

ORDINANCE NO. 08- 24

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, FLORIDA, AMENDING CHAPTER 10, LAND DEVELOPMENT CODE, OF THE CODE OF LAWS OF LEON COUNTY, FLORIDA; AMENDING SECTION 10-1.101, DEFINITIONS; AMENDING DIVISION 2 OF ARTICLE VII, SUBDIVISION AND SITE AND DEVELOPMENT PLAN REGULATIONS, SUBDIVISION CLASSIFICATIONS, EXEMPTIONS, AND PLATTING, TO DELETE SECTION 10-7.202, RESIDENTIAL DEVELOPMENT PURSUANT TO COMPREHENSIVE PLAN POLICY 2.1.9; AMENDING DIVISION 2 OF ARTICLE VII, SUBDIVISION AND SITE AND DEVELOPMENT PLAN REGULATIONS, SUBDIVISION CLASSIFICATIONS, EXEMPTIONS, AND PLATTING, TO ADD A NEW SECTION 10-7.202, RESIDENTIAL DEVELOPMENT PURSUANT TO COMPREHENSIVE PLAN POLICY 2.1.9; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners desires to enact an ordinance amending Section 10.7.202 of the Leon County Code of Laws, relating to Residential Development Pursuant to Policy 2.1.9 of the Land Use Element of the Comprehensive Plan;

WHEREAS, Policy 2.1.9 of the Land Use Element of the Comprehensive Plan was amended, effective June 6, 2008, to sunset the ability to subdivide land to create parcels of transferable property pursuant to Policy 2.1.9 of the Land Use Element of the Comprehensive Plan on February 1, 2010;

WHEREAS, Policy 2.1.9 of the Land Use Element of the Comprehensive Plan was amended, effective June 6, 2008, to preserve the ability for the owners of property within Leon County to subdivide land to create parcels for use as a homestead by a family member pursuant to Policy 2.1.9 of the Land Use Element of the Comprehensive Plan on February 1, 2010;

WHEREAS, the Board of County Commissioners desires to ensure that the provisions included herein are utilized for their intended purposes of conveying land for use as a homestead by a family member and not as a general exception from the density limitations established for affected regions of the County in the Comprehensive Plan and thereby desires to establish appropriate implementing regulations;

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

Section 1. Short title: The short title of this ordinance shall be referred to as “Revised 2.1.9 Subdivision Standards.”

Section 2: A portion of Section 10-1.101 of the Code of Laws of Leon County, Florida, Definitions, is hereby amended to add the following definition entries, as follows:

Original homestead family member – shall mean a person eligible, under this section, and Ch. 163.3179, *Florida Statutes*, to obtain rights for additional dwelling units or create parcels of land for ownership by an originally intended heir through the 2.1.9 subdivision process for purpose of family homestead.

Originally intended heir – shall mean a person eligible, under this section, and Ch. 163.3179, *Florida Statutes*, to receive ownership of a lot/parcel created through the 2.1.9 subdivision process for purpose of family homestead.

Section 3: Section 10-7.202 of the Code of Laws of Leon County, Florida, is hereby repealed and amended as follows:

~~**Sec. 10-7.202. Residential development pursuant to Comprehensive Plan Land Use Element Policy 2.1.9.**~~

~~1. The following qualify for review as a Comprehensive Plan Land Use Element Policy 2.1.9. "Subdivision," which allows residential development at a maximum density of two units per acre for the first six dwelling units, whether subdivided or not, including existing dwelling units.~~

~~2. To qualify for use of Land Use Element Policy 2.1.9., the following conditions must be met:~~

~~(a) The parcel must be located in one or more of the following zoning districts:~~

~~(i) Rural;~~

~~(ii) Urban Fringe; or~~

~~(iii) Lake Talquin Recreation/Urban Fringe; or~~

~~(iv) Residential preservation overlay of one of the above only if outside the urban~~

~~services area.~~

- ~~(b) This special policy has not previously been approved or applied to any other parcel in the applicant's ownership or control;~~
- ~~(c) The applicant held fee simple title to the parcel and in single ownership as of February 1, 1990, and has continuously retained fee simple title since that date, except for applicants covered by the Family Parcel Policy 2.1.9 as defined in section 10-7.202, 3.(b) of this chapter; and,~~
- ~~(d) All lots proposed to be created utilizing the Policy 2.1.9 process shall meet all concurrency requirements.~~
- ~~3. Policy 2.1.9 "Subdivisions" shall be permitted only in the following categories:~~
 - ~~(a) For metes and bounds property: Residential development is only allowed to a maximum density of two units per acre, whether previously subdivided or not, for the first six dwelling units, including any existing units.~~
 - ~~(b) For metes and bounds property under the "Family Parcel Provision," residential development is applicable to property owners who cannot use the provision in 3(a), above, due to date of ownership or acquisition, or because an adequate number of lots would not result for family members. The property owner may convey a portion of the property to each of their relatives, as defined by Florida Statutes (Section 163.3179), notwithstanding the density or intensity applicable to the subject parcel in the zoning district: (a) if the subdivision does not create lots which are less than one-half acre in size; (b) such parcel has not been previously created through a Policy 2.1.9 non-heir provision; (c) said "Family Parcel" provision has not been used previously by the property owner; (d) the proposed subdivision meets all other applicable provisions of~~

~~subsection 2 of this section, above.~~

~~(c) For previously platted unrecorded subdivisions: Residential development is permitted if the following criteria are met: (a) the parcel must be a minimum of four acres; (b) the parcel must lie outside the urban service area as defined in the comprehensive plan; (c) the density on the resulting parcels may not exceed one dwelling unit per two acres, including existing dwelling units, up to a maximum division of five lots; (d) the resulting parcels shall be compatible and consistent with the majority of lots within the subdivision; (e) the resulting parcels shall meet concurrency requirements; and, (f) and the parcel must meet all applicable items in subsection 2, above.~~

~~(d) For property that abuts a canopy road with existing physical access, Policy 2.1.9 may be utilized where no protected tree and/or vegetation removal is required, and which meets the provisions of subsection 2, shall qualify under this section. However, where the subject property abuts a canopy road and there is no existing physical access, full Type B site and development plan review shall be required.~~

~~4. Approval of an application for residential development pursuant to Comprehensive Plan Land Use Policy 2.1.9. shall be dependent upon a finding by the County in the affirmative for each of the three following criteria:~~

~~(a) Whether the application is consistent with the Comprehensive Plan.~~

~~(b) Whether the application complies with applicable provisions of the Land Development Code; and,~~

~~(c) Whether the requirements of this chapter and other applicable regulations and ordinances have been met.~~

~~In those instances wherein the application substantially meets these three criteria but, in the~~

~~determination of the reviewing entity, does not completely satisfy these criteria, the entity may approve the application subject to condition that all deficiencies are corrected; whereupon the applicant shall thereafter be required to provide a revised application, demonstrating complete satisfaction with these criteria. No permits for development activity for properties included in such applications shall be issued by the County unless and until the application has been determined to demonstrate complete satisfaction with these criteria.~~

Sec. 10-7.202. Residential development pursuant to Comprehensive Plan Land Use Element Policy 2.1.9.

1. Eligibility to subdivide land to create parcels of transferable property. To qualify for subdivision of land pursuant to Comprehensive Plan Land Use Element Policy 2.1.9., for purposes of creating parcels of property that may be transferred to entities unrelated to the property owner, notwithstanding the density or intensity of limits established for this land by the Future Land Use Map of the Comprehensive Plan or the Official Zoning Map, the following conditions must be met:

(a) The land to be subdivided must be located in one or more of the following zoning districts:

(i) Rural;

(ii) Urban Fringe; or

(iii) Lake Talquin Recreation/Urban Fringe; or

(iv) Residential preservation overlay of one of the three districts listed above, and only if outside the urban services area.

(b) The applicant has not previously utilized the provisions of Policy 2.1.9 to subdivide this or any other parcel in the applicant's ownership or control;

(c) The applicant has held fee simple title to the parcel, in single ownership, as of February 1, 1990, and has continuously maintained a record interest in the parcel since that date;

(d) A maximum of six lots may be created at a maximum residential density of two units per acre, with a minimum lot size of one-half acre of buildable area, whether the parcel is subdivided or not, including existing dwelling units; additional lots may be created so long as their size and density comply with applicable zoning district and future land use category standards; and,

(e) This subsection, 10-7.202.1, shall no longer be in effect as of February 1, 2010.

2. Eligibility to subdivide land to create parcels for use as a homestead by a family member.

To qualify for subdivision of land pursuant to Comprehensive Plan Land Use Element Policy 2.1.9., for purposes of creating parcels of property for use as a homestead by an individual who is the grandparent, parent, stepparent, adopted parent, sibling, child, stepchild, adopted child, or grandchild of the person who conveys the parcel, notwithstanding the density or intensity of limits established for this land by the Future Land Use Map of the Comprehensive Plan or the Official Zoning Map, the following conditions must be met:

(a) The land to be subdivided must be located in one or more of the following zoning districts: the Rural; the Urban Fringe; the Lake Talquin Recreation/Urban Fringe; or the Residential preservation overlay of one of the three districts listed above, and only if outside the urban services area.

(b) The parcel to be subdivided has existed in its present configuration since February 1, 1990; or, the parcel was created, subsequent to February 1, 1990, through subdivision pursuant to the family heir provision of Policy 2.1.9 of the Land Use Element of

the Comprehensive Plan and conveyed to an originally intended heir, as defined herein, and the applicant is an originally intended heir or an heir through successive generations of that property owner. Any subdivision or conveyance of the parcel after February 1, 1990, shall thereafter void the eligibility to subdivide the parcel under this section for use as a homestead by a family member, unless such subdivision or conveyance was undertaken pursuant to the family heir provision of Policy 2.1.9 of the Land Use Element of the Comprehensive Plan.

3. Criteria for approval. Approval of an application for residential development pursuant to Comprehensive Plan Land Use Policy 2.1.9. shall be dependent upon a finding by the County in the affirmative for each of the following criteria:

(i) That the application is consistent with the Comprehensive Plan.

(ii) That the application complies with the standards set out in subsection 10-7.202.5; and,

(iii) That the application complies with applicable provisions of the Land Development Code and other applicable regulations and ordinances have been met, including those pertaining to environmental protection, access, zoning district development standards except lot size, and concurrency management system requirements.

4. Additional criteria for approval for subdivision to create parcels for use as a homestead by a family member (subsection, 10-7.202.2). In addition to an affirmative finding for each of the three criteria set out in subsection 10-7.202.3, approval of an application made pursuant to subsection 10-7.202.2 shall be dependent upon a finding by the County in the affirmative for each of the following criteria:

(a) that the application includes documentation of those covenants and restrictions, executed by the applicant and the Chair of the DRC, recorded pursuant to subsection 10-7.202.9(f); and,

(b) that the number of lots that may be created through subdivision of property for use as a homestead by a family member is equal to or less than the number of heirs plus the original homestead family member.

5. Substantive requirements for the subdivision of land pursuant to this section.

(a) General. The following general requirements apply to applications submitted pursuant to this section:

1) No lot created may be any smaller than one-half acre of buildable area in size;

2) parcels within a recorded subdivision may not be further subdivided by application of this section; and,

3) the application may be fashioned for approval of additional dwelling units without subdivision; in which instance, the application shall demonstrate sufficient land area for each dwelling unit, equivalent to amount of land and arrangement of dwelling units as would otherwise be required to create subdivision lots.

(b) Additional requirements for application for subdivision of land within previously approved unrecorded subdivisions. Further subdivision of land to create residential lots or additional dwelling units pursuant to Policy 2.1.9 of the Land Use Element of the Comprehensive Plan shall be allowed if the resulting parcels are no smaller than the smallest existing lot within the subdivision, established in accordance with the Leon County Land Development Code, nor less than one-half acre in size.

6. Timely completion of a deficient application. The Department of Growth and Environmental Management or its successor, shall inform the applicant of any deficiencies constituting an incomplete application. The applicant shall have 180 days, from the date of the issuance of notice from the County informing of deficiencies constituting an incomplete application, to make required

corrections to the application and submit that application for review. The applicant shall be entitled to request, in writing to the County, one 90-day extension; the County may grant that extension based upon a demonstration of hardship by the applicant. Failure to resubmit a revised application in a timely manner shall have the same effect as denial of the application without prejudice; however, no application filed pursuant to subsection 10-7.202.1 shall be accepted after February 1, 2010.

7. *Approval subject to condition.* In those instances wherein the application substantially meets the applicable criteria for approval but, in the determination of the entity with authority to approve the application, does not completely satisfy these criteria, the entity may approve the application subject to condition that all deficiencies are corrected; whereupon the applicant shall thereafter be required to provide a revised application, demonstrating complete satisfaction with these criteria. No permits for development activity for properties included in such applications shall be issued by the County unless and until the application has been determined to demonstrate complete satisfaction with these criteria.

8. *Timely revision of an application approved subject to condition.* Any application made pursuant to this section, approved subject to condition, shall be revised to demonstrate satisfaction of all conditions within 180 days from the date of the issuance of notice informing the applicant of approval subject to condition by the County. The applicant shall be entitled to request, in writing to the County, one 90-day extension; the County may grant that extension based upon a demonstration of hardship by the applicant. Failure to revise the application within the allotted time period to demonstrate satisfaction of all conditions shall have the same effect as denial of the application without prejudice; however, no application filed pursuant to subsection 10-7.202.1 shall be accepted after February 1, 2010.

9. Limitations on the Use of Parcels Created Pursuant to 10-7.202.2; creating parcels of property for use as a homestead by a family member:

a) Parcels created through subdivision pursuant to subsection 10-7.202.2 are intended as homestead property for heirs of the owner/subdivider. No parcel created through this process shall be conveyed to any person other than the originally intended heir within a period of fewer than two years from the date of the approval of the 2.1.9 subdivision.

b) No building permit shall be issued for any building on any parcel created through subdivision pursuant to subsection 10-7.202.2, except to the originally intended heir or the original homestead family member, within a period of fewer than two years from the date of the approval of the 2.1.9 subdivision.

c) After a period of two years from the date of the creation of a lot created pursuant to subsection 10-7.202.2, that lot may be conveyed to any other person.

d) Except as provided in e), below, any lot created by subdivision pursuant to subsection 10-7.202.2 may, after a period of two years from the date of the creation of the lot, be eligible for further subdivision or additional dwelling units pursuant to this Chapter.

e) Any lot created by subdivision pursuant to subsection 10-7.202.2 may be eligible for further subdivision or additional dwelling units, within the two year period immediately following the date of the creation, by originally intended heir or original homestead family member, for the purpose of creating additional lots for conveyance to another eligible family member, as provided by Section 163.3179, *Florida Statutes*. Such subdivision or application for additional dwelling units shall comply with subsection 10-7.202.2.

f) The applicant for subdivision or additional dwelling unit pursuant to subsection 10-7.202.2, shall provide covenants and restrictions to be executed by the applicant and the

Chair of the Development Review Committee, on the behalf of Leon County, which shall be recorded in the Clerk of the Court's records, restricting transfer and regulating the development of the property to comply with the limitations of subsection 10-7.202.9. The covenants and restrictions shall be enforceable by Leon County. The covenants and restrictions may be amended, by the Board of County Commissioners, as necessary, to otherwise provide for the transfer or permitting in the case of the death or institutionalization of the originally intended heir.

10. Procedural standards.

a) Except as provided for in b) below, all applications for subdivision pursuant to this section shall be subject to the review and approval requirements of the Type A site and development plan application process; however, no pre-application meeting or technical staff meeting shall be required, but may be provided, at the request of the applicant, free of charge.

b) In those instances where subdivision pursuant to this section would result in the requirement of a new access connection to a designated canopy road or the removal of any protected tree and/or vegetation within the canopy road protection zone the subdivision application shall be subject to the review and approval requirements of the Type B site and development plan application process including, mandatory pre-application and technical staff meetings, at the expense of the applicant.

Section 5. Conflicts.

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, except to the extent of any conflicts with the Tallahassee-Leon County 2010 Comprehensive Plan as amended, which provisions shall prevail over any part of this ordinance which is inconsistent, either in whole or in part, with the said Comprehensive Plan.

Section 6. Severability.

If any word, phrase, clause, section or portion of this ordinance shall be held invalid or unconstitutional by a court of competent jurisdiction, such portion or words shall be deemed a separate and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 7. Effective date.

This ordinance shall have effect upon becoming law.

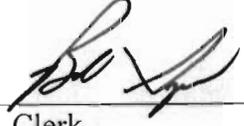
DULY PASSED AND ADOPTED BY the Board of County Commissioners of Leon County, Florida, this 25th day of November, 2008.



LEON COUNTY, FLORIDA

BY: 
Bryan Desloge, Chairman
Board of County Commissioners

ATTEST:
BOB INZER, CLERK OF THE COURT

By: 
Clerk

APPROVED AS TO FORM:
COUNTY ATTORNEY'S OFFICE
LEON COUNTY, FLORIDA

By: 
Herbert W. A. Thiele, Esq.
County Attorney