

MEMORANDUM



To: Chairman and Members
Planning and Land Development Regulation Committee

From: Becky Mendez, Senior Planning Manager

Date: February 23, 2009

Subject: Text Amendment to the Comprehensive Plan
Chapter 21 Administration and Interpretation
Case #: CPA- 09-1-3
Ordinance No. 2009-XX

I. Overview

Since the update of the Comprehensive Plan based on the Evaluation and Appraisal Report (Large Scale Cycle 08-1), the County has pledged to review and update various chapters of the Plan on a continual basis. This is to ensure the document remains current and compliant with Florida Statutes, as well as to continuously improve the clarity and practical use of the document.

II. Discussion of Amendment

Attached to proposed Ordinance 2009-XX as Exhibit A is the recommended amendment of Chapter 21 in strike through/underline format. An explanation of the proposed change appears in brackets and highlighted in grey below each amended section.

Generally, the amendments are simply to improve the clarity and purpose of a statement. In subsection B.5, the paragraphs have been reordered to improve the flow of information. The most significant revision is to subsection C.2. This section has been revised to remove the specific notification requirements that were prescribed for small scale amendments only. It is unclear as to why large scale amendments were not addressed in this section. However, for consistency this section has been amended to require notification for all comprehensive plan amendments, regardless of scale, to be as specifically required by Chapters 163 and 125 Florida Statutes. The Florida Statute requirements are very detailed and specific on how and when public notice is to be produced. The County always follows these requirements and shall continue to reserve the right to

provide additional notice as long as the requirements set forth in the above referenced statutes are met. Also, due public notice requirements are defined in the Land Development Code. It is not necessary to repeat them in the Comprehensive Plan.

III. Staff Recommendation

Staff recommends that the PLDRC forward the amendment to County Council with the recommendation of approval to transmit to the Department of Community Affairs and the Volusia County Growth Management Commission.

IV. ATTACHMENTS

Ordinance 2009-XX

Exhibit A: Proposed Amendment Chapter 21, Administration and Interpretation

1 **WHEREAS**, pursuant to Section 163.3174, Florida Statutes, Volusia County
2 Zoning Ordinance No. 80-8, as amended, has designated the Volusia County Planning
3 and Land Development Regulation Commission as the local planning agency for the
4 unincorporated area of Volusia County, Florida.

5 **NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF**
6 **VOLUSIA COUNTY, FLORIDA, AS FOLLOWS:**

7 The Volusia County Comprehensive Plan, Ordinance No. 90-10, as previously
8 amended, is further amended as follows:

9 **SECTION I:** All Chapters and Elements of said Plan, including maps, map
10 series, tables and figures, are hereby amended to make them internally consistent; to
11 make them consistent with regional, state, or federal programs; to make them
12 consistent with objections, recommendations, comments and conditions imposed by the
13 Department of Community Affairs and by the Volusia County Growth Management
14 Commission; and to change dates as appropriate for consistency.

15 **SECTION II:** Chapter 21, "Administration and Interpretation," is hereby amended
16 as presented in Exhibit A, appended hereto, and by reference made a part hereof.

17 **SECTION III: SEVERABILITY.** Should any section or provision of this
18 Ordinance, or application of any provision of this Ordinance, be declared to be
19 unconstitutional, invalid, or inconsistent with the Volusia County Comprehensive Plan,
20 such declaration shall not affect the validity of the remainder of this Ordinance.

21 **SECTION IV: EFFECTIVE DATE.** A certified copy of this Ordinance shall be
22 filed in the Office of the Secretary of State by the Clerk of the County Council within ten
23 (10) days after enactment. This Ordinance shall take effect upon the later of the

1 following dates: a) issuance of a certificate of consistency or conditional certificate of
2 consistency by the Volusia Growth Management Commission, and issuance of a final
3 order by the State of Florida Department of Community Affairs determining this
4 Ordinance to be in compliance with Florida Statutes Section 163.3184(9), or b) issuance
5 of a final order by the State of Florida Administration Commission determining this
6 Ordinance to be in compliance with Florida Statutes Section 163.3184(10).

7
8 **ADOPTED BY THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, IN**
9 **OPEN MEETING DULY ASSEMBLED IN THE COUNTY COUNCIL CHAMBERS AT**
10 **THE THOMAS C. KELLY ADMINISTRATION CENTER, 123 WEST INDIANA**
11 **AVENUE, DELAND, FLORIDA, THIS _____ DAY OF _____ A.D., 2009.**
12

13
14 ATTEST: COUNTY COUNCIL
15 FLORIDA COUNTY OF VOLUSIA,
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17
18 _____
19 James T. Dinneen, County Manager Frank T. Bruno Jr., County Chair
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**CHAPTER 21
ADMINISTRATION AND INTERPRETATION**

CHAPTER 21

COMPREHENSIVE PLAN

ADMINISTRATION AND INTERPRETATION

A. INTRODUCTION

This Chapter sets forth the guidelines and criteria to accomplish the administration ~~& and~~ interpretation of the Volusia County Comprehensive Plan. Proper Plan administration requires the establishment of procedures to insure that the Plan provides for the following:

- a means of Plan interpretation;
- a means of appealing a Plan interpretation; and,
- a means of considering Plan amendments.

B. PLAN INTERPRETATION

It is the responsibility of the Planning & Development Services Director (herein after referred to as the Director), or a duly authorized representative to interpret the Comprehensive Plan and its application to public and private land and to activities permitted thereon. Plan interpretations are to be based on the applicable text, maps, figures and tables within the adopted Comprehensive Plan along with the support documentation developed to support the Comprehensive Plan. Plan interpretations shall follow guideline three as stated in the Introduction of this Plan document and as restated here. "The Comprehensive Plan will be construed as a complete document and no specific goal, objective, policy or recommendation shall be used independently."

1. Use and Status of Support Documentation. —The published, "~~Compilation of~~ Support Documentation" establishes the base data compiled to support the Comprehensive Plan. The Support Documentation is not adopted as part of the Plan but may be used in any review, interpretation and update of the adopted Comprehensive Plan. The Support Documentation may be updated as part of a future Comprehensive Plan amendment and portions may be incorporated as a Plan amendment if deemed appropriate.
2. Interpretation of Implementation Mechanisms. —Implementation mechanisms as identified within each Plan Element or Sub-element are representative activities to be engaged in to accomplish Plan policies. Other implementation measures may be employed along with or instead of those listed.

It is not the intent of the County to limit the number of means available to implement the Comprehensive Plan. Use of additional implementation mechanisms to supplement or replace those enumerated will not require a Plan amendment.

In addition where the development of appropriate land development regulations is not specified as an implementation mechanism for any policy, nothing shall preclude the use of land development regulations to implement that policy. Likewise binding development agreements may be used as a measure to implement the purpose and intent of the Comprehensive Plan and its policies.

3. Interpretation of Conflicts. –Conflicts shall be judged under the following guidelines:
 - a. In the event of any difference of meaning or implication between the text of the Plan and any caption, illustration, summary table, or illustrative table, the text shall control pending an administrative interpretation.
 - b. In the event of an apparent conflict between the Future Land Use Map and any other map or figure in the adopted Comprehensive Plan, the Future Land Use Map shall prevail.
 - c. In the event of an apparent conflict between Plan goals, objectives and policies or any other portion of the Plan text, the conflict shall be subject to an administrative interpretation.

4. Interpretation of Undefined Terms. –Terms not otherwise defined herein shall be interpreted first by reference to the relevant provisions of the Local Government Comprehensive Planning and Land Development Regulation Act, if specifically defined therein, or other relevant and appropriate State statutes or rules; ~~secondly~~ Second, terms shall be interpreted by reference to generally accepted planning or otherwise professional terminology if technical; and ~~Otherwise undefined terms shall be defined according to the most current Webster's New Collegiate Dictionary.~~

5. Administrative Interpretations. —It is the responsibility of the Director to make Comprehensive Plan administrative interpretations. Applications for an administrative interpretation, together with the appropriate fee as may be required by resolution of the County Council, shall be filed with the Director. Administrative interpretations may be required as a result of one of the following actions:
 - a. Failure to obtain a Comprehensive Plan consistency finding based on submission of a building permit or site plan application.

In the event of a failure to find a building permit or site plan consistent with the Plan, the application may be forwarded to the Director for an administrative interpretation. The building permit or site plan application shall stand as the application for an administrative interpretation. Interpretations made by the Director may be appealed to the County Council as set forth in this Chapter.
 - b. Request for delineation of boundaries of land use categories under the "Areas Between Future Land Use Categories" provision found in the Future Land Use Element.

Written requests may be required for administrative interpretations under the "areas between Future Land Use Categories" provision. Required supporting information could include a survey and legal description of the parcel(s) in question. The applicant may submit additional materials that support the application and may be asked for additional information to explain the request.
 - c. Any other action which would require a Comprehensive Plan interpretation.

~~In the event of a failure to find a building permit or site plan consistent with the Plan the application may be forwarded to the Director for an administrative interpretation. The building permit or site plan application shall stand as the application for an administrative interpretation. Interpretations made by the Director may be appealed to the County Council as set forth in this Chapter.~~

~~Written requests may be required for administrative interpretations under the "areas between Future Land Use Categories" provision; required information could include a survey and legal description of the parcel(s) for the request area to the Director. The applicant may submit additional materials which he feels supports his application and may be asked for additional information to explain his request.~~

Any affected party may make application for a formal administrative interpretation of the Comprehensive Plan. The application would be for a set of circumstances not covered under one of the aforementioned provisions. ~~Specifically the~~ The application shall include a written statement which clearly identifies the section or section(s) of the Plan for which an interpretation is required, along with references to text, maps, figures and support document(s) which the applicant feels supports the application. Along with the statement, the applicant should include any text references, maps, figures and support documents that may support the application.

6. Administrative Rulings on Plan Consistency and their Relationship to the Concurrency Provisions of the Capital Improvement Element. –A finding of consistency does not constitute a finding of concurrency. A finding of concurrency which is a separate determination that is subject to Article XIV, Concurrency Management, of the Volusia County Land Development Code (Ord. 90-33), as developed pursuant to the terms of the Plan's Capital Improvements Element.
7. Appeal of an Administrative Interpretation. –Any administrative interpretation made by the Director under the provisions of this section may be appealed. The County Council has the sole authority to hear and decide appeals. Appeals may be initiated by any person aggrieved or by any officer, board, department or agency of County Government. An appeal shall be submitted within 10 days after rendition of the interpretation by filing with the Director and with the Legal Department, a written Notice of Appeal specifying its grounds, together with the appropriate fee, as may be required by resolution of the County Council. The appeal shall be submitted on a form prescribed by the Director.

Upon receipt of the Notice of Appeal, the Director shall transmit to the County Council all documents, plans, papers, minutes, applications, recommendations or other materials relating to the appealed decision.

In its deliberations, the County Council shall decide that the determination of the Director is either consistent or inconsistent with the Comprehensive Plan, and then shall direct the disposition of the appeal. In lieu of a consistency/non-consistency ruling the Council may determine that the scope of the appeal goes beyond a simple interpretation of the Plan and deals with a substantive issue affecting County policy. Having found so, the County Council may then refer the application to the Planning and Land Development Regulation Commission for its recommendation on the policy implications of the appeal

and for its recommendation for considering the appeal as a Comprehensive Plan amendment.

8. Recourses to Decisions of the County Council. —Any decision on an administrative interpretation by the County Council may be appealed by any aggrieved person to the Circuit Court for review by certiorari, within 30 days after the rendition of the decision of the County Council. The aggrieved person shall notify all interested persons as required by law and have established a record before the County Council during its hearing on the appeal.

C. PLAN AMENDMENTS

From time to time, it will be necessary to amend the Volusia County Comprehensive Plan: to keep up with changing conditions, to comply with State mandated updates and evaluations, to achieve implementation of the Plan, and to provide citizens and affected parties a means of recourse to participate in the County's Comprehensive Planning Program.

All amendments and procedures for amendment to the Comprehensive Plan shall be of the kind and type as prescribed by State Law (Chapter 163 F.S.) and by Volusia County Ordinance 87-24. Any action, except administrative land use boundary shifts as authorized by the Plan, which requires that a change be made to any of the maps, text, figures, tables or charts and any other change having the effect of altering the use of land as prescribed by this Plan shall be deemed to require a Comprehensive Plan amendment. Plan amendments may be initiated by elected bodies, public agencies, appointed officials, advisory boards, public, semi-public or private utilities, individuals and groups, or any other affected person or combinations thereof.

1. Types of Comprehensive Plan Amendments. —The Comprehensive Plan may be amended as a result of one of the following types of application:
 - a. Mandated Amendment: —~~a~~An amendment required to comply with State laws and rules thereof. A mandated amendment would include court directed settlements in accord with State law.
 - b. Administrative Amendment - an amendment which is initiated by the County Council through their own actions or acting on the advice or recommendation of an appointed advisory board, staff or other agency of government.
 - c. Development Amendment: —~~a~~An amendment which is initiated by the property owner(s) or his authorized agent to change the Plan so that a particular development type or land use not otherwise consistent with the Plan, would become consistent following the adoption of the amendment. Applicants may be a single individual owning a single parcel or two or more individuals owning contiguous land areas. Applicants may also be an individual or groups of individuals owning 51% or more of the subject land area. Applicants may be private individuals sponsoring a residential, commercial, industrial or related use or a public agency sponsoring an public use amendment subject to the Comprehensive Plan.
 - d. Small Scale Development Amendment: - ~~a~~An Development A amendment which qualifies under the small scale development amendment provisions of Chapter

163.3187(1)(c) F.S. This section exempts small scale amendments from the two a year amendment limitations and provides for an accelerated review and adoption schedule.

2. Submission of an Application for a Comprehensive Plan Amendment—

- a. Mandated and Administrative Amendments shall not require a formal application but shall be constructed in form to meet the requirements of Chapter 163 F.S. and Administrative Rule 9J-5. No fee is required for a Mandated or Administrative Plan Amendment.

Development amendments shall be submitted on a form prescribed by the Director. Fees for development amendments shall be as determined by resolution of the County Council.

Development amendments may include an optional application conference. The Growth and Resource Management Department will schedule the conference and may invite other public agencies and representatives as appropriate to attend the meeting.

Comprehensive Plan amendments shall, at a minimum, be publicly noticed as required by Chapter 163.3184(15) F.S. and Chapter 125.66 F.S.

~~Development amendments which are processed as a small scale amendment application require the notification of adjacent property owners in the manner described herein:~~

~~For the purpose of this section, "adjoining property" is intended to include property for which any portion of the boundary is contiguous to any portion of the boundary of the property encompassed by the proposed "small scale" amendment and which is not owned or leased by the individual(s) having ownership of the property encompassed by the proposed "small scale" amendment. In the case of an intervening easement or right of way, this term shall mean the property adjoining said easement or right of way which is not owned by the owner(s) of the property encompassed by the proposed "small scale" amendment. Where the proposed "small scale" amendment encompasses part of a larger property owned or leased by the same individual(s), the boundary of the larger property shall be used to determine the adjoining property(ies).~~

~~At least ten days prior to the Planning and Land Development Regulation Commission scheduled public hearing date, the landowner, or his duly authorized agent, shall mail notice of the public hearing to the owner(s) of adjoining property. The latest ad valorem tax record shall be used to identify the name and address of the adjoining property owner(s)~~

~~Said notice, which is to be mailed by certified mail return receipt requested, shall set forth the time, day, place, and purpose of the public hearing. The Group Management Services Group will provide the owner or~~

~~his authorized agent with a notice form. The owner or his authorized agent shall acknowledge receipt of the notice form~~

~~It is the intent of this provision that only one said mailing is required to be sent to the owner(s) of property adjoining the property involved in the proposed "small scale" Plan amendment which is not owned or leased by the owner(s) of the property encompassed by the proposed "small scale" Plan amendment.~~

~~A copy of said notice shall be available for public inspection during the regular business hours in the Growth and Resource Management Department.~~

- b. Processing of Plan Amendment Applications. –All complete Plan amendment applications shall be transmitted by the Growth and Resource Management Department to the Planning and Land Development Regulation Commission (PLDRC). The application shall contain all required exhibits, information and materials and a staff report.

The Planning and Land Development Regulation Commission shall meet and consider the application and shall forward its recommendation for County Council action. It shall be the responsibility of the County Council to approve, approve with conditions, continue, or deny the amendment. All amendments must meet the requirements as set forth by Chapter 163, Part II, F.S. and the applicable rules of the Volusia County Growth Management Commission. No amendment can be considered in effect until certified by the Volusia County Growth Management Commission.

D. RIGHT TO CHALLENGE THE CONSISTENCY OF A DEVELOPMENT ORDER

The right of any aggrieved or adversely affected party to bring action for injunctive or other relief against any local government to prevent such local government from taking any action on a development order shall be as set forth in Part II, Chapter 163 F.S., section 163.3215.

E. CONCURRENCY AS RELATED TO THE ADMINISTRATION & INTERPRETATION OF THE VOLUSIA COUNTY COMPREHENSIVE PLAN

Volusia County implemented, as part of its Concurrency Management requirements, tests to determine if the impact of a development order would meet or exceed the capacity of the available public infrastructure to support that development order. This same Ordinance establishes the tests to determine if a development order can achieve a vested status. Those development orders which achieve the vested status are not subject to a concurrency determination. The concurrency ordinance is one of the regulatory tools required under the schedule established by Part II, Chapter 163, F.S. section 163.3202.

Consistency and concurrency are separate determinations. Consistency tests were effective April 3, 1990, the date of Plan approval by the Volusia Growth Management Commission as set forth in the adopting ordinance of this Plan document. Concurrency tests are required by Article IVX, Concurrency Management, of the Land Development Code, Ord. 90-33.

Development orders must at a minimum, meet both tests before issuance of an approved development order.

F. VESTED RIGHTS

Nothing contained in this Comprehensive Plan shall be construed or applied to constitute a temporary or permanent taking of private property or the abrogation of validly existing vested rights. Such vested rights are generally defined as: the property owner (1) has relied in good faith (2) upon some act or omission of the government and (3) has made such a substantial change in position or incurred such extensive obligations and expenses to their detriment that it would be highly inequitable to deny relief.

This Plan shall be construed to be consistent with the provisions of the Florida Statutes specifically, F.S. 163, 3167(8) that state: "Nothing in this act shall limit or modify the rights of any person to complete any development that has been authorized as a development of regional impact pursuant to Chapter 380 or who has been issued a final local development order and development has commenced and is continuing in good faith."