

By the Council for Smarter Government and Representative
Bennett

1 A bill to be entitled
2 An act relating to local government development
3 orders; amending s. 163.3215, F.S.; revising
4 the methods for challenging the consistency of
5 a development order with a comprehensive plan;
6 redefining the term "aggrieved or adversely
7 affected party"; providing an effective date.
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9 Be It Enacted by the Legislature of the State of Florida:
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11 Section 1. Section 163.3215, Florida Statutes, is
12 amended to read:

13 163.3215 Standing to enforce local comprehensive plans
14 through development orders.--

15 (1) Subsections (3) and (4) provide the exclusive
16 methods for an aggrieved or adversely affected party to appeal
17 and challenge the consistency of a development order with a
18 comprehensive plan adopted under this part. The local
19 government that issues the development order is to be named as
20 a respondent in all proceedings under this section. Subsection
21 (3) shall not apply to development orders for which a local
22 government has established a process consistent with the
23 requirements of subsection (4). A local government may decide
24 which types of development orders will proceed under
25 subsection (4). Subsection (3) shall apply to all other
26 development orders that are not subject to subsection (4).

27 (2) As used in this section, the term "aggrieved or
28 adversely affected party" means any person or local government
29 that will suffer an adverse effect to an interest protected or
30 furthered by the local government comprehensive plan,
31 including interests related to health and safety, police and

1 fire protection service systems, densities or intensities of
2 development, transportation facilities, health care
3 facilities, equipment or services, and environmental or
4 natural resources. The alleged adverse interest may be shared
5 in common with other members of the community at large but
6 must exceed in degree the general interest in community good
7 shared by all persons. The term includes the owner, developer,
8 or applicant for a development order.

9 (3)(1) Any aggrieved or adversely affected party may
10 maintain a de novo ~~an~~ action for declaratory, injunctive, or
11 other relief against any local government to challenge any
12 decision of such local government granting or denying an
13 application for, or to prevent such local government from
14 taking any action on a development order, as defined in s.
15 163.3164, which materially alters the use or density or
16 intensity of use on a particular piece of property which ~~that~~
17 is not consistent with the comprehensive plan adopted under
18 this part. The de novo action must be filed no later than 30
19 days following rendition of a development order or other
20 written decision, or when all local administrative appeals, if
21 any, are exhausted, whichever occurs later.

22 ~~(2) "Aggrieved or adversely affected party" means any~~
23 ~~person or local government which will suffer an adverse effect~~
24 ~~to an interest protected or furthered by the local government~~
25 ~~comprehensive plan, including interests related to health and~~
26 ~~safety, police and fire protection service systems, densities~~
27 ~~or intensities of development, transportation facilities,~~
28 ~~health care facilities, equipment or services, or~~
29 ~~environmental or natural resources. The alleged adverse~~
30 ~~interest may be shared in common with other members of the~~
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1 ~~community at large, but shall exceed in degree the general~~
2 ~~interest in community good shared by all persons.~~

3 ~~(3)(a) No suit may be maintained under this section~~
4 ~~challenging the approval or denial of a zoning, rezoning,~~
5 ~~planned unit development, variance, special exception,~~
6 ~~conditional use, or other development order granted prior to~~
7 ~~October 1, 1985, or applied for prior to July 1, 1985.~~

8 ~~(b) Suit under this section shall be the sole action~~
9 ~~available to challenge the consistency of a development order~~
10 ~~with a comprehensive plan adopted under this part.~~

11 (4) If a local government elects to adopt or has
12 adopted an ordinance establishing, at a minimum, the
13 requirements listed in this subsection, the sole method by
14 which an aggrieved and adversely affected party may challenge
15 any decision of local government granting or denying an
16 application for a development order, as defined in s.
17 163.3164, which materially alters the use or density or
18 intensity of use on a particular piece of property, on the
19 basis that it is not consistent with the comprehensive plan
20 adopted under this part, is by an appeal filed by a petition
21 for writ of certiorari filed in circuit court no later than 30
22 days following rendition of a development order or other
23 written decision of the local government, or when all local
24 administrative appeals, if any, are exhausted, whichever
25 occurs later. An action for injunctive or other relief may be
26 joined with the petition for certiorari. Principles of
27 judicial or administrative res judicata and collateral
28 estoppel apply to these proceedings. Minimum components of the
29 local process are as follows:

30 (a) The local process must make provision for notice
31 of an application for a development order that materially

1 alters the use or density or intensity of use on a particular
2 piece of property, including notice by publication or mailed
3 notice consistent with the provisions of s. 166.041(3)(c)2.b.
4 and c. and s. 125.66(4)(b)2. and 3., and must require
5 prominent posting at the job site. The notice must be given
6 within 10 days after the filing of an application for
7 development order; however, notice under this subsection is
8 not required for an application for a building permit or any
9 other official action of local government which does not
10 materially alter the use or density or intensity of use on a
11 particular piece of property. The notice must clearly
12 delineate that an aggrieved or adversely affected person has
13 the right to request a quasi-judicial hearing before the local
14 government for which the application is made, must explain the
15 conditions precedent to the appeal of any development order
16 ultimately rendered upon the application, and must specify the
17 location where written procedures can be obtained that
18 describe the process, including how to initiate the
19 quasi-judicial process, the timeframes for initiating the
20 process, and the location of the hearing. The process may
21 include an opportunity for an alternative dispute resolution.

22 (b) The local process must provide a clear point of
23 entry consisting of a written preliminary decision, at a time
24 and in a manner to be established in the local ordinance, with
25 the time to request a quasi-judicial hearing running from the
26 issuance of the written preliminary decision; the local
27 government, however, is not bound by the preliminary decision.
28 A party may request a hearing to challenge or support a
29 preliminary decision.

30 (c) The local process must provide an opportunity for
31 participation in the process by an aggrieved or adversely

1 affected party, allowing a reasonable time for the party to
2 prepare and present a case for the quasi-judicial hearing.

3 (d) The local process must provide, at a minimum, an
4 opportunity for the disclosure of witnesses and exhibits prior
5 to hearing and an opportunity for the depositions of witnesses
6 to be taken.

7 (e) The local process may not require that a party be
8 represented by an attorney in order to participate in a
9 hearing.

10 (f) The local process must provide for a
11 quasi-judicial hearing before an impartial special master who
12 is an attorney who has at least 5 years' experience and who
13 shall, at the conclusion of the hearing, recommend written
14 findings of fact and conclusions of law. The special master
15 shall have the power to swear witnesses and take their
16 testimony under oath, to issue subpoenas and other orders
17 regarding the conduct of the proceedings, and to compel entry
18 upon the land. The standard of review applied by the special
19 master in determining whether a proposed development order is
20 consistent with the comprehensive plan shall be strict
21 scrutiny in accordance with Florida law.

22 (g) At the quasi-judicial hearing, all parties must
23 have the opportunity to respond, to present evidence and
24 argument on all issues involved which are related to the
25 development order, and to conduct cross-examination and submit
26 rebuttal evidence. Public testimony must be allowed.

27 (h) The local process must provide for a duly noticed
28 public hearing before the local government at which public
29 testimony is allowed. At the quasi-judicial hearing, the local
30 government is bound by the special master's findings of fact
31 unless the findings of fact are not supported by competent

1 substantial evidence. The governing body may modify the
2 conclusions of law if it finds that the special master's
3 application or interpretation of law is erroneous. The
4 governing body may make reasonable legal interpretations of
5 its comprehensive plan and land development regulations
6 without regard to whether the special master's interpretation
7 is labeled as a finding of fact or a conclusion of law. The
8 local government's final decision must be reduced to writing,
9 including the findings of fact and conclusions of law, and is
10 not considered rendered or final until officially date-stamped
11 by the city or county clerk.

12 (i) An ex parte communication relating to the merits
13 of the matter under review may not be made to the special
14 master. An ex parte communication relating to the merits of
15 the matter under review may not be made to the governing body
16 after a time to be established by the local ordinance, which
17 time must be no later than receipt of the special master's
18 recommended order by the governing body.

19 (j) At the option of the local government, the process
20 may require actions to challenge the consistency of a
21 development order with land development regulations to be
22 brought in the same proceeding.

23 ~~(4) As a condition precedent to the institution of an~~
24 ~~action pursuant to this section, the complaining party shall~~
25 ~~first file a verified complaint with the local government~~
26 ~~whose actions are complained of setting forth the facts upon~~
27 ~~which the complaint is based and the relief sought by the~~
28 ~~complaining party. The verified complaint shall be filed no~~
29 ~~later than 30 days after the alleged inconsistent action has~~
30 ~~been taken. The local government receiving the complaint~~
31 ~~shall respond within 30 days after receipt of the complaint.~~

1 ~~Thereafter, the complaining party may institute the action~~
2 ~~authorized in this section. However, the action shall be~~
3 ~~instituted no later than 30 days after the expiration of the~~
4 ~~30-day period which the local government has to take~~
5 ~~appropriate action. Failure to comply with this subsection~~
6 ~~shall not bar an action for a temporary restraining order to~~
7 ~~prevent immediate and irreparable harm from the actions~~
8 ~~complained of.~~

9 (5) Venue in any cases brought under this section
10 shall lie in the county or counties where the actions or
11 inactions giving rise to the cause of action are alleged to
12 have occurred.

13 (6) The signature of an attorney or party constitutes
14 a certificate that he or she has read the pleading, motion, or
15 other paper and that, to the best of his or her knowledge,
16 information, and belief formed after reasonable inquiry, it is
17 not interposed for any improper purpose, such as to harass or
18 to cause unnecessary delay or for economic advantage,
19 competitive reasons or frivolous purposes or needless increase
20 in the cost of litigation. If a pleading, motion, or other
21 paper is signed in violation of these requirements, the court,
22 upon motion or its own initiative, shall impose upon the
23 person who signed it, a represented party, or both, an
24 appropriate sanction, which may include an order to pay to the
25 other party or parties the amount of reasonable expenses
26 incurred because of the filing of the pleading, motion, or
27 other paper, including a reasonable attorney's fee.

28 (7) In any proceeding ~~action~~ under subsection (3) or
29 subsection (4) ~~this section~~, no settlement shall be entered
30 into by the local government unless the terms of the

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1 settlement have been the subject of a public hearing after
2 notice as required by this part.

3 (8) In any proceeding ~~suit~~ under subsection (3) or
4 subsection (4) ~~this section~~, the Department of Legal Affairs
5 may intervene to represent the interests of the state.

6 (9) Neither subsection (3) nor subsection (4) relieves
7 the local government of its obligations to hold public
8 hearings as required by law.

9 Section 2. This act shall take effect June 1, 2002.

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