

GROWTH MANAGEMENT DEPARTMENT CONSISTENCY REPORT

PURPOSE: Review of Proposed Ordinance Amending Article 300, Section 306.18 Modification of the Pasco County Land Development Code (LDC)

The Growth Management Department staff has reviewed the currently adopted Pasco County Comprehensive Plan (January 2007) as it relates to the proposed amendments to the Pasco County Land Development Code. The findings of the Growth Management Department staff are discussed below.

PROPOSED ORDINANCE:

An ordinance to amend the Pasco County Land Development Code amending Section 306.18 relating to modification of a previously permitted development and applicability of new land development regulations and comprehensive plan provisions..

PURPOSE:

The purpose of the ordinance is as follows:

1. Revise some of the previously adopted regulations relating to the procedure for modification of previously permitted development to provide greater certainty and clarity to the rules.
2. Protect the public safety and welfare of the residents of the County.
3. Further the purpose, goals, objectives and policies of the County's Comprehensive Plan.

Pursuant to Florida Statutes (F.S.), Chapter 163, each local government shall prepare a comprehensive plan. The adopted comprehensive plan shall meet the minimum criteria of Chapter 9J-5 which includes Goals, Objectives, and Policies. F.S., Chapter 163, also requires each local government to adopt or amend and enforce Land Development Code regulations that are consistent with and implement the adopted plan. The Local Planning Agency (LPA) must review and make a recommendation to the Board of County Commissioners (BCC) as to the ordinance's consistency relationship with the adopted Comprehensive Plan.

The amendments to the Land Development Code have been reviewed for consistency with the applicable Goals, Objectives, and Policies of the adopted Pasco County Comprehensive Plan and, in particular, the following Goals, Objectives, and Policies:

CHAPTER 1: ADMINISTRATION ELEMENT

The Pasco County Comprehensive Plan is a policy document designed to guide the growth and development of Pasco County to the Year 2025. The authority or mandate, for this Plan comes from the Local Government Comprehensive Planning and Land Development Regulation Act of 1985 and subsequent amendments.

1. Intent

The Comprehensive Plan shall be construed broadly to accomplish its purpose and its intent. Terms not otherwise defined in the glossary shall be interpreted first, by reference to the relevant provisions of the Local Government Comprehensive Planning and Land Development Regulation Act. Secondly, by reference to generally accepted engineering, planning, or other professional terminology if technical in nature; and otherwise, according to common usage unless the content clearly indicates otherwise. Any term still in dispute after the above remedies have been exhausted shall be resolved pursuant to the procedure presented below.

Where administration of this Comprehensive Plan includes the interpretation of a specific policy, and where such interpretation is reasonably debatable after considering the language contained in the related objective and goal, an "aggrieved or adversely affected party" (as defined in Section 163.3215(2), Florida Statutes) may request an official interpretation of the policy by the Board of County Commissioners. Any such interpretation shall be rendered by the Board of County Commissioners within thirty (30) days of the receipt of a written request for official interpretation and shall be final. Any such final interpretation shall be subject to further action only as described in Section 163.3215, Florida Statutes.

Other specific Comprehensive Plan interpretation procedures, including procedures for interpretation of the Future Land Use Map, are contained in the **Future Land Use** Appendix.

2. Conflicting Policies

The Comprehensive Plan has been written in order to achieve internal consistency between the goals, objectives and policies; however, circumstances may arise in which the application of two or more statements result in a conflict or uncertainty as to which statement most appropriately applies. The problem may be resolved by the Pasco County Growth Management Administrator using the following methods in order of priority:

- a. The more specific statement shall have preference over the more general.
- b. The more stringent statement, from the perspective of the Pasco County Growth Management Administrator, shall have preference over the less stringent.
- c. If the conflict remains unresolved after Paragraph Nos. 2.a and 2.b, the Pasco County Board of County Commissioners shall decide the matter in the same manner as an Official Interpretation.

3. Zonings Approved Subsequent to the Pasco County Comprehensive Plan of 1991 (April 9, 1991)

Zonings approved by the County after April 9, 1991, shall not be considered conflicting zonings under this Comprehensive Plan. Accordingly, nothing in this Comprehensive Plan shall be construed as creating a conflict between the density, intensity and/or uses approved by zoning actions after April 9, 1991, and the Comprehensive Plan land use designation.

4. Approved Developments of Regional Impact Pursuant to Chapter 380, Florida Statutes, and Developments Issued Final Local Development Orders

Consistent with Section 163.3167(8), Florida Statutes, nothing in this Comprehensive Plan shall limit or modify the rights of any person to complete any development that has been authorized as a Development of Regional Impact (DRI) pursuant to Chapter 380, Florida Statutes, or that has been issued a final local development order and development has commenced and is continuing in good faith (hereinafter collectively referred to as "Development Order"). For purposes of the application of the Statute and this provision of the Comprehensive Plan, the term "final local development order" shall mean an approved preliminary plan or preliminary site plan pursuant to Section 306 of the Land Development Code, plat, construction plan or building permit and the term "commenced and is continuing in good faith" shall mean that the DRI development order or preliminary plan/ preliminary site plan, plat, construction plan or building permit approval has not expired pursuant to the terms of the Development Order, land development regulations or state law. The phrase "rights of any person to complete any development" shall mean the right vested pursuant to this provision and the statute is the right to complete the density and/or intensity of the land uses approved in the Development Order, subject to any other applicable provisions of this Comprehensive Plan, the land development regulations and the Development Order conditions. It is not the intent of this section to preclude the consideration of appropriate extensions of Development Orders or phasing deadlines therein. The limited right vested pursuant to this provision and the statute shall, however, terminate upon expiration, repeal, or rescission of any approved Development Order that created the limited vested right, or any phase thereof, including any extension thereof. The limited vested right in this paragraph is solely for purposes of determining consistency of property, or development applications, approvals or orders relating to property, with the permitted use, density and intensity provisions of the Comprehensive Plan Future Land Use Element; accordingly, this paragraph shall not be construed as: a) creating any additional vested rights or causes of action for purposes of Section 70.001, Florida Statutes, common law, or otherwise, or b) limiting the Board of County Commissioner's zoning, land use, or general police power authority, including, but not limited to, the Board's power to rezone property, amend the Comprehensive Plan, and/or terminate or rescind development orders and approvals.

5. Single-Family Units on Legal Lots of Record Existing Prior to the Effective Date of the 1991 Comprehensive Plan (April 9, 1991)

No development order for a single-family residential unit shall be withheld due to inconsistency with the density provisions of this Comprehensive Plan, if such residential unit will be constructed upon a legal Lot of Record existing prior to the adoption of the 1990 Comprehensive Plan. Single-family residential units qualifying under this provision must comply with and be consistent with all other provisions of this Comprehensive Plan and other applicable land development regulations.

CHAPTER 2: FUTURE LAND USE ELEMENT

FUTURE LAND USE GOALS, OBJECTIVES AND POLICIES

GOAL 1: FOUNDATION FOR GROWTH MANAGEMENT

Implement the County's Future Land Use Plan to achieve an appropriate balance between public and private interests in the:

- **Protection of the environment;**
- **Creation of favorable economic conditions;**
- **Provision of affordable housing;**
- **Provision of adequate services and facilities;**
- **Maintenance of established residential neighborhoods;**
- **Protection of rural and agricultural areas;**
- **Provision of high quality, aesthetically designed roadways; and**
- **Protection of private property rights.**

OBJECTIVE FLU 1.9 PROTECTION OF PRIVATE PROPERTY RIGHTS

The County shall not intentionally enact or impose a land development regulation or intentionally apply a land development regulation that would violate the Bert J. Harris, Jr. Private Property Rights Protection Act or amount to a taking under applicable law.

Policy FLU 1.9.1 Private property rights act

Pasco County recognizes the provisions of the Bert J. Harris, Jr. Private Property Rights Protection Act, Florida Statutes Section 70.001, as amended, and shall consider the provisions of that Act and other general principles of law when preparing recommendations for land use decisions.

Policy FLU 1.9.2. Administrative Remedies To Protect Private Property Rights

Pasco County shall consider adoption of, through the Land Development Code, administrative remedies which are designed to protect private property rights and address potential Harris Act and takings claims.

Policy FLU 1.9.3 Relationship Of Land Use To Zoning Classifications

The Pasco County Comprehensive Plan sets forth the long range potential uses of property in the context of a lawful planning horizon and provides for a wide array of potential zoning classifications within each land use designation. A property owner is not entitled to all zoning classifications or the most potentially dense or intense zoning classification within a land use designation. Numerous planning, timing, compatibility, public facility and other generally acceptable planning issues affect the appropriateness of assigning a particular zoning classification or approving a particular land use with regard to a particular parcel of property.

STAFF FINDINGS:

The Growth Management Department staff finds the proposed revisions to Section 306.18 Modification, amending the Pasco County Land Development Code, to be consistent with the adopted Pasco County Comprehensive Plan based upon the Goals, Objectives, and Policies cited above and recommends that the LPA incorporate this finding as its recommendation to the BCC as to the ordinance's consistency with the Pasco County Comprehensive Plan.



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Growth Management Administrator

Date



12/06/02