A proposed solution to the problems of unfair process and inadequate review of local quasi-judicial decisions that directly affect the quality and effectiveness of growth management in Florida.

Robert Lincoln, Esq.
Icard, Merrill, Cullis, Timm, Furen & Ginsburg, P.A.
2033 Main St., Suite 600
Sarasota, FL 34239
rlincoln@icardmerrill.com

## Chapter 120 Part II

**120.100—SHORT TITLE—**This Act may be referred to as the "Local Government Administrative Procedures and Review Act" or "LGAPRA."

**120.110—INTENT AND SEVERABILITY—**This section is intended to improve the fairness, effectiveness and legitimacy of local administrative decisions by providing minimum procedures for the conduct and review of all quasi-judicial hearings and decisions by local governments or their agencies, boards, and officers. After the effective date of this ordinance, any quasi-judicial hearing as defined herein shall be conducted in accordance with the terms or intent of this statute, and any ordinance or regulation that is in conflict with the terms of this statute shall be ineffective to the extent of such inconsistency; however, nothing in this statute shall prohibit any local government from adopting supplemental rules or ordinances for the conduct of public hearings so long as those rules are consistent with the terms and intent of this statute.. Should the provisions of this section be inconsistent with any existing statute, the terms of this section shall govern. This section is intended to provide access and protection to the public and the public interest and shall be construed liberally to achieve those purposes. Should any part of this section be found to violate the Florida or United States Constitution, it shall be severed and all other sections shall remain in force.

**120.120—DEFINITIONS—**As used in this section the term:

(1) **Party** means an applicant for a permit or development order, the a person subject to a licensing or enforcement action, the local government agency or official designated by statute, ordinance or resolution to process or prosecute the quasi-judicial hearing, or an aggrieved or adversely affected person. When a tribunal other than the governing body of a local government conducts a hearing governed by this section, the governing body, county administrator or city manager, or other staff designated by the governing body shall be a party for the purpose of participation and appeal, and may appeal the order regardless of participation in the hearing.

(2) **Aggrieved or affected person** has the meaning provided in Section 163.3215, Florida Statutes. .

(3) **Order** means a written decision rendered by the tribunal resolving a quasi-judicial matter, and includes a development order so rendered.

(4) **Development order** has the meaning provided in section163.3164, Florida Statutes.

(5) **Record** means the official record of the quasi-judicial hearing as provided herein.

(6) **Rendition of an Order** has the meaning provided in the Florida Rules of Appellate Procedure.

(7) **Presiding Officer—**means a hearing officer, special magistrate or other person charged with conducting a hearing under this section.  In the case of a hearing conducted before a tribunal consisting of more than one member, it means the designated chairperson with authority to control the hearing.

(8) **Elected Board** means the elected governing body elected of a local government, regardless of the description of the board in the charter or enabling legislation.

(9) **Appointed Board** means a board appointed by the governing body of an elected local government, which board is empowered to conduct quasi-judicial hearings.

(10) **Local Government** means any county, municipality, or independent special district, except those covered by Chapter 120, Part I.

(11) **Tribunal** means the entity or person conducting a quasi-judicial hearing and entering the order or development order to be reviewed.

(12) **Special Magistrate** means a hearing officer, administrative law judge, special master, special magistrate or other official authorized under a statute or local ordinance to conduct a quasi-judicial hearing.

(13) **Member of the Tribunal** means any Special Magistrate, a member of any Elected or Appointed Board, or the advisory counsel to any tribunal, and any staff, clerk or aide to such a member.

(14) **Ex parte contact** means any contact between a party, party's counsel or other reprehensive or agent, and in the case of a proceeding involving a development order, with any member of the public, and a member of a tribunal regarding any subject pertaining to a matter or proceeding before the tribunal without prior notice to and the opportunity to participate by, the other parties to the proceeding.  Contacts made solely for the purpose of determining purely procedural matters, such as checking on the status of a proceeding, the scheduling of a hearing, or to obtain record information, shall not be considered an ex parte contact.

(15) **Party of record**. Means a person granted party statutes under the provisions of this section or based on a specific determination of the tribunal, and who participated in the quasi-judicial hearing whether through attendance at the hearing, representation by counsel or other agent, or by the filing of written evidence.

**120.130—SCOPE**—This section applies to quasi-judicial actions taken by any local government, including any county, municipality or community development district, or agency thereof. It governs the conduct of any quasi-judicial hearing taken under Chapter 162, and disciplinary or licensing actions of local boards authorized to license contractors or professionals. It does not apply to any original hearings before a county or circuit court.

**120.135—NOTICE AND PARTICIPATION—**

**(1) Notice to named parties** – except where notice is otherwise governed by statutes, notice of any quasi-judicial hearing shall be mailed to named or identified parties at least 21 days prior to the hearing, and shall set forth the issues to be determined at the hearing. If the matter involves disciplinary or enforcement matters, notice shall be by certified mail to the respondent, and shall state with particularity the nature and basis of the action.

**(2) Notice regarding hearings involving development orders** – In any hearing governed by this section involving the issuance of a development order, mailed notice shall be sent to the record owners of properties within 350 feet of the property subject to the development order, unless local regulations or ordinances provide for a greater scope of notice, no fewer than 21 days prior to the hearing., and any person receiving such notice shall be presumed to be an aggrieved or affected person and permitted to participate in the hearing and any prehearing proceedings as a party of record. The property subject to the application for a development order shall be posted with notice identifying the date, time, location and subject of the hearing. The local government shall also comply with the notice requirements of ss.166.41 and 125.66, Florida Statutes, as applicable.

**(3) Notice to affected persons and participation by persons in proceedings not involving development orders**. If it appears that the determination of the rights of parties in a proceeding will necessarily involve a determination of the substantial interests of persons who are not parties, the presiding officer may enter an order requiring that the absent person be notified of the hearing and be given an opportunity to be joined as a party of record.

**(4) Party status of affected persons**. Upon the petition of any person that asserts facts demonstrating that the person may be adversely affected by the subject of the proceeding, the person shall be granted party status and be permitted to participate fully in the hearing as a party, unless such status is presumed as provided under subsection (2).

**(5) Notice of regulations and information**. Any notice provided to any person or party pursuant to this subsection shall inform the recipient of her right to counsel and either

include or reference the applicable procedures and regulations, and identify the location and availability of information regarding the specific subject of the notice.

**(6) Notice and scope of inquiry at hearing.** Except as otherwise provided in subsection 120.140, the scope of inquiry and evidence at the hearing shall be limited to the issues and controversies identified in the notice of hearing.

**(7) Filing and serving of notices, motions and other communications.** Unless otherwise required by law, notices, motions and other communications under this chapter may be sent by U.S. Mail, telefacsimile, hand delivery, or by email.

**(8) Computation of time**. Time for filing appeals, motions, responses or other actions shall be computed as provided in the Rules of Appellate Procedure.

## 120.140—MINIMAL STANDARDS OF PROCEDURE FOR THE CONDUCT OF QUASI-JUDICIAL HEARINGS

**(1) Representation**. A party may appear on her own behalf, be represented by counsel, or be represented by a qualified non-attorney. The local government may establish by ordinance standards for the qualification and conduct of non-attorney representatives. In the absence of such local regulations, a non-attorney representative may represent a party only after providing notice to the tribunal at least 5 days prior to the hearing that includes at a minimum a summary of the representative's relevant experience and qualifications. The tribunal may reject non-attorney representation for good cause, including a history of improper conduct in prior proceedings; however, if such rejection occurs the hearing must be continued at the request of the party whose representative was rejected.

**(2) Presentation and examination of evidence**. All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence. When appropriate, non-party members of the general public may be given an opportunity to present oral or written communications, but if the tribunal proposes to consider such material, then all parties shall be given an opportunity to cross-examine or challenge or rebut the material. Testimony may be given in narrative form or may be presented in a question and answer format, in which case leading questions shall be permitted. Statements by attorneys or non-attorney representatives may be accepted as narrative testimony if the attorney or representative has been sworn and indicates that the statements are intended to be evidence; in such case the attorney or non-attorney representative shall be subject to cross examination regarding any statements made.

**(3) Time limits on presentation of evidence.** The tribunal may set reasonable time limits for the presentation and rebuttal of evidence by the parties, but all parties must be provided with sufficient time to fully put on their evidence at the hearing. The tribunal shall grant additional time for the presentation of evidence on motion or notice by any party that sets forth a reasonable need or basis for the request.

**(4) Record**. The record in a quasi-judicial hearing governed by this section shall consist only of:

a. All notices, pleadings, motions, and intermediate rulings.

b. Evidence admitted.

c. Those matters officially recognized. The constitutions of the United States and the State of Florida, State statutes, and adopted ordinances and regulations of the local government shall be recognized without prior motion or notice. Any other matter that would be subject to judicial notice in a civil proceeding shall be noticed

d. Proffers of proof and objections and rulings thereon.

e. Any decision, opinion, order, or report by the presiding officer;.

f. All staff memoranda or data submitted to the presiding officer during the hearing or prior to its disposition, after notice of the submission to all parties, except communications by advisory staff as permitted under s. 120.66(1), if such communications are public records.

g. All matters placed on the record after an ex parte communication.

h. The official transcript.

i. Where an advisory board conducts a public hearing prior to the conduct of the final quasi-judicial hearing, the resolution, order or findings resulting from that hearing. Other record materials created before the advisory board may be included in the record only if the local government causes a transcript of the hearing to be created and the entire record is reviewed by the tribunal, including all members of any board, prior to the opening of the final hearing.

**(5) Tribunal to preserve record and testimony**. Each tribunal shall have an official clerk, designated by ordinance or by a resolution of the tribunal in the absence of an ordinance. The clerk shall be charged with maintaining the official record of each proceeding before the tribunal, and shall provide a copy of any materials therein on the request of any person, at a charge no greater than that provided by Chapter 119, Florida Statutes for other public records. The tribunal shall accurately and completely preserve all testimony and exhibits introduced in the hearing, and, on the request of any party, it shall make a full or partial transcript available at no more than actual cost.

**(6) Attorney to the tribunal**. Where the hearing is not conducted by a Special Magistrate who is a licensed attorney, the tribunal may employ an attorney to advise it. Such an advising attorney may not assist the local government staff or another attorney in preparing or presenting its case, nor may the advising attorney confer with, advise or communicate with the staff or another attorney representing the local government staff in

relation to any matter that is, or has been, before the tribunal unless all parties or their representatives are present.

**(7) Subpoenas for witnesses or evidence**. At the request of any party, the tribunal shall issue a subpoena demanding the appearance of any person, and may, upon cause shown, direct any party to produce at the hearing documents or records requested by any other party. Should any witness so subpoenaed fail to appear, or any records ordered produced not be made available at the hearing, the hearing shall be continued, and the aggrieved party may apply to the circuit court for enforcement of the subpoena.

**(8) Examination by tribunal.** The tribunal may ask clarifying questions of any witness, attorney or non-attorney representative, but may not introduce issues not raised by a Party, nor may the tribunal assist any party in the presentation of its case. Statements made by members of the tribunal during the course of the hearing or deliberations thereafter shall not be considered evidence in support of a determination by the tribunal.

**(9) Participation for improper purpose**. No person shall become a party or participate in any proceeding under this part for the primary purposes of harassment or delay of another party.

## 120.145—SPECIAL PROVISIONS FOR QUASI-JUDICIAL HEARINGS INVOLVING DEVELOPMENT ORDERS

**(1) Notice of issues contested by staff**. No fewer than ten (10) days before the hearing, the local government staff charged with reviewing and assessing the application for the development order shall file with the tribunal and serve on the applicant and any other parties of record a notice detailing:

> a) any inconsistencies found between the application for the development permit and the local comprehensive plan, land development regulations, or other applicable state or local standards;
> b) any proposed conditions addressing those inconsistencies that staff finds would address potential inconsistencies between the application for a development order and the local comprehensive plan, land development regulations or other applicable standards, along with an explanation of how they would address the issues;
> c) any issues that would remain contested should the applicant accept the proposed conditions;
> d) a summary of any evidence to be presented at the hearing and a list of witnesses;
> e) if the local government intends to introduce evidence of a public interest that would support denying the application, the interest and the evidence to be presented in support.

**(2) Response by Applicant**. No fewer than five (5) days before the hearing, the applicant shall file with the tribunal and serve on the reviewing staff and any other parties

notice the acceptance, rejection, or proposed modification of the stipulations or conditions proposed by staff. The applicant also shall provide a summary of the evidence to be presented, a list of witnesses that the applicant intends to present, and an estimate of the time needed to present the evidence.

(a) If there are no contested issues remaining, the local government staff shall be considered aligned with the applicant and shall join in its presentation of the case.
(b) Should the Applicant fail to timely file the notice, the hearing shall be continued at the request of the staff or any other party.

**(3) Notice by Aggrieved or Affected Persons.** Any aggrieved or affected person, including an person who receives mailed or direct notice, who wishes to have party status at the hearing must, at least five (5) days prior to the hearing, file with the tribunal and serve on the local government and the applicant notice identifying all issues that the affected person intends to raise at the hearing, a summary of the evidence to be presented, and a list of any witnesses who may be presented.

(a) Failure to File. Should the affected person fail to provide the required notice, it may not participate at the hearing as a full party without the permission of the tribunal, and the applicant shall be entitled to a continuance should permission to participate as a full party be granted. Should the person not be granted party status, the person may present information at the hearing as a member of the public.

**(4) Hearing Limited to Contested Issues.** The scope of the hearing shall be limited to those issues remaining as identified by the staff's notice and those raised by other parties. Should the staff recommend approval, or approval with conditions accepted by the applicant, and no third party files a notice identify valid issues that would justify denying the development order, the tribunal shall enter an order granting the development order, with the conditions specified, at the close of the hearing. If contested issues of fact or interpretations of law remain, the tribunal shall determine those issues, and grant the development permit if the applicant has demonstrated by a preponderance of the evidence consistency with the comprehensive plan and all substantive local ordinances and regulations.

**120.150—ADDITIONAL PROVISIONS FOR QUASI-JUDICIAL HEARINGS CONDUCTED BY AN ELECTED OR APPOINTED BOARD**—An elected or appointed Board may conduct hearings pursuant to this part.

(1) The Board may establish rules of procedure governing the disposition of pre-hearing motions, evidentiary objections during the hearing, and may appoint an Special Magistrate for the limited purpose of ruling on such matters while retaining jurisdiction over all other aspects of the hearing. In the absence of such rules, the presiding officer of the Board shall rule on preliminary motions and matters prior to the hearing, and on evidentiary matters and objections during the hearing.

(2) Should a member of a Board be absent or unavailable during the hearing, the hearing may continue so long as a quorum is available. In the event that a Board member is not present at all times during a hearing, the Board member shall not participate in the deliberations and voting on the Order unless the Board member has reviewed the entire transcript and record for those portions of the hearing for which the Board member was absent.

(3) Orders shall be adopted by a simple majority of the members of the board voting on any matter, and no super-majority shall be required regardless of any local ordinance or charter provision to the contrary.

**120.55—ADOPTION OF ORDERS BY AN ELECTED BOARD AFTER HEARINGS ARE CONDUCTED BY A SPECIAL MAGISTRATE**. Nothing in this section shall prohibit local governments from adopting procedures in which a hearing is conducted by a Special Magistrate whose proposed order or findings then becomes the basis for an Order entered by an Elected or Appointed Board. Such procedures must provide that the Elected or Appointed Board may alter the Special Magistrate's Findings of Fact only if all members of the Board have read both the proposed order and the entire record of the hearing before the Special Magistrate and then determine that a finding or findings are not supported by competent substantial evidence. The Board may alter the Special Magistrate's conclusions of law if the Board finds them to be erroneous, but shall state the basis for such a finding with particularity on the record prior to rendering its Order.

**120.160—EVIDENCE IN LOCAL QUASI-JUDICIAL HEARINGS**—In hearing governed by this section, the following minimal rules of evidence shall apply:

(1) Oral evidence shall be taken only on oath or affirmation.

(2) Each party shall have the right to cross examine and impeach any witness or document, regardless of which party called the witness to testify.

(3) Hearsay evidence, whether received in evidence over objection or not, may be used to supplement or explain other evidence, but shall not be sufficient in itself to support a finding unless the evidence falls within an exception to the hearsay rule as found in Chapter 90, F.S.

(4) The rules of privilege apply to the same extent as in civil actions under Florida law.

(5) Documents. Relevant documents, photographs, other images or demonstrative exhibits offered as evidence shall be accepted into evidence if a reasonable person would accept the proffered evidence as authentic on its face or through representations proffered with the document. However, documents that are or contain hearsay shall be treated as under paragraph (3) of this subsection.

(6) Any party may file written evidence, including reports of experts, no less than 10 days prior to the hearing. Copies shall be sent to all parties of record. Any such report may be examined during the hearing, and the reports of expert witnesses shall be excluded if the expert is not available at the hearing to be examined regarding the content and conclusions of the report. This shall not prevent an expert witness from relying on the reports and conclusions of other experts, or on other material not entered into evidence.

(7) Expert witnesses shall be recognized, and expert testimony accepted, on the same basis as in a civil hearing.

**120.165—ORDER OF PROOF AND BURDEN OF PURSUASION.**

**(1) Generally**. The party asserting the affirmative has the burden of proof and shall present its case initially. Cross examination shall be conducted immediately after any witness testifies, and may be conducted by any party.

**(2) Hearings involving development orders**. In hearings governing the issuance of a development order, the applicant shall present first. Staff shall present any contested issues remaining as detailed in subsection 120.195. Any third party participants shall then present their evidence. If the hearing is a public hearing, members of the public shall be permitted to speak, but shall not be permitted to present other witnesses or to cross-examine witnesses. The applicant shall then have the opportunity to present rebuttal evidence and closing argument.

**(3) Disciplinary or enforcement hearings**. In any disciplinary or enforcement proceeding, the burden shall be on the local government to establish by clear and convincing evidence all facts necessary to establish the existence of the violation and the basis for any penalty. The local government representative shall present its evidence first, followed by the respondent shall present evidence. Both sides shall have opportunity for rebuttal and closing argument.

**(4) Determination based on evidence at hearing.** All findings of fact that form the basis of any order entered pursuant to this section shall be based solely on the evidence produced at the hearing and considered by the tribunal.

**(5) Burden of proof**. Factual determinations by the tribunal shall be based on a preponderance of the evidence presented, except in hearings involving disciplinary, enforcement or the imposition of penalties, where all findings must be supported by clear and convincing evidence.

**120.170— MINIMAL STANDARDS FOR THE RENDITION OF ORDERS IN LOCAL QUASI-JUDICIAL HEARINGS.** The Legislature declares and recognizes that longstanding Florida law requires that the record and order issued in a quasi-judicial proceeding must provide a sufficient basis for effective judicial review. The tribunal shall issue a written order in all hearings conducted pursuant to this part. The order shall, at a minimum, recite the facts and conclusions that form the basis of the determination; no

order shall simply grant or deny the relief or action requested. The Order shall be filed with the designated Clerk or Secretary to the Board, and a copy of the Order shall be sent by facsimile or United States mail, or both, to the parties of record no later than the date the Order is filed.

**120.175—Ex Parte Contacts**. The Legislature recognizes that ex parte contacts are anathema to the fairness and proper conduct of a quasi-judicial hearing. Regardless of any other statute, ordinance or regulation, the following procedures and standards shall apply to limit and regulate ex parte contacts in any proceeding governed by this section:

(1) In any proceeding under this section, no ex parte communication relative to the merits, threat, or offer of reward shall be made to a member of a tribunal regarding an issue or matter pending before the tribunal by:

(a) Any public employee or official engaged in prosecution or advocacy in connection with the matter under consideration or a factually related matter, including any indirect contact through other employees or officials.

(b) A party to the proceeding, the party's authorized representative or counsel, or any person who, directly or indirectly, would have a substantial interest in the proposed agency action.

(c) A member of a tribunal who receives an ex parte communication in violation of subsection (1), shall place on the record of the pending matter all written communications received, all written responses to such communications, and a memorandum stating the substance of all oral communications received and all oral responses made, and shall also advise all parties that such matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be allowed to do so at the hearing. The Special Magistrate or Board member may, if necessary to eliminate the effect of an ex parte communication, withdraw from the proceeding, in which case the a successor shall be appointed as provided in the procedure in this section governing Disqualification.

(d) The failure of a member of a tribunal to disclose ex parte contacts as provided herein prior to the commencement of the hearing shall be considered per se evidence of bias and the offending individual may be disqualified as provided in this section upon motion of any party aggrieved by the ex parte contact.

**120.180—PREHEARING MOTIONS**

(1) Requests for relief may be made by motion. All motions shall be in writing unless made on the record during a hearing, and shall fully state the action requested and the grounds relied upon. The original written motion shall be filed with the presiding officer. When time allows, the other parties may, within 7 days of service of a written motion, file a response in opposition. Written motions will normally be disposed of after the response period has expired, based on the motion, together with any supporting or

opposing memoranda. The presiding officer shall conduct such hearings and enter such orders as are deemed necessary to dispose of issues raised by the motion.

(2) Motions, other than a motion to dismiss, shall include a statement that the movant has conferred with all other parties of record and shall state as to each party whether the party has any objection to the motion.

(3) Motions for continuance or extension of time shall be filed prior to the expiration of the deadline sought to be extended and shall state good cause for the request.

**120.185—POSTHEARING MOTIONS**

(1) Within ten (10) days of the rendition of the Order, any Party may file a motion for:

(a) Reconsideration, clarification or modification of the Order, or

(b) New hearing.

(2) Copies of the motion shall be served on all parties of record, who may respond within five (5) days. The filing of such a motion shall stay the period for filing a notice of appeal.

(3) The tribunal may adopt its own rules for the review of such motions, including provisions for conducting argument before the tribunal.

(4) Decisions on such motions shall be rendered in writing within 45 days of filing.

**120.190 DISQUALIFICATION**

(1) Notwithstanding the provisions of section 112.3143, Florida, Statutes, any party may file a verified motion for disqualification concerning any member of a tribunal for bias, prejudice, or interest within a 10 days prior to the hearing.

(2) If the verified motion alleges that the member of the tribunal was biased or prejudiced or facts that would lead a reasonable person to fear that they would not receive a fair or impartial hearing from the member, the presiding officer shall set a hearing on the motion prior to the quasi-judicial hearing.

(a) If the motion is directed at a Special Magistrate, the Special Magistrate may conduct the hearing and shall disqualify himself or herself if the Magistrate admits and holds that he or she does not stand fair and impartial between the parties..

(b) If the motion is directed at a member of an Elected or Appointed Board, but not the presiding officer, the motion shall be heard by the presiding officer and shall disqualify the member if the moving party establishes facts that would lead a reasonable

person to believe that the member was biased or prejudiced toward the party or the party's cause;

(c ) If the motion is directed at the presiding officer, other than a Special Magistrate, the presiding officer shall designate another member of the tribunal to conduct a hearing as under subsection (b).

(3) If a disqualified member was appointed, the appointing power may appoint a substitute to serve in the matter from which the member is disqualified. If the member is an elected official, the remaining elected members of the Elected Board may appoint a substitute to serve in the hearing from which the individual is disqualified. However, if a quorum remains after the individual is disqualified, it shall not be necessary to appoint a substitute.

(4) Any action taken by a duly appointed substitute for a disqualified individual shall be as conclusive and effective as if action had been taken by the tribunal as it was constituted prior to any substitution.

**120.200 APPELLATE REVIEW OF ORDERS ISSUED AFTER LOCAL QUASI-JUDICIAL HEARINGS—**

(1) Any party of record may appeal an order rendered pursuant to this section to the Circuit Court in the circuit in which the local government is in accordance with its jurisdiction under Article V, Section 5 (b). A notice of appeal shall be filed within 30 days of the rendition of the order to be appealed, along with the filing fee established by statute for civil actions.

(2) Stay pending appeal. Once an appeal is filed, an appealing party may move the circuit court for a stay pending the appeal. The court shall conduct an evidentiary hearing to determine whether a stay should be granted, and may grant a stay on such terms as it deems proper.

(3) Decisions of the circuit court in appeals taken under this section are decisions of a trial court that may be appealed to the District Court under its jurisdiction under Article V, Section 4(b)(1) of the Florida Constitution.

(4) Judicial review of any Order under this part shall be confined to the record made at the hearing and transmitted. Should the record transmitted fail to include matters properly included in the record, as defined in this section, the transmitted record may be supplemented in accordance with the Florida Rules of Appellate Procedure.

(5) The record for judicial review shall be compiled in accordance with the Florida Rules of Appellate Procedure, except that the designated Clerk to the tribunal rather than the Clerk of the Circuit Court shall compile and transmit the record (unless the Clerk of Court is designated as the Clerk and record keeper to the tribunal) within 60 days of the filing of the notice of appeal. If the record is kept by a person or agency other than the

Clerk of the Circuit Court, the charge for preparing, copying and transmitting the record shall not exceed that of providing official records under Chapter 119, Florida Statutes.

(6)(a) The reviewing court's decision may be mandatory, prohibitory, or declaratory in form, and it shall provide whatever relief is appropriate irrespective of the original form of the petition. The court may:

1. Order action required by law; direct the tribunal's exercise of discretion when required by law; set aside the tribunal's action; remand the case for further proceedings; or decide the rights, privileges, obligations, requirements, or procedures at issue between the parties; and

2. Order such ancillary relief as the court finds necessary to redress the effects of official action wrongfully taken or withheld.

(b) If the court sets aside the Order or remands the case to the tribunal for further proceedings, it may make such interlocutory order as the court finds necessary to preserve the interests of any party and the public pending further proceedings.

(7) The court shall remand a case to the tribunal for further proceedings consistent with the court's decision, or set aside the action, or may order direct relief as appropriate, when it finds that:

(a) The order depends on any finding of fact that is not supported by competent, substantial evidence in the record; however, the court shall not substitute its judgment for that of the tribunal as to the weight of the evidence on any disputed finding of fact;

(b) The fairness of the proceedings or the correctness of the action may have been impaired by a material error in procedure or a failure to follow prescribed procedure;

(c) The tribunal's exercise of discretion was:

1. Outside the range of discretion delegated to it by law;

2. Inconsistent with local ordinances or regulations, or of a statute or the constitutions of Florida or the United States;

3. Inconsistent with officially stated policy or a prior practice, if the deviation is not explained; or

4. Otherwise in violation of a constitutional or statutory provision;

(8) Parties challenging an action by appeal may raise the constitutionality of the regulation, ordinance, or statute, or any interpretation or application thereof, in the appeal. The court shall have exercise such power and jurisdiction as is necessary to ensure that s

(9) Unless the court finds a ground for setting aside, modifying, remanding, or ordering action or ancillary relief under a specified provision of this section, it shall affirm the Order.

(10) Appeals shall not be filed or prosecuted for the purpose of delay, harassment or other improper purposes. Appeals that are frivolous, meritless, or without a cognizable legal basis shall be subject to sanctions as provided in section 70.51, Florida Statutes.

OPTIONAL PROVISION FOR CONSIDERATION:

**120.210—APPEAL OF DEVELOPMENT ORDERS ISSUED AFTER LOCAL QUASI-JUDICIAL HEARINGS**. In any proceeding under this part involving a development order, the appeal shall be as provided in s. 120.200 of this Part, except that the appeal shall be filed with the local government along with the filing fee, and heard by, an Administrative Law Judge of the Division of Administrative Hearings.

(1) The procedures and standards set forth in Section 120.200 shall apply to all appeals heard before an Administrative Law Judge pursuant to this section. The Division of Administrative Hearings shall assign a rotation of no more than four Administrative Law Judges who shall hear all appeals under this section. The local government shall be responsible for all charges and costs for the services of the Administrative Law Judge, but may apply the filing fee to offset such charges.

(2) Oral argument shall be provided in all cases, and shall be held in the County in which the decision was taken.

(3) The appeal shall be hearing on an expedited basis, and extensions for the time to file any pleading or brief shall not granted excepted for good cause shown. The initial brief shall be due 45 days after the filing of the notice of appeal, the appellee and any aligned parties shall have 15 days to respond, and the appellant shall have 15 days from the filing of the response in which to file a reply. Oral argument shall be held within 120 days of the filing of the notice of appeal.

(4) The determination of the Administrative Law Judge shall be a final order. Appeal from the final order entered by the Administrative Law Judge shall be taken by filing a notice of appeal with the Judge and with the First District Court of Appeal, which shall have jurisdiction over all such appeals.

(5) The Division of Administrative Hearings shall adopt such rules as are necessary to implement its responsibilities under this section.

OTHER SUGGESTED COMPLEMENTARY CHANGES TO FLORIDA STATUTES:

1) Amendment to 163.3215: Replace subsection (4) and its subparts with the following:

4) Where a development order is issued pursuant to a quasi-judicial proceeding conducted under Chapter 120, Part II, Florida Statutes, the sole method by which an aggrieved and adversely affected party who participated in that proceeding may challenge any decision of local government granting or denying an application for a development order on the basis that it is not consistent with the comprehensive plan adopted under this part, is by an appeal filed pursuant to that section. It is the intent of the Legislature that the reviewing court exercise its authority to grant any relief necessary to fulfill the intent of this section.

2) Amendments to 163.3184, 163.3187, and 163.3189:

In all of these sections, amend the statute to provide that in all cases, the decision of the Administrative Law Judge is a final order, appealable to the First District Court of Appeal.

Eliminate all references to the Administration Commission and assign any of its remaining roles to the ALJ.