

## **PROCEDURE FOR APPEAL OF DENIAL OF RIGHT-OF-WAY PERMIT**

The Commission should have some familiarity with the procedure involved in an appeal from a denial of a right-of-way permit as it is strikingly similar to the appeal process involved in an appeal from a denial of a development permit by the Planning & Zoning Board under ULDR § 47-26B.1.

### **FIRST PHASE OF REVIEW.**

The Applicant must file the appeal within thirty (30) days of the decision (denial of the permit). The Record compiled by the City Engineer is to be forwarded to the City Commission for review. At its regular meeting, the City Commission shall review the record and the arguments by Applicant and the City to determine if:

- (a) There was a departure from the essential requirements of the law in the proceedings below; or
- (b) Competent substantial evidence does not exist to support the decision below.

Upon review of the record and arguments, the City Commission *must uphold* the decision below if (a) there was not a departure from the essential requirements of the law in the proceedings below or if (b) there was competent substantial evidence to support the decision below.

During the First Phase of Review, argument may be made by the Applicant and City representatives and public input may be heard limited solely to whether the record supports the decision below.

Upon review of the record below and arguments, if the City Commission finds (a) that there was a departure from the essential requirements of the law or (b) that there is not substantial competent evidence to support the decision below, then the City Commission *shall proceed* to the Second Phase of Review and conduct a *de novo* hearing.

### **SECOND PHASE OF REVIEW – DE NOVO HEARING.**

The *de novo* hearing may be held immediately or shall be set by Resolution no later than thirty (30) days from the date of the adoption of the Resolution.

At the conclusion of the *de novo* hearing, the City Commission may reject, approve or amend the decision below.

### **APPEAL TO CIRCUIT COURT BY WRIT OF CERTIORARI**

Appeal from a final decision by the City Commission shall be to Circuit Court by filing a Petition for Writ of Certiorari within thirty (30) days of the final decision.