

Marguerite Linke

From: Bryant, Linda C. <Linda.Bryant@DOS.MyFlorida.com>
Sent: Friday, August 11, 2017 7:41 AM
To: Marguerite Linke
Cc: County Ordinances
Subject: Hernando20170810_Ordinance2017_29_Ack.pdf
Attachments: Hernando20170810_Ordinance2017_29_Ack.pdf

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FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

August 11, 2017

Honorable Don Barbee Jr.
Hernando County Clerk's Office
20 North Main Street, Rm. 3621
Brooksville, Florida 34601

Attention: Marguerite Linke, Administrative Services

Dear Mr. Barbee:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Hernando County Ordinance No. 2017-29, which was filed in this office on August 10, 2017.

Sincerely,

Ernest L. Reddick
Program Administrator

ELR/lb

ORDINANCE NO.: 2017 - 29

AN ORDINANCE PROVIDING FOR PROCEDURES FOR SELLING, CONVEYING, AND LEASING COUNTY-OWNED REAL PROPERTY AND ANY IMPROVEMENTS THEREON; PROVIDING FOR THE REPEAL OF HERNANDO COUNTY CODE § 2-140; AMENDING HERNANDO COUNTY CODE § 3-33; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF HERNANDO

COUNTY:

WHEREAS, Hernando County ("County") is a non-charter county as that term is used in Article VIII, Section 1(f), Florida Constitution; and,

WHEREAS, the County is given its home rule powers by the Florida Constitution, Fla. Stat. § 125.01, and other provisions of Florida Law; and,

WHEREAS, in the absence of a specific constitutional or statutory provision therefor, a non-charter county has no obligation to establish a bidding procedure to let contracts and may contract in any manner not arbitrary or capricious; and,

WHEREAS, prior to 2001, Fla. Stat. § 125.35 required counties to engage in a strict competitive bidding procedure prior to selling, conveying, or leasing real property or improvements constructed thereon; and,

WHEREAS, in 2001 the Legislature enacted Fla. Stat. § 125.35(3) which allows counties to enact ordinances providing their own standards to be used in the selling, conveying, leasing of real property or improvements constructed thereon; and,

1 WHEREAS, Fla. Stat. § 125.35(3) requires that the alternative standards and procedures set
2 out in this ordinance provide at a minimum for:

- 3 (a) The establishment of competition and qualification standards upon which disposition
4 will be determined; and,
- 5 (b) The provision of reasonable public notice of the intent to consider disposition of
6 county property and the availability of copies of the standards; reasonableness of the
7 notice is to be determined by the efficacy and efficiency of the means of
8 communication used; and,
- 9 (c) The identification of the form and manner by which an interested person may acquire
10 county property; and,
- 11 (d) The delineation of the types of negotiation procedures applicable to the selection of
12 a person to whom county properties may be disposed; and,
- 13 (e) The delineation of the manner in which interested persons will be notified of the
14 board's intent to consider final action at a regular meeting of the board on the
15 disposition of a property and the time and manner for making objections; and,
- 16 (f) The adherence in the disposition of real property to the governing comprehensive
17 plan and zoning ordinances; and,

18 WHEREAS, the Board finds that the alternative standards and procedures set out in this
19 ordinance meet or exceed the minimum requirements set out in Fla. Stat. § 125.35(3); and,

1 WHEREAS, Fla. Stat. § 332.08 allows for the Board to adopt policies to manage properties
2 located within airports; and,

3 WHEREAS the Board wishes to refine the procedures by which the County sells, conveys,
4 and leases real property and improvements constructed thereon in the manner provided for herein;

5 NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY
6 COMMISSIONERS OF HERNANDO COUNTY:

7 **Section 1. Adoption of Standards and Procedures for the Disposition of County-Owned**
8 **Real Property.** A new Hernando County Code Chapter 2, Article VII, Division 2, to be entitled
9 “Standards and Procedures for the Disposition of Real Property,” is hereby created to read as
10 follows:

11 Section 2-170 - Purpose and Scope.

12 This division is adopted to set forth the methods by which the County may sell, lease,
13 or otherwise dispose of surplus real property or improvements constructed thereon.

14 The provisions of this division are strictly procedural in nature and create no
15 substantive rights on behalf of any party.

16 Section 2-171 - Declaration of Surplus Property.

17 (a) Any real property owned by the County may be declared as surplus upon:

18 (1) Presentation of a staff request to the Board of County Commissioners
19 (‘the Board’) by the County Administrator or the County Administrator’s designee
20 (collectively ‘the County Administrator’).

1 (2) Presentation of an interested party's request to the Board by the
2 County Administrator. The County Administrator shall include a staff
3 recommendation with the interested party's request.

4 (3) The Board's own motion.

5 (b) When the Board finds that any County-owned real property or improvements
6 constructed thereon are not needed for County purposes, the Board may declare the
7 property to be surplus property. Once the property is declared surplus, the property
8 may be sold, leased, dedicated, donated, or otherwise conveyed to interested parties
9 as provided for herein.

10 (c) Declaring property as surplus is a discretionary act of the Board. It is not
11 subject to appeal.

12 Section 2-172 - Methods of Disposal.

13 Once the real property has been declared surplus, the County Administrator shall
14 recommend to the Board one of the following methods by which the surplus property
15 can be alienated.

16 (a) *Competitive Selection.* In accordance with F.S. § 125.35, the County may
17 sell, convey or lease any real property through one of the following alternative
18 competitive selection processes:

19 (1) The County can solicit bids to award the property to the highest and
20 best bidder for the particular use of the property that the Board determines to be the

1 highest and best. At a minimum, a notice of the solicitation shall be published once
2 a week for at least two weeks in a newspaper of general circulation, calling for bids
3 on the property. In the discretion of the County Administrator, the County may
4 solicit bids by issuing a formal invitation to bid pursuant to the Hernando County
5 Procurement Ordinance, Hernando County Code Chapter 2, Article V, and the
6 policies promulgated thereunder. Responses to the solicitation must be received by
7 the County at least 10 days prior to the Board meeting at which the property is to be
8 sold, leased, or conveyed.

9 (2) The County may solicit proposals for the disposition of property by
10 issuing a request for proposals pursuant to the Hernando County Procurement
11 Ordinance, Hernando County Code Chapter 2, Article V, and the policies
12 promulgated thereunder.

13 (3) In addition to the utilization of any other means of advertising, the
14 County shall publish notice of a solicitation of bids, invitation to bid, or a request for
15 proposals once a week for two weeks in a newspaper of general circulation.

16 (b) *Private Sale.* In accordance with Fla. Stat. § 125.35(2), the County may
17 negotiate a private sale with an adjacent property owner when the Board finds that
18 the property is of insufficient size and shape to be issued a permit for any type of
19 development, or when the value of the property is \$15,000.00 or less as determined
20 by the Hernando County Property Appraiser, and of use only to the adjacent property

owners. The Board may, after sending notice of its intended action to owners of adjacent property by certified mail, effect a sale and conveyance of the parcel at private sale without receiving bids or publishing notice; however, if, within 10 working days after receiving such mailed notice, two or more owners of adjacent property notify the Board of their desire to purchase the parcel, the Board shall accept sealed bids for the parcel from such property owners.

(c) *Property Exchange.* In accordance with Fla. Stat. § 125.37, the County may exchange surplus real property for another parcel of real property, provided that the Board has published a notice for at least two weeks in a newspaper of general circulation, before adoption of a resolution authorizing the exchange. The notice shall set forth the terms and conditions of the exchange of property.

(d) *Sale to Government or Non-Profit.* In accordance with Fla. Stat. § 125.38, upon a finding by the Board that the property is required for use by another governmental entity or non-profit entity, the County may sell, transfer, or convey real property to that entity for such price, whether nominal or otherwise as the Board may fix. No advertisement is required. The fact of the application being made, the purpose for which such property is to be used, and the price or rent thereof shall be set out in a resolution duly adopted by the Board, setting forth the following:

- (1) The facts of the application;
- (2) The purpose for which the property is to be used;

1 (3) The purchase price and terms; and

2 (4) A provision to be incorporated into the deed which states that in the
3 event the property is not used or ceases to be used for the stated purpose, the property
4 shall revert to the County which shall thereafter have the right to re-enter and
5 repossess the property.

6 (e) *Affordable Housing.* In accordance with Fla. Stat. § 125.379, the County may
7 sell, transfer, or convey surplus real property to another governmental entity, a non-
8 profit entity, or a private entity or person to carry out the provisions of Fla. Stat. Ch.
9 420, relating to affordable housing. The County may adopt requirements for such
10 conveyances on a case-by-case basis to insure that said property will be permanently
11 preserved as affordable housing.

12 (f) *Direct Negotiation.* The Board can waive the process of soliciting offers and
13 negotiate directly with a company for the sale, conveyance, or leasing of property if
14 the company is a participant in a targeted industry, as that term is defined in
15 Hernando County Code § 11.5-28. To do so, the Board shall:

16 (1) Publish a notice in a newspaper of general circulation in the county
17 at least ten days before the board's regular meeting at which the bid or proposal
18 waiver will be considered. The notice shall identify the nature of the proposed bid or
19 proposal waiver and shall identify the County office where copies of the draft
20 resolution providing for the bid or proposal waiver may be reviewed or obtained. The

1 notice shall also provide the time and manner for persons making objections in
2 writing or otherwise.

3 (2) Consider the proposed waiver at a regularly scheduled Board meeting.
4 Although the item is not a public hearing, interested members of the public may
5 comment on the item during general public comment or at the time the item is
6 presented.

7 (3) Adopt a resolution specifying the basis for the competitive bid waiver
8 in the event the Board determines to grant the waiver.

9 (h) *Real Estate Broker.* As authorized in Fla. Stat. § 125.35(3), the County may
10 sell, lease, transfer, or convey real property or improvements thereon through any of
11 the procedures set forth in subsections (a) - (f) above by using the services of a
12 licensed real estate broker, as follows:

13 (1) A licensed real estate broker shall be retained in accordance with the
14 County's procurement policies.

15 (2) Any offer made to a licensed real estate broker for purchase of listed
16 surplus property shall be brought to the Board in the form of a purchase agreement.
17 Notice of the Board's intent to consider the purchase agreement shall be provided by
18 advertisement in a newspaper of general circulation in the County at least ten days
19 in advance of the Board meeting.

1 (i) *Public Auction.* As authorized in Fla. Stat. § 125.35(3), the County may sell,
2 lease, transfer, or convey real property or improvements thereon by using the services
3 of a public auction house, as follows:

4 (1) The services of a public auction house shall be retained in accordance
5 with the County's procurement policies.

6 (2) For any real property dispositions made through public auction, the
7 County shall establish a base reserve for the property.

8 (j) Notwithstanding the foregoing, the Board retains its sole and absolute
9 discretion to reject any and all offers to purchase or lease County-owned property.

10 (k) Any conveyance of property under this division shall be in accordance with
11 and subject to all applicable laws, including (1) the terms and conditions of any gift,
12 trust, grant requirement, deed restriction, bond covenant or other covenants or
13 restrictions, mortgage, deed of trust, lease, license, use agreement or other agreement
14 applicable to such property, and (2) the provisions of any applicable federal or state
15 law, or any regulations promulgated thereunder.

16 Section 2-173 - Treatment of Unsolicited Offers.

17 The Board of County Commissioners is under no obligation to consider
18 unsolicited bids to purchase or lease County-owned property. If the applicable
19 property has not yet been determined to be surplus property, the offer shall be
20 processed as a request to declare such property to be surplus pursuant to Hernando

County Code § 2-171(a)(2). If the Board has determined that the applicable property is surplus, the Board shall have the discretion to dispose of the applicable property through one of the methods set forth in Hernando County Code § 2-172.

Section 2-174 - Evaluation and Negotiation Criteria.

(a) In determining the terms and conditions of the disposal of surplus property, the Board shall take the following factors into consideration:

(1) The appraised value of the real property;

(2) The condition of the real property, and the extent to which the party seeking to acquire the property will have to expend funds to make the property usable, rezoning issues excluded, or, to bring the property into compliance with the County Code;

(3) The proposed use of the party seeking to acquire the property; and

(4) The proposed use of the property for affordable housing.

(b) In no event shall the disposition of surplus property violate the County's Comprehensive Plan or Zoning Code.

Section 2-175 - Provisions Specific to the Sale of Property.

(a) That all costs of closing, if any, shall be paid by the purchaser in the closing statement. The purchaser shall reimburse the County for the cost of any required appraisal. The County shall convey the title to real property by means of a deed of

1 conveyance in the form required by Fla. Stat. § 125.411, as it may be amended from
2 time to time.

3 (b) All properties shall be sold in an “as is” condition. Prospective purchasers
4 will be encouraged to fully inspect the property. A 30 day due diligence period may
5 be agreed to by the Board in appropriate circumstances.

6 (c) The purchaser shall determine whether or not it desires to have title
7 insurance. The cost of title insurance will be borne by the purchaser. Any ad
8 valorem taxes, assessment or other lien on the property shall be paid by the
9 purchaser or title to the property will be accepted with those liens and
10 encumbrances to which the property is subject.

11 (d) The Board may require a deposit of a portion of the proposed purchase price
12 as a condition of a contract for sale.

13 Section 2-175 - Exemptions; Conditions.

14 (a) Pursuant to Fla. Stat. § 125.35(1)(b), the provisions of this division do not
15 apply to:

- 16 (1) The negotiation of a lease of an airport or seaport facility; or,
17 (2) The modification or extension of an existing lease of real property for
18 an additional term not to exceed 25 years, where the improved value of the lease has
19 an appraised value in excess of \$20 million; or,

1 (3) The negotiation of a lease for a professional sports franchise facility
2 financed by revenues received pursuant to Fla. Stat. §§ 125.0104 or 212.20.

3 (b) Pursuant to Fla. Stat. § 125.39, the provisions of this article shall not be
4 construed to cover the sale or disposition of any land conveyed to the County for a
5 specific purpose under an instrument containing a reversionary clause whereby said
6 land shall revert to the grantor or grantors upon failure to use said real property for
7 such purpose.

8 (c) The provisions of this division shall not apply to the disposition of tangible
9 property.

10 (d) Fla. Stat. § 73.013, as it may be amended from time to time, shall govern the
11 sale, lease, conveyance, or disposition of any real property acquired by the County
12 by eminent domain.

13 Section 2-176 - Prohibition of Sale or Lease of County-Owned Property for Less than
14 Fair Market Value.

15 Except as provided for in Hernando County Code § 2-172(d) and (e) above and
16 Hernando County Code § 3-33, the Board shall not convey or lease its interest in any
17 real property or improvements thereon for less than the fair market value of the
18 County's interest in such real property. Notwithstanding the foregoing, the County
19 may not sell or convey property that the County accounts for as part of enterprise
20 fund at less than fair market value.

1 Section 2-177 - Disclosures of Ownership Interests.

2 (a) Prior to the County's entering into any contract, agreement or lease relating
3 to the purchase, sale or leasing of real property or improvements thereon by, to or
4 from the County, all individuals, corporations, partnerships, joint ventures or other
5 legal entities having any interest of any kind in the property to be purchased, sold or
6 leased, shall file with the County an affidavit identifying the extent of its ownership
7 interest in the subject real property. The affidavit of disclosure must be fully
8 executed and received by the County not later than ten (10) days immediately
9 preceding the decision of the Board to sell or not sell the property to the purchaser.

10 (b) Failure by any party to comply with the requirements of subsection (a) shall
11 render the entire agreement to purchase, sale or lease voidable.

12 Section 2-178 - Prospective Application; Conflict.

13 (a) The provisions of this division shall have prospective application only and
14 shall not affect the validity of any contractual obligation existing as of this division's
15 effective date.

16 (b) The provisions of this division are neither intended to amend, modify or
17 supersede any provision of federal or state law, or any regulations promulgated
18 thereunder, nor are they intended to conflict with any existing contractual obligation,
19 deed restriction, or grant requirement of the County and shall, insofar as possible, be
20 interpreted so that no such conflict shall exist. In event of such a conflict, the

provisions of an applicable law, regulation, contractual obligation, deed restriction, or grant requirement will control over a conflicting provision of this division.

Section 2-179 - Adoption of Implementing Policies.

Pursuant to Hernando County Code § 2-138, the chief procurement officer shall promulgate administrative policies and procedures implementing this division and Hernando County Code § 3-33 which shall be forwarded through the County Administrator for review and approval prior to adoption by the Board.

Section 2. Repeal of Hernando County Code § 2-140. Hernando County Code § 2-140 is hereby repealed.

Section 3. Amendment of Hernando County Code § 3-33. Hernando County Code § 3-33, Airport Leases, is amended to read as follows, with underlined matter added and struck-through matter deleted:

(a) Pursuant to the Airport Authority Law of 1945, Fla. Stat. §§ 332.01-332.12, and Fla. Stat. § 125.35, as they may be amended from time to time, the Board of County Commissioners (“the Board”) shall administer and dispose of real property and improvements located within the confines of the Brooksville-Tampa Bay Regional Airport (“the Airport”). The provisions of this section are strictly procedural in nature and create no substantive rights on behalf of any party.

(b) Definitions. As used in this section:

(1) “Lease” shall mean a written agreement between the Board and a

1 tenant, including any leases or subleases, in which the Board agrees to give a tenant
2 an exclusive right to use, occupy, and control the real property for a specific term and
3 for consideration, whether such written agreement creates a leasehold interest by an
4 assignment, extension, modification, amendment, novation, or conversion.

5 (2) “License” shall mean an agreement, including a license, right of entry,
6 and use permit, whereby the Board grants a revocable, non-exclusive right to a
7 person or entity to use Airport property for a specific purpose. It is personal to that
8 person or entity, does not transfer an interest in real property. For the purposes of
9 this section, agreements allowing parties utilize a tie-down or a hangar, solely for the
10 short-term (e.g. month-to-month or year-to-year) storage of aircraft, shall be
11 considered a license, regardless of the title by which the Board has granted such
12 authorization.

13 (c) Leasing authorized. Because airport property other than runways, taxiways,
14 aids to navigation, parking, driving and landscaping areas and surrounding setbacks
15 exists to allow development of hangars and other aviation-related facilities and uses,
16 the Board may lease any portion of the airport not needed for direct aviation use
17 without first declaring the property surplus. Except as provided for herein, leases
18 shall be awarded pursuant to the processes set forth in Hernando County Code
19 Chapter 2, Article VII, Division 2.

20 (d) Leases and licenses at the Airport shall comply with:

1 (1) All applicable federal, state, and local rules, guidelines, procedures,
2 deed restrictions, and regulations; and,

3 (2) The regulations and requirements of the Federal Aviation
4 Administration (“FAA”) or the Florida Department of Transportation (“FDOT”), as
5 well as the grant assurances associated with any applicable FAA or FDOT grants;
6 and,

7 (3) The provisions of Hernando County Code Chapter 3, Airports and
8 Aviation, including but not limited to the Application and Review of Qualifications
9 of Potential Operators Ordinance, Hernando County Code Chapter 3, Article IV, the
10 Minimum Operating Standards for the Brooksville-Tampa Bay Regional Airport
11 Ordinance, Hernando County Code Chapter 3, Article V, and the Rules and
12 Regulations for the Brooksville-Tampa Bay Regional Airport Ordinance, Hernando
13 County Code Chapter 3, Article V.

14 (e) *Adherence to Airport Layout Plan (ALP) Required.* The ALP depicts the
15 entire property of the Airport and identifies existing facilities and plans for future
16 development. The ALP reflects the existing and proposed allocation of areas of the
17 Airport to specific operations and support functional usage. No use, occupancy,
18 construction, modification or improvement that is inconsistent with the Airport’s
19 FAA-approved ALP shall be allowed. The conversion of any area of the Airport to
20 a substantially different use than that shown in the approved ALP could adversely

affect the safety, utility or efficiency of the Airport. Only upon a legislative determination by the Board that a particular construction, modification or improvement would serve the needs of the Airport, and that a change in circumstances is evident such that the need for space for such facilities or services was not anticipated at the time the most recent ALP was submitted to the FAA for approval, will the Board consider making application to the FAA for approval of a revision of the ALP pursuant to the request of a tenant or prospective tenant. The requesting tenant or prospective tenant shall be responsible for all costs associated the application to the FAA for approval of a revision of the ALP. Nothing contained in this policy shall require the County to make such an application.

(f) Pursuant to Fla. Stat. § 332.08(1)(e), property that has been designated on the ALP for aeronautical use may be leased for a term not to exceed 50 years. All other property may be leased for an initial term not to exceed 30 years.

~~---~~(g) All leases at the airport shall be at fair market value rent (FMVR) in accordance with the regulations, rules and orders of the Federal Aviation Authority (FAA) applicable to surplus military airports. All leases shall include a provision whereby the rent is adjusted at least every five (5) years during the life of the lease, and including any renewals or extensions thereto, to reflect fair market value rent at time of adjustment. Fair market value rent shall be based upon current appraisal methodology performed in accordance with the Uniform Standards of Professional

1 Appraisal Practice (USPAP).

2 ----(h) In order to encourage new tenants to locate at the airport, the airport director,
3 in his or her discretion, may offer leasing incentives as provided herein on all ground
4 leases at least thirty (30) years in duration and where the tenant pays for the costs of
5 all improvement (i.e., constructing the building and other improvements). The leasing
6 incentives for all new non-aeronautical tenants shall be limited to the first five (5)
7 years of the lease term and shall be based on a sliding scale in which one hundred
8 (100) percent of fair market value rent is obtained by the fifth year. All leases shall
9 be subject to review and approval by the board of county commissioners. All leases
10 on non-approved forms may be subject to further review and approval by the FAA.

11 (i) All proposed leases shall be approved by the County Attorney's Office as to
12 form and legal sufficiency.

13 (i) Pursuant to Fla. Stat. § 332.08 and Hernando County Code § 2-138, the chief
14 procurement officer, in consultation with the airport manager, shall promulgate a
15 policy for the leasing and licensing of Airport land, to be approved by the Board.

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

Section 5. Inclusion in the Code. It is the intention of the Board of County Commissioners of Hernando County, Florida, and it is hereby provided, that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of Hernando County, Florida. To this end, the section of this Ordinance may be renumbered or relettered to accomplish such intention, and that the word 'ordinance' may be changed to 'section, 'article,' or other appropriate designation.

Section 6. Conflicting Provisions Repealed. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 7. Effective Date. This ordinance shall take effect immediately upon receipt of official acknowledgment from the office of the Secretary of State of Florida that this ordinance has been filed with said office.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF HERNANDO COUNTY in Regular Session this 8th day of August, 2017.



**BOARD OF COUNTY COMMISSIONERS
HERNANDO COUNTY, FLORIDA**

Attest: Marguerite Barbée, Jr.
DONALD C. BARBEE, JR.
Clerk

By: Wayne Dukes
WAYNE DUKES
Chairman

Approved for Form and Legal Sufficiency

[Signature]
Deputy County Attorney