

Board of County Commissioners Agenda Request

Date of Meeting: November 6, 2018

Date Submitted: October 24, 2018

To: Honorable Chairperson and Members of the Board

From: Dee Jackson, Interim County Administrator
Allara Mills Gutcher, The Planning Collaborative

Subject: **PUBLIC HEARING:** (Legislative) Consideration of Adoption of Ordinance 2018-018 for the Amendment of Chapters 1 and 7 of the Land Development Code, Specifically Regarding the Citizen’s Bill of Rights (LDR 2018-01)

Statement of Issue:

This Public Hearing is to adopt Ordinance 2018-018 for the amendment of Chapter 1, Administration and Enforcement and Chapter 7, Development Orders, Development Permits, and Development Agreements of the Land Development Code, to amend the Citizen’s Bill of Rights and move it from Chapter 7 to Chapter 1.

Background:

At the May 19, 2009 Gadsden County Board of County Commissioners (BOCC) meeting, the BOCC authorized the County Attorney to draft an ordinance reflecting the language proposed by the 1000 Friends of Florida in the model “Citizens’ Bill of Rights” drafted by that organization. This item was presented for discussion a draft ordinance incorporating portions of the language of the 1000 Friends of Florida “Citizens’ Bill of Rights”, with additional criteria.

On February 11 and March 11, 2010 the Planning Commission considered the item as drafted by staff. This draft essentially created an additional step from the current county process in the consideration of large-scale comprehensive plan amendments. It created the seven day “cooling-off period”, and required the super majority-vote of the BOCC for large scale comprehensive plan amendments.

The Planning Commission recommended several changes. They made recommendations to add small scale comprehensive plan amendments, variances and special exceptions to those items requiring a super majority vote to the draft. They also recommended the insertion of the requirement that in order to change the ordinance, a super-majority vote would be required.

On May 4, 2010, the Board of County Commissioners considered this item and adopted the version that is in place today as Ordinance 2010-005.

At the December 16, 2014 BOCC meeting, the BOCC requested that staff and the Planning Commission revise the requirements of the Citizen's Growth Management and Planning Bill of Rights.

In January of 2015, staff presented an amended version of the CBOR to the Planning Commission. At that meeting the Planning Commission recommended that the BOCC remove the section in full from the Land Development Regulations. Subsequently, staff held an informative session with the BOCC to go over the merits and hurdles of the CBOR, but no further action was taken.

The amendment to the CBOR was introduced in a different form to the Planning Commission on April 12, 2018. At that time, the Planning Commission recommended to the BOCC that the CBOR be amended, specifically to only apply to Comprehensive Plan Future Land Use Map amendments and moved to Chapter 1 of the Land Development Code.

The amendment was submitted to the BOCC on May 15, 2018. At that time, the BOCC elected to hold a workshop to discuss the amendments. At the June 21, 2018 workshop, the BOCC directed the amendment to return with changes for a vote. This item was heard last at the July 17, 2018 BOCC hearing. It was not passed.

At the October 2, 2018 BOCC meeting, it was requested that this item be placed on the agenda at the next BOCC meeting for consideration; however, advertising requirements could not be met.

Analysis:

The current version of the Citizen's Bill of Rights requires the following:

- A. A mandated citizen participation plan – this step requires public notice to property owners and neighborhood associations within one-half mile of the development site property boundaries.
- B. Neighborhood Participation – notification of neighborhood associations by county staff within 10 days of the filing of any application or proposal filed for comprehensive plan map amendment; requires a community meeting 30 calendar days prior filing the application; requires a second community meeting 15 days prior to amendment adoption hearing of a plan amendment after review “by DCA”. *(Note: the timing of the second requirement in this subsection is not clear. Although the staff is required to notify the neighborhood associations of the filing within 10 days after filing with the county, the community meeting requirement 30 days prior to “submittal to DCA” (now DEO) is confusing. This timing should be based upon the Planning Commission hearing, not the submittal or filing date to DCA (now DEO) as that timing is more fluid.)*
- C. Seven day “cooling-off” period – plan amendments cannot be changed in the seven business days prior to the advertised public hearing. If revised within this period, then the hearing must be rescheduled.

- D. Super-majority vote – required for all comprehensive plan amendments, major land development reviews, variances, special exceptions, major site plans and major subdivision(s). A super majority vote is also required for amendment of this section.
- E. Requires all comprehensive plan map amendments and “site development applications” to protect environmental resources.
- F. No Free Density – when the conversion of land from residential or agriculture occurs to create “urban density”, proof must be made to show “land for significant public benefit is offered in fair and equitable exchange”.
- G. Requires the establishment of urban service boundaries by 2014.

Observations:

This regulation requires a citizen’s meeting for several reasons including variances, special exceptions, and other listed development applications such as “major site plans and major subdivision in Gadsden County”. The latter two requests are not applicable by definition in Gadsden County, making the subsection confusing. If the intent is to require a citizen’s meeting for minor and major subdivision review, then the language should be amended to reflect that. If the BOCC would like to retain this requirement, then the consultant recommends only requiring this for a final plat, and not for lot splits, preliminary or conceptual plats. However, this is not the recommendation of the consultant. The recommendation is to remove all references except for Comprehensive Plan Future Land Use Map amendments and special exceptions. Requiring a workshop at this phase will remove the extra burden of the applicant for such workshops at the stage where the proposed development is already allowable by policy and regulation.

This regulation assumes there will be an impact to neighborhood associations and citizens. Until an analysis has been completed to show an impact has occurred, if any, this implication in the regulation is arbitrary. (i.e. What is the definition of an “impacted citizen”? What criteria is used to determine the impacts in these instances?) In addition, at this time and not during the known past does the Planning Department maintain a list of neighborhood associations with contacts, making this requirement impractical.

Citations:

Section 7001.1(A) – “The developer shall conduct workshops with citizens *impacted* to identify all issues of concern prior to any public hearing.” (Emphasis added)

Section 7001.1(B) – “Within 10 business days of the filing of any applications or proposals filed for comprehensive plan amendments or land development regulations, the Department shall notify potentially *impacted* neighborhood associations of such filings.” (Emphasis added)

The burden of proof to show that a request for a development is consistent with the Comprehensive Plan and Land Development Code is upon the applicant. If the applicant demonstrates that the development is consistent with the Comprehensive Plan and the LDC, the burden of proof to deny a development order, special exception, or variance, which are all quasi-judicial hearings, is upon the local government. If the development meets the criteria of the Code, then the local government

must show just cause to deny the request. The function of a quasi-judicial land use hearing is to only apply the existing adopted regulations or policies to the specific development application. This hearing is to make a determination on whether or not the request meets the existing regulations and policies.

A citizen participation meeting can be used to inform the public on the proposed development, but cannot be used to deny the request if it meets the Comprehensive Plan and Land Development Code requirements. Therefore, the purpose of the meeting must only be informative.

The notice to neighborhood associations is challenging. Neighborhood associations are not required to notify the local government of organization. County staff does not know they exist unless a member of the association notifies staff. This is not enforceable.

The current Code language requires that county staff notify “potentially impacted neighborhood associations” of proposed “comprehensive plan amendments or land development regulations” within 10 days of filing. This seems to be a misprint, as “land development regulations” are not an item listed in paragraph one of Section 7001.1 and should be rewritten, if retained. The first paragraph of the section cites additional requirements for “comprehensive plan amendments, major land development reviews,...variances, special exceptions, major site plans and major subdivision (sic) in Gadsden County.”

The “DCA” does not exist as of 2011, and if this language is retained, should be replaced with “DEO” for Department of Economic Opportunity. Also of note, consideration should be made as to the purpose of the second required meeting in paragraph (B).

In paragraph E, no definition of “environmental resources” is offered in the Land Development Code, and therefore this term is not definitive in meaning or intent. In addition, as the citation continues to state that the requests must be in compliance with the Comprehensive Plan and the Land Development Code, this subsection is unnecessary as this is a statement of law.

In paragraph F, there are no parameters for the “fair and equitable exchange” of “land for significant public benefit” for the conversion of land from rural and agricultural to urban density. If this requirement is retained, there needs to be a program to detail the exchange of residential and agriculture lands to urban density by, at minimum, defining what “urban density” is and what the “significant public benefit” is and what a “fair and equitable exchange” is. Other needed guidance is needed to describe the ratio of lands exchanged, what is an “appropriate location”. In addition, as written this paragraph is a deterrent to a developer who may seek to provide a compact, walkable, mixed use community. These types of communities provide better urban form, and should be encouraged opposed to conditioned by an exchange of lands.

County staff has not completed the task in part G of Section 7001.1 which requires the county to establish urban services boundaries with the municipalities by 2014.

The Comprehensive Plan is silent on the issue of public participation meetings and notice requirements. Therefore, this amendment is not inconsistent with the Plan.

The public hearing process is located in Chapter 1 of the Land Development Code. Changes to the Citizen's Bill of Rights will not become in conflict with those pertinent sections.

Planning Commission Recommendation(s):

The Planning Commission voted 5-2 in favor amending the ordinance to only apply to Comprehensive Plan Future Land Use Map amendments, and to delete in full Parts D-G of the Subsection.

Proposed Ordinance 2018-018 is the Planning Commission's recommendation, except that it retains special exceptions as applications which are subject to the CBOR.

Options:

1. Adopt Ordinance 2018-018, amending Chapters 1 and 7 of the Land Development Code.
2. Proposed changes to Ordinance 2018-018, amending Chapters 1 and 7 of the Land Development Code, and adopt with changes.
3. Do not adopt Ordinance 2018-018.
4. Board Direction.

Attachments:

1. Attachment 1 – Proposed Ordinance 2018-018.
2. Attachment 2 - Newspaper advertisement.

SECTION 7001.1 SUBSECTION 1700. CITIZENS GROWTH MANAGEMENT AND PLANNING-BILL OF RIGHTS

This section establisheds additional requirements for Comprehensive Plan Future Land Use Map A amendments and ~~Major Land Development Reviews including but not limited to variances,~~ special E exceptions ~~major Site Plans and major Subdivision applied for~~ in Gadsden County. All applicants for small scale and large scale Comprehensive Plan Future Land Use Map A amendments ~~and Major Land Development Reviews~~ and special exceptions shall comply with the following requirements: For the purposes of this Subsection, the Board of County Commissioners shall not be classified as an applicant.

- A. Mandatory Workshop – The applicant shall conduct a workshop to present the request for the amendment(s) or the special exception to interested parties. This workshop shall occur at least seven (7) days prior to submittal of an application for a Future Land Use Map amendment or special exception to Gadsden County, but after the applicant has held a pre-application meeting with County staff. The applicant must present to the Planning Commission and Board of County Commissioners a list of any issues raised at the workshop, and indicate if and how they were resolved. Mandated Citizen Participation Plan-Developers must prepare a citizen participation plan and notify by mail and newspaper impacted property owners and neighborhood associations within one half mile of the development site property boundaries. The Growth Management Department must verify that proper notification has occurred. The Developer shall conduct workshops with citizens impacted to identify all issues of concern prior to any public hearing. The developer must present to the Planning Commission and Board of County Commissioners a list of all issues raised, and indicate if and how they were resolved. Unresolved issues then become the focus of P & Z and BOCC discussion.

- B. Notice Requirements – No less than fourteen (14) days prior to any mandatory workshop held by the applicant, the applicant must notify by mail property owners within a one-half mile boundary of the parcel or parcels subject to the request. An additional notification shall be placed in at least one newspaper of general circulation in Gadsden County at least two weeks prior to the workshop date. The newspaper ad shall contain all information as specified by Gadsden County. Notices shall be mailed to the address of the property owner shown on the Property Appraiser’s website. Notices shall include the time, date and location of the workshop, and description with a location map of the subject parcel. The Planning Official, or designee, shall verify that proper notification has occurred. Neighborhood Participation—Gadsden County’s Department of Planning and Community Development Department (Department) must compile a list of all valid neighborhood associations (with contact person) operating within the unincorporated areas. Within 10 business days of the filing of any applications or proposals filed for comprehensive plan amendments or land development regulations, the

- ~~Department shall notify potentially impacted neighborhood associations of such filings. Prior to submittal to DCA of plan amendments that would change future land use map a Community or neighborhood meeting must be held 30 calendar days before the application is filed and the application must verify that the meeting was held. A second Community or Neighborhood meeting must be held 15 business days before the amendment adoption hearing after review by DCA.~~
- ~~C. Seven Day "Cooling Off" Period Amendments to the Application -- Comprehensive Plan Future Land Use Map amendments and special exception requests cannot be changed in the seven (7) business days prior to the advertised public hearing between submittal of the application to Gadsden County and prior to the public hearing before the Planning Commission. This will allow the citizens, commissioners, and others to fairly evaluate the document. If the plan amendment is revised within that period, the hearing will be postponed unless all affected parties agree otherwise. Any material changes to proposed plan amendments must be submitted and made available to the public at least five (5) business days prior to the hearing at the adoption stage. Any amendments to the application must be at the Planning Commission public meeting or at the Board of County Commission public meeting.~~
- ~~D. "Super Majority" -- Votes for ALL COMPREHENSIVE PLAN amendments, and Major Land Development Reviews including but not limited to variances, special exceptions, major site plans and major subdivision shall require a "super majority" vote of the BOCC. A super majority vote of the BOCC is required to amend or repeal this ordinance.~~
- ~~E. All comprehensive land use map changes and site development applications shall protect Gadsden County Environmental Resources as identified in and in compliance with the adopted Comprehensive Plan requirements and Land Development Code.~~
- ~~F. "No Free Density" -- The conversion of rural and agricultural land to urban density in the form of compact, walkable, mixed use communities in appropriate locations shall only be undertaken where land for significant public benefit is offered in fair and equitable exchange. This shall include the permanent preservation of natural and agricultural lands and open spaces;~~
- ~~G. "Establish Reasonable Urban Service Boundaries" -- County government will work with the municipalities and other appropriate parties to establish reasonable urban services boundaries within the DCA mandated timeframe of 2014.~~

(Ord. #2010-005, 05-04-10)

NOTICE OF INTENT: PUBLIC HEARING

NOTICE IS HEREBY GIVEN to all concerned that the Board of County Commissioners of Gadsden County, Florida, intends, at a regular meeting, at the Gadsden County Governmental Complex, 9-B East Jefferson Street, Quincy, Florida, at 6:00 p.m. on the 6th day of November, 2018, to consider adoption of an ordinance entitled:

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF GADSDEN COUNTY, FLORIDA AMENDING THE LAND DEVELOPMENT CODE, AMENDING CHAPTER 1, ADMINISTRATION AND ENFORCEMENT AND SECTION 7001.1, THE CITIZENS GROWTH MANAGEMENT AND PLANNING BILL OF RIGHTS IN CHAPTER 7, DEVELOPMENT ORDERS, DEVELOPMENT PERMITS, AND DEVELOPMENT AGREEMENTS; PROVIDING FOR REPEAL, SEVERABILITY, INCLUSION IN THE GADSDEN COUNTY LAND DEVELOPMENT CODE, MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING, AND CORRECTION OF SCRIVENER'S ERRORS; AND PROVIDING FOR AN EFFECTIVE DATE.

INTERESTED PARTIES MAY APPEAR AT THE MEETING AND BE HEARD WITH RESPECT TO THE PROPOSED ORDINANCE. IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE BOARD OF COUNTY COMMISSIONERS WITH RESPECT TO THIS MATTER, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND FOR SUCH PURPOSE, HE OR SHE MUST ASSURE THAT A VERBATIM RECORDING OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

The proposed ordinance is available for public inspection at the Office of the Clerk, Gadsden County Courthouse, 10 E. Jefferson St., Quincy, Florida, and on the County website at www.gadsdencountyfl.gov.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Persons needing assistance in obtaining any information from the County on attending the public hearing must contact the Gadsden County Administrator's Office, 1B E. Jefferson Street, Quincy, Florida, (850) 875-8650, at least 48 hours prior to the hearing; if you are hearing or voice impaired, call 711.

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