

**SEMINOLE COUNTY GOVERNMENT
LAND PLANNING AGENCY/PLANNING AND ZONING COMMISSION
AGENDA MEMORANDUM**

SUBJECT: AMENDMENT TO THE LAND DEVELOPMENT CODE OF SEMINOLE COUNTY AND THE SEMINOLE COUNTY CODE FOR COMPLIANCE WITH CHAPTER 2002-296, LAWS OF FLORIDA

DEPARTMENT: Planning and Development **DIVISION:** Planning

AUTHORIZED BY: Matthew West **CONTACT:** Tony Matthews **EXT.** 7373

Agenda Date 07/09/03 **Regular** **Consent** **Work Session** **Briefing**
Public Hearing – 1:30 **Public Hearing – 6:00**

MOTION/RECOMMENDATION:

1. RECOMMEND amending the Land Development Code of Seminole County and the Seminole County Code for compliance with Chapter 2002-296, Laws of Florida, per the attached ordinance; or
2. DO NOT RECOMMEND amending the Land Development Code of Seminole County and the Seminole County Code for compliance with Chapter 2002-296, Laws of Florida; or
3. CONTINUE this item to a date certain.

(Countywide)

(Tony Matthews, Principal Planner)

BACKGROUND:

The attached ordinance will bring the terms of the Land Development Code of Seminole County and the Seminole County Code into compliance with Chapter 2002-296, Laws of Florida (also known as Senate Bill 1906 from the 2002 Legislature). The proposed ordinance includes language that provides for: (1) appointment of a School Board representative to serve on the County's Land Planning Agency; (2) clarification of the role of hearing officers; (3) amendment to the process for appeal of Board decisions; and (4) elimination of certain required Board findings in rezoning decisions (see attached ordinance and pages from Florida Statutes).

STAFF RECOMMENDATION:

RECOMMEND amending the Land Development Code of Seminole County and the Seminole County Code for compliance with Chapter 2002-296, Laws of Florida, per the attached ordinance.

Attachments: Proposed ordinance, pages from Florida Statutes.
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Reviewed by:
Co Atty: ABC
DFS: _____
Other: MW
DCM: _____
CM: _____
File No. _____

O R D I N A N C E

AN ORDINANCE AMENDING THE LAND DEVELOPMENT CODE OF SEMINOLE COUNTY SECTIONS 1.12, 5.18, 7.3, 7.5, 15.2, 15.3, 15.6, 15.8, 20.4, 30.912; AMENDING RULES AND PROCEDURES FOR APPEALS OF LOCAL GOVERNMENT DECISIONS TO CIRCUIT COURT; CLARIFYING INTENT OF HEARING OFFICER PROVISION; ADDING APPOINTMENT OF A SCHOOL BOARD REPRESENTATIVE TO THE LAND PLANNING AGENCY; REMOVING REQUIREMENT TO DISTINGUISH BETWEEN LEGISLATIVE AND QUASI-JUDICIAL DETERMINATIONS; AMENDING THE SEMINOLE COUNTY CODE SECTION 55.126; AMENDING PROCESS FOR APPEALING LOCAL GOVERNMENT DECISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the State Legislature passed legislation known as Chapter 2002-296, Laws of Florida which took effect on May 31, 2002; and

WHEREAS, this legislation amended Section 163.3215, Florida Statutes, in regard to the process for appeal of certain local government land use decisions to local courts; and

WHEREAS, this legislation also amended Section 163.3174, Florida Statutes, to require appointment of a Seminole County School Board representative to the Seminole County Land Planning Agency; and

WHEREAS, the Board of County Commissioners desires to bring the terms of the Land Development Code of Seminole County and the Seminole County Code into compliance with the requirements of the new law,

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SEMINOLE COUNTY, FLORIDA, AS FOLLOWS:

Section 1. Chapter 1, Section 1.12, Land Development Code of Seminole County is hereby amended to read as follows:

Sec. 1.12. Appeals.

(a) Unless specifically stated to the contrary in this Code all appeals to the Board of County Commissioners ~~as to a particular appeal process, all appeals to a higher authority shall be de novo, provided, however, that this provision shall not apply to appeals to the courts.~~

* * * * *

(c) All appeals from decisions of the Board of County Commissioners regarding building permits, zoning permits, subdivision approval, rezoning, certification, special exceptions, variances, or any other official action effecting the permitting of land development and consistency with the Seminole County Comprehensive Plan shall be ~~by petition for writ of certiorari filed within thirty (30) days of the date of the board's decision notwithstanding the date that the decision is reduced to writing~~ subject to the terms of Section 163.3215, Florida Statutes, as amended.

Section 2. Chapter 5, Section 5.18, Land Development Code of Seminole County is hereby amended by adding subsection (f) to read as follows:

Sec. 5.18. Hearing Officer.

(f) Nothing contained in this Section shall be construed to create a special master review process pursuant to Section 163.3215, Florida Statutes.

Section 3. Chapter 7, Section 7.3, Land Development Code of Seminole County is hereby amended to read as follows:

Sec. 7.3. Organizational Structure and financing. The Seminole County Land Planning Agency shall be directly responsible to the Board of County Commissioners and shall be a recommendatory agency with respect to said Board. The agency shall be funded by the Board of County Commissioners in a manner consistent with the County's budgetary process and subject to the discretion of said Board. Employees, officers and agents of the agency shall be appointed or employed by the Board of County Commissioners in its discretion, and shall serve at the pleasure of said Board, except for the Seminole County School Board representative who shall be appointed by, and serve at the pleasure of, the School Board.

Section 4. Chapter 7, Section 7.5, Land Development Code of Seminole County is hereby amended to read as follows:

Sec. 7.5. Organization; rules and procedures. The initial and subsequent members of the Seminole County Land Planning Agency shall be the present members of the planning and zoning commission, whose terms shall expire at the end of the period

for which they were appointed. At the expiration of the term of each of the members of the Seminole County Planning and Zoning Commission, the next succeeding term of office for each member ~~appointed by the Board of County Commissioners~~ shall be for four (4) years. The Seminole County School Board shall appoint one (1) representative to the Seminole County Land Planning Agency. Said representative shall be an advisory member of the Agency and shall not be afforded voting rights on any matters brought before the Agency. Said member shall serve a term to be determined by the School Board. Any vacancy in the membership of the planning and zoning commission shall be filled for the unexpired portion of the term in the same manner as an appointment for a full term. At the first public meeting held by the Seminole County Land Planning Agency, the agency shall set rules and procedures and choose its officers. The Board of County Commissioners may establish policies and rules of procedure for the Seminole County Land Planning Agency by a subsequent resolution or ordinance. The Seminole County Land Planning Agency shall conduct its activities in accordance with the public participation provisions of the 1991 Seminole County Comprehensive Plan as it may be amended.

Section 5. Chapter 15, Section 15.2, Land Development Code of Seminole County is hereby amended to read as follows:

Sec. 15.2. Statement of Intent.

~~(a) This chapter establishes the sole and exclusive administrative procedures and standards by which real property owners may seek to demonstrate that private property rights relating to parcels of real property have vested against and under the provisions of the 1991 Seminole County Comprehensive Plan. Said administrative procedures shall result in determinations relating to the consistency of development with the 1991 Seminole County Comprehensive Plan as well as the application of the various policies and provisions set forth in said plan including, but not limited to, determinations relating to the concurrency management system and issuance of certificates of concurrency.~~

(b)(a) It is the purpose of this chapter to provide an administrative process for appealing decisions rendered by the Planning and Development Director, the County Engineer, hearing officers and administrative decision makers prior to any available recourse in a court of competent jurisdiction. In particular, it is intended that such administrative relief be provided in the most professional, objective and equitable manner possible through decisions of the Planning and Development Director, the County Engineer and other administrative decision makers and through the appointment of hearing officers to adjudicate matters as provided herein.

~~(c) The function of hearing officers shall be to serve as the second step of a two step administrative process relating to the determinations provided by in this chapter.~~

~~(d)~~(b) No party shall be deemed to have exhausted his, her or its administrative remedies for the purpose of seeking judicial review unless the party first obtains reviews of the Planning and Development Director's decision, the County Engineer's decision, and administrative decision maker's decision and a hearing officer's decision as provided herein.

Section 6. Chapter 15, Section 15.3(f), Land Development Code of Seminole County is hereby amended to read as follows:

Sec. 15.3. Existing development orders, exemptions and general provisions.

(f) The property owner may appeal the decision of the Planning and Development Director in accordance with the provisions of this chapter and applicable law.

Section 7. Chapter 15, Section 15.6(g)(6), Land Development Code of Seminole County is hereby amended to read as follows:

Sec. 15.6. Appeal of Planning and Development Director's decisions to hearing officer.

(6) Decisions of hearing officers shall be final, but subject to appeal to the Board of County Commissioners and judicial review as set forth in this chapter and applicable law.

Section 8. Chapter 15, Section 15.8, Land Development Code of Seminole County is hereby amended to read as follows:

Sec. 15.8 Judicial review. Decisions made by the Board of County Commissioner's pursuant to this chapter may be appealed ~~by the real property owner~~ to the Circuit Court in and for Seminole County Florida.

Section 9. Chapter 20, Section 20.4, Land Development Code of Seminole County is hereby amended to read as follows:

Sec. 20.4 Exemptions. Development activities that are eligible to receive a development permit are typically exempt from the requirements of this chapter; provided, however, that the provisions of this chapter may be used by the County Manager, a Deputy County Manager, or the Planning and Development Director, as appropriate, whenever he or she determines that the provisions of this Code will be appropriately implemented by utilizing the procedures set forth in this chapter. The denial of any application for development shall occur in a manner consistent with the provisions of this chapter. Approvals or denials of applications for amendments to the Seminole County Comprehensive Plan are not development orders as such decisions are legislative decisions of the Board Of County Commissioners. ~~Actions by the board of county commissioners providing for a comprehensive rezoning plan for a large area of the county are likewise legislative in nature. In making decisions whether to~~

~~rezone property the board of county commissioners shall, in its action, make a finding as to whether the rezoning proposal was analyzed and acted upon in legislative or quasi-judicial context.~~

Section 10. Chapter 30, Section 30.912, Land Development Code of Seminole County is hereby amended to read as follows:

Sec. 30.192. Appeals. Denials of development permits relating to the permitted uses set forth at section 30.902(s) and (t) in this zoning classification may be ~~immediately~~ appealed to the circuit court in and for Seminole County, Florida.

Section 11. Chapter 55, Section 55.126, Seminole County Code is hereby amended to read as follows:

Sec. 55.126. Review of Orders and Decisions. Any person, firm or corporation aggrieved by any non-legislative order or decision of the Board shall have the right to petition the Board for a rehearing and reconsideration of any order, regulation or decision. Such petition must be filed within ten (10) days following the date of the Board's decision, regardless of when such order, regulation or decision is actually reduced to writing and filed of record. The effect of the filing of a petition for a rehearing shall operate to stay the order or decision sought to be reviewed until the petition is disposed of. After a petition for rehearing has been denied, such aggrieved party may have such order or decision reviewed by

~~certiorari to the Circuit court of Seminole County, Florida pursuant to the terms of Section 163.3215, Florida Statutes, as amended. by such other proceedings as may be prescribed by Court rules, Such appeal must be filed within thirty (30) days after the disposition of the petition for rehearing. The proceedings before the Board shall be deemed quasi-judicial in nature and such review shall be limited to the record made before the Board. The aggrieved party shall not be entitled to trial de novo, but shall only be entitled to a determination as to whether or not there is substantial competent evidence to support the findings and order of the Board.~~

Section 12. Codification. It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall become, and be made a part of the Seminole County Code. The word "Ordinance" may be changed to section, article, or other appropriate word or phrase and the sections of this Ordinance may be assigned new numbering or lettering to accomplish such intention; providing, however, that Sections 12, 13, and 14 shall not be codified.

Section 13. Severability. If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.

Section 14. Effective Date. This Ordinance shall take effective upon filing a copy of this Ordinance with the Department of State by the Clerk of the Board of County Commissioners.

ENACTED this _____ day of _____, 2003.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF SEMINOLE COUNTY, FLORIDA

MARYANNE MORSE,
Clerk of the Board of
County Commissioners of
Seminole County, Florida

By: _____
DARYL G. MCLAIN, Chairman

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163.3174 Local planning agency.--

(1) The governing body of each local government, individually or in combination as provided in s. 163.3171, shall designate and by ordinance establish a "local planning agency," unless the agency is otherwise established by law. Notwithstanding any special act to the contrary, all local planning agencies or equivalent agencies that first review rezoning and comprehensive plan amendments in each municipality and county shall include a representative of the school district appointed by the school board as a nonvoting member of the local planning agency or equivalent agency to attend those meetings at which the agency considers comprehensive plan amendments and rezonings that would, if approved, increase residential density on the property that is the subject of the application. However, this subsection does not prevent the governing body of the local government from granting voting status to the school board member. The governing body may designate itself as the local planning agency pursuant to this subsection with the addition of a nonvoting school board representative. The governing body shall notify the state land planning agency of the establishment of its local planning agency. All local planning agencies shall provide opportunities for involvement by applicable community college boards, which may be accomplished by formal representation, membership on technical advisory committees, or other appropriate means. The local planning agency shall prepare the comprehensive plan or plan amendment after hearings to be held after public notice and shall make recommendations to the governing body regarding the adoption or amendment of the plan. The agency may be a local planning commission, the planning department of the local government, or other instrumentality, including a countywide planning entity established by special act or a council of local government officials created pursuant to s. 163.02, provided the composition of the council is fairly representative of all the governing bodies in the county or planning area; however:

(a) If a joint planning entity is in existence on the effective date of this act which authorizes the governing bodies to adopt and enforce a land use plan effective throughout the joint planning area, that entity shall be the agency for those local governments until such time as the authority of the joint planning entity is modified by law.

(b) In the case of chartered counties, the planning responsibility between the county and the several municipalities therein shall be as stipulated in the charter.

(2) Nothing in this act shall prevent the governing body of a local government that participates in creating a local planning agency serving two or more jurisdictions from continuing or creating its own local planning agency. Any such governing body which continues or creates its own local planning agency may designate which local planning agency functions, powers, and duties will be performed by each such local planning agency.

(3) The governing body or bodies shall appropriate funds for salaries, fees, and expenses necessary in the conduct of the work of the local planning agency and shall also establish a schedule of fees to be charged by the agency. To accomplish the purposes and activities authorized by this act, the local planning agency, with the approval of the governing body or bodies and in accord with the fiscal practices thereof, may expend all sums so appropriated and other sums made available for use from fees, gifts, state or federal grants, state or federal loans, and other sources; however, acceptance of loans must be approved by the governing bodies involved.

(4) The local planning agency shall have the general responsibility for the conduct of the comprehensive planning program. Specifically, the local planning agency shall:

(a) Be the agency responsible for the preparation of the comprehensive plan or plan amendment and shall make recommendations to the governing body regarding the adoption or amendment of such plan. During the preparation of the plan or plan amendment and prior to any recommendation to the governing body, the local planning agency shall hold at least one public hearing, with public notice, on the proposed plan or plan amendment. The governing body in cooperation with the local planning agency may designate any agency, committee, department, or person to prepare the comprehensive plan or plan amendment, but final recommendation of the adoption of such plan or plan amendment to the governing body shall be the responsibility of the local planning agency.

(b) Monitor and oversee the effectiveness and status of the comprehensive plan and recommend to the governing body such changes in the comprehensive plan as may from time to time be required, including preparation of the periodic reports required by s. 163.3191.

(c) Review proposed land development regulations, land development codes, or amendments thereto, and make recommendations to the governing body as to the consistency of the proposal with the adopted comprehensive plan, or element or portion thereof, when the local planning agency is serving as the land development regulation commission or the local government requires review by both the local planning agency and the land development regulation commission.

(d) Perform any other functions, duties, and responsibilities assigned to it by the governing body or by general or special law.

(5) All meetings of the local planning agency shall be public meetings, and agency records shall be public records.

History.--s. 6, ch. 75-257; s. 1, ch. 77-223; s. 5, ch. 85-55; s. 2, ch. 92-129; s. 9, ch. 95-310; s. 9, ch. 95-341; s. 1, ch. 2002-296.

¹163.3215 Standing to enforce local comprehensive plans through development orders.--

(1) Subsections (3) and (4) provide the exclusive methods for an aggrieved or adversely affected party to appeal and challenge the consistency of a development order with a comprehensive plan adopted under this part. The local government that issues the development order is to be named as a respondent in all proceedings under this section. Subsection (3) shall not apply to development orders for which a local government has established a process consistent with the requirements of subsection (4). A local government may decide which types of development orders will proceed under subsection (4). Subsection (3) shall apply to all other development orders that are not subject to subsection (4).

(2) As used in this section, the term "aggrieved or adversely affected party" means any person or local government that will suffer an adverse effect to an interest protected or furthered by the local government comprehensive plan, including interests related to health and safety, police and fire protection service systems, densities or intensities of development, transportation facilities, health care facilities, equipment or services, and environmental or natural resources. The alleged adverse interest may be shared in common with other members of the community at large but must exceed in degree the general interest in community good shared by all persons. The term includes the owner, developer, or applicant for a development order.

(3) Any aggrieved or adversely affected party may maintain a de novo action for declaratory, injunctive, or other relief against any local government to challenge any decision of such local government granting or denying an application for, or to prevent such local government from taking any action on, a development order, as defined in s. 163.3164, which materially alters the use or density or intensity of use on a particular piece of property which is not consistent with the comprehensive plan adopted under this part. The de novo action must be filed no later than 30 days following rendition of a development order or other written decision, or when all local administrative appeals, if any, are exhausted, whichever occurs later.

(4) If a local government elects to adopt or has adopted an ordinance establishing, at a minimum, the requirements listed in this subsection, the sole method by which an aggrieved and adversely affected party may challenge any decision of local government granting or denying an application for a development order, as defined in s. 163.3164, which materially alters the use or density or intensity of use on a particular piece of property, on the basis that it is not consistent with the comprehensive plan adopted under this part, is by an appeal filed by a petition for writ of certiorari filed in circuit court no later than 30 days following rendition of a development order or other written decision of the local government, or when all local administrative appeals, if any, are exhausted, whichever occurs later. An action for injunctive or other relief may be joined with the petition for certiorari. Principles of judicial or administrative res judicata and collateral estoppel apply to these proceedings. Minimum components of the local process are as follows:

(a) The local process must make provision for notice of an application for a development order that materially alters the use or density or intensity of use on a particular piece of property, including notice by publication or mailed notice consistent with the provisions of ss. 125.66(4)(b)2. and 3. and 166.041(3)(c)2.b. and c., and must require prominent posting at the job site. The notice must be given within 10 days after the filing of an application for a development order; however, notice under this subsection is not required for an application for a building permit or any other official action of local government which does not materially alter the use or density or intensity of use on a particular piece of property. The notice must clearly delineate that an aggrieved or adversely affected person has the right to request a quasi-judicial hearing before the local government for which the application is made, must explain the conditions precedent to the appeal of any development order ultimately rendered upon the application, and must specify the location where written procedures can be obtained that describe the process, including how to initiate the quasi-judicial process, the timeframes for initiating the process, and the location of the hearing. The process may include an opportunity for an alternative dispute resolution.

(b) The local process must provide a clear point of entry consisting of a written preliminary decision, at a time and in a manner to be established in the local ordinance, with the time to request a quasi-judicial hearing running from the issuance of the written preliminary decision; the local government, however, is not bound by the preliminary decision. A party may request a hearing to challenge or support a preliminary decision.

(c) The local process must provide an opportunity for participation in the process by an aggrieved or adversely affected party, allowing a reasonable time for the party to prepare and present a case for the quasi-judicial hearing.

(d) The local process must provide, at a minimum, an opportunity for the disclosure of witnesses and exhibits prior to hearing and an opportunity for the depositions of witnesses to be taken.

(e) The local process may not require that a party be represented by an attorney in order to participate in a hearing.

(f) The local process must provide for a quasi-judicial hearing before an impartial special master who is an attorney who has at least 5 years' experience and who shall, at the conclusion of the hearing, recommend written findings of fact and conclusions of law. The special master shall have the power to swear witnesses and take their testimony under oath, to issue subpoenas and other orders regarding the conduct of the proceedings, and to compel entry upon the land. The standard of review applied by the special master in determining whether a proposed development order is consistent with the comprehensive plan shall be strict scrutiny in accordance with Florida law.

(g) At the quasi-judicial hearing, all parties must have the opportunity to respond, to present evidence and argument on all issues involved which are related to the development order, and to conduct cross-examination and submit rebuttal evidence. Public testimony must be allowed.

(h) The local process must provide for a duly noticed public hearing before the local government at which public testimony is allowed. At the quasi-judicial hearing, the local government is bound by the special master's findings of fact unless the findings of fact are not supported by competent substantial evidence. The governing body may modify the conclusions of law if it finds that the special master's application or interpretation of law is erroneous. The governing body may make reasonable legal interpretations of its comprehensive plan and land development regulations without regard to whether the special master's interpretation is labeled as a finding of fact or a conclusion of law. The local government's final decision must be reduced to writing, including the findings of fact and conclusions of law, and is not considered rendered or final until officially date-stamped by the city or county clerk.

(i) An ex parte communication relating to the merits of the matter under review may not be made to the special master. An ex parte communication relating to the merits of the matter under review may not be made to the governing body after a time to be established by the local ordinance, which time must be no later than receipt of the special master's recommended order by the governing body.

(j) At the option of the local government, the process may require actions to challenge the consistency of a development order with land development regulations to be brought in the same proceeding.

(5) Venue in any cases brought under this section shall lie in the county or counties where the actions or inactions giving rise to the cause of action are alleged to have occurred.

(6) The signature of an attorney or party constitutes a certificate that he or she has read the pleading, motion, or other paper and that, to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or for economic advantage, competitive reasons or frivolous purposes or needless increase in the cost of litigation. If a pleading, motion, or other paper is signed in violation of these requirements, the court, upon motion or its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

(7) In any proceeding under subsection (3) or subsection (4), no settlement shall be entered into by the local government unless the terms of the settlement have been the subject of a public hearing after notice as required by this part.

(8) In any proceeding under subsection (3) or subsection (4), the Department of Legal Affairs may intervene to represent the interests of the state.

(9) Neither subsection (3) nor subsection (4) relieves the local government of its obligations to hold public hearings as required by law.

History.--s. 18, ch. 85-55; s. 901, ch. 95-147; s. 10, ch. 2002-296.

¹**Note.**--Section 35, ch. 2002-296, provides that "[i]t is the intent of the Legislature that section 10 of this act shall not affect the outcome of *Pinecrest Lakes, Inc. v. Schidel*, 795 So.2d 191 (Fla. 4th DCA 2001), rehearing denied, 802 So.2d 486."