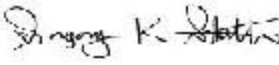




December 18, 2008		AGENDA ITEM		Item 06
<input checked="" type="checkbox"/> Ordinance		<input type="checkbox"/> Resolution		<input type="checkbox"/> Budget Resolution
<input checked="" type="checkbox"/> Other				
Department: Growth and Resource Management		File Number: VC-1228251064330-A		
Division: Planning and Development				
Subject: Ordinance No. 2008-26 amending land development regulations regarding exempt subdivisions.				
Account Number(s): N/A				
Total Item Budget: N/A				
Staff Contact(s): Kelli McGee Phone: (386)736-5959 ext. 2845 Palmer Panton Phone: (386)736-5959 ext. 2736				
Summary/Highlights: On September 4, 2008, October 16, 2008, and November 6, 2008, County Council discussed the existing exempt subdivision regulations of the land development code. Council directed staff to draft an ordinance to remove many of the exemptions, for their consideration in December 2008. As proposed, this amendment also will provide for the continued approval of certain lots created prior to December 18, 2008, when it has been demonstrated: 1. That the creation of those lots was approved through Land Development; or				
Recommended Motion: Adopt Ordinance No. 2008-26.				
Gregory Stubbs Director Growth and Resource Management  Kelli McGee Director Planning and Development No Signature Present	OMB Approved as to Budget Requirements	Legal  Approved as to Form and Legality	Betty Holness County Manager's Office  Approved Agenda Item For: December 18, 2008	
Council Action:		Modification:		
<input type="checkbox"/> Approved as Recommended <input type="checkbox"/> Approved With Modifications <input type="checkbox"/> Disapproved <input type="checkbox"/> Continued Date:				

Summary/Highlights Continued:

2. That building permits have been issued in reliance on the lots being exempt from the subdivision regulations of the Code; or

3. That a deed has been recorded with the Clerk of the Court that conveyed a lot which met the exemption criteria at the time of recording.

Presentation of the proposed amendment to the Planning and Land Development Regulation Commission will take place on December 9, 2008, at its regularly scheduled meeting.

Attached to this agenda are the following:

1. PLDRC Agenda Memo - containing a summary of the proposed amendments.
2. Ordinance No. 2008-26



TO: Chairman and Members
Planning & Land Development
Regulation Commission

DATE: November 26, 2008

FROM: Kelli McGee
Director of Planning and Development

PLDRC HEARING: December 9, 2008

SUBJECT: Public Item # 1 Ordinance No. 2008-26. Text amendment to the Appendix A-Land Development Code, Article II, *Subdivision Regulations, Section 202, Exemptions or Vested Rights*, of the County of Volusia code of ordinances

BACKGROUND: On September 4, 2008, October 16, 2008 and November 6, 2008 the County Council held public workshops to discuss "smart growth" techniques and more specifically the existing exempt subdivision regulations of the land development code. Council directed staff to draft an ordinance, removing many of the exemptions, for their consideration in December 2008.

SUMMARY: Section 202.01(1) allows the division of land into 10, 20 or 25-acre lots, consistent with the applicable zoning classification, without any review by staff. As long as the minimum lot size requirement of the zoning classification is met, these subdivisions may create lots that are completely within the 100-year floodplain and/or wetlands. The access to these lots may also be through the 100-year floodplain and/or wetlands, and there is no requirement for the roads to meet any minimum standard. This can result in the creation of lots on which the homes cannot be accessed by emergency services or roads that are impassable in flood conditions. It also allows for the creation of lots on which future lot owners are required to pay significant wetland mitigation fees in order to build their homes.

Section 202.01(3) exempts divisions created by Court Orders from meeting the requirements of the subdivision regulations. Although these divisions must be determined to be consistent with the Comprehensive Land Use Plan, this exemption allows the creation of any size lot on dirt, or non-existent roads. The removal of this exemption does not challenge the Court's authority to award property as it deems appropriate, but it requires that such divisions meet the subdivision regulations of the Code.

Section 202.01(6) allows the division of land into not less than 2 ½-acre lots, provided each lot has a minimum of 10,000 sq. ft. outside of the 100-year floodplain and any new access is also outside of the 100-year floodplain. These subdivisions are not reviewed for impacts to wetlands, and, therefore, create the same situations as in (1) above, where subsequent buyers find themselves having to incur significant costs for wetland permitting. There are no minimum roadway design standards and access is usually onto dirt roads.

Section 202.01 (12) allows for the division of commercial property without platting. Non-residential development should be developed on platted property.

STAFF RECOMMENDATION: Approval of Ordinance 2008-26, amending the Land Development Code regarding exempt subdivision activities.

ATTACHMENTS:

1. Draft Ordinance 2008-26
2. November 6, 2008 County Council Agenda item and minute excerpt
3. October 16, 2008 County Council Agenda item and minute excerpt
4. September 4, 2008 County Council Agenda item and minute excerpt

1
2 **ORDINANCE NO. 2008-26**
3

4 AN ORDINANCE OF THE COUNTY COUNCIL OF
5 VOLUSIA COUNTY, FLORIDA, AMENDING THE
6 VOLUSIA COUNTY LAND DEVELOPMENT CODE
7 ORDINANCE NO. 88-3, AS PREVIOUSLY
8 AMENDED, AMENDING SECTION 202.01,
9 "EXEMPT ACTIVITIES"; AMENDING SECTION
10 202.02, "DETERMINATION OF EXEMPTION OR
11 VESTED RIGHTS"; PROVIDING FOR
12 SEVERABILITY; PROVIDING AN EFFECTIVE
13 DATE.
14

15
16 BE IT ORDAINED BY THE COUNTY COUNCIL OF VOLUSIA COUNTY,
17 FLORIDA, AS FOLLOWS:
18

19
20 **SECTION I:** Article II, Section 202.01, Code of Ordinances, Appendix A,
21 County of Volusia is amended as follows.

22 **Sec. 202. Exemption or vested rights.**

23 *202.01. Exempt Activities.* The following activities are exempt from the
24 provisions of this article provided said activities are consistent with the Volusia
25 County Comprehensive Plan, Ordinance No. 90-10, as amended, and article XIV
26 of this ordinance.

27 ~~(1) Subdivision of an existing lot as defined in this ordinance into two~~
28 ~~(2) or more lots where all resulting lots are consistent with the~~
29 ~~comprehensive plan and contain twenty-five (25) acres or more in~~
30 ~~area if classified as Resource Corridor pursuant to the zoning~~
31 ~~ordinance [appendix B, Code of Ordinances]; twenty (20) acres or~~
32 ~~more in area if classified as Forestry Resource; or, ten (10) acres or~~
33 ~~more in area if otherwise classified; and, where no new streets or~~
34 ~~access easements are planned to be dedicated and accepted by~~
35 ~~the public. Deeds and other conveyances shall include in bold~~
36 ~~capital letter ten-point type the following statement: "NO~~

1 ~~GOVERNMENTAL AGENCY, INCLUDING THE COUNTY OF~~
2 ~~VOLUSIA, SHALL EVER BE RESPONSIBLE FOR THE~~
3 ~~MAINTENANCE, UPKEEP OR IMPROVEMENT OF ANY PRIVATE~~
4 ~~DRIVES, ROADS, STREETS, EASEMENTS OR RIGHTS-OF-WAY~~
5 ~~PROVIDING INGRESS AND EGRESS TO THE PROPERTY~~
6 ~~HEREIN CONVEYED."~~

7 (1) ~~(2)~~ Conveyance of lands to another without division.

8 ~~(3) Any division by inheritance (whether testate or intestate), or by~~
9 ~~partition or other order of court.~~

10 (2) ~~(4)~~ Acquisition of property for public purposes.

11 (3) ~~(5)~~ The division of air space into units within a building wherein said
12 building is held in common, undivided ownership.

13 ~~(6) Subdivision of an existing lot as defined in this ordinance into not~~
14 ~~more than four (4) lots where all resulting lots are consistent with~~
15 ~~the comprehensive plan only if all the following conditions are met:~~

16 ~~(a) The original parcel was created from a division allowed by~~
17 ~~the county regulations in effect at the time of its creation.~~

18 ~~(b) The property to be divided is zoned for agricultural or single-~~
19 ~~family uses.~~

20 ~~(c) All proposed lots shall meet the minimum lot width and area~~
21 ~~requirements of the zoning ordinance [appendix B, Code of~~
22 ~~Ordinances] but shall not be less than two and one-half (2~~
23 ~~1/2) acres in area; and, shall contain at least ten thousand~~
24 ~~(10,000) square feet of contiguous buildable area above the~~
25 ~~100-year flood-prone level of the existing lot.~~

26 ~~(d) No new streets or access easements shall be dedicated to~~
27 ~~or accepted by the public and no new streets or access~~

1 easements shall be located within any 100-year flood-prone
2 area.

3 ~~(e) Where any of the proposed lots do not abut a public street,~~
4 ~~every agreement for sale and conveyance of said lots shall~~
5 ~~state in bold capital letters in ten-point type the following:~~
6 ~~"NO GOVERNMENTAL AGENCY, INCLUDING THE~~
7 ~~GOVERNMENT OF VOLUSIA COUNTY, SHALL EVER BE~~
8 ~~RESPONSIBLE FOR THE MAINTENANCE, UPKEEP OR~~
9 ~~IMPROVEMENTS OF ANY PRIVATE DRIVES, ROADS,~~
10 ~~STREETS, EASEMENTS OR RIGHTS-OF-WAY~~
11 ~~PROVIDING INGRESS AND EGRESS TO THE PROPERTY~~
12 ~~HEREIN CONVEYED.";~~ or

13 ~~(f) Where any of the proposed lot(s) abut a public street, which~~
14 ~~is identified on the thoroughfare map and the capital~~
15 ~~improvement program of the comprehensive plan, and said~~
16 ~~street does not meet the right-of-way requirements of section~~
17 ~~402.05 of this ordinance, additional right-of-way shall be~~
18 ~~dedicated or conveyed by easement to the county in return~~
19 ~~for county road impact fee credits as provided in section 70-~~
20 ~~79, of the Code of Ordinances of the County of Volusia.~~

21 ~~(g) The division does not represent a multiple division of~~
22 ~~contiguous lands by the same owner.~~

23 (4) ~~(7)~~ The following types of combinations of lots:

24 a. Combinations of all or portions of previously exempted
25 platted or unrecorded lots where no new lots contain less
26 area or width than the original lots and where the number of
27 new lots created does not exceed the number of lots existing
28 prior to the combination.

1 b. Combinations of previously exempted whole platted lots or
2 previously exempted whole unrecorded lots with non-
3 exempted whole platted lots for the purpose of creating a
4 unified building site to meet zoning requirements provided all
5 resulting combined lots abut for a distance of at least thirty-
6 five (35) feet at least one (1) publicly maintained street or
7 street that has been opened legally as of October 29, 1976,
8 and which is capable of being traversed by an ordinary
9 passenger vehicle. The separated portions of lots that have
10 been severed by a publicly dedicated street may be
11 considered whole lots for the combining purposes of this
12 exemption.

13 (5) ~~(8)~~ Divisions of land for purposes of conveyances, where such
14 divisions were lawful under regulations in effect at the time such
15 divisions were made, and where vested rights have been acquired
16 by the subdivider (developer) in reliance upon previous regulations
17 where the following criteria have been met:

18 a. A platted subdivision or unrecorded map or survey
19 illustrating the division of the lands, which plat, unrecorded
20 map or survey was in existence prior to October 29, 1976;
21 and

22 1. Substantial physical on site development prior to
23 October 29, 1976; or

24 2. Streets legally opened as of October 29, 1976, which
25 are capable of being traversed by an ordinary
26 passenger vehicle, and at least twenty-five (25)
27 percent of the lots have been sold by bona fide
28 contracts to different owners in parcels of not more
29 than four (4) lots each.

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3. Lots or portions of lots which abut a paved thoroughfare road for a minimum distance equal to the lot width requirement of the applicable zoning classification; and
 - a. Applicant demonstrates that all associated improvements including, but not limited to, principal structures, accessory structures, access to structures, and onsite sewage disposable systems can be developed without impact to wetlands or wetland buffers.
 - b. Applicant demonstrates that the above-referenced improvements can be sited in an area that is not depicted as flood prone on the FEMA Maps, or as determined not flood prone by a licensed professional engineer registered in the State of Florida.
 - c. If within an urban land use category:
 - (1) Lots shall meet the minimum dimensional requirements of the applicable zoning classification.
 - (2) Service connection to central sewer and central water shall be available to each lot.
 - d. If within a non-urban land use category:
 - (1) Lots shall meet the minimum dimensional requirements of the applicable zoning classification or qualify for a nonconforming lot letter but

1 in no case shall contain less than one
2 acre.

3 (2) Applicant demonstrates sufficient
4 buildable area to construct a principal
5 structure meeting the minimum floor
6 area of the applicable zoning
7 classification while meeting existing
8 building setbacks.

9 Lots or portions of lots which abut a
10 paved thoroughfare road may be
11 combined with adjacent whole lots to
12 achieve conformance with the above
13 criteria.

14 4. Portions of existing subdivisions meeting the above
15 criteria may be exempted.

16 ~~(6)~~ (9) Adjustment of the lot lines of only previously exempted
17 platted or unrecorded lots upon a showing that:

18 (a) The adjustment does not reduce any lot to a size less than
19 that permitted by the zoning of the lot; and

20 (b) The adjustment does not reduce any lot to a size less than
21 the average size of comparable building sites within a radius
22 of five hundred (500) feet from the boundary line of the lot for
23 which exemption is sought; and

24 (c) The adjustment does not increase the number of lots.

25 ~~(7)~~ (10) Any approved "Division Having No Substantial Impact," any "Minor
26 Subdivision," or any "Summary Review of Divisions of Land" into
27 ten lots or less in accordance with the previous Volusia County

1 Subdivision Regulations, Ordinance No. 72-2, as amended, is
2 hereby exempt from provisions of this article provided that any
3 application for above-described divisions was received by the office
4 of the CDE on or before January 19, 1988.

5 ~~(8)~~ ~~(11)~~ Divisions created by purchase contracts or conveyances which
6 occurred prior to January 19, 1988, which would have met the
7 "Legal Exemption and Vested Rights" or "Divisions Having No
8 Substantial Impact" or the "Summary Review Process" of Volusia
9 County Subdivision Regulations, Ordinance No. 72-2, as amended.

10 (9) Any subdivision previously exempt under section 202, if on or prior
11 to December 18, 2008;

12 (a) An exempt subdivision determination has been approved or
13 is under review by the LDM; or

14 (b) An application for a building permit has been submitted to
15 the County; or

16 (c) A conveyance of a lot has been recorded with the Clerk of
17 the Court of Volusia County.

18 ~~(12) The creation of one (1) lot of one (1) acre or greater in area in a~~
19 ~~commercial zone from a parent parcel ten (10) acres or greater in~~
20 ~~area, where:~~

21 ~~(a) The lot to be created has received final site plan approval;~~
22 ~~and~~

23 ~~(b) The parent parcel has not been the subject of any prior~~
24 ~~divisions under this subsection; and~~

25 ~~(c) A sketch plan meeting the requirements of section 203 of~~
26 ~~this code has been submitted and approved by the DRC.~~
27 ~~The sketch plan shall include both the proposed lot and the~~

1 parent parcel, in sufficient detail to demonstrate the
2 feasibility of the project, and necessary easements for future
3 access, utility services, right of way reservation, and
4 provision for drainage for any future division or site plan
5 review of the parent parcel. All such easements shall be
6 recorded as a condition of approval of final site plan under
7 subparagraph (a).

8
9 *202.02. Determination of Exemption or Vested Rights.*

10 (1) Exemptions or vested rights under subsection 202.01(1) through ~~(5)~~(3) and
11 (9) may be approved by the land development manager (LDM) upon submittal of
12 appropriate information. In addition, exemptions or vested rights under
13 subsection 202.01~~(7)~~(4)(a) for previously approved or exempted platted or
14 unrecorded lots may be approved by the LDM, in the event there are no
15 easements to be vacated, by filing an application with the LDM and paying the
16 required fee. Except as otherwise provided, exemptions or vested rights under
17 202.01~~(6)~~(4) through 202.01~~(12)~~(8) shall be administratively determined by the
18 CDE by filing an application with the LDM and paying the required fee.

19 ...

20
21 **SECTION II:** Except as amended herein, the provisions of the Code of
22 Ordinances of the County of Volusia remain in full force and effect.

23 **SECTION III:** AUTHORIZING INCLUSION IN CODE - The provisions of this
24 ordinance shall be included and incorporated into the Code of Ordinances of the
25 County of Volusia, as additions or amendments thereto, and shall be

1 appropriately renumbered to conform to the uniform numbering system of the
2 Code.

3 **SECTION IV: SEVERABILITY** - Should any word, phrase, sentence, subsection
4 or section be held by a court of competent jurisdiction to be illegal, void,
5 unenforceable, or unconstitutional, then that word, phrase, sentence, subsection
6 or section so held shall be severed from this ordinance and all other words,
7 phrases, sentences, subsections, or sections shall remain in full force and effect.

8 **SECTION V: EFFECTIVE DATE** - A certified copy of this Ordinance shall be
9 filed with the Department of State by the County Manager within ten (10) days
10 after enactment by the County Council and this Ordinance shall take effect upon
11 filing with the Department of State.

12
13 ADOPTED BY THE COUNTY COUNCIL OF VOLUSIA COUNTY,
14 FLORIDA, IN OPEN MEETING DULY ASSEMBLED IN THE COUNTY
15 COUNCIL CHAMBERS AT THE THOMAS C. KELLY ADMINISTRATION
16 CENTER, 123 WEST INDIANA AVENUE, DELAND, FLORIDA, THIS 18th DAY
17 OF DECEMBER A.D., 2008.
18

19
20 ATTEST: COUNTY COUNCIL
COUNTY OF VOLUSIA, FLORIDA

21
22
23 James T. Dinneen, County Manager/Clerk Frank T. Bruno, Jr., County Chair