

House Bill No. 1859

An act relating to Collier County; amending ch. 67-1246, Laws of Florida; amending the scope of the act to authorize a county hearing examiner program; amending definitions; amending the functions, powers, and duties of the planning commissions; amending provisions relating to supplementing and amending the zoning ordinance; amending the powers and duties of the board of zoning appeals; amending provisions relating to appeal from a decision of an administrative official; providing the procedure for establishing a county hearing examiner program; providing for severability; providing an effective date.

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

Section 1. Sections 1, 3, 6, 11, 14, 15, and 16 of chapter 67-1246, Laws of Florida, are amended, and section 31 is added to said chapter, to read:

Section 1. Scope of act. All municipalities lying within the county of Collier, state of Florida, and the county of Collier, of the state of Florida, may plan, may zone, may regulate subdivisions and may establish and maintain the boards, hearing examiners, and commissions described herein for carrying out the purposes of this act. The powers delegated by this act may be employed by municipalities or the county individually, or, by mutual agreement, in such combinations as common interest dictate.

Section 3. Definitions. As used in this act, the following words or phrases have the meaning indicated below:

Area: The complete area qualifying under the provisions of this act, whether this be all of the lands lying within the limits of a municipality, lands in and adjacent to municipalities, all unincorporated lands within Collier county, the portions of such unincorporated areas as may qualify under the provisions of this act, or areas comprising combinations of the lands in municipalities and Collier county.

Due public notice: As used in the phrase “public hearing or hearings with due public notice” involves the following requirements: Unless otherwise expressly provided for by section 125.66, Florida Statutes, as amended, or section 166.041, Florida Statutes, as amended, as may be applicable, due public notice requires that at least fifteen (15) days notice of the time and place of such hearings shall be published one (1) time in a newspaper of general circulation in the area. The notice shall state the time and place of the hearing, the nature of the matter to be discussed and that written comments filed with an appropriate designated official will be heard.

Governing body: The municipal commission or council, county commission, or any other chief local governing unit, however designated, for the political jurisdiction affected.

**Nonconformity:** A lot, structure, or use of land, or any combination thereof, which is not in compliance with a zoning ordinance, but which was lawfully created or begun prior to adoption of the zoning ordinance provisions with which it does not comply.

**Ordinance:** When used in relation to Collier county or the board of county commissioners shall mean a resolution of the board of county commissioners, or shall mean such other appropriate official action as is customarily taken by the governing body involved, regardless of how such official action is regularly called.

**Plat:** Includes map, plan or replat, and is a pictorial representation of a subdivision.

**Subdivision:** The division of a parcel of land into two (2) or more lots or parcels of land, for the purpose, whether immediate or future, of transfer of ownership, a map or plat of which is recorded in the public records of the county, and intended for use as residential, multi-family, commercial or industrial properties. The term includes a resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided.

**Street:** The primary means of access, whether public or private, to a lot or parcel of land.

**Special exception:** As used in connection with the provisions of this act dealing with zoning, a special exception is a use that would not be appropriate generally or without restriction throughout the particular zoning district or classification but which, if controlled as to number, area, location or relation to the neighborhood, would promote the public safety, health, comfort, good order, appearance, convenience, prosperity, morals and the general welfare. Such uses may be permitted in such zoning district or classification as special exceptions, if specific provision for such special exceptions is made in the zoning ordinance.

The singular usage includes the plural and the plural the singular.

**Section 6. Functions, powers and duties of the planning commissions.** The functions, powers and duties of planning commission shall be, in general:

(a) To acquire and maintain in current form such basic information and materials as are necessary to an understanding of past trends, present conditions, and forces at work to cause changes in these conditions. Such basic information and materials may include maps and photographs of man made or natural physical features of the area concerned, statistics on past trends and present conditions with respect to population, property values, economic base, land use and such other information as is important or likely to be important in determining the amount, direction and kind of development to be expected in the area and its various parts.

(b) To prepare, and from time to time recommend amendment and revisions to, a comprehensive and coordinated general plan for meeting present requirements and such future requirements as may be foreseen.

(c) To prepare and recommend principles and policies for guiding the development of the area.

(d) To prepare and recommend ordinances designed to promote orderly development along the lines indicated by official principles and policies and the comprehensive plan.

~~(e) To consider whether specific proposed developments conform to the principles and requirements of the comprehensive plan, and to make recommendations based thereon.~~

~~(e)(f)~~ To keep the governing body and the general public informed and advised on matters relating to planning.

~~(f)(g)~~ To conduct such public hearings as may be required to gather information necessary for the drafting, establishment and maintenance of the various components of the comprehensive plan, and such additional public hearings as are specified under the provisions of this act or may be required by ordinance.

~~(g)(h)~~ In addition, a planning commission may make, cause to be made, or obtain special studies on the location, condition and adequacy of specific facilities of the area. These may include, but are not limited to, studies on housing, commercial and industrial facilities, parks, playgrounds, beaches and other recreational facilities, schools, public buildings, public and private utilities, traffic, transportation and parking.

~~(h)(i)~~ To perform any other duties which may be lawfully assigned to it.

Section 11. Supplementing and amending the zoning ordinance. The governing body may from time to time amend or supplement the regulations and districts fixed by any zoning ordinance adopted pursuant to this act. Proposed changes may be suggested by the governing body, by the planning commission, by the hearing examiner, or by petition of the owners of fifty per cent (50%) or more of the area involved in the proposed change. In the latter case, the petitioner or petitioners may be required to assume the cost of public notice and other costs incidental to the hearings.

The planning commission, regardless of the source of the proposal for change, shall hold a public hearing or hearings thereon, with due public notice, and submit its recommendation on the proposed change to the governing body, except that the county planning commission may only render recommendations for those proposed changes which pertain to the county and which would change the actual list of permitted, conditional, or prohibited uses within a zoning category, or otherwise would alter or amend provisions of the county's codified land development regulations. The governing body ~~shall~~ may hold a public hearing or hearings thereon, and shall act on the recommendation. No change in the zoning ordinance shall become effective except by an affirmative vote of four fifths ( $\frac{4}{5}$ 's) of the full membership of the governing body.

Section 14. Board of zoning appeals; powers and duties; boards of zoning appeals ~~or on~~ the governing body acting as a board of zoning appeals in the event it so elects, shall have the following powers and duties.

(a) To hear and decide administrative appeals where it is alleged there is error in any order, requirement, decision, interpretation or determination made by an administrative official in the enforcement of any zoning ordinance or regulation adopted pursuant to this act.

~~(b) To authorize, upon appeal from a decision of the administrative official, such variance from the terms of the zoning ordinance as will not be contrary to the public interest where, owing to conditions peculiar to the property, a literal enforcement of the provisions of the ordinance would result in unnecessary and undue hardship. Variances from the ordinance shall be authorized only for height, area and size of structure, or size of yards and open spaces; boards of zoning appeals shall not be authorized or empowered to issue variances to permit the establishment or expansion of a use in a zone or district in which such use is not permitted by the zoning ordinance. No variance shall be granted where the special conditions or circumstances peculiar to the property are the result of the action of the applicant for a variance, which action occurred subsequent to the adoption of the regulation which makes the variance necessary. No variance shall be granted because of the presence of non-conformities in the zone or district or adjoining zones or districts.~~

~~Boards of zoning appeals shall not authorize a variance until it shall be found that the authorization of such variance will result in substantial compliance with the intent and purpose of this act and the zoning ordinance, that the property cannot be put to a reasonable use which complies fully with the requirements of the zoning ordinance, that the variance is the minimum which will make possible the reasonable use of the land, building or structure, and that no substantial detriment to the public health, safety, order, comfort, convenience, appearance or general welfare will result from such authorization.~~

~~Boards of zoning appeals may make the authorization of a variance conditional upon such alternate and additional restrictions, stipulations, and safeguards as it may deem necessary to insure compliance with the intent and purpose of the zoning ordinance. Violation of such conditions when made a part of the terms under which the variance is granted shall be deemed a violation of the zoning ordinance.~~

No administrative appeal variance shall be considered authorized by a board of zoning appeals or the governing body acting as a board of zoning appeals except after public hearing with due public notice.

Section 15. Exercise of powers. In exercising its powers, boards of zoning appeals or the governing body may, in conformity with the provisions of this act and the zoning ordinance, reverse or affirm, wholly or partly, or may modify the administrative order, requirement, decision or determination made by an administrative official in the enforcement of any zoning ordinance or regulation adopted pursuant to this act, and appealed from, and may make such administrative order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the administrative appeal is taken.

Section 16. Appeal from decision of administrative official. Appeals to a board of zoning appeals or the governing body, as the case may be, may be taken by any person aggrieved or by any officer, department, board, or bureau of the governing body or bodies in the area affected by the administrative decision, determination or requirement made by the administrative official. Such appeals shall be taken within thirty (30) days by filing with the administrative official a written notice specifying the grounds thereof. The administrative official shall forthwith transmit to the board all papers, documents, and maps constituting the record of the administrative action from which an appeal is taken.

Due public notice of the hearing on the administrative appeal shall be given.

Upon the hearing, any party may appear in person or by attorney. A decision shall be reached by the appellate body within thirty (30) days of the hearing; otherwise, the action appealed from shall be deemed affirmed.

Section 31. The method and procedures for implementing a county hearing examiner program shall be as set forth by county ordinance.

Section 2. If any section, sentence, clause, phrase, or word of this act is for any reason held or declared to be unconstitutional, invalid, or inoperative, such holding or invalidity shall not affect the remaining portions of this act, and it shall be construed to have been the legislative intent to pass this act without such unconstitutional, invalid, or inoperative part therein; and the remainder of this act, after the exclusion of such part or parts, shall be deemed and held to be valid as if such parts had not been included therein.

Section 3. This act shall take effect upon becoming a law.

Approved by the Governor May 25, 2001.

Filed in Office Secretary of State May 25, 2001.