



Marion County

Board of County Commissioners

Walk-on Agenda

McPherson Governmental Campus
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District 1 – Craig Curry, Commissioner
District 2 – Kathy Bryant, Commissioner
District 3 – Jeff Gold, Chairman
District 4 – Carl Zalak III, Vice Chair
District 5 – Michelle Stone, Commissioner

Tuesday, July 20, 2021

9:00 AM

**McPherson Governmental
Campus Auditorium**

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- 8.1. Request Approval to Seek an Opinion of the Attorney General Regarding House Bill (HB) 59



Marion County

Board of County Commissioners

Agenda Item

File No.: 2021-3881

Agenda Date: 7/20/2021

Agenda No.: 8.1.

SUBJECT:

Request Approval to Seek an Opinion of the Attorney General Regarding House Bill (HB) 59

INITIATOR:

Matthew G. Minter, County Attorney

DEPARTMENT:

Legal

DESCRIPTION/BACKGROUND:

A recent Act sponsored by Representative Stan McClain, HB 59, related to growth management, became effective July 1, 2021. Among other things, this Act amended subsection (6) of section 163.3177, Florida Statutes, adding the following requirement in new sub- paragraph (i) 2.,:

Each local government **must adopt** a property rights element in its comprehensive plan by the earlier of the date of **its adoption of its next proposed plan amendment** that is initiated after July 1, 2021, **or the date of the next scheduled evaluation and appraisal of its comprehensive plan** pursuant to s. 163.3101. If a local government adopts its own property rights element, the element **may not conflict with** the statement of rights provided in subparagraph 1." This text is at the bottom of Page 4 of 8 of the Act; a copy of the entire Act is attached hereto for your reference.

As is sometimes the case with new legislation, local government attorneys and land use attorneys are already asking questions about the interpretation of certain portions of the new requirements. Among those is the issue: Is Marion County required to adopt this new Property Rights Element before it approves *any other* comprehensive plan amendment? Or, focusing on the word "its," in the text, is Marion County only required to adopt the new element before the County adopts any new County-initiated plan amendment? -- Meaning that we can and should consider privately initiated plan amendments even before we adopt the new Property Rights Element?

The Act permits a local government to adopt its own version of a Property Rights Element - but if we do, it "may not conflict with" a statement of property rights contained in the Act.

I am requesting Board approval to request an opinion from the Attorney General to clarify certain provisions of the Act for the benefit of our Growth Services Division.

BUDGET/IMPACT:

None

RECOMMENDED ACTION:

Motion to authorize the County Attorney to seek an opinion of the Attorney General for the purposes described above.

Attachment

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2021 Legislature

1
2 An act relating to growth management; amending s.
3 163.3167, F.S.; specifying requirements for certain
4 comprehensive plans effective, rather than adopted,
5 after a specified date and for associated land
6 development regulations; amending s. 163.3177, F.S.;
7 requiring local governments to include a property
8 rights element in their comprehensive plans; providing
9 a statement of rights which a local government may
10 use; requiring a local government to adopt a property
11 rights element by the earlier of its adoption of its
12 next proposed plan amendment initiated after a certain
13 date or the next scheduled evaluation and appraisal of
14 its comprehensive plan; prohibiting a local
15 government's property rights element from conflicting
16 with the statement of rights contained in the act;
17 amending s. 163.3237, F.S.; providing that the consent
18 of certain property owners is not required for
19 development agreement changes under certain
20 circumstances; providing an exception; amending s.
21 337.25, F.S.; requiring the Department of
22 Transportation to afford a right of first refusal to
23 certain individuals under specified circumstances;
24 providing requirements and procedures for the right of
25 first refusal; amending s. 380.06, F.S.; authorizing

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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certain developments of regional impact agreements to
be amended under certain circumstances; providing
retroactive applicability; providing a declaration of
important state interest; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) of section 163.3167, Florida
Statutes, is amended to read:

163.3167 Scope of act.—

(3) A municipality established after the effective date of
this act shall, within 1 year after incorporation, establish a
local planning agency, pursuant to s. 163.3174, and prepare and
adopt a comprehensive plan of the type and in the manner set out
in this act within 3 years after the date of such incorporation.
A county comprehensive plan is controlling until the
municipality adopts a comprehensive plan in accordance with this
act. A comprehensive plan for a newly incorporated municipality
which becomes effective ~~adopted~~ after January 1, 2016 ~~2019~~, and
all land development regulations adopted to implement the
comprehensive plan must incorporate each development order
existing before the comprehensive plan's effective date, may not
impair the completion of a development in accordance with such
existing development order, and must vest the density and
intensity approved by such development order existing on the

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effective date of the comprehensive plan without limitation or modification.

Section 2. Paragraph (i) is added to subsection (6) of section 163.3177, Florida Statutes, to read:

163.3177 Required and optional elements of comprehensive plan; studies and surveys.—

(6) In addition to the requirements of subsections (1)–(5), the comprehensive plan shall include the following elements:

(i)1. In accordance with the legislative intent expressed in ss. 163.3161(10) and 187.101(3) that governmental entities respect judicially acknowledged and constitutionally protected private property rights, each local government shall include in its comprehensive plan a property rights element to ensure that private property rights are considered in local decisionmaking. A local government may adopt its own property rights element or use the following statement of rights:

The following rights shall be considered in local decisionmaking:

1. The right of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights.

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2. The right of a property owner to use, maintain, develop, and improve his or her property for personal use or for the use of any other person, subject to state law and local ordinances.

3. The right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property.

4. The right of a property owner to dispose of his or her property through sale or gift.

2. Each local government must adopt a property rights element in its comprehensive plan by the earlier of the date of its adoption of its next proposed plan amendment that is initiated after July 1, 2021, or the date of the next scheduled evaluation and appraisal of its comprehensive plan pursuant to s. 163.3191. If a local government adopts its own property rights element, the element may not conflict with the statement of rights provided in subparagraph 1.

Section 3. Section 163.3237, Florida Statutes, is amended to read:

163.3237 Amendment or cancellation of a development agreement.—A development agreement may be amended or canceled by

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mutual consent of the parties to the agreement or by their successors in interest. A party or its designated successor in interest to a development agreement and a local government may amend or cancel a development agreement without securing the consent of other parcel owners whose property was originally subject to the development agreement, unless the amendment or cancellation directly modifies the allowable uses or entitlements of such owners' property.

Section 4. Subsection (4) of section 337.25, Florida Statutes, is amended to read:

337.25 Acquisition, lease, and disposal of real and personal property.—

(4) The department may convey, in the name of the state, any land, building, or other property, real or personal, which was acquired under subsection (1) and which the department has determined is not needed for the construction, operation, and maintenance of a transportation facility. When such a determination has been made, property may be disposed of through negotiations, sealed competitive bids, auctions, or any other means the department deems to be in its best interest, with due advertisement for property valued by the department at greater than \$10,000. A sale may not occur at a price less than the department's current estimate of value, except as provided in paragraphs (a)-(d). The department may afford a right of first refusal to the local government or other political subdivision

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126 in the jurisdiction in which the parcel is situated, except in a
127 conveyance transacted under paragraph (a), paragraph (c), or
128 paragraph (e). Notwithstanding any provision of this section to
129 the contrary, before any conveyance under this subsection may be
130 made, except a conveyance under paragraph (a) or paragraph (c),
131 the department shall first afford a right of first refusal to
132 the previous property owner for the department's current
133 estimate of value of the property. The right of first refusal
134 must be made in writing and sent to the previous owner via
135 certified mail or hand delivery, effective upon receipt. The
136 right of first refusal must provide the previous owner with a
137 minimum of 30 days to exercise the right in writing and must be
138 sent to the originator of the offer by certified mail or hand
139 delivery, effective upon dispatch. If the previous owner
140 exercises his or her right of first refusal, the previous owner
141 has a minimum of 90 days to close on the property. The right of
142 first refusal set forth in this subsection may not be required
143 for the disposal of property acquired more than 10 years before
144 the date of disposition by the department.

145 (a) If the property has been donated to the state for
146 transportation purposes and a transportation facility has not
147 been constructed for at least 5 years, plans have not been
148 prepared for the construction of such facility, and the property
149 is not located in a transportation corridor, the governmental
150 entity may authorize reconveyance of the donated property for no

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151 consideration to the original donor or the donor's heirs,
152 successors, assigns, or representatives.

153 (b) If the property is to be used for a public purpose,
154 the property may be conveyed without consideration to a
155 governmental entity.

156 (c) If the property was originally acquired specifically
157 to provide replacement housing for persons displaced by
158 transportation projects, the department may negotiate for the
159 sale of such property as replacement housing. As compensation,
160 the state shall receive at least its investment in such property
161 or the department's current estimate of value, whichever is
162 lower. It is expressly intended that this benefit be extended
163 only to persons actually displaced by the project. Dispositions
164 to any other person must be for at least the department's
165 current estimate of value.

166 (d) If the department determines that the property
167 requires significant costs to be incurred or that continued
168 ownership of the property exposes the department to significant
169 liability risks, the department may use the projected
170 maintenance costs over the next 10 years to offset the
171 property's value in establishing a value for disposal of the
172 property, even if that value is zero.

173 (e) If, at the discretion of the department, a sale to a
174 person other than an abutting property owner would be
175 inequitable, the property may be sold to the abutting owner for

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the department's current estimate of value.

Section 5. Paragraph (d) of subsection (4) of section 380.06, Florida Statutes, is amended to read:

380.06 Developments of regional impact.—

(4) LOCAL GOVERNMENT DEVELOPMENT ORDER.—

(d) Any agreement entered into by the state land planning agency, the developer, and the local government with respect to an approved development of regional impact previously classified as essentially built out, or any other official determination that an approved development of regional impact is essentially built out, remains valid unless it expired on or before April 6, 2018, and may be amended pursuant to the processes adopted by the local government for amending development orders. Any such agreement or amendment may authorize the developer to exchange approved land uses, subject to demonstrating that the exchange will not increase impacts to public facilities. This paragraph applies to all such agreements and amendments effective on or after April 6, 2018.

Section 6. The Legislature finds and declares that this act fulfills an important state interest.

Section 7. This act shall take effect July 1, 2021.