

ORDINANCE NO.: 2006- 07

AN ORDINANCE AMENDING CHAPTER 23 (PLANNING), ARTICLE VII (LAND DEVELOPMENT REGULATIONS), DIVISION 2 (VESTED RIGHTS) OF THE HERNANDO COUNTY CODE OF ORDINANCES RELATING TO VESTED RIGHTS; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the County periodically reviews its Land Development Regulations for purposes of revising, updating and improving same; and,

WHEREAS, Ordinance 91-21, also known as the Vested Rights Ordinance, was adopted by the Board of County Commissioners in 1991 following the adoption of the Hernando County Comprehensive Plan;

WHEREAS, the Hernando County Comprehensive Plan, as amended from time to time, has been in effect for fifteen years; and,

WHEREAS, the County desires to remove potential ambiguities and conflicts under the prior Vested Rights Ordinance, adjust for the passage of time, and simplify Chapter 23, Article VII, Division 2 of the Code in general.

NOW THEREFORE:

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF HERNANDO COUNTY, FLORIDA:

SECTION 1. Amending Chapter 23 (Planning), Article VII (Land Development Regulations), Division 2 (Vested Rights). Chapter 23 (Planning), Article VII (Land Development Regulations), Division 2 (Vested Rights) is amended to read as follows, with underlined matter added and struck-through matter deleted:

Sec. 23-240. Vested Rights. Short title:

(a) Definitions. 'Statutory vested rights' are defined herein as those rights conferred under a development order issued pursuant to § 380.06, Florida Statutes, relating to a development of regional impact. 'Common law vested rights' are based on the equitable notions of fundamental fairness, good faith reliance, and substantial change of position and shall be defined and interpreted in accordance with Florida case law.

(b) Vested rights: procedures. Any person who claims vested rights to develop or use a particular parcel or property which may be affected by the adoption or amendment of any land development

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HERNANDO COUNTY, FLORIDA

1 regulation (exclusive of the Hernando County Comprehensive Plan, zoning, subdividing or platting)  
2 may seek a determination of vested rights by filing a written request with the administrative official  
3 designated pursuant to Appendix A, Article V, Section 1 of this Code. The administrative official  
4 may impose reasonable conditions on any determination and may provide for a validity period for  
5 such determination. The decision of the administrative official shall be deemed final unless appealed  
6 to the board of county commissioners within the allowed time and as provided for in Appendix A,  
7 Article V, Section 3 F of this Code. The decision of the board of county commissioners may be  
8 appealed to circuit court within thirty (30) days of the execution of the order to be appealed by the  
9 aggrieved party filing a petition for certiorari. The administrative process herein shall be the sole  
10 method of obtaining a determination of vested rights.

11  
12 (c) *Scope of this section; other provisions.* This section shall not apply to the Hernando County  
13 Comprehensive Plan which may only be amended as provided for in Chapter 23, Article 1 of this  
14 Code and Chapter 163, Part II, Florida Statutes. This section shall not apply to any zoning  
15 designation or classification which may only be amended as provided for in Appendix A, Article VI  
16 of this Code. Non-conforming structures, uses and lots are provided for under Appendix A, Article  
17 II, Section 2 of this Code. The subdividing and platting of land shall be pursuant to Chapter 26 of  
18 this Code.

19  
20 (d) *Repeal; pending applications.* Ordinance 91-21 is hereby repealed in its entirety; however, any  
21 person with an application for a determination of vested rights pending at time of adoption of this  
22 revision may proceed under the former provisions of said ordinance as if still in effect.

23  
24 (e) *Developments of regional impact; local development orders; development agreements.*  
25 Notwithstanding anything to the contrary, nothing in this section shall limit or modify the rights of  
26 any person to complete any development that has been authorized as a development of regional  
27 impact pursuant to chapter 380, Florida Statutes, or who has been issued a final unexpired local  
28 development order and is continuing in good faith under said development order. Nothing in this  
29 section shall affect any bona fide written agreement between a developer and the County which  
30 agreement conferred specific development rights and has not otherwise expired.

31  
32 ~~This division shall be known and may be cited as the "Vested Rights Ordinance."~~  
33 ~~(Ord. No. 91-21, § 1, 4-23-91; Ord. No. 06- , 5-23-06)~~

34  
35 **~~Sec. 23-241. Findings:~~**

36  
37 ~~The Hernando County Board of County Commissioners finds that:~~

- 38  
39 ~~(1) Chapter 163.3167, Florida Statutes, required Hernando County, Florida, to prepare and adopt~~  
40 ~~a comprehensive plan as scheduled by the Department of Community Affairs; and~~  
41

1 ~~(2) The board of county commissioners conducted public hearings relating to the adoption of the~~  
2 ~~comprehensive plan in accordance with chapter 163.3167 Florida Statutes; and~~  
3

4 ~~(3) It is the responsibility of the board of county commissioners to adopt regulations that~~  
5 ~~adequately plan for and guide growth and development within the county and to ensure that~~  
6 ~~existing rights of property owners are preserved in accordance with the Constitution of the~~  
7 ~~State of Florida and the United States; and~~  
8

9 ~~(4) Section 163.3194(1)(b), Florida Statutes, requires that all land development regulations~~  
10 ~~enacted or amended by the county shall be consistent with the adopted comprehensive plan;~~  
11 ~~or element or portion thereof, and any land development regulations existing at the time of~~  
12 ~~adoption which are not consistent with the adopted comprehensive plan, or element or~~  
13 ~~portion thereof, shall be amended so as to be consistent; and~~  
14

15 ~~(5) Existing zoning alone does not create any specific rights to development densities or~~  
16 ~~intensities under the adopted comprehensive plan; and~~  
17

18 ~~(6) The determination of vested development rights will ensure due process to anyone that may~~  
19 ~~have a claim to vested development rights; and~~  
20

21 ~~(7) Hernando County, in adopting this division, is establishing the sole procedure for the~~  
22 ~~determination of vested development rights of any landowner in the unincorporated areas of~~  
23 ~~the county:~~

24 ~~(Ord. No. 91-21, § 2, 4-23-91)~~  
25

26 **Sec. 23-242. Declaration of intent and purpose:**  
27

28 ~~It is the intent of this division to establish an administrative procedure by which a property owner~~  
29 ~~may demonstrate that private property rights have been vested:~~

30 ~~(Ord. No. 91-21, § 3, 4-23-91)~~  
31

32 **Sec. 23-243. Definitions:**  
33

34 ~~As used in this division, the following terms are defined below:~~  
35

36 ~~*Building permit.* A permit to construct or reconstruct any structure having a roof and used~~  
37 ~~or built for a shelter enclosure of persons, animals or property of any kind. This definition does not~~  
38 ~~include foundation permits.~~  
39

40 ~~*Continuing in good faith.* The final local development order for a project has not expired and~~  
41 ~~development activity occurs which significantly moves the proposed development toward~~

1 ~~completion unless the lapse in development activity was due to factors beyond the developer's~~  
2 ~~control.~~

3  
4 ~~*Development.* The carrying out of any building activity, the making of any material change~~  
5 ~~in the use or appearance of any structure or land, or the dividing of land into two (2) or more parcels.~~

6  
7 ~~*Final local development orders.* The following unexpired development orders shall be~~  
8 ~~considered to be final development orders for purposes of a determination of vested rights in a~~  
9 ~~previously approved development:~~

- 10 (1) ~~Subdivision conditional plat approval;~~  
11 (2) ~~Subdivision construction plan approval;~~  
12 (3) ~~Subdivision final plat approval;~~  
13 (4) ~~Building permit;~~  
14 (5) ~~Zoning permit.~~

15  
16 ~~*Infrastructure.* Facilities and services needed to sustain industrial, residential and commercial~~  
17 ~~activities. "Infrastructure" includes, but is not limited to, water and sewer, streets, street signage,~~  
18 ~~drainage and other public facilities.~~

19  
20 ~~*Lot of record.* A lot which is duly recorded in the office of the clerk of the circuit court.~~  
21 ~~Parcel. A continuous quantity of land in the possession of or owned by or recorded as the property~~  
22 ~~of the same person or persons. A parcel may consist of contiguous platted lots.~~  
23 ~~(Ord. No. 91-21, § 4, 4-23-91)~~

24  
25 **Sec. 23-244. Administrative procedures.**

26  
27 (a) ~~*Presumptive vested rights.* The following categories shall be presumptively vested:~~

- 28  
29 (1) ~~Any individually owned, legally created lot existing prior to March 1, 1990, provided~~  
30 ~~there are no contiguous lots of the same ownership.~~  
31  
32 (2) ~~Any legally created parcel existing prior to March 1, 1990.~~  
33  
34 (3) ~~Any lot in a platted subdivision that has county-maintained or approved~~  
35 ~~infrastructure.~~  
36  
37 (4) ~~All active and valid building permits, provided development continues in accordance~~  
38 ~~with county regulations pursuant to the building permit for which it was issued.~~  
39  
40 (5) ~~Any structure on which construction has been completed and a certificate of~~  
41 ~~occupancy issued.~~

1           ~~(6) All active zoning permits, provided development continues in accordance with~~  
2           ~~conditions of approval.~~

3  
4           ~~(b) Statutory vesting. The following categories will be statutorily vested:~~

5  
6           ~~(1) Development orders relating to a development of regional impact (DRI) or a Florida~~  
7           ~~Quality Development (FQD) issued pursuant to chapter 380, Florida Statutes, or any~~  
8           ~~successor statute to such chapter shall be vested.~~

9  
10          ~~(2) DRI scale developments existing prior to July 1, 1973, pursuant to chapter 380.06,~~  
11          ~~Florida Statutes, shall be vested, provided a valid, unexpired binding letter pursuant~~  
12          ~~to chapter 380, Florida Statutes, or any successor statute to such Chapter exists.~~

13          ~~(3) The right to develop or to continue the development of the property shall be found~~  
14          ~~to exist if a valid and unexpired final local development order was issued by the~~  
15          ~~county prior to March 1, 1990, and development is continuing in good faith.~~

16  
17          ~~(c) Common law vesting. An application for a vested rights determination shall be approved~~  
18          ~~if the applicant has demonstrated all of the following or otherwise accorded vested rights status by~~  
19          ~~a court of appropriate jurisdiction:~~

20  
21          ~~(1) The applicant:~~

22  
23               ~~a. Owned the property prior to March 1, 1990, or entered into a contract or~~  
24               ~~option to purchase the property on or before such date; or~~

25               ~~b. Presents facts such that it would be inequitable, unjust or fundamentally~~  
26               ~~unfair to deny an application for a vested rights determination where the~~  
27               ~~applicant acquire ownership after such date; and~~

28  
29          ~~(2) There was a valid, unexpired act of an agency or authority of the county other than~~  
30          ~~an existing future land use map designation or an existing zoning designation upon~~  
31          ~~which the applicant reasonably relied in good faith;~~

32  
33          ~~(3) The applicant, in reliance upon the valid, unexpired act of government, has made a~~  
34          ~~substantial change in position or has incurred extensive obligations or expenses; and~~

35  
36          ~~(4) It would be inequitable, unjust or fundamentally unfair to deny the development~~  
37          ~~rights acquired by the applicant. In making this determination, the county shall~~  
38          ~~consider a number of factors, including, but not limited to:~~

39  
40               ~~a. Whether construction or other development activity has commenced and is~~  
41               ~~continuing in good faith.~~

1           b. ~~Whether the expense or obligation incurred cannot be substantially utilized~~  
2           ~~for a development permitted by the county comprehensive plan and land~~  
3           ~~development regulations.~~

4  
5           ~~The following are not considered development expenditures or obligations in and of~~  
6 ~~themselves:~~

7           i. ~~Expenditures for legal and other professional services that are not related to the~~  
8           ~~design or construction of improvements;~~

9           ii. ~~Taxes paid;~~

10          iii. ~~Expenditures for acquisition or the financing costs of the land.~~

11  
12          ~~(d) Application procedure:~~

13          (1) ~~The owners shall request a determination of vested rights by filing a complete, sworn~~  
14          ~~application and appropriate fee with the county.~~

15  
16          (2) ~~The board of county commissioners shall establish an appropriate application fee by~~  
17          ~~resolution and such application fee shall be filed with the application for a~~  
18          ~~determination of vested rights.~~

19  
20          ~~(e) Determination procedures:~~

21  
22          (1) ~~The initial vesting determination request is reviewed by county staff to determine if~~  
23          ~~the request is complete. If it is incomplete, it will be returned to the applicant with~~  
24          ~~written notification of deficient items as required by this division. Within six (6)~~  
25          ~~months from the date the application was returned to the applicant, the applicant shall~~  
26          ~~correct the deficient items or notify the county of their intent to do otherwise. If the~~  
27          ~~applicant does not respond in this time period, the application will become void.~~

28  
29          (2) ~~The county administrator or his designee will review the request to determine~~  
30          ~~whether the county staff or the board of county commissioners will make the vesting~~  
31          ~~determination. Those requests which fall under subsections (a) and (b)(1) will be~~  
32          ~~reviewed by staff, those requests falling under subsections (b)(2), (b)(3), and (c) will~~  
33          ~~be reviewed by the board of county commissioners.~~

34  
35          (3) ~~If staff is reviewing the application, the final determination will be made in writing~~  
36          ~~within twenty (20) working days of the application's sufficiency determination.~~

37  
38          (4) ~~The county staff shall provide the applicant with written notification of the~~  
39          ~~determination of vested status.~~

40  
41          (5) ~~In the event the county staff determines that a hearing before the board of county~~  
42          ~~commissioners is necessary to make a determination, a date for the hearing shall be~~

1           ~~set and the applicant notified of the date, time and place of the hearing. The~~  
2           ~~applicant's request will be reviewed by staff and a written recommendation prepared~~  
3           ~~for the public hearing within twenty (20) working days of the application's~~  
4           ~~sufficiency determination. The applicant will be notified by mail of staff's~~  
5           ~~recommendation to the board of county commissioners.~~

6  
7           ~~(f) *Limitations on determinations of vested rights:*~~

- 8  
9           ~~(1) Presumptive vested rights determinations do not have an expiration date.~~  
10  
11           ~~(2) Statutory and common law vested rights determinations shall remain valid for a~~  
12           ~~period up to five (5) years from the date the determination was made unless~~  
13           ~~otherwise specified by the vesting authority. An extension may be requested,~~  
14           ~~provided such extension is determined to be in compliance with current county~~  
15           ~~regulations. The request must be applied for no less than ninety (90) days prior to the~~  
16           ~~expiration of the determination.~~  
17  
18           ~~(3) All development subject to a vested rights determination must be consistent with the~~  
19           ~~terms of the development approval upon which the determination was based. Any~~  
20           ~~substantial deviation from a prior approval, except as required by governmental~~  
21           ~~action, shall cause the development involved to be subject to the policies, regulations~~  
22           ~~and implementing decisions set forth in the adopted county comprehensive plan.~~  
23  
24           ~~(4) A vested rights determination shall apply to the land and is therefore transferrable~~  
25           ~~from owner of the land.~~  
26  
27           ~~(5) If the final local development order expires prior to development and extensions~~  
28           ~~permitted under this division are not pursued, the vesting status of the property will~~  
29           ~~become null and void.~~  
30  
31           ~~(6) Development orders issued after the effective date of the compliance agreement,~~  
32           ~~March 1, 1990, and prior to November 14, 1990, will be subject to any modifications~~  
33           ~~required by these remedial actions. Those persons issued development orders in this~~  
34           ~~time frame are on notice such orders may not form the basis of a vested rights claim.~~

35  
36           ~~(g) *Appellate procedures.* The applicant may appeal a vested rights determination made by~~  
37           ~~the county staff to the board of county commissioners within thirty (30) days of the decision. The~~  
38           ~~decision of the board of county commissioners can be subjected to judicial review as determined by~~  
39           ~~general law.~~

40           ~~(Ord. No. 91-21, § 5, 4-23-91)~~

41  
42           **Secs. 23-241 5--23-254. Reserved.**

1 **SECTION 2. Severability.** It is declared to be the intent of the Board of County Commissioners  
2 that if any section, subsection, clause, sentence, phrase, or provision of this ordinance is for any  
3 reason held unconstitutional or invalid, the invalidity thereof shall not affect the validity of the  
4 remaining portions of this ordinance.

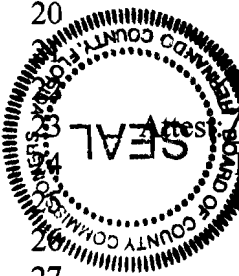
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6 **SECTION 3. Inclusion in the Code.** It is the intention of the Board of County Commissioners of  
7 Hernando County, Florida, and it is hereby provided, that the provisions of this Ordinance shall  
8 become and be made a part of the Code of Ordinances of Hernando County, Florida. To this end,  
9 any section or subsection of this Ordinance may be renumbered or relettered to accomplish such  
10 intention, and the word "ordinance" may be changed to "section, "article," or other appropriate  
11 designation.

12  
13 **SECTION 4. Effective date.** This ordinance shall take effect immediately upon filing with the  
14 Department of State.

15  
16 **BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF HERNANDO**  
17 **COUNTY** in Regular Session this 23<sup>rd</sup> day of May, 2006.

18  
19 **BOARD OF COUNTY COMMISSIONERS**  
20 **HERNANDO COUNTY, FLORIDA**

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Attest: Karen Nicolai  
KAREN NICOLAI  
CLERK

By: Diane B. Rowden  
DIANE B. ROWDEN  
CHAIRPERSON

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Approved as to Form and  
Legal Sufficiency

By: [Signature] 5/16/06  
Assistant County Attorney