

ORDINANCE NO. 2023-_____

AN ORDINANCE AMENDING CHAPTER 62 ARTICLE VI, DIVISION 2, SECTION 62-1157, "SUBMISSION OF BINDING DEVELOPMENT PLAN IN SUPPORT OF REQUEST FOR CHANGE OF ZONING OR CONDITIONAL USE PERMIT" TO CLARIFY THAT BINDING DEVELOPMENT PLANS ARE EXCLUSIVE AND SEPARATE FROM DEVELOPMENT AGREEMENTS GOVERNED BY CHAPTER 163, PART II, FLORIDA STATUTES; REQUIRING THAT ALL THOSE WITH AN INTEREST IN THE SUBJECT PROPERTY BE IDENTIFIED; REQUIRING THAT THOSE WITH AN INTEREST IN THE SUBJECT PROPERTY BE MADE A PARTY TO AND CONSENT TO THE BINDING DEVELOPMENT PLAN PRIOR TO APPROVAL BY THE BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS; CLARIFYING PROCEDURES AND TIME PERIOD TO SUPPLY RECORDED BINDING DEVELOPMENT PLAN TO BREVARD COUNTY, INCLUDING AUTHORIZING THE BOARD TO GRANT CERTAIN TIME EXTENSIONS FOR RECORDING BINDING DEVELOPMENT PLANS; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AREA ENCOMPASSED; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA.

WHEREAS, the Board has determined that Binding Development Plans ("BDPs") will serve the public health, safety, and welfare by ensuring development is done correctly and in accordance with the County's Comprehensive Plan and Land Development Regulations exclusive of the requirements outlined in Chapter 163, Part II, Florida Statutes, known as the Florida Local Government Development Agreement Act, as may be amended; and

WHEREAS, it is necessary and proper to require all those with a legal and equitable interest in property being made subject to a BDP be a party to the agreement to ensure that the terms of the agreement will continue to run with the land regardless of its disposition, including in the event of foreclosure; and

WHEREAS, it is in the best interest of the public to clarify when the specified time period to supply a recorded BDP to the County begins to run so that the interest of the applicant in having a reasonable time to complete the process is afforded while also protecting the interests of the public in having an accurate and up-to-date zoning map indicating that property has been made subject to the terms of a BDP.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

Underline indicates additions.

~~Strike-through indicates deletions.~~

SECTION 1. Chapter 62 Article VI, Division 2, Section 62-1157, "Submission of binding development plan in support of request for change of zoning or conditional use permit," Code of Ordinances of Brevard County, Florida, is hereby amended as follows:

An applicant for a change of zoning or a conditional use permit may voluntarily submit a binding development plan in support of such change of zoning or conditional use permit, exclusive and separate from development agreements governed by Chapter 163, Part II, Florida Statutes, as may be amended.

(1) Basic requirements for a binding development plan are as follows:

- a. The plan shall provide a legal description of the land subject to the restriction.
- b. The application shall identify all legal and equitable owners of the subject property, as well as any entity with an interest in the property.
- ~~b.c.~~ Where a concurrency issue is addressed by the binding development plan, the plan shall specify a time certain for performance by the property owner.
- ~~c.d.~~ The plan shall provide a written description of the particular conditions, restrictions, or requirements placed on the property prior to development.
- ~~d.e.~~ The binding development plan shall also include a conceptual graphic representation, when applicable, of the proposed development, depicting all restrictions stipulated in subsection (1)~~e~~d of this section.
- ~~e.f.~~ Where a binding development plan is submitted, approval of the zoning action shall be contingent upon the presentation of a final and complete binding development plan and acceptance of the plan by the board of county commissioners.
- ~~f.g.~~ If appropriate, the document should state the level of development permitted. The document shall specify that no further development shall be permitted without a waiver or release of the restrictions by the county. Any restriction stipulated in the binding development plan shall not be less restrictive than requirements of existing codes and regulations.
- h. All persons or entities with a legal or equitable interest in the subject property shall be a party to the binding development plan, as well as any entity with an interest in the property including, but not limited to, any lienor(s). This requirement may be satisfied by either being a signatory to the binding development plan or through an instrument that binds all such owners and interest-holders to the agreement. All legal and equitable owners of the subject property, as well as any entity with an interest in the property, must consent to the binding development plan prior to its approval by the Board of County Commissioners.

g.i. ~~(1)~~ The document shall be recorded ~~by the applicant~~ in the public records of the county, and a certified copy of the recorded document shall be supplied to the zoning division within 120 (one hundred twenty) days of approval by the board of county commissioners at the public hearing held pursuant to section 62-1151(d) or, where there is no associated rezoning application, at the public hearing held in accordance with Section 62-1157(2). Approval of the zoning action is not effective until such criteria are satisfied. Unless an extension is approved pursuant to Section 62-1157(1)(i)(2), if the applicant fails to record the binding development plan prior to the expiration of 120 (one hundred twenty) days from the date of approval by the board of county commissioners, then the application will be considered to have been withdrawn.

(2) The applicant may make a request of a 60 (sixty) day extension for good cause to the Board of County Commissioners. Such a request must be made within 90 (ninety) days of approval by the Board of County Commissioners at the public hearing held pursuant to section 62-1151(d) or, where there is no associated rezoning application, at the public hearing held in accordance with section 62-1157(2). Upon receiving such a request, staff will present the extension request to the Board of County Commissioners for approval prior to the expiration of 120 (one hundred twenty) days. In no event shall an extension exceed 60 (sixty) days. If the applicant fails to record the binding development plan prior to the expiration of the extension, then the application will be considered to have been withdrawn.

- (2) Before entering into, amending or revoking a binding development plan, or amending, revoking or removing an existing binding site plan where rezoning is not also under consideration, two public hearings shall be held. The first public hearing shall be held by the local planning agency, and the second public hearing shall be held by the board of county commissioners. The notice requirements for rezoning of property contained in section 62-1151 shall apply. However, the notice shall describe generally the proposed binding development plan or the proposed amendment to the binding development plan rather than the proposed amendment to the official zoning map which is referenced in section 62-1151.
- (3) The public hearings described in subsection (2) of this section shall be conducted and the item considered as required in section 62-1151 and the 1988 county comprehensive plan, as amended. However, the review shall be of the proposed binding development plan or the proposed amendment to the binding development plan rather than the proposed zoning classification referenced in section 62-1151.
- (4) Existing binding site plans shall be treated as binding development plans insofar as they are consistent with the 1988 county comprehensive plan, as amended, and more restrictive ordinances of the county, and the plans shall

continue to be binding on the applicant and his assigns, heirs and successors in title or possession of the lot, tract or parcel of land. However, at the time such binding site plans are amended, the plan shall be converted to the form of the binding development plans required under this section.

SECTION 2. Conflicting Provisions. In the case of a direct conflict between any provision of this Ordinance and a portion or provision of any other appropriate federal, state or county law, rule, code or regulation, the more restrictive shall apply.

SECTION 3. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

SECTION 4. Area Encompassed. This Ordinance shall take effect only in the unincorporated area of Brevard County, Florida.

SECTION 5. Effective Date. A certified copy of this Ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment. This Ordinance shall take effect upon adoption and filing as required by law.

SECTION 6. Inclusion in Code. It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of Brevard County, Florida; and that the sections of this Ordinance may be renumbered or re-lettered and that the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.

DONE, ORDERED, AND ADOPTED, in regular session, this 21st Day of February, 2023.

Attest:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Rachel M. Sadoff, Clerk of Court

Rita Pritchett, Chair
(as approved by the Board on February
21, 2023)

(S E A L)