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ORDINANCE 91-21

APR 30 4 25 1981

AN ORDINANCE OF HERNANDO COUNTY, TO BE KNOWN AS THE VESTED RIGHTS ORDINANCE, AMENDING THE HERNANDO COUNTY, FLORIDA, CODE OF ORDINANCES, ENACTING AND ESTABLISHING AN ADMINISTRATIVE PROCESS FOR PROPERTY OWNERS TO OBTAIN A VESTED RIGHTS DETERMINATION; STATING A DECLARATION OF INTENT AND PURPOSE; PROVIDING FOR DEFINITIONS; ESTABLISHING ADMINISTRATIVE PROCEDURES FOR PRESUMPTIVE VESTING DETERMINATIONS; STATUTORY VESTING DETERMINATIONS AND COMMON LAW VESTING DETERMINATIONS; ESTABLISHING AN APPLICATION PROCEDURE; PROVIDING FOR VESTED RIGHTS LIMITATIONS; ESTABLISHING AN APPELLATE PROCEDURE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION INTO THE LAND DEVELOPMENT REGULATIONS AND ESTABLISHING AN EFFECTIVE DATE.

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

SECTION 1: SHORT TITLE. THIS ORDINANCE SHALL BE KNOWN AND MAY BE CITED AS THE VESTED RIGHTS ORDINANCE.

SECTION 2: FINDINGS. THE HERNANDO COUNTY BOARD OF COUNTY COMMISSIONERS FINDS THAT:

WHEREAS, Chapter 163.3167, Florida Statutes, required Hernando County, Florida, to prepare and adopt a comprehensive plan as scheduled by the Department of Community Affairs; and

WHEREAS, the Board of County Commissioners of Hernando County conducted public hearings relating to the adoption of the Hernando County Comprehensive Plan in accordance with Chapter 163.3167 Florida Statutes; and

WHEREAS, it is the responsibility of the Board of County Commissioners to adopt regulations that adequately plan for and guide growth and development within the County and to ensure that existing rights of property owners are preserved in accordance with the Constitution of the State of Florida and the United States; and

WHEREAS, Section 163.3194(1)(b), Florida Statutes, requires that all land development regulations enacted or amended by Hernando County shall be consistent with the adopted Comprehensive Plan, or element or portion thereof, and any land development regulations existing at the time of adoption which are not consistent with the adopted Comprehensive Plan, or element or portion thereof, shall be amended so as to be consistent; and

WHEREAS, existing zoning alone does not create any specific rights to development densities or intensities under the adopted Comprehensive Plan; and

WHEREAS, the determination of vested development rights will ensure due process to anyone that may have a claim to vested development rights; and

WHEREAS, Hernando County, in adopting this ordinance, is establishing the sole procedure for the determination of vested development rights of any landowner in the unincorporated areas of Hernando County.

SECTION 3: DECLARATION OF INTENT AND PURPOSE.

It is the intent of this Ordinance to establish an administrative procedure by which a property owner may demonstrate that private property rights have been vested.

SECTION 4: DEFINITIONS.

Building Permit. As used in this ordinance shall mean a permit to construct or reconstruct any structure, having a roof, and used or built for a shelter enclosure of persons, animals, or property of any kind. This definition does not include foundation permits.

Continuing in Good Faith. As used in this ordinance shall mean the final local development order for a project has not expired, and development activity occurs which significantly moves the proposed development toward completion unless the lapse in development activity was due to factors beyond the developer's control.

Development. The carrying out of any building activity, the making of any material change in the use or appearance of any structure or land, or the dividing of land into two or more parcels.

Final Local Development Orders. The following unexpired development orders shall be considered to be final development orders for purposes of a determination of vested rights in a previously approved development:

1. Subdivision conditional plat approval
2. Subdivision construction plan approval
3. Subdivision final plat approval
4. Building permit
5. Zoning Permit

Infrastructure. Facilities and services needed to sustain industrial, residential and commercial activities. Infrastructure includes but is not limited to water and sewer, streets, street signage, drainage and other public facilities.

Lot of record. A lot which is duly recorded in the Office of the Clerk of the Circuit Court.

Parcel. A continuous quantity of land in the possession of or owned by, or recorded as the property of the same person or persons. A parcel may consist of contiguous platted lots.

SECTION 5. ADMINISTRATIVE PROCEDURES.

A. PRESUMPTIVE VESTED RIGHTS

The following categories shall be presumptively vested:

1. Any individually owned, legally created lot existing prior to March 1, 1990, provided there are no contiguous lots of the same ownership.
2. Any legally created parcel existing prior to March 1, 1990.
3. Any lot in a platted subdivision that has county maintained or approved infrastructure.
4. All active and valid building permits provided development continues in accordance with county

regulations pursuant to the building permit for which it was issued.

5. Any structure on which construction has been completed and a certificate of occupancy issued.
6. All active zoning permits provided development continues in accordance with conditions of approval.

B. STATUTORY VESTING

The following categories will be statutorily vested:

1. Development Orders relating to a Development of Regional Impact (DRI) or a Florida Quality Development (FQD) issued pursuant to Chapter 380, Florida Statutes or any successor statute to said Chapter shall be vested.
2. DRI scale developments existing prior to July 1, 1973, pursuant to Chapter 380.06, Florida Statutes, shall be vested provided a valid, unexpired binding letter pursuant to Chapter 380, Florida Statutes, or any successor statute to said Chapter exists.
3. The right to develop or to continue the development of the property shall be found to exist if: a valid and unexpired final local development order was issued by the county prior to March 1, 1990 and development is continuing in good faith.

C. COMMON LAW VESTING

An application for a vested rights determination shall be approved if the applicant has demonstrated all of the following, or otherwise accorded vested rights status by a court of appropriate jurisdiction:

1. The applicant:
 - a) Owned the property prior to March 1, 1990 or entered into a contract or option to purchase the property on or before such date; or,
 - b) Presents facts such that it would be inequitable, unjust, or fundamentally unfair to deny an application for a vested rights determination where the applicant acquired ownership after such date; and,
2. There was a valid, unexpired act of an agency or authority of Hernando County other than an existing future land use map designation or an existing zoning designation upon which the applicant reasonably relied in good faith; and
3. The applicant, in reliance upon the valid, unexpired act of government, has made a substantial change in position or has incurred extensive obligations or expenses; and
4. It would be inequitable, unjust or fundamentally unfair to deny the development rights acquired by the applicant. In making this determination, Hernando County shall consider a number of factors, including but not limited to:
 - a) Whether construction or other development activity has commenced and is continuing in good faith.

- b) Whether the expense or obligation incurred cannot be substantially utilized for a development permitted by the Hernando County Comprehensive Plan and Land Development Regulations.

The following are not considered development expenditures or obligations in and of themselves:

1. Expenditures for legal and other professional services that are not related to the design or construction of improvements;
2. Taxes paid;
3. Expenditures for acquisition or the financing costs of the land.

D. APPLICATION PROCEDURE

1. The owners shall request a determination of vested rights by filing a complete, sworn application and appropriate fee with the county.
2. The Board of County Commissioners shall establish an appropriate application fee by resolution and said application fee shall be filed with the application for a determination of vested rights.

E. DETERMINATION PROCEDURES

1. The initial vesting determination request is reviewed by county staff to determine if the request is complete. If it is incomplete, it will be returned to the applicant with written notification of deficient items as required by this ordinance. Within 6 months from the date the application was returned to the applicant, the applicant shall correct the deficient items or notify the county of their intent to do otherwise. If the applicant does not respond in this time period, the application will become void.
2. The County Administrator or his designee will review the request to determine whether the county staff or the Board of County Commissioners will make the vesting determination. Those requests which fall under Section 5(A) and 5(B)(1) will be reviewed by staff, those requests falling under 5(B)(2), 5(B)(3) and 5(C) will be reviewed by the Board of County Commissioners.
3. If staff is reviewing the application, the final determination will be made in writing within twenty (20) working days of the application's sufficiency determination.
4. The county staff shall provide the applicant with written notification of the determination of vested status.
5. In the event the county staff determines that a hearing before the Board of County Commissioners is necessary to make a determination, a date for the hearing shall be set and the applicant notified of the date, time and place of the hearing. The applicant's request will be reviewed by staff and a written recommendation prepared for the public hearing within twenty (20) working days of the application's sufficiency determination. The applicant

will be notified by mail of staff's recommendation to the Board of County Commissioners.

F. LIMITATIONS ON DETERMINATIONS OF VESTED RIGHTS.

1. Presumptive vested rights determinations do not have an expiration date.
2. Statutory and common law vested rights determinations shall remain valid for a period up to 5 years from the date the determination was made unless otherwise specified by the vesting authority. An extension may be requested provided such extension is determined to be in compliance with current county regulations. The request must be applied for no less than (90) days prior to the expiration of the determination.
3. All development subject to a vested rights determination must be consistent with the terms of the development approval upon which the determination was based. Any substantial deviation from a prior approval, except as required by governmental action, shall cause the development involved to be subject to the policies, regulations and implementing decisions set forth in the adopted Hernando County Comprehensive Plan.
4. A vested rights determination shall apply to the land and is therefore transferrable from owner to owner of the land.
5. If the final local development order expires prior to development and extensions permitted under the ordinance are not pursued, the vesting status of the property will become null and void.
6. Development orders issued after the effective date of the compliance agreement, March 1, 1990, and prior to November 14, 1990 will be subject to any modifications required by these remedial actions. Those persons issued development orders in this time frame are on notice such orders may not form the basis of a vested rights claim.

G. APPELLATE PROCEDURES.

The applicant may appeal a vested rights determination made by the county staff to the Board of County Commissioners within 30 days of the decision. The decision of the Board of County Commissioners can be subjected to judicial review as determined by general law.

SECTION 6. SEVERABILITY

If any section, subsection, sentence, clause, or phrase of this ordinance, for any reason, is held to be unconstitutional, void or invalid, the validity of the remaining portions of said ordinance shall be no affected thereby.

SECTION 7. INCLUSION

Provisions of this Ordinance shall be included and incorporated into the Land Development Regulations (LDR's) of Hernando County as an addition or amendment thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the code.

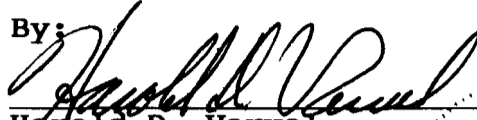
SECTION 8. EFFECTIVE DATE

The effective date of this ordinance shall become official upon recording of the official acknowledgement from the Office of the Secretary of State of the State of Florida that this Ordinance has been filed with said office.

Adopted by the Board of County Commissioners in regular session
this 23rd day of April, 1991.

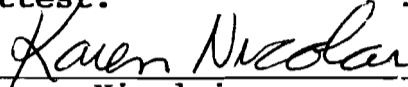
Board of County Commissioners
Hernando County, FL

By:



Harold D. Varvel,
Chairman

Attest:



Karen Nicolai,
Clerk of the Circuit Court