

CHAPTER 9

DEVELOPMENT AGREEMENTS

SECTION 9000. DEVELOPMENT AGREEMENTS.

Subsection 9001. Development Agreement Procedures.

The following procedures shall apply for development agreements.

A. The Gadsden County Board of County Commissioners, in their sole discretion, may enter into Development Agreements with the legal owners of real property within the unincorporated limits of Gadsden County, as provided in Chapter 163, Florida Statutes, and as is further set forth in the terms and requirements of this Chapter. Entry into a Development Agreement by the Gadsden County Board of County Commissioners shall in no way limit or modify any legislative power by the County to adopt ordinances, resolutions, regulations, or to make executive, administrative or legislative decisions of any kind which it had the power to make prior to the entry into such a Development Agreement, except to the degree that the Development Agreement, by its expressed terms and not by implication, gives vested rights to said property owner as to certain development permission, required improvements, and similar matters. No Development Agreement shall by its expressed terms or by implication limit the right of the Board of County Commissioners to adopt ordinances, regulations or to adopt policies that are of general application or specific as to the property subject to the Development Agreement in the unincorporated limits of Gadsden County, except as is expressly provided by Chapter 163, F.S.

(Ord. # 1996-002, 7-2-96)

B. A property owner desiring to enter into a Development Agreement with the County shall make a written request of such Development to the Planning Director and pay the fee as is established by the Gadsden County Board of County Commissioners. Such written request shall identify the lands and real property which are desired to be subject to the Development Agreement and shall identify all legal and equitable owners having any interest in such property and such ownership interests shall be certified by a title company or an attorney at law licensed to practice in the State of Florida. In the event that any partnerships, corporations, joint ventures or other entities other than individuals, owns a legal or equitable interest in such property, all principals and other persons with interest in such partnerships, corporations or joint ventures shall be revealed.

(Ord. # 1996-002, 7-2-96)

C. Upon receipt of such a request, the Planning Director shall place the matter on the agenda of the Gadsden County Board of County Commissioners and the Commission, in its sole discretion determine, whether or not it desires the Planning Director to pursue negotiations with the property owner relative to the entry into a Development Agreement. In the event the Board of County Commissioners determines not to proceed with further negotiations or discussions regarding the Development Agreement, the fee paid by the property owner shall be refunded. In the event the Board of County Commissioners instructs the Planning Director to proceed with further negotiations, the fee shall thereafter be non-refundable, regardless of whether or not a Development Agreement is ultimately executed between the County and the property owner.

(Ord. # 1996-002, 7-2-96)

Subsection 9002. Submittal requirements.

Upon the Board of County Commissioners deterring that it desires to proceed with further negotiations relative to a Development Agreement, the property owner shall submit, within thirty (30) working days, a development proposal for the subject property to include the following information.

A. Legal description of the lands to include identification of lands or "out parcels" to be exempt from the agreement;

(Ord. # 1996-002, 7-2-96)

B. The persons, firms, or corporation having a legal or equitable interest in the land;

(Ord. # 1996-002, 7-2-96)

C. The desired duration of the Development agreement, but not exceeding ten (10) years;

(Ord. # 1996-002, 7-2-96)

D. The development uses desired to be permitted on the land including population densities and building intensity and heights;

(Ord. # 1996-002, 7-2-96)

F. A description of all existing and proposed public facilities that will serve the land;

(Ord. # 1996-002, 7-2-96)

G. Identification of land use designation amendments that would be required if the proposed development approval were to be approved;

(Ord. # 1996-002, 7-2-96)

H. The present land use categories of all abutting properties. The complete names and addresses of all property owners abutting or lying within one thousand feet (1000') of the subject property as currently listed in the Gadsden County records must be submitted to the Department of Planning at least one (1) week after submittal of the application;

(Ord. # 1996-002, 7-2-96)

I. A certified property boundary survey prepared or updated by a registered Florida surveyor no more than twelve (12) months prior to the property owner's written request for Development Agreement;

(Ord. # 1996-002, 7-2-96)

J. All environmentally sensitive lands, Florida Department of Environmental Protection (DEP) jurisdictional wetlands, lands which are considered environmentally sensitive pursuant to the Gadsden County Comprehensive Plan, 2001 and land subject to the jurisdiction and regulations of the Northwest Florida Water Management District shall be shown on a survey of the property.

(Ord. # 1996-002, 7-2-96)

K. All existing and proposed utilities and the manner in which the existing utilities will be extended to the site and/or expanded for the used of the development, including water, waste water, gas, electricity, cable television and other utilities;

(Ord. # 1996-002, 7-2-96)

- L. A Master Drainage Plan for the development indicating thereon existing drainage features and land topography along with and imposed thereon, the proposed drainage features indicating clearly the means by which the final developed land will collect, regulate and conduct the drainage runoff from the lands developed;
(Ord. # 1996-002, 7-2-96)
- M. The location, type, size and height of fencing, earth berms, retaining walls, or screen planting to buffer abutting properties or as is otherwise required by County regulations;
(Ord. # 1996-002, 7-2-96)
- N. A grading plan, including the elevation requirements of the National Flood Insurance Program as applicable to the County;
(Ord. # 1996-002, 7-2-96)
- O. A landscape plan and an existing tree survey;
(Ord. # 1996-002, 7-2-96)
- P. Any easements existing or being imposed upon the lands for development;
(Ord. # 1996-002, 7-2-96)
- Q. A list of all Federal, State and local permits required;
(Ord. # 1996-002, 7-2-96)
- R. Private or public park lands required must be shown;
(Ord. # 1996-002, 7-2-96)
- S. A summation of the benefits to the property owner and the County; and
(Ord. # 1996-002, 7-2-96)
- T. All other information that the Planning Director may require because of the particular nature or location of the development.
(Ord. # 1996-002, 7-2-96)

Subsection 9003. Status of vesting rights.

The submission of a request for consideration of a Development Agreement, the County Commission's willingness to pursue discussions, the resultant negotiations regarding a Development Agreement, the payment of any application fees for the submission of any applications, engineering plans, surveys and any other expenditures or efforts in prosecution of the Development agreement provided for herein by a property owner shall not vest any rights whatsoever in any land use designation in such property owner, nor shall it in any manner whatsoever limit the County Commission from undertaking any land use plan amendment that it would otherwise be legally entitled to undertake.

(Ord. # 1996-002, 7-2-96)

Subsection 9004. Preliminary Development Agreement.

- A. The Planning Director and the DRC shall review the development proposal of the property owner and shall meet and negotiate with the property owner regarding appropriate development of the property and the terms and conditions on which said property should be developed as the DRC shall deem appropriate and necessary for the protection of the public

interest. At such time as the property owner and DRC have reached a tentative agreement as to the terms and conditions of the Development Agreement, or the DRC deems that no further negotiations shall be necessary or useful because of the unlikely possibility of reaching a concurrence on the terms and conditions of a Development Agreement, the Planning Director shall report the status of such negotiations to the County Commission. Such tentative agreement shall not give rise to any development right or rights, or legally vest any development rights of the property owner.

(Ord. # 1996-002, 7-2-96)

- B. In the event the Planning Director, the DRC and the property owner has negotiated terms of a mutually acceptable Development Agreement, the essential terms of that Development Agreement shall be presented in an outline form to the County Commission. The County Commission shall review the same and shall, if it determines to proceed further with the completion of the Development Agreement by vote of not less than a majority of the members of the County Commission, direct the County Attorney to reduce the said development terms to contractual form for further consideration by the County Commission. This direction shall in no manner whatsoever obligate the County Commission to ultimately approve a Development Agreement or to approve any of the matters outlined to it by the Planning Director or DRC as to any specific term or condition.

(Ord. # 1996-002, 7-2-96)

- C. In the event the Planning Director, DRC and the property owner have not negotiated a mutually satisfactory Development Agreement, the Planning Director shall so notify the County Commission, and the Development Agreement process as to the particular land, shall be concluded.

(Ord. # 1996-002, 7-2-96)

Subsection 9005. Required public notice.

- A. At such time as the County Attorney has reduced the terms of the proposed Development Agreement to written contractual form, the Planning Director shall transmit such Development Agreement to the County Commission with his/her written recommendations regarding adoption of the Development Agreement. The County Commission shall conduct a public hearing on the question of entering into the said Development Agreement. Said public hearing shall be advertised in a newspaper of general circulation in Gadsden County and such notice shall be advertised approximately seven (7) days prior to the second public hearing. Notice of intent to consider said Development agreement shall be mailed to all property owners lying within one thousand feet (1000') of the subject land not less than thirty (30) days prior to the first hearing which shall be held and considered by the Gadsden County Planning Commission. The date, time and place of the second public hearing shall be announced at the first public hearing. The notice shall specify the location of the land subject to the Development Agreement, the development uses proposed on the property, the proposed population densities and building heights, and shall specify where a copy of the proposed agreement can be obtained.

(Ord. # 1996-002, 7-2-96)

- B. Prior to the second public hearing, the proposed Development Agreement shall have been reviewed at a public hearing by the Planning Commission and its recommendation shall have been provided to the County Commission. In the event that the Planning Commission has

not passed on a recommendation to the Board of County Commissioner's within forty-five (45) days from the date of the Planning Commission hearing, then the County Commission shall hear and deliberate at a public hearing on the proposed Development Agreement without such recommendation.

(Ord. # 1996-002, 7-2-96)

- C. At the public hearing, the County commission shall accept any public comment on the terms of the Development Agreement. At the public hearing to consider the proposed development Agreement, the County Commission may, by vote of not less than a majority of members, approve the form and execution of a Development Agreement.

(Ord. # 1996-002, 7-2-96)

Subsection 9006. Required provisions for an approved Development Agreement.

Any Development Agreement approved under the provisions of this Code, shall contain not less than the following requirements.

- A. A legal description of the land subject to the agreement and the identification of all persons having legal or equitable ownership therein.

(Ord. # 1996-002, 7-2-96)

- B. The duration of the Development Agreement, which duration shall not exceed ten (10) years, but which may be extended by mutual consent to the County and the property owner, said extension being subject to the public hearing process necessary for the initial approval of the said Development Agreement.

(Ord. # 1996-002, 7-2-96)

- C. The development uses permitted on the land, including population densities, building intensities and building height.

(Ord. # 1996-002, 7-2-96)

- D. A conceptual site plan containing information as required by Subsection 8104 of this Code. This site plan will be used to consider the development proposal.

(Ord. # 1996-002, 7-2-96)

- E. A description of the public facilities that will service the development, including designation of the entity or agency that shall be providing such to serve the project, the date by which such facilities will be constructed and a schedule to assure public facilities will be available concurrent with development will be provided. The Agreement may provide for a bond or letter of credit to be deposited with the County for the construction of any new facilities that are required to be constructed. Alternatively, such construction may be a condition precedent to the issuance of any building permit or other development permission. In the event that new public facilities are in place and operating at the time that development permits are requested, no such letter of credit or bond shall be necessary unless such facilities are not adequate for the project.

(Ord. # 1996-002, 7-2-96)

- F. A description of any reservation or dedication of land for public purposes. The Development Agreement shall provide specifically how the land dedication ordinance obligation for the project, if any, is to be met. In the event that land is to be conveyed to the County, the

Development Agreement will provide that such conveyance will be by warranty deed, and will be accompanied by a title insurance policy (at the expense of the property owner) in an amount not less than the fair market value of the land.

(Ord. # 1996-002, 7-2-96)

- G. A description of all local development permits approved or needed to be approved for the development of the land, specifically to include at least the following: any required land use plan amendments, any required submissions to the Florida Department of Community Affairs, any required approvals of the Florida Department of Environmental Protection (DEP), the Florida Department of Transportation (FDOT), the North West Florida Water Management District, the U.S. Department of Environmental Protection, the U.S. Army Corp of Engineers, and any other governmental approvals that are required for the project. The Development Agreement shall specifically provide that said development approvals will be obtained at the sole cost of the property owner and that, in the event any development approvals are not received, no further development or the property shall be allowed until such time and the County Commission has reviewed the matter and determined whether or not to terminate the Development Agreement, or to modify it in a manner consistent with the public interest. Under these conditions, action in reliance on the Development Agreement or expenditures in pursuance of the terms or any rights accruing to the property owner thereunder, shall not vest any development rights in the property owner, nor shall it constitute partial performance entitling the property owner to a continuation of the Development Agreement.

(Ord. # 1996-002, 7-2-96)

- H. A specific finding in the Development Agreement that development permitted or proposed is consistent with the County's Comprehensive Plan and the land development regulations contained in this Code. If amendments are necessary to the category designation on the subject property, that such Development Agreement is contingent upon those amendments being made and approved by the appropriate governmental agencies.

(Ord. # 1996-002, 7-2-96)

- I. The County Commission may provide for any conditions, terms restrictions, or other requirements determined to be necessary for the public health, safety, or welfare of its citizens, and such conditions, terms or restrictions may be more onerous or demanding than those otherwise specifically required by the land development regulations contained in this Code and may provide for off-site improvements, screening, buffering, setbacks, building height restriction, land coverage restrictions, and similar types of matters that would not otherwise be required of the development under existing County ordinances and regulations.

(Ord. # 1996-002, 7-2-96)

- J. A statement indicating that failure of the Development Agreement to address a particular permit, condition, term or restriction shall not relieve the property owner of the necessity of complying with the law governing said permitting requirement, conditions or restrictions and that any matter or thing required to be done under existing ordinances of Gadsden County shall not be otherwise amended, modified or waived, unless such modification, amendment or waiver is expressly provided fore in the Development Agreement, with specific reference to the Code provision so waived, modified or amended.

(Ord. # 1996-002, 7-2-96)

- K. At the County Commission's discretion, the Development Agreement may provide the entire

development or any phase thereof, be commenced or be completed within any specific period of time and may provide for penalties in the nature of monetary penalties, the denial of future building permits, the termination of the Development Agreement, or the withholding of a Certificate of Occupancy for the failure of the property owner to comply with any such requirement.

(Ord. # 1996-002, 7-2-96)

Subsection 9007. Local laws and policies governing a development agreement.

A. The local government laws and policies governing the development of land at the time of the execution of the development agreement shall govern the development of land for the duration of the development agreement.

(Ord. # 1996-002, 7-2-96)

B. The governing body may apply subsequently adopted laws and policies to a development that is subject to a development agreement only if the local government has held a public hearing and determined:

1. They are not in conflict with the laws and policies governing the development agreement and do not prevent the development of the land uses, intensities or densities in the development agreement;
2. They are essential to the public health, safety, or welfare and expressly state that they shall apply to a development that is subject to the development agreement.
3. They are specifically anticipated and provided for in the development agreement;
4. The local government demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of the development agreement; or;
5. The development agreement is based on substantially inaccurate information supplied by the developer.

(Ord. # 1996-002, 7-2-96)

Subsection 9008. Status of Development Code Requirements on Land Subject to a Development Agreement.

A. The ordinances and regulations of the County governing the development of land at the time of execution of any Development Agreement provided for shall continue to govern the development of land subject to the Development Agreement for the duration of the Development Agreement. At termination of the duration of the Development Agreement, all then existing codes shall become applicable to the project regardless of the terms of the Development Agreement, and said Development Agreement shall be modified accordingly. Application of such laws and policies governing development of the land shall not include any fee structure including impact fees then in existence or thereafter imposed.

(Ord. # 1996-002, 7-2-96)

B. The County may apply ordinances and policies adopted subsequent to the execution of the Development Agreement of the subject property, only if the County has held a public hearing and determined that such new ordinances and policies are:

1. Not in conflict with the laws and policies governing the Development Agreement and do not prevent development of the land uses, intensities or densities as allowed under the terms of the Development Agreement.
2. Essential to the public health, safety and welfare and expressly state that they shall apply to a development that is subject to a Development Agreement.

3. Specifically anticipated and provided for in the Agreement, and
4. The County demonstrates substantial changes have occurred in pertinent conditions existing at the time of approval of the Development Agreement, or the Development Agreement is based on substantially inaccurate information supplied by the developer.

(Ord. # 1996-002, 7-2-96)

- C. All Development Agreements shall specifically provide that subsequently adopted ordinances and policies of general application in the County, specifically including impact fees, shall be applicable to the lands subject to the Development Agreement.

(Ord. # 1996-002, 7-2-96)

Subsection 9009. Monitoring of Executed Development Agreements.

The County shall review all lands within the County subject to a Development Agreement not less than once every twelve (12) calendar months to determine if there has been demonstrated good faith compliance with terms of the Development Agreement. The Planning Director shall report his/her findings to the County Commission. In the event that the County finds, on the basis of substantial competent evidence, there has been a failure to comply with the terms of the Development Agreement, the Agreement may be revoked or modified by the County upon thirty (30) days notice to the property owner as shown on the most current records of the Property Appraiser for Gadsden County. Such termination or amendment shall be accomplished only after a public hearing and notice as is herein required for the adoption of a Development Agreement. Amendment or cancellation of the Development Agreement by mutual consent of the County and the property owner may be accomplished following the notice requirements required for initial adoption of the Development Agreement.

(Ord. # 1996-002, 7-2-96)

Subsection 9010. Recording of the Development Agreement.

No later than fourteen (14) days after execution of a Development Agreement, the County shall record the said Agreement with the Clerk of the Circuit Court in Gadsden County and a copy of the recorded Development Agreement shall be submitted to the Florida Department of Community Affairs within fourteen (14) days after the Agreement is recorded. The burden of the Development Agreement shall be binding upon and the benefits of the Agreement shall inure to all successors in interest to the parties to the Agreement.

Subsection 9011. Subsequent Passage of State Laws and the Effect on Existing Development Agreements.

In the event that State and Federal laws are enacted after the execution of a Development Agreement which are applicable to and preclude the parties' compliance with terms of the Development Agreement, such agreement shall be modified or revoked as is necessary to comply with the relevant State or Federal laws, such modification or revocation to take place only after the notice provisions provided for the adoption of a Development Agreement have been complied with. Such persons as are defined by State law shall have standing to enforce the Development Agreement.

(Ord. # 1996-002, 7-2-96)

Subsection 9012. Legal Status of a Development Agreement.

All Development Agreements shall be executed by all persons having legal or equitable title to the subject property, including the fee simple owner and any mortgages, unless the County Attorney approves the execution of the Development Agreement without the necessity of such joinder or subordination on a determination that the substantial interests of the County will not be adversely affected thereby. A Development Agreement is determined to be a legislative act of the County Commission in furtherance of its powers to regulate development within the boundaries and, as such shall be superior to the rights of existing mortgages, lien holders, or other persons with a legal or equitable interest in the subject property. The Development Agreement and the obligations and responsibilities arising on the property owner shall be superior to the rights of said mortgages or lien holders and shall not be subject to foreclosure under the terms of mortgages or liens entered into or recorded prior to execution and recording of the Development Agreement.

(Ord. # 1996-002, 7-2-96)