

ORDINANCE NO. 24- \_\_\_\_

**AN ORDINANCE OF PINELLAS COUNTY, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE; PROVIDING FINDINGS; PROVIDING FOR PURPOSE AND INTENT; AMENDING CHAPTERS 134, 138, 142, 154 AND 158 OF THE LAND DEVELOPMENT CODE; PROVIDING REVISED AUTHORITY FOR THE DEVELOPMENT REVIEW COMMITTEE; PROVIDING REVISED AUTHORITY FOR THE COUNTY ADMINISTRATOR OR HIS OR HER DESIGNEE; AMENDING THE INITIAL REVIEW PROCESS FOR USE AND VARIANCE APPLICATIONS; AMENDING THE PROCEDURE FOR REVIEW AND APPROVAL OF FLOODPLAIN VARIANCES; PROVIDING FOR THE CORRECTION OF SCRIVENER'S ERRORS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the Board of County Commissioners of Pinellas County, Florida, ("BCC") adopted the Land Development Code in 1990; and

WHEREAS, in 2018, the BCC approved Ordinance No. 18-36, which constituted the first major rewrite of the Pinellas County Land Development Code since 1990; and

WHEREAS, the purpose of this Ordinance is to amend and update the provisions of Chapters 134, 138, 142, 154 and 158 of the Land Development Code to change the role of the Development Review Committee from a formal body charged with making determinations and recommendations to an informal information gathering body, along with additional changes to the aforementioned chapters; and

WHEREAS, in accordance with Section 138-83 of the Land Development Code the Development Review Committee held a duly noticed public meeting on January 8, 2024, as to the proposed Ordinance and recommends approval of the proposed amendments contained therein; and

WHEREAS, the Local Planning Agency held a duly noticed and advertised public hearing on February 14, 2024, as to the proposed Ordinance and recommends that the Board of County Commissioners approve the proposed amendments contained therein; and

WHEREAS, the Board of County Commissioners finds that proposed amendments to the Land Development Code as set forth herein are consistent with the Comprehensive Plan and the review requirements set forth in Section 138-83 of the Land Development Code.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Pinellas County, Florida in regular meeting duly assembled this \_\_\_\_ day of \_\_\_\_\_ 2024, that:

**SECTION 1.** Chapter 134 of the Pinellas County Land Development Code is hereby amended as set forth below. This ordinance does not repeal and replace Chapter 134. The only section(s) of Chapter 134 being amended are those with revisions reflected herein. Sections of Chapter 134 not included herein remain in full force and effect.

## **Chapter 134**

### **Sec. 134-14. Quasi-judicial proceedings.**

- (a) *Purpose and intent.* The board of county commissioners ("board") has prepared these rules to encourage public participation during quasi-judicial hearings in a manner consistent with the requirements of law. The board intends that these hearings be informal and not intimidating for the public, while recognizing the need for certain structure to maintain orderly hearings. Notwithstanding the procedures established in this section, these procedures may be modified by the hearing body utilizing said procedures to effectuate the effective presentation of evidence.
- (b) *Applicability of these procedures.*
  - (1) *Land Development Code.* These procedures apply to all quasi-judicial proceedings held to interpret, implement, and enforce the Land Development Code by all hearing bodies, as further defined herein. Examples of quasi-judicial proceedings include but are not limited to: site specific rezonings, variances, Type 2 and 3 uses, and administrative appeals.
  - (2) *Covered decision makers.* These procedures shall be utilized by the board of county commissioners, the local planning agency, and the board of adjustment and appeals ("hearing bodies").
  - (3) *Applicants.* Applicants shall be limited to the property owner(s) or their representatives, as further detailed herein.
  - (4) *Legislative proceedings.* Utilization of these procedures by a hearing body when sitting in a legislative capacity does not change the character of the legislative proceeding nor does it confer any additional rights or remedies upon any person or party.
- (c) *Pre-hearing submittals.*
  - (1) *Application.* The applicant shall submit an application as provided in the procedures established for the individual decision being requested.
  - (2) *Staff recommendation.* To the extent that the applicable procedure requires a staff review and written recommendation to be presented to the hearing body, that written recommendation shall be completed and available for public inspection no less than one week prior to the hearing.

- (3) *Supplemental material.* No later than one week prior to the scheduled public hearing, any applicant, proponent, or opponent may submit any written arguments, evidence, explanations, studies, reports, petitions or other documentation for consideration by the hearing body in support of or in opposition of the application. Unless an oversized exhibit is absolutely essential, documentary paper or photographic exhibits should not exceed 24 inches by 36 inches and, if mounted on a backboard, shall be removable therefrom. All non-digital documentary evidence should be capable of being folded and filed. If an exhibit is presented, it becomes part of the record and will not be returned. No new materials will be accepted at the hearing as of right; such material shall only be accepted in the hearing body's sole discretion.
- (4) *Applicant representation.* Applicants may represent themselves, or choose to be represented by an attorney or non-attorney representative. In the case of a non-attorney representative, and if the applicant will not appear at the hearing, the applicant shall furnish a properly executed power of attorney or other such document authorizing such representation.
- (5) *Record.* The applicant's application, staff recommendation, and properly filed supplemental material shall automatically become part of the record. In addition, properly sworn testimony during the hearing shall also automatically become part of the record. Additional materials shall only become part of the record in the hearing body's sole discretion in accordance with the terms herein.

(d) *Public hearing.*

- (1) *Generally.* It is the expectation that the hearing will be as informal and non-intimidating as possible. Each person who addresses the hearing body shall utilize the speaker's lectern, if available, to allow his or her comments to be recorded and shall provide their name, address and whether they will speak on behalf of others.
  - a. *Recording.* All quasi-judicial hearings shall be recorded. Any party who wishes to appeal a decision shall be solely responsible for ensuring a verbatim transcript of the proceedings is created for appeal.
  - b. *Time limitation guidelines.* It is expected that presentations will be organized and efficiently presented. Persons in the following status should complete their presentation or comments within the prescribed time limits, unless an extension is granted by the hearing body upon a showing of good cause:
    1. Staff should introduce and present the case in 20 minutes, including their response and summary.
    2. The applicant should present his or her entire case in 20 minutes, including rebuttal.
    3. Persons who have been authorized to represent an organization with five or more members or a group of five or more persons should limit their

presentation to ten minutes. Others in the organization or group shall waive their time. The five represented individuals must be present and waive their time.

4. All other persons may speak up to a total of three minutes each.
- c. *Registration of proponents or opponents.* To the extent possible, persons who desire to make presentations as proponents or opponents of an item should, prior to the meeting at which such item is to be heard, register with the hearing body's clerk on the forms provided. Five or more persons deemed by the hearing body to be associated together or otherwise represent a common point of view on an item may be requested to select a spokesperson.
  - d. *Organizational or group speakers.* Prior to presenting his/her case, any person representing an organization or other persons shall indicate who he/she represents and how he/she received authorization to speak on behalf of such organization or group of persons. The hearing body may make further inquiry into the represented authority of such person if necessary.
  - e. *Speaker's qualifications.* Persons speaking on issues requiring educational, occupational and other experience should identify those qualifications. The hearing body may further inquire as to such qualifications.
  - f. *Restrictions on testimony or presentation of evidence.* At any proceeding, the chair, or administrative official leading the proceedings, unless overruled by majority of the hearing body members present, may restrict or terminate presentations which in the chairman's judgment are irrelevant, frivolous, unduly repetitive, inflammatory, or otherwise out of order.
  - g. *Ex parte communications.* Individuals should not contact the person or entity responsible for issuing or recommending the final development order(s) about issues coming before said official or hearing body, and said officials and hearing bodies shall avoid such communication to the extent practicable. If such communication inadvertently or unavoidably takes place, such conversations should be disclosed and made part of the record before or during the hearing. Such disclosure shall include the subject of the communication and the identity of the person, group, or entity with whom the communication took place.
- (2) *Order and subject of appearance.* The public hearing shall be conducted in the following manner:
    - a. Disclosure of any ex-parte communications by hearing body members.
    - b. *Initial presentation by staff.* County staff shall make the initial presentation to the hearing body regarding any item under consideration. Affected parties may ask questions of, or seek clarification from, staff by request through the chair after staff's initial presentation.

- c. *Applicant's presentation.* After staff presentation, the applicant(s) shall be allowed to present their case.
  - d. *Proponent's presentation.* After presentation by the applicant(s), proponents of the item or request shall be allowed to speak in support of the case.
  - e. *Opponent's presentation.* After the hearing body and staff inquiry of the proponents, opponents of an item or request shall be allowed to speak.
  - f. *Applicants' rebuttal presentation.* The applicant shall be allowed an opportunity for rebuttal. Rebuttal shall only address previous testimony. Proponents, opponents or staff who believe that the rebuttal presentation includes an error of fact may ask for and may be allowed an opportunity to point out such error of fact.
  - g. *Inquiry by hearing body.* The hearing body shall have an opportunity to comment or ask questions of or seek clarification from staff, applicant(s), proponent(s), or opponent(s) at any time during the proceedings. After the respective parties' presentations, affected parties may ask questions of or seek clarification from the applicant(s), proponent(s), or opponent(s) by request through the chair.
  - h. *Closing of public comment.* For those matters in which public comment is heard by the hearing body, the chair shall close the public comment portion of the meeting on that item upon the conclusion of the last appropriate speaker's comments. No additional public comments shall be allowed, except in specific response to questions by members of the hearing body or in said body's sole discretion.
- (3) *Waiver of hearing.* The applicant may waive the right to a full hearing if it agrees with the staff recommendation and no one from the audience wishes to speak for or against the application.
- (4) *Continued public hearings.*
- a. *Continuance requested by the applicant.* The applicant shall have one opportunity to continue his or her case to a future scheduled meeting date for up to 70 days, by submitting a notification to continue in writing to the county department responsible for scheduling the hearing prior to formal publication of the hearing. If the applicant notifies said department after publication, requests a continuance for more than 70 days, or seeks to continue the case after the case has previously been continued, such a request shall be decided by the responsible hearing body. All costs associated with a continuance, including but not limited to re-advertising, shall be borne by the applicant.
  - b. *Opportunity to be heard.* In any matter where it is known that a scheduled public hearing will be continued to a future date, public comment may be limited to those persons who state that they believe they cannot be available to speak on the date to which the public hearing is being continued. Such persons may then make their

comments at the current meeting, provided, that upon making their comments, such persons shall waive the right to repeat or make substantially the same presentation at any subsequent meeting on the same subject. This waiver shall not preclude such persons from making different presentations based on new information or from offering response to other persons' presentation, if otherwise allowable, at any subsequent meeting.

- (e) *Burden of proof.* The applicant has the burden of producing competent substantial evidence for the hearing body to make an informed decision and conclude that the applicable standards for the case at hand have been met. Failure to submit sufficient timely evidence or testimony, or address the relevant criteria on which the application is based, may be a sufficient basis for the hearing body to deny the application.
- (f) *Administrative appeals.*
  - (1) *Scope of review.* Administrative appeals shall be held by the board of adjustment and appeals or board of county commissioners in conformity with the provisions herein, and shall be reviewed de novo.
  - (2) *Right of appeal.* Appeals may be filed by any affected party aggrieved by the application of the Land Development Code or the comprehensive plan by county staff, or aggrieved by an action that provides for an appeal to the board of county commissioners ("appellant").
  - (3) *Procedure for appeal.* An appeal shall be filed in writing with the applicable department responsible for issuing the decision, or administering the application, for which a decision has been rendered, within 15 calendar days after rendition of the final development order or determination at issue. The date of rendition shall be the date at which a written, dated instrument expressing such decision is executed by the administrative official or original hearing body.
  - (4) *Filing fee.* Each appeal shall be accompanied by a filing fee, as determined by the annual fee schedule adopted by the board of county commissioners.
  - (5) *Substance of appeal.* At a minimum, the appeal shall indicate the following:
    - a. The section(s) of the Pinellas County Land Development Code that the appellant has a reasonable basis to believe were not adhered to regarding the final decision on appeal;
    - b. How the appellant has been aggrieved by such noncompliance, which must include specific reasons beyond generalizations, and must be different in nature and scope to the general public or neighborhood at large; and
    - c. Whether a pre-hearing conference is requested.

- (6) *Denial and consolidation.* The hearing body hearing the appeal shall have the right to deny the appeal if the appeal does not adhere to the requirements herein. Said hearing body also reserves the right to consolidate multiple appeals of the same decision, or multiple appeals of different decisions affecting the same project, when appropriate.
- (7) *Effect of appeal.* Upon filing of an appeal, all work on the premises associated with the final development order shall be at the sole risk and cost of the applicant.
- (8) *Finality of decision.* No new application for an identical request on the same parcel shall be accepted for consideration within a period of six months following a final decision on an administrative appeal. An applicant may request a waiver to this provision and the responsible hearing body may waive this provision for good cause.
- (9) *Judicial review of decisions.* Any affected person may appeal a final adverse administrative decision to circuit court, provided that the aggrieved party has first filed an administrative appeal, was denied relief, and has filed an appeal to circuit court within 30 calendar days of the final adverse decision.
- (10) *Pre-hearing conference.* The board of adjustment and appeals or board of county commissioners may require a preliminary hearing in its sole discretion. If the hearing body determines a prehearing conference is needed, it shall issue a notice of prehearing conference outlining the specific requirements of the hearing.
  - a. *Minimum requirements.* At a minimum, the notice shall require each party to furnish the following items in an effort to narrow the issues on appeal:
    1. A list of documentary evidence and exhibits that will be offered during the hearing and brief statement explaining their purpose;
    2. A list of all possible witnesses, which shall include the witnesses' name, address, phone number, and a brief summary of the substance of each witness' proposed testimony;
    3. The parties must bring copies of any documents or exhibits they intend to use at the hearing, to be placed in the record for the hearing.
  - b. *Failure to comply.* Failure to comply with the terms of the notice may result in the prehearing conference to be continued and/or the non-complying party's witnesses and/or exhibits being disallowed or such other relief as the hearing body may determine.
  - c. *Failure to appear.* Failure to appear at the scheduled pre-hearing conference may constitute grounds for the hearing body to find that the appellant has withdrawn the appeal.

**Sec. 134-156. Definitions.**

*Board of adjustment and appeals (BAA)* shall be as defined in chapter 138, division 2.

*Commencement of development* means the onset of construction, such that actual, on-site grade alterations or other material physical changes have been made to the appearance of land in conformance with:

- (1) An approved final site plan;
- (2) A habitat management permit that is consistent with an associated site plan; or
- (3) Final construction plans approved by the county.

*Continue in good faith* means that all necessary and required development orders or permits have been applied for prior to the expiration of any previously received county development order, expressly including any development agreement, such that development and construction continue in a reasonably prudent, commercial manner that is of a real, actual and genuine nature as opposed to a sham or deception, and which meets the standards for "good faith" outlined in section 134-160. A rebuttable presumption of not having continued in good faith shall arise from the lapse, expiration or abandonment of any development order or permit issued by the county, or from any other voluntary act of the claimant which has the same effect.

*Development review committee (DRC)* shall be as defined in section 138-64.

*Divest* means to abrogate or revoke preexisting vested rights.

*Vested right* means any property right that would attach to and run with a described property that authorizes the development and use of that property; and includes, but is not limited to: a special exemption status provided for in section 134-86; an authorized land use designation or density or intensity of development; and any other specifically identified condition of development or mitigation.

*Vested right determination* means those administrative procedures defined in this article used for reviewing a landowner's or developer's request for a remedy under this article that would recognize and define vested rights.

### **Sec. 134-157. Legislative findings and intent.**

The board of county commissioners finds and declares that:

- (1) The provisions of F.S. § 163.3161 et seq. establish the local government comprehensive planning and land development regulation act (referred to in this article as "the act").
- (2) The provisions of F.S. § 163.3202(2)(g) provide that counties shall have the power and responsibility to plan comprehensively for their future development and growth, including the adoption and implementation of appropriate land development regulations which are necessary or desirable to implement a comprehensive plan.
- (3) The county adopted its Comprehensive Plan (the "county plan") on August 8, 1989, through the adoption of Ordinance No. 89-32.



- (4) The county plan establishes the minimum requirements necessary to maintain, through orderly growth and development, the character and stability of present and future land use and development in the unincorporated areas of the county.
- (5) The provisions of F.S. § 163.3167 provide for statutory vesting of certain development rights as they may further be defined by local government.
- (6) Section 134-82(b) provides that the board of county commissioners retains the power and authority to enact ordinances, rules and regulations that are more restrictive than those originally adopted in the county plan.
- (7) Section 134-82(c) provides that nothing in the county plan or its subsequent land use regulations shall be construed or applied so as to result in the abrogation of validly existing vested rights.
- (8) Section 134-85(b) provides that the board of county commissioners shall establish administrative procedures which any party challenging denial of a development order or a development permit as an abrogation of vested rights must exhaust before any action on a request for development is deemed final by any court or quasi-judicial proceeding.
- (9) Section 134-86(c)(2)b. provides that a development order or right may be determined to be vested through any administrative procedure subsequently established by the board of county commissioners.
- (10) It is necessary and desirable that administrative determinations of vested property rights be made so as to ensure reasonable certainty, stability, and fairness in the land use planning process in order to stimulate economic growth, secure the reasonable investment-backed expectations of landowners, and foster cooperation between the public and private sectors with respect to growth management.
- (11) The establishment of an administrative determination procedure will promote the goals of the county plan in a manner which is consistent with section 2 of article I of the state constitution guaranteeing all natural persons the inalienable right to acquire, possess and protect property.
- (12) It is the specific intent of the board of county commissioners that no provision of this article be interpreted so as to abrogate validly existing vested private property rights which would exist under the United States or state constitutions.
- (13) It is the specific intent of the board of county commissioners that no administrative determination made under this article result in either a temporary or permanent taking of private property without just or full compensation under the United States or the state constitutions.

- (14) The board of county commissioners specifically intends that it shall be the duty and responsibility of the party alleging vested rights to affirmatively demonstrate the legal requisites of the rights alleged.
- (15) It is the board of county commissioners' specific intention that the procedures provided for in this article not be utilized routinely or frivolously, but rather, only in those extreme circumstances where a potential denial of private property or development rights would otherwise result.
- (16) The delays attendant the full hearing process may be deemed unnecessary for applications for vested rights which are of such a limited nature and are based on clear provisions of a development order.
- (17) In order to effectively administer a program of vested rights applications, it is often necessary to fashion variable forms of relief, consistent with the equitable nature of vested rights decisions. Thus it is the intent of the board of county commissioners for the County Administrator or his or her designee, acting in his or her designated capacity on vested rights matters, to have the authority to fashion the relief necessary to protect the legitimate vested rights of property owners while at the same time protecting the rights of the citizens of the county.
- (18) Both the purpose and intent of the various land development regulations, the provisions of the comprehensive plan and the statutory and case law governing vested rights provide the County Administrator or his or her designee with ample guidance in exercising his or her authority under this article.

**Sec. 134-160. Procedures for vested rights determinations.**

(a) *Applications for vested rights determinations.*

- (1) All applicants for vested rights determinations must file an application for a vested rights determination with the county administrator through the county Building and Development Review Services department. Vested rights claims arising under section 134-86(c)(2)b. Must be filed by June 30, 2019, unless the filing date therefor has been otherwise extended.
- (2) A vested rights application must meet the requirements of this section, and each application should include any information the applicant considers necessary to demonstrate compliance with the standards outlined in this section. As such, applications may contain attachments, appendices or exhibits that substantiate those facts supporting the applicant's claim.
- (3) A typical application package might contain affidavits, drawings, contracts, recordings, or any other form of documentation or information that may apply, including, but not limited to:

- a. The transcript or record of any previous hearing where action on the challenged development order or permit was taken.
  - b. Any donations or dedications of real property or any other property interest made to the county for the following purposes:
    - 1. Roads or other transportation facilities;
    - 2. Access (ingress/egress) or rights-of-way;
    - 3. Drainage easements;
    - 4. Parks or recreation/open space;
    - 5. Retention/detention areas;
    - 6. Conservation areas;
    - 7. Any other purpose consistent with the provision of services for any element of the county plan; which are either on- or off-site with respect to the property involved in the vested rights determination.
  - c. Other development orders or development permits issued by the county with respect to the property involved in the vested rights determination, and any related federal, state or regional permits.
  - d. The construction of roads, sidewalks, stormwater detention/retention or drainage facilities, sewer or water facilities, parks, etc., which are either on- or off-site, especially where such construction is in excess of capacity for the development seeking a vested rights determination.
  - e. Expenditures of funds for planning, engineering, environmental, and other consultants or projects, including site preparation or grading.
  - f. Construction of actual buildings in accordance with an existing or prior development order or development permit issued by the county.
  - g. Expenditure of funds for land acquisition made specifically for the proposed development.
- (4) The information in subsection (a)(3) of this section should be limited, however, to those actions by the applicant (or his predecessor) made in reasonable reliance upon an affirmative act or approval of the county which formally authorized, accepted, or approved a course of development on the land in question. To that extent, the applicant is encouraged to so specifically identify the acts relied upon.
- (5) Additionally, the applicant should consider submitting information which:

- a. Demonstrates that the applicant has acted in good faith and without knowledge that subsequent changes to applicable ordinances, resolutions, or regulations might affect his development expectations. In establishing "good faith," the applicant should consider submitting information which affirmatively states that the applicant:
    - 1. Has not waived, abandoned, or substantially deviated from prior related county development approvals;
    - 2. Has not, by act or failure to act, consented or assented to changes in prior county development approvals;
    - 3. Has, at all times relevant, conformed with the applicable laws, rules, and regulations of the state and the county;
    - 4. Is not otherwise estopped from claiming vested rights through acts or omissions which arose in the development or marketing of preexisting county development approvals, upon which others have relied to their detriment.
  - b. Details the specific ordinance, resolution, regulation or comprehensive plan provision that the applicant alleges should not apply because of the vested rights claimed.
- (b) *Review and standards for vested rights determinations.*
- (1) Within ten working days of receipt of an application for a vested rights determination, the county administrator or his designee shall determine whether the application received is complete. If the application is deficient, then the applicant shall be notified in writing of the deficiencies.
  - (2) Once an application is complete, or the applicant has informed the county administrator or his designee that no further information is available, the application shall be reviewed by the County Administrator or his or her designee.
  - (3) Within 30 working days of the application submittal, the County Administrator or his or her designee shall make and report findings of fact and conclusive decisions based upon the record presented and consideration of the following standards:
    - a. An affirmative determination of vested rights may be made only upon sufficient demonstration by the applicant that:
      - 1. A legally valid, unexpired act or omission of the county had approved or authorized the proposed development which is the subject of the determination;

2. Substantial expenditures or obligations were made or incurred in developing the subject proposal; "substantial" shall be considered relative to the total estimated cost of the project/phase being reviewed, and the applicant's typical or ordinary business practice;
  3. The expenditures and obligations made in subsection (b)(4)a.2, above were incurred in good-faith reliance on the acts or omissions of subsection (b)(4)a.1, above;
  4. A denial of the application, destroying those rights which would otherwise be acquired, would be highly unfair and unjust because there are no other reasonable uses permitted for the expenditures and obligations of subsection (b)(4)a.2, above, under the land development regulations now in effect; to demonstrate that denial would be highly unfair and unjust, the applicant must show that the expenses or obligations incurred are unique to the proposed development such that a reasonable return on these expenses or obligations would have been made under preexisting regulations, but could not be made under the regulations now in effect; and that
  5. The applicant was without actual or record knowledge of the changes made in the regulations prior to the expenditures and obligations of subsection (b)(4)a.2, above, unless considerable doubt can be shown to have existed about the actual adoption of the regulation, or about the actual prohibition of the proposed development.
- b. A negative determination would not be highly unfair or unjust if substantial, competent evidence in the record demonstrates that construction has not commenced or that the expenditures and obligations incurred are not unique to the otherwise approved development or that the public cost outweighs the private injury or that the expenses or obligations were incurred with notice of a change in regulations or that the applicant's development can make a reasonable return on the expenditures and obligations incurred under the present regulation.
- c. In addition to the factors in subsections (b)(4)a. and (b)(4)b. of this section, the County Administrator or his or her designee should also consider the following factors when it appears from the plans or documents submitted by an applicant that the proposed project would or reasonably could be completed in discrete phases:
- i. The extent to which the plans or documents submitted are more conceptual master plans or final site plan/construction drawings derived from detailed surveying, engineering or architectural work;
  - ii. The extent to which infrastructure, such as streets, sidewalks, utilities or other facilities, has been constructed for the entire project; and
  - iii. The extent to which infrastructure already constructed would be unsuitable for use as part of any uncompleted phases if such phases were built out in

conformity with existing regulations; "unsuitable" should be considered relative to the applicant's investment loss resulting from the manner, location, or scale of constructed infrastructure which could not be utilized due to the change in regulations.

(c) *Forms of relief available.* The three forms of relief deemed appropriate for applications are special exemptions, conditional relief, and denial without prejudice, and are described as follows:

- (1) *Special exemptions.* With respect to those issues which can be reasonably characterized as being clearly, completely and specifically documented provisions of a final local development order, a form of special exemption, as referenced in article III of this chapter, may be issued to the extent that such a vesting would prevent the limitation or modification of the applicant's right to complete its development. An applicant may be said to have vested rights in the provisions of its development order to the extent that no non-environmental or health related land development provisions may deprive him of those rights. This form of special exemption may be broad-based and complete, depending upon the terms of the development order and the relief necessary to protect any rights under the development order.
- (2) *Conditional relief.* The comprehensive plan prohibits special exemption status against the application of environmental and health related land development regulations. The form of relief available, rather than a blanket special exemption, should be reviewed on a factually intensive basis for the possibility that conditional variances or other forms of conditional relief may be available. Any such relief must be analyzed to determine if the conditions under which it is granted are consistent with the purpose and intent of the various land development regulations, the provisions of the comprehensive plan and the statutory and case law governing vested rights. Conditions may be initial, after satisfaction of which the right becomes vested, or may be ongoing. Conditional variances will address the appropriateness of relief, allowing the county to fashion that form of relief necessary to equitably address the legitimate concerns of the applicant while at the same time protecting the legitimate interests of the citizens of the county.
- (3) *Denial without prejudice.* The applicant may reserve or be entitled to reserve the right to address other land development regulations at such time as they become an issue. Such a reservation of rights is an appropriate mechanism to address future questions that may arise from the applicant's development status.

(d) *Appeal of vested rights determinations.*

- (1) Any applicant denied any claimed vested rights must file, in writing, a request for an appeal with the board of adjustment and appeals within ten days of the applicant's notification of the County Administrator or his or her designee decision.
- (2) Upon receipt of a timely filed appeal, the board of adjustment and appeals shall schedule and properly notice a public hearing to be held before the board of adjustment and appeals as soon as practicable.

- (3) At the public hearing, the board of adjustment and appeals may consider the record developed from subsections (a) and (b) of this section, as well as all testimony and evidence presented.
- (4) The board of adjustment and appeals shall make its determination based upon this record in light of the standards and factors outlined in subsections (b)(4)a. to (b)(4)c. of this section, and such other factors as the board of adjustment and appeals may deem relevant.
- (5) An applicant denied claimed vested rights may seek judicial review of the board of adjustment and appeals determination by timely filing an action in a court of competent jurisdiction.

**Sec. 134-161. Divestiture of certain vested rights.**

- (a) Whenever protection of the public's health or safety from new perils may so require, or upon a showing that a holder of vested development rights has failed to continue in good faith, the county administrator or designee, upon proper showing, may divest otherwise proper development rights. Divestiture under these circumstances may also apply to any certificates of concurrency issued for development proposed within the area affected.
- (b) Any change or modification to a development plan that is inconsistent with the county plan or would result in increased or greater development impacts sufficient to degrade a level of service below that provided for by the county plan creates a rebuttable presumption that the developments rights causing the impact are divested. Notwithstanding this provision, changes or modifications to development plans, orders or permits that are consistent with the county plan, and do not increase impacts or degrade a level of service provided for by the county plan, are presumed to retain any preexisting development rights so long as all other development review requirements are complied with.
- (c) Upon a finding that a holder of vested development rights has continued in good faith but has filed for an extension of time because of a failure to fully comply with time limitations associated with those rights, the county administrator or designee may grant reasonable extensions of time to exercise those development rights. Extensions of time up to six months may be issued..
- (d) Persons adversely affected by an alleged divestiture of development rights under subsection (a), (b) or (c) of this section may seek administrative review thereof through the procedures outlined in subsection (c), above.

**SECTION 2.** Chapter 138 of the Pinellas County Land Development Code is hereby amended as set forth below. This ordinance does not repeal and replace Chapter 138. The only section(s) of Chapter 138 being amended are those with revisions reflected herein. Sections of Chapter 138 not included herein remain in full force and effect.

## CHAPTER 138

### Sec. 138-64. - Development Review Committee (DRC).

(a) *Establishment.* The Development Review Committee (DRC) is hereby established to review and analyze certain development proposals in order to assist the applicant and ensure compliance with this Code and the Comprehensive Plan. The DRC is established to provide a more collaborative technical review and analysis of Site Plans, Type 2, Type 3, and Type 4 reviews. The DRC is also established to provide information and analysis to applicants, higher review authorities, and boards.

(b) *Composition.* The DRC shall be composed of designated county staff members.

(1) The Building and Development Review Services director or designee shall be a member of the DRC.

(2) The DRC shall be composed of staff members with technical knowledge in the subject areas listed below.:

- a. Land use planning/urban design
- b. Civil engineering/Floodplain Management
- c. Utilities
- d. Roadways and transportation
- e. Environmental management/biology
- f. Public Safety
- g. Economic development
- h. Other subject areas as determined by the BDRS Director

(c) *Powers and duties.* The DRC shall have the power and duties to review and analyze the following development-related applications and requests:

(1) *Application/review types:* The DRC shall have the authority to review and analyze the following applications:

- a. The DRC shall have the authority to conduct completeness and sufficiency reviews on the applications/requests designated to the Type 2, Type 3, and Type 4 review as listed in Table 138-77. Comments made by the DRC are solely for informational purposes and shall not be construed as an approval or denial of any application. Failure of the DRC to identify any required permits or procedures shall not relieve



the applicant of any such requirements nor constitute a waiver of the requirement by the decision-making body.

- b. The DRC shall have the authority to conduct Technical Reviews of Site Plans. Comments made by the DRC are solely for informational purposes and shall not be construed as an approval or denial of any application. Failure of the DRC to identify any required permits or procedures shall not relieve the applicant of any such requirements nor constitute a waiver of the requirement by the decision-making body.

(2) *Adoption of procedural rules.* The DRC shall have the authority to adopt rules of procedure.

(3) *Other authority.* The DRC shall have authority to review and analyze such other matters as provided by this Code or as may be assigned by the Board of County Commissioners or county administrator.

(d) *DRC meeting requirements.*

(1) *Record of proceedings.*

a. *Records maintenance.* All records of any proceeding before the DRC shall be filed with the county.

b. *Recording.* All DRC meetings shall be recorded and filed with the County. .

c. *Application files.* Application files shall be held and maintained by the county.

(2) *Schedule.* The DRC shall determine an appropriate meeting schedule to ensure that issues before the committee are analyzed in a timely manner.

(3) *Public meeting.*

a. All meetings of the DRC shall be open to the public.

b. An agenda shall be prepared and distributed to each member prior to each meeting.

c. All applicants having requests reviewed by the DRC will be provided an agenda and invited to attend and participate in the meeting.

(4) *Final determination.* The information and analysis provided to a higher board shall be based on adopted policies in the comprehensive plan, state and federal law and the Pinellas County Code.

**Sec. 138-66. Board of adjustment and appeals (BAA).**

- (a) *Establishment.* The board of adjustment and appeals (BAA) is established to be the approval authority for Type 2 processes.
- (b) *Composition.*
  - (1) The BAA shall be composed of seven members, one each nominated by each member of the board of county commissioners and appointed by the board of county commissioners. The term of office shall be up to four years and shall run concurrently with the term of the nominating commissioner. The board of county commissioners may appoint two alternate members to the BAA to serve during the absence of any regular member. Alternate members shall serve four-year terms.
  - (2) A BAA member may be removed and replaced by the board of commissioners at will.
- (c) *Powers and duties.* The BAA shall have the power and duties to review and take action on the following:
  - (1) *Application/review types.* The BAA shall have the authority to review and take action on any of the applications/requests designated to the Type 2 review as listed in Table 138-77.
  - (2) *Appeals.*
    - a. The BAA shall have the authority to review appeals from department reviews.
    - b. The BAA shall have the authority to review appeals from vested rights determinations made by the County Administrator or his or her designee per chapter 134, article V.
  - (3) *Adoption of procedural rules.* The BAA shall have the authority to adopt rules of procedure.
  - (4) *Other authority.* The BAA shall have authority to review and decide on such other matters as assigned by the board of county commissioners or county administrator from time to time.
- (d) *Quorum.* Four BAA members shall constitute a quorum.

**Sec. 138-77. Review types.**

- (a) Each application/request shall be processed and reviewed pursuant to the required review type as established in Table 138-77 — Review Type and Approval.

- (b) Certain land uses are assigned a review type pursuant to the property's zoning district. The required review type for the proposed land use is established in article III, division 3, and summarized in Table 138-355.
- (c) Each review type is summarized in Table 138-77 along with the associated application/request, decision making authority, and appeal authority. The subsequent sections of this chapter provide additional provisions and authorities for each review type.
- (d) During review Types 2, 3, 4, and 5, the applicant may request a continuance. Staff may grant the continuance before the case is publicly noticed. Following public notice, the review or decision-making authority may continue an application for good cause in its sole discretion.

Review Type	Application/Request	Decision Making Authority	Appeal Authority
Type 1  Path A: Department Reviews	<ul style="list-style-type: none"> <li>• Type 1 uses NOT requiring or part of a site plan</li> <li>• Code interpretations</li> <li>• Minor development activity</li> <li>• Minor Modifications, including site plans</li> <li>• Waivers</li> <li>• Administrative Adjustments up to 10%</li> <li>• Administrative Adjustments up to 30% for landscaping standards</li> <li>• Zoning Clearances and Verification Letters</li> <li>• Signs</li> <li>• Environmental Permits (County)</li> <li>• Right-of-Way Utilization permits (or equivalent)</li> <li>• Stormwater projects involving single-family detached residential</li> <li>• Mobile home replacement (single unit)</li> <li>• Temporary uses</li> <li>• Lot Line Adjustments and Lot Splits (no plats)</li> <li>• Time extensions.</li> <li>• Other actions and powers that are not specifically assigned to a higher review authority, as established by the Code.</li> </ul>	Department Review	1st Appeal — Board of Adjustment and Appeals (BAA)  2nd Appeal — Circuit Court

<p>Type 1</p> <p>Path B: County Administrator or his or her designee</p>	<ul style="list-style-type: none"> <li>• Type 1 uses requiring or part of a site plan</li> <li>• Administrative Adjustments from 10% to 20%</li> <li>• Administrative Adjustments from 30% to 50% for landscaping standards</li> <li>• Site Plans</li> <li>• Non-Traditional Pets</li>   <li>• Other authority as provided by this Code or delegated by the BoCC or county administrator.</li> </ul>	<p>County Administrator or his or her designee</p>	<p>1st Appeal — Board of Adjustment and Appeals (BAA)</p> <p>2nd Appeal — Circuit Court</p>
<p>Type 2</p>	<ul style="list-style-type: none"> <li>• New Type 2 Use establishment or major modifications thereof</li> <li>• Variances</li> <li>• Modification, expansion, redevelopment, revocation, and/or re-establishment of nonconforming uses and structures</li> <li>• Other authority as provided by this Code.</li> </ul>	<p>Board of Adjustment and Appeals (BAA)</p>	<p>Circuit Court</p>
<p>Type 3</p>	<ul style="list-style-type: none"> <li>• New Type 3 Use establishment or major modifications thereof</li> <li>• Variances (if a part of the establishment of Type 3 Use)</li> <li>• Development Agreements</li> <li>• Development master plans or similar or major modifications thereof</li> <li>• Zoning Changes</li> <li>• Land Development Code text amendments</li> <li>• Other authority as provided by this Code.</li> </ul>	<p>Board of County Commissioners (BoCC)</p>	<p>Circuit Court</p>
<p>Type 4</p>	<ul style="list-style-type: none"> <li>• Comprehensive plan amendments</li> </ul>	<p>Board of County Commissioners</p>	<p>Pursuant to State Statutes</p>
<p>Type 5</p>	<ul style="list-style-type: none"> <li>• Final plats</li> <li>• Final public land transfers</li> <li>• Final right-of-way transfers (vacations and dedications)</li> <li>• Final platted easement terminations</li> </ul>	<p>Board of County Commissioners</p>	<p>Circuit Court</p>

**Sec. 138-81. Type 1 review.**

- (a) *Purpose.* Type 1 review is an administrative process to ensure that development projects, land usages, and activities comply with the minimum provisions of this Code. A Type 1 process is intended to be a clear and objective review.
- (b) *Application types.* A Type 1 review is required for the following applicable types:
  - (1) The applications/requests designated to the Type 1 review as listed in Table 138-77.
  - (2) Other authority as allowed in this Code.
- (c) *Performed by.* Type 1 review is performed by one of the following authorities:
  - (1) *Department review.* Considered a Type 1—Path A review, the applicable county department, as determined by the county administrator, may review and provide action on any application requiring Type 1 review. Department reviews may occur for applications/requests pursuant to Table 138.81.a.
  - (2) *County Administrator or his or her designee.* Considered a Type 1—Path B review, the County Administrator or his or her designee reviews applications/request pursuant to Table 138.81.a.

Table 138.81.a—Type 1 Reviewing Authorities by Application and Request Type further identifies which reviewing authority is tasked with each application/request.

Table 138.81.a — Type 1 Reviewing Authorities by Application and Request Type		
Type 1 Review Path	Path A	Path B
Reviewing Authority	Department Review	County Administrator or his or her designee
Applications/ Requests(*)  (*) The application/requests are based on Table 138-77	<ul style="list-style-type: none"> <li>• Type 1 uses NOT requiring or part of a site plan</li> <li>• Code Interpretations</li> <li>• Minor Development Activity</li> <li>• Minor Modifications, including site plans</li> <li>• Waivers</li> <li>• Administrative Adjustments up to 10% adjustment.</li> <li>• Administrative Adjustments up to 30% adjustment of a landscaping standard.</li> <li>• Zoning Clearance Letters</li> <li>• Signs</li> </ul>	<ul style="list-style-type: none"> <li>• Type 1 uses requiring or part of a site plan</li> <li>• Administrative adjustments from 10% to 20% adjustment of a dimensional standard</li> <li>• Administrative Adjustments from 30% to 50% for landscaping standards</li> <li>• Non-Traditional Pets</li> <li>• Site plans</li> <li>• Other authority as provided by this Code.</li> </ul>

	<ul style="list-style-type: none"> <li>• Environmental Permits (County)</li> <li>• Right-of-way Utilization Permits</li> <li>• Stormwater projects involving single-family detached residential</li> <li>• Mobile home replacement (single unit)</li> <li>• Temporary Use Permits</li> <li>• Lot Line Adjustments and Lot Splits (no plats)</li> <li>• Time extensions.</li> <li>• Other actions and powers that are not specifically assigned to a higher review authority, as established by the Code.</li> </ul>	
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- (d) *Result.* Type 1 reviews will result in one of the following actions based on application type.
- (1) For code interpretations and zoning clearance letters, the applicable department will issue a written determination of the requested property and/or land use issue.
  - (2) For Type 1 uses not involving a site plan, the applicable department will issue a determination whether the use is permitted or not permitted based on code requirements.
  - (3) For Type 1 uses involving a site plan, the Director of BDRS will issue a written determination of approval, approval with conditions, or denial, based on the provisions of the Code.
  - (4) For waivers and administrative adjustments, the reviewing authority will issue a written determination of approval, approval with conditions, or denial based on the provisions of the Code.
- (e) *Appeal process and authority.* Type 1 review decisions may be appealed as per Table 138-77 and per section 134-14.
- (f) *Review procedures.*

The following Table 138.81.b—Type 1 Review Procedure, outlines the general review procedures for Type 1 submittals.

Table 138.81.b — Type 1 Review Procedure	
Type 1—Path A Review Department Reviews  <i>Applications/Reviews</i>	Type 1—Path B Review County Administrator or his or her designee

<ul style="list-style-type: none"> <li>■ Type 1 uses not involving or part of a site plan</li> <li>■ Code Interpretation</li> <li>■ Minor Development Activity</li> <li>■ Minor Modifications, including site plans</li> <li>■ Waivers</li> <li>■ Administrative Adjustments up to 10%</li> <li>■ Administrative Adjustments up to 30% for landscaping standards</li> <li>■ Zoning Clearance Letters</li> <li>■ Signs</li> <li>■ Environmental Permits (County)</li> <li>■ Right-of-Way Utilization permits</li> <li>■ Stormwater projects involving single-family detached residential</li> <li>■ Mobile home replacement (single unit)</li> <li>■ Temporary Use Permits</li> <li>■ Lot Line Adjustments and Lot Splits</li> <li>■ Time Extensions</li> <li>■ Other authorized authority</li> </ul>	<p><i>Applications/Reviews</i></p> <ul style="list-style-type: none"> <li>■ Type 1 uses requiring or part of a site plan</li> <li>■ Administrative Adjustments from 10% to 20% adjustment</li> <li>■ Administrative Adjustments from 30% to 50% for landscaping standards</li> <li>• Non-Traditional Pets</li>   <li>■ Site Plans</li> <li>■ Other authorized authority</li> </ul>
↓	↓
<p><i>Pre-Application Meeting (optional)</i> County Staff</p>	
↓	↓
<p><i>Review and Action Body</i> Department Review</p>	<p><i>Review and Action Body</i> County Administrator or his or her designee</p>
↓	↓
<p><i>Result</i></p> <ul style="list-style-type: none"> <li>■ Administrative Findings</li> <li>■ Written Determination of action</li> </ul> <p>AND/OR</p> <ul style="list-style-type: none"> <li>■ Permit</li> </ul>	<p><i>Result</i></p> <ul style="list-style-type: none"> <li>■ Written Determination of action</li> </ul>
↓	↓
<p><i>Appeal Process</i></p> <ul style="list-style-type: none"> <li>■ 1<sup>st</sup> Appeal – Board of Adjustment</li> </ul>	<p><i>Appeal Process</i></p> <ul style="list-style-type: none"> <li>■ 1<sup>st</sup> Appeal – Board of Adjustment</li> </ul>

and Appeals (BAA) ■ 2 <sup>nd</sup> Appeal – Circuit Court	and Appeals (BAA) ■ 2 <sup>nd</sup> Appeal – Circuit Court
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**Sec. 138-82. Type 2 review.**

- (a) *Purpose.* Type 2 review is a public hearing process to ensure that development projects, land usages, and activities comply with the minimum provisions of this Code and are consistent with the comprehensive plan. A Type 2 process requires the board of adjustment and appeals (BAA) to determine the appropriateness of certain applications/requests at specific locations within the county.
- (b) *Application types.* A Type 2 review is required for the following applicable types:
  - (1) The applications/requests designated to the Type 2 review as listed in Table 138-77 and Table 138-355 (article III, division 3).
  - (2) Other authority as provided by this Code.
- (c) *Performed by.* Type 2 review is performed by the following authorities:
  - (1) Development review committee (DRC). The DRC reviews the application/request, and provides information and analysis to staff to assist in writing a staff report to the BAA.
  - (2) Board of adjustment and appeals (BAA). The BAA reviews the application/request, department staff report, conducts a public hearing, and takes final action on Type 2 uses and variances to code standards.
- (d) *Result.* Type 2 reviews will result in a notice of official action.
- (e) *Appeal process and authority.* Type 2 review decisions may be appealed per Table 138-77 and per section 134-14.
- (f) *Review procedures.*
  - (1) The applicant shall file a formal application with the applicable department as determined by the county administrator.
    - a. The application shall include, at a minimum:
      - 1. Applicant, owner, and property information.
      - 2. Description of the request.
      - 3. A conceptual plan or drawing illustrating the request. Plans shall be drawn to scale and show the property boundaries, proposed improvements and connections to the roadway system.



- b. The following Table 138.82.a, Type 2 Review Procedure, outlines the general review procedures for Type 2 submittals.

Table 138.82.a — Type 2 Review Procedure
<i>Applications/Reviews</i>
<ul style="list-style-type: none"> <li>■ Type 2 uses - establishment of new or major modifications thereof</li> <li>■ Variances</li> <li>■ Modification, expansion, redevelopment, revocation, and/or re-establishment of nonconforming uses and structures</li> <li>■ Other authority allowed by this Code</li> </ul>
↓
<i>Pre-Application Meeting (optional)</i>
County Staff
↓
<i>Review and Analysis Body</i>
Development Review Committee (DRC)
↓
<i>Review and Action Body</i>
Board of Adjustment and Appeals (BAA)
↓
<i>Result</i>
<ul style="list-style-type: none"> <li>■ Written notice of official action</li> </ul>
↓
<i>Appeal Process</i>
<ul style="list-style-type: none"> <li>■ Circuit Court</li> </ul>

**Sec. 138-83. Type 3 review.**

- (a) *Purpose.* Type 3 review is a public hearing process to ensure that development projects, land usages, Land Development Code text amendments, and activities comply with the minimum provisions of code and are consistent with the comprehensive plan. A Type 3 process requires the board of county commissioners (BoCC) to determine the appropriateness of certain applications/requests at specific locations within the county.

- (b) *Application types.* A Type 3 review is required for the following applicable types:
- (1) The applications/requests designated to the Type 3 review as listed in Table 138-77 and Table 138-355 (article III, division 3).
  - (2) Other authority as provided by this Code, the State of Florida, or similar laws.
- (c) *Performed by.* Type 3 review is performed by the following authorities:
- (1) *Development review committee (DRC).* The DRC reviews the application/request, , and provides information and analysis to staff to assist in writing a staff report to the LPA.
  - (2) *Local planning agency (LPA).* The LPA reviews the application/request, department staff report, conducts a public hearing, and makes a formal recommendation to the BoCC.
  - (3) *Board of county commissioners (BoCC).* The BoCC reviews the application/request, reviews the department staff report, reviews LPA recommendation and findings, conducts a public hearing, and takes final action.
- (d) *Result.* Type 3 reviews will result in a written determination.
- (e) *Appeal process and authority.* Type 3 review decisions may be appealed per Table 138-77 and per section 134-14.
- (f) *Review procedures.*
- (1) The applicant shall file a formal application with the applicable department as determined by the county administrator.
    - a. The application shall include, at a minimum:
      1. Applicant, owner, and property information.
      2. Description of the request.
      3. A conceptual plan or drawing illustrating the request, if applicable. Plans shall be drawn to scale and show the property boundaries, proposed improvements, and connections to the roadway system.
    - b. The following Table 138.83.a, Type 3 Review Procedure, outlines the general review procedures for Type 3 submittals.

<b>Table 138.83.a — Type 3 Review Procedure</b>
<i>Applications/Reviews</i>
<ul style="list-style-type: none"> <li>■ Type 3 uses — establishment of new or major modifications <ul style="list-style-type: none"> <li>■ Variances that are a part of a new or major expansion of a Type 3 use.</li> <li>■ Development Agreements</li> <li>■ Development master plans or similar or major modifications thereof</li> <li>■ Zoning Atlas Changes</li> <li>■ Land Development Code text amendments</li> <li>■ Other authority allowed by this Code</li> </ul> </li> </ul>
↓
<i>Pre-Application Meeting (optional)</i> <b>County Staff</b>
↓
<i>Review and Analysis Body</i> <b>Development Review Committee (DRC)</b>
↓
<i>Recommendation Body</i> <b>Local Planning Agency (LPA)</b>
↓
<i>Review and Action Body</i> <b>Board of County Commissioners</b> <b>** Two BoCC hearings may be required based on request type pursuant to State Statutes</b>
↓
<i>Result</i>
<ul style="list-style-type: none"> <li>■ Written Notice of official action</li> </ul>
↓
<i>Appeal Process</i>
<ul style="list-style-type: none"> <li>■ Circuit Court</li> </ul>

**Sec. 138-84. Type 4 review.**

- (a) *Purpose.* Type 4 review is a public hearing process to consider changes to the comprehensive plan. A Type 4 process requires the board of county commissioners (BoCC) to determine the

appropriateness of certain applications/requests based on the comprehensive plan, the countywide rules, and other sound community planning practices.

- (b) *Application types.* A Type 4 review is required for the following applicable types:
  - (1) *Comprehensive plan amendments.*
  - (2) Zone changes and Land Development Code text amendments that are processed concurrent with an associated comprehensive plan amendment.
- (c) *Performed by.* Type 4 review is performed by the following authorities:
  - (1) *Development review committee (DRC).* The DRC reviews the application/request, , and provides information and analysis to staff to assist in writing a staff report to the local planning agency (LPA).
  - (2) *Local planning agency (LPA).* The LPA reviews the application/request, conducts a public hearing, and makes a formal recommendation to the BoCC.
  - (3) *Board of county commissioners (BoCC).* The BoCC reviews the application/request, department staff report, reviews LPA recommendation and findings, conducts a public hearing, and takes final action whether to change the Pinellas County Comprehensive Plan and/or Future Land Use Map.
  - (4) *Countywide planning authority (CPA).* The BoCC, in its role as the CPA, reviews Comprehensive Plan amendments when the request will require changes to the countywide land use plan. Where authorized by the countywide rules, the CPA reviews the application/request, reviews staff reports and recommendations, conducts a public hearing, and takes final action pertaining to the countywide land use plan pursuant to the countywide rules.
- (d) *Result.* Type 4 reviews will result in a written determination.
- (e) *Appeal process and authority.* Type 4 review decisions may be appealed per Table 138-77 and per section 134-14.
- (f) *Review procedure.*
  - (1) The applicant shall file a formal application with the county.
    - a. The application shall include, at a minimum:
      - 1. Applicant, owner, and property information.
      - 2. Description of the request.

- b. The following Table 138.84.a—Level 4 Review Procedure, outlines the general review procedures for Type 4 submittals.

<b>Table 138.84.a — Level 4 Review Procedure</b>	
<p><b>Small-Scale Amendment(s)</b> <i>Applications/Reviews</i></p> <ul style="list-style-type: none"> <li>■ Small scale amendments as defined by the State</li> <li>■ Associated Zoning Atlas Changes (Review Type 3) may run concurrently</li> </ul>	<p><b>Expedited State Review Amendment(s)</b> <i>Applications/Reviews</i></p> <ul style="list-style-type: none"> <li>■ Comprehensive Plan amendments except for small scale and state coordinated review.</li> <li>■ Associated Zoning Atlas Changes and Land Development Code text amendments (Review Type 3) may run concurrently</li> </ul>
↓	↓
<p><i>Pre-Application Meeting (recommended)</i> <b>County Staff</b></p>	
<p><i>Review and Analysis Body</i> <b>Development Review Committee (DRC)</b></p>	<p><i>Review and Analysis Body</i> <b>Development Review Committee (DRC)</b></p>
↓	↓
<p><i>Recommendation Body</i> <b>Local Planning Agency (LPA)</b></p>	<p><i>Recommendation Body</i> <b>Local Planning Agency (LPA)</b></p>
↓	↓
<p><i>Pinellas County Adoption Hearing</i> <b>Board of County Commissioners (BoCC)</b></p>	<p><i>Pinellas County Transmittal Hearing</i> <b>Board of County Commissioners (BoCC)</b></p>
↓	↓
<p><i>Result ADOPTION HEARING</i></p> <ul style="list-style-type: none"> <li>■ Written Notice of official action</li> <li>■ If Denial, the request does not continue</li> </ul>	<p><i>Result TRANSMITTAL (1st) HEARING</i></p> <ul style="list-style-type: none"> <li>■ Written Notice of official action</li> <li>■ If Denial, the application does not continue</li> </ul>
<p><i>Countywide Planning Authority Hearing(*, (b))</i> <b>Countywide Planning Authority (CPA)</b></p> <p><i>*Required when involving changes to the Countywide Plan</i></p>	<p><i>Countywide Planning Authority Hearing(*, (b))</i> <b>Countywide Planning Authority (CPA)</b></p> <p><i>*Required when involving changes to the Countywide Plan</i></p>
↓	↓
<p><i>Transmit to State(a)</i> <b>State land planning agency</b></p> <p>Effective date 31 days after adoption if no challenges filed to the State</p>	<p><i>Transmit to State(a)</i> <b>State land planning agency</b></p>
↓	↓
↓	<p><i>Pinellas County Adoption (2nd) Hearing</i> <b>Board of County Commissioners (BoCC)</b></p>
↓	↓

	<p style="text-align: center;"><i>Result TRANSMITTAL HEARING</i>          ■ Written Notice of official action</p>
<p style="text-align: center;"><i>Notes:</i></p> <p><i>a. Type 4 Comprehensive Plan amendments involve and require certain coordination with the State of Florida subject to state statutes.</i></p> <p><i>b. All Comprehensive Plan amendments that required amendments to the Countywide Plan shall be contingent upon the approval of the necessary amendments to the Countywide Plan and compliance with also secure approval pursuant to the Countywide Rules. This may affect the Type 4 process.</i></p> <p><i>c. Appeals may be sought pursuant to section 138-84 (e).</i></p>	

**Sec. 138-177. Site plan approval procedures.**

(a) *Site plans.*

- (1) A site plan shall be reviewed as a Type 1 — Path B review.
- (2) The site plan shall be provided to demonstrate full compliance with the provisions of the Code and any condition imposed by any decision-making authority for the use. The site plan shall include the items and information listed in section 138-178—Site plan requirements.

(b) *Site plans for affordable housing developments (AHDs).*

- (1) It is the intent of the board of county commissioners that these plans shall be given priority in the review system.
- (2) County Staff shall provide an expeditious review of these plans.

(c) *Site plans for economic development projects.* Economic development projects that are identified to be a priority by the board of county commissions shall be expedited in the review process.

**Sec. 138-178. Site plan requirements.**

(a) *Site plan set.* A site plan shall be provided as a set of documents per county procedures and departmental checklist.

(b) *Site plan set preparation.* Site plan elements shall be prepared by:

- (1) Property surveys and new legal descriptions shall be prepared by a licensed professional surveyor to conduct work in the State of Florida.
- (2) Development plans, grading plans, utility plans and similar plans shall be prepared by an appropriate professional licensed to conduct work in the State of Florida.

- (c) *Approved site plan.* After receiving site plan approval, the applicant shall submit updated copies of the site plan, containing all data and information required as follows, to the designated county department:
  - (1) Final site plans, development designs, reports, or similar items that reflect staff's written determination.
  - (2) A notice of intent (NOI) issued by the Florida Department of Environmental Protection (FDEP) for activities regulated under the National Pollutant Discharge Elimination System (NPDES) program or as amended.
  - (3) A statement from the servicing utility companies which supply water, sewer, and electric service indicating that the utility is available for the proposed development. If water or sewer is not available, the County health department must approve potable water and/or septic tank design, where applicable, before a development approval can be recommended. Land shall not be subdivided into parcels less than two acres when septic would be the only means of waste disposal.

**Sec. 138-230. Generally.**

- (a) An applicant may seek relief, deviations, and/or adjustments from the dimensional and technical provisions of this Code as a variance, waiver and/or administrative adjustment; these are further described in individual sections of this division. Variances require a public hearing, and waivers and administrative adjustments require a department review..
- (b) A variance, waiver and/or administrative adjustment may not be granted to the following:
  - (1) Density and intensity limitations of the Code and the Comprehensive Plan.
  - (2) Land usage restrictions of the Code and the Comprehensive Plan.
  - (3) Review and procedural requirements of Code.
  - (4) State and federal rules, regulations, and standards.
- (c) *Required information.* These requests must be submitted to include the following information:
  - (1) A proposed site development diagram (concept plan) drawn to scale.
  - (2) An accurate survey of the subject site and adjustment properties.
  - (3) A written explanation and justification of the requested variance, waiver, and/or administrative adjustment.
  - (4) A written response for each of the criteria for granting of variances, waivers and/or administrative adjustment as listed in this division.

- (5) Other supplementation information as required by the county administrator or designee.
- (d) *Initiation of construction.* A variance, waiver and/or administrative adjustment issued under the provisions of this division shall automatically expire within two years from the date of granting such approval if construction of the project has not commenced and continued in good faith. All site plans must be approved and development orders must be final; and the granting of any variance, waiver, and/or administrative adjustment shall not be deemed as automatic approval for any such permit or site plan required.
- (e) *Extensions.* The county administrator or designee may grant an extension of up to one year upon a showing of good cause, provided the request for extension is submitted in writing stating the reason for extension and is received prior to the expiration of the variance, waiver and/or administrative adjustment.
- (f) *Expiration.* Variance, waivers, and administrative adjustment approvals shall automatically expire in the event a subject structure is removed from the site or a subject use is discontinued for a period of 180 consecutive days.
- (g) Economic hardship shall not be a justifiable reason for granting a variance, waiver or administrative adjustment.

**Sec. 138-235. Variances.**

- (a) *Purpose.* A variance is a request to lessen or remove certain dimensional standards of the Code for a particular property or structure. A variance is reviewed in a public hearing setting by the board of adjustment and appeals (BAA) or the board of county commissioners (BoCC). Action shall be determined by the reviewing authority.
- (b) *Variances allowed.* Subject to the criteria of this division, the BAA and/or BoCC may grant the following variances to the Code:
  - (1) Zoning district dimensional requirements including lot size, setbacks and building height.
  - (2) Parking requirements including parking quantity, dimensions, access, and location.
  - (3) Landscaping and tree preservation requirements including plant quantity, size, species, and location.
  - (4) Sign requirements including size, location, and quantity.
  - (5) Fence requirements and limitations including height, materials, location, and size.
  - (6) Building requirements and limitations including size, materials, facade treatment/design, and location. This shall not be allowed where the comprehensive plan imposes limitations including, but not limited to, floor area ratios and impervious surface ratios.



- (7) Other structural requirements including height, location, size, and materials.
- (8) Design criteria for any zoning district.
- (9) Specific use standard(s) within Chapter 138 Article IX for any land use that relate to numerical/dimensional requirements or design criteria within Article IX or Article X Division 6 of Chapter 138.
- (10) Alcohol sales distance limitation standards. This shall not be allowed to conflict with state requirements.
- (11) Animals and livestock standards.
- (12) Other similar requirements of the Code. However, variances pertaining to ADA standards are not permitted.
- (13) Review of variances related to Chapter 154 Article II Section 154-52 Pinellas County Stormwater Manual are delegated to a Special Magistrate retained via contract with Pinellas County.

(c) *Variance review.* Variances shall be reviewed pursuant to the following:

- (1) Variances may be processed as a Type 2 review. The BAA shall have the authority to review and take action on any variance.
- (2) Variances may be processed as a Type 3 review under certain situations. The BoCC shall have the authority to take action on any variance that is a part of the following:
  - a. The establishment of a new Type 3 use; and/or
  - b. Development agreements.

**Sec. 138-236. Variances from floodplain standards.**

- (a) *Purpose.* The intent is to provide a means to seek relief and/or flexibility to the county's floodplain standards of chapter 158 based on unique situations, hardships, and alternative development strategies.
- (b) *Floodplain standards variances allowed.* The permitted variances to floodplain standards are established in chapter 158 of the Pinellas County Code.
- (c) *Floodplain standards variance review.* Variance to floodplain regulations shall be reviewed by the a Special Magistrate retained via contract with Pinellas County pursuant to Chapter 158 Division 7 of the Pinellas County Code.

**Sec. 138-237. Waivers and administrative adjustments.**

- (a) *Purpose.* There are situations that require flexibility to technical standards, dimensional standards, district design criteria, and/or specific use standards to respond to unique site conditions and/or existing conditions in the immediate vicinity. The waiver and administrative adjustment provisions are intended to allow an applicant to seek flexibility to certain code requirements and allow the county to administratively process and take action on said requests as a Type 1 review; the degree of the request will determine whether the application will follow a Path A or B review pursuant to subsection (d).
- (1) A waiver is an approved elimination of a particular technical standard based on a site constraint, and/or the ability to meet the intent by another means. Waivers generally have minimal or no impact on a neighboring property.
  - (2) An administrative adjustment is an approved adjustment or reduction to certain dimensional standards and/or technical requirements of the Code based on a site constraint, and/or the ability to meet the intent by another means. Administrative adjustments may have some impact on a neighboring property.
- (b) *Administrative adjustments.* Subject to the criteria and limitations of this division, the approval authority may grant the following administrative adjustments to the Code:
- (1) Zoning district dimensional requirements may be adjusted up to 20 percent; this may include adjustments to setbacks, building height, and building size. Building size is only applicable to accessory dwelling units and accessory residential structures.
  - (2) Parking and loading requirements may be adjusted subject the following limitations:
    - a. The minimum parking and/or loading quantity may be adjusted up to 20 percent or two stalls/spaces whichever is greater; this adjustment may not be permitted in addition to the other administrative reductions outlined in chapter 138, article X, division 2.
    - b. The minimum parking/loading dimensions may be adjusted up to 20 percent or two feet whichever is greater.
  - (3) Landscaping and tree preservation requirements may be adjusted up to 50 percent; this may include adjustments to plant quantity, plant size, buffer width, and location.
  - (4) Sign dimensional standards may be adjusted up to 20 percent; this is limited to adjustments to sign placement on the site and/or placement on a building.
  - (5) Fence requirements and limitations may be adjusted up to 20 percent or two feet whichever is greater; this is limited to adjustments to height, location, and size.
  - (6) Design criteria may be adjusted up to 20 percent; this is limited to adjustments to setbacks, building height, buffer width, façade treatment areas, and sidewalks.

- (7) Specific use standard(s) may be adjusted up to 20 percent; this is limited to adjustments to setbacks, building height, buffer width, façade treatment areas, and sidewalks.
  - (8) Roadway and transportation dimensional standards may be adjusted up to 20 percent; this is limited to adjustments to lane width, sidewalk widths, turnaround dimensions, and right-of-way widths.
  - (9) Stormwater design elements may be varied or adjusted to overcome site constraints or respond to existing development conditions in accordance with the Pinellas County Stormwater Manual. Stormwater dimensional requirements may be adjusted up to 20 percent.
  - (10) Construction standards and materials for sidewalks, roadways, driveways and similar elements may be varied and/or adjusted when alternative materials or methods are used that strengthen the district intent. Dimensional requirements may be adjusted up to 20 percent. Adjustments pertaining to ADA standards are not permitted.
- (c) *Waivers allowed.* Subject to the criteria and limitations of this division, the approval authority may grant the following waivers to the Code:
- (1) Site access standards and requirements may be waived to respond to site constraints and/or respond to existing development conditions.
  - (2) Sidewalk connections may be waived to respond to site constraints and/or respond to existing development conditions that would make the connections impractical or unsafe.
  - (3) Landscaping and buffering standards may be waived for specific areas on a site when other on-site vegetation is present and provides the same purpose. Landscaping standards may be waived for portions of a site to respond to government security and surveillance mandates.
  - (4) Construction elements for sidewalks, roadways, driveways, parking lots, and stormwater management facilities may be waived when comparable methods are proposed to meet the standard's original intent.
  - (5) Road frontage requirements may be waived so long as legal access is available. A waiver may be granted where roadway frontage constraints exist due to existing property configurations and the inability to combine with or connect to adjacent properties. The provisions of section 138-3503 shall be considered for road frontage waiver requests.
  - (6) Other similar technical standards as determined by the county administrator or designee. However, waivers pertaining to ADA standards are not permitted.
- (d) *Waivers and administrative adjustment review.* Waivers and administrative adjustments may be processed as a Type 1 review subject to the following:

- (1) Type 1—Path A: Department review procedure is allowed for the following:
  - a. Waivers
  - b. Administrative adjustments up to ten percent of a dimensional standard.
  - c. Administrative adjustments up to 30 percent of landscape standards.
- (2) Type 1—Path B: County Administrator or his or her designee Review procedure is required for the following:
  - a. Administrative adjustments from 10 percent to 20 percent of a dimensional standard.
  - b. Administrative adjustments from 30 percent to 50 percent of landscape standards.

**Sec. 138-252. Notice requirements.**

Notice shall be provided pursuant to the following.

- (a) Type 2 reviews shall provide internet website notice, mail notices, and posting signs for the BAA meeting.
- (b) Type 3 and 4 reviews shall provide internet website notice, mail notices, newspaper advertisements per Florida State Statute requirements, and posting signs for the LPA and BOCC meetings.
- (c) Type 5 reviews shall provide notice as required by Florida State Statutes.
- (d) All notices pertaining to legislative actions or other actions regulated by Florida State Statutes shall be conducted in accordance with Florida State Statutes or as amended. All other required notices shall occur ten days prior to hearings.
  - (1) For mailing notices, the required notice shall be based on the postmark date.
  - (2) For newspaper advertisements, the required notice shall be based on the publish date.

**Sec. 138-253. Notice types.**

The notice types that may be required in this Code are listed in this section. Certain actions, hearings, and procedures require specific notice types as defined in section 138-252, notice requirements. Where a specific notice type is required, it shall be implemented as listed below.

- (a) *Internet website notice.* Notice of the requested action, hearing, and/or procedures shall be posted on the Pinellas County website in a designated section of the website as

determined by the county administrator or designee and as required by Florida State Statutes.

- (b) Newspaper advertisements, if required, shall comply with Florida State Statutes.
- (c) *Mail notice.* Notice shall be mailed to surrounding property owners as prescribed in this subsection. All notice to affected property owners shall be per the Florida Statutes.
  - (1) Notice for variance(s) — Mail notices shall be sent to property owners within at least 250 feet of the subject property requesting the variance.
  - (2) Notice for all other actions, hearings, and procedures — Mail notices shall be sent to property owners within at least 250 feet of the subject property.
  - (3) Notice pertaining to legislative actions shall be conducted in accordance with Florida State Statutes or as amended.
- (d) *Posting sign.* A sign shall be posted on the subject property requesting the action, hearing, and/or proceeding. Posting signs are subject to the following standards:
  - (1) Size posting signs shall be a minimum of 18 inches by 24 inches.
  - (2) Legibility text shall be clearly legible and of a contrasting color from the background.
  - (3) Location signs shall be posted along public and private street frontages. For large-area cases involving multiple properties signs may be posted at strategic locations but need not be placed on all affected properties.

**Sec. 138-3250. Model dwelling units and pre-construction sales offices.**

- (a) *Purpose.* Model dwelling units are intended to showcase future residences and/or units that are available for purchase or lease within the development. Pre-construction sales offices are intended to host the real estate transaction for homes, units, and/or properties available within the development. These uses are intended to be allowed on a temporary basis and solely for the sales and marketing of the units within the development.
- (b) *Applicability.* The provisions of this section shall apply to model dwelling units, pre-construction, and their associated elements.
- (c) *Standards.*
  - (1) Model dwelling units may be allowed as an accessory use in any district for the purpose of displaying and marketing the development, project, or subdivision in which such uses are to be located.

- (2) Authorization for a temporary use and structure shall only be granted after the filing of an approved site plan. This may be approved as part of a Type 1 review for the development in which the model dwelling units and/or pre-construction sales office is located.
- (3) A maximum of four model dwelling units may be permitted within each development.
- (4) The model dwelling unit shall meet all district requirements for lot and yard dimensions.
- (5) The sales office, if not in a model dwelling unit, shall not exceed 750 square feet and is an accessory use on the same property. It shall only be used by the developer team and shall only be used in connection with the development in which located.
- (6) Model dwelling units and signs shall not be illuminated after 9:30 p.m. and shall not be used for any business activity after 10:00 p.m.
- (7) Model dwelling units shall not be occupied as a personal residence until such time the commercial operations cease and the land in which it is located is platted.
- (8) Model dwelling units shall not be used as a means to sell similar homes for a period longer than two years. The Building and Development Review Services Director may grant an extension for a period not to exceed an additional two years from the date the certificate of occupancy for the model dwelling unit was issued.
- (9) These regulations shall not apply to a home displayed as a model dwelling unit for less than three months, where no accessory office is erected.

**Sec. 138-3352. Non-traditional pets.**

- (a) *Purpose.* There may be some situations where an individual desires to keep or possess an animal species that is not otherwise addressed by this Code. There should be an opportunity to pursue special approval to keep such animals (e.g., pot-bellied pig, pygmy goat or marmoset) where appropriate, safe, and adequate site conditions exist.
- (b) *Applicability.* This section shall apply to individuals that wish to request approval to keep an animal species that is not otherwise addressed by this Code.
- (c) *Standards.*
  - (1) An applicant may seek approval to keep, board, and/or possess non-traditional pets, subject to a Type 1 Path B review.
  - (2) State and federal restrictions on certain species shall supersede any county approval.
  - (3) The approval of the non-traditional pet shall be assigned to a specific individual AND to an exact parcel of land for habitation.

**SECTION 3.** Chapter 142 of the Pinellas County Land Development Code is hereby amended as set forth below. This ordinance does not repeal and replace Chapter 142. The only section(s) of Chapter 142 being amended are those with revisions reflected herein. Sections of Chapter 142 not included herein remain in full force and effect.

## **CHAPTER 142**

### **Sec. 142-36. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Cross references to F.S. ch. 333 Zoning, are provided where applicable:

*Aeronautical study* means a Federal Aviation Administration study, conducted in accordance with the standards of 14 C.F.R. Part 77, subpart C, and Federal Aviation Administration policy and guidance, on the effect of proposed construction or alteration upon the operation of air navigation facilities and the safe and efficient use of navigable airspace. (F.S. § 333.01)

*Airport* means any area of land or water designed and set aside for the landing and taking off of aircraft and used or to be used in the interest of the public for such purpose (F.S. § 333.01). Specific to this chapter, airport means the St. Pete-Clearwater International Airport.

*Airport elevation* means the established elevation of the highest point on the usable landing area, as measured in feet above mean sea level.

*Airport hazard* means an obstruction to air navigation which affects the safe and efficient use of navigable airspace or the operation of planned or existing air navigation and communication facilities and for which no person has previously obtained a permit or variance.

*Airport land use compatibility zoning* means airport zoning regulations governing the use of land on, adjacent to, or in the immediate vicinity of airports. (F.S. § 333.01)

*Airport layout plan* means a set of scaled drawings that provide a graphic representation of the existing and future development plan for the airport and demonstrate the preservation and continuity of safety, utility, and efficiency of the airport.

*Airport master plan* means a comprehensive plan of an airport which typically describes current and future plans for airport development designed to support existing and future aviation demand. (F.S. § 333.01)

*Airport protection zoning regulations* means airport zoning regulations governing airport hazards. (F.S. § 333.01)

*Airport reference point* means the point established as the approximate geographic center of the airport landing area and so designated.

*Avigation easement* means a covenant running with the land in which the property owner grants to the county the right to use the airspace above the owner's property and to create noise normally associated with aircraft operation without liability.

*Board of adjustment and appeals* means a board consisting of seven members of the appointed in accordance with the terms of chapter 138, to hear and decide upon variances.

*CFR* is the Code of Federal Regulations.

*Clearance determination* is a determination based upon the standards herein, made by the airport director or designee in conjunction with development review services prior to the issuance of any development or use authorization, that the proposed development or use would not intrude into any airport zone as defined within this regulation. Local clearance determinations shall be based upon FAA Determinations which are issued following an FAA Obstruction Evaluation for one or more natural or manmade objects.

*Day-night average sound level (DNL)* is the cumulative average sound levels in decibels (dB) over a 24-hour period, and symbolized L(dn), as measured in accordance with FAR Part 150 and FAA Orders #1050.ID and #5050.4A.

*Development review committee* means the body defined in section 138-64 of this Code.

*Educational facility* means any structure, land, or use that includes a public or private kindergarten through 12th grade school, charter school, magnet school, college campus, or university campus. The term does not include space used for educational purposes within a multi-tenant building.

*FAA* is the Federal Aviation Administration, a division of the U.S. Department of Transportation.

*FAR* is the Federal Aviation Regulations, Title 14, Code of Federal Regulations. FAR Part 77 is entitled "Objects Affecting Navigable Airspace." FAR Part 150 is entitled "Airport Noise Compatibility Planning."

*Height.* For the purpose of determining the height limits in all zones set forth in this article and shown on the zoning map, the datum shall be mean sea level elevation unless otherwise specified.

*Landing area* means the area of the airport used for the landing, takeoff or taxiing of aircraft.

*Nonconforming use* means any structure, tree, or use of land which is lawfully in existence at the time the regulation is prescribed or an amendment thereto becomes effective and does not then meet the requirements of such regulation.

*Obstruction* means any existing or proposed manmade object or object of natural growth or terrain that violates the standards contained in 14 C.F.R. part 77, subpart C. The term includes:



- (a) Any object of natural growth or terrain.
- (b) Permanent or temporary construction or alteration, including equipment or materials used and any permanent or temporary apparatus.
- (c) Alteration of any permanent or temporary existing structure by a change in the structure's height, including appurtenances, lateral dimensions, and equipment of materials used in the structure.

*Person* means any individual, firm, copartnership, corporation, company, association, joint-stock association, or body politic, and includes any trustee, receiver, assignee, or other similar representative thereof.

*Runway* means the paved surface of an airport landing strip.

*Structure* means any object, constructed or installed by man, including, but without limitation thereof, buildings, towers, smokestacks, utility poles and overhead transmission lines.

*Substantial modification* means any repair, reconstruction rehabilitation, or improvement of a structure when the actual cost of the repair, reconstruction, rehabilitation, or improvement of the structure equals or exceeds 50 percent of the market value of the structure.

*TERPS* means United States Standard for Terminal Instrument Procedures for arriving and departing aircraft as established by the Federal Aviation Administration.

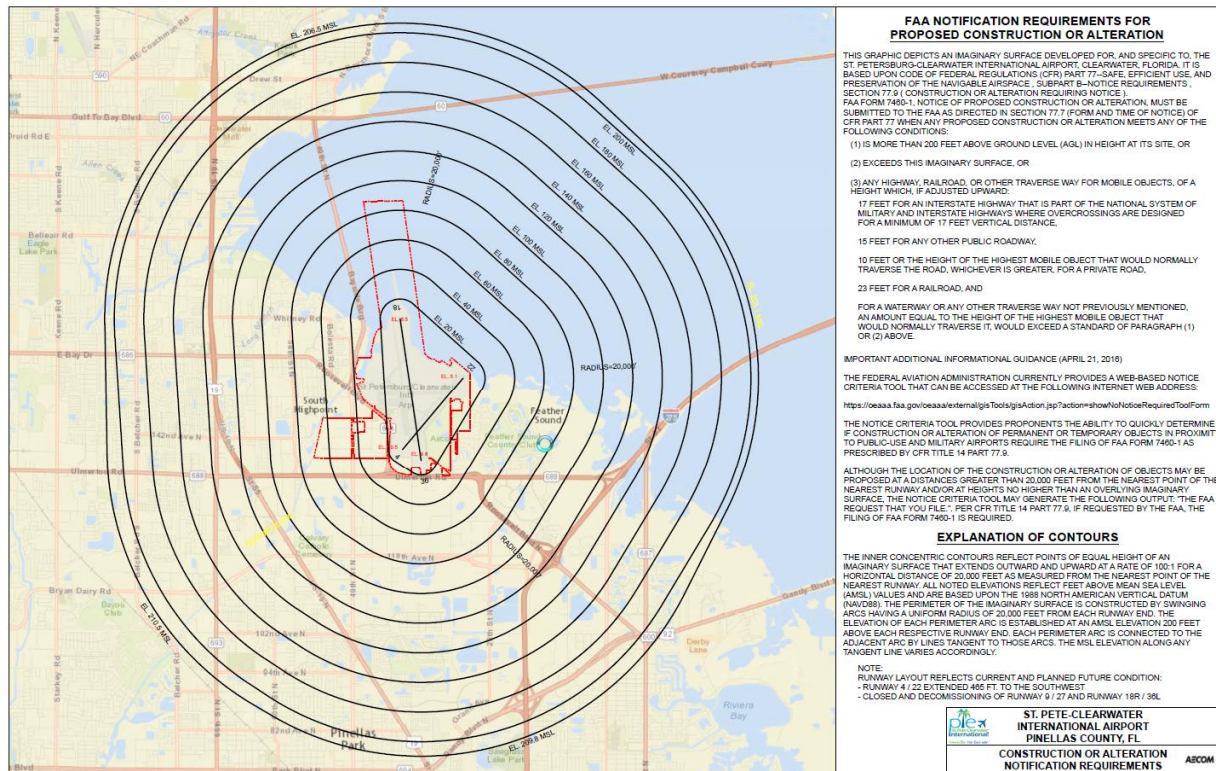
*Tree* includes any plant of the vegetable kingdom.

**Sec. 142-38. Permitting and FAA determinations (clearances).**

- (a) It shall be the duty of the development review services department in conjunction with the airport director to administer and enforce the regulations prescribed in this article. Applications required by this article shall be promptly considered and granted or denied. Applications for variances for action by the Board of Adjustment and Appeals (BAA) shall be promptly transmitted to the development review services department for review and action by the BAA.
- (b) Within the PIE airport hazard area (exhibit A), except as otherwise provided in these regulations, no existing or proposed structure, or object of natural growth may be developed, constructed, established, enlarged, substantially altered or repaired, approved for construction, planted, allowed to grow, be replanted or issued a natural resource permit or building permit at a height that would be higher than the lowest overlying CFR Part 77 or TERPS surface (exhibit B). The heights for objects and overlying surfaces are computed using feet above mean sea level (MSL) values referencing the North American Vertical Datum 1988 (NAVD 88) Vertical Datum, unless otherwise specified.
- (c) Penetrations of any overlying CFR Part 77 Civil Airport Imaginary Surface or TERPS Surface will require an FAA Aeronautical Study and FAA-generated Determination.

- (d) Any existing or proposed structure or object of natural growth that exceeds the standards defined in section 142-37 is presumed to be a hazard to air navigation unless an obstruction evaluation study conducted by the FAA determines otherwise. Any structure or object of natural growth in violation of these standards shall be evaluated by the FAA to determine if the structure or object of natural growth has substantial adverse effect on navigable airspace affecting airport operations. This FAA Determination may be any one of the following FAA-issued Determinations following an FAA Obstruction Evaluation for one or more natural or man-made objects studied:
- (1) "Determination of Hazard To Air Navigation";
  - (2) "Does Not Exceed";
  - (3) "Exceeds But Okay";
  - (4) "Notice of Presumed Hazard";
  - (5) "Determination of No Hazard"; or
  - (6) "Determination of Hazard".
- (e) Based upon the FAA's determination regarding and proposed construction or alteration of structures, the airport director in conjunction with development review services, prior to the issuance of any development or use authorization, must concur that the proposed development or use would not intrude into any airport zone as defined within this regulation.

## Exhibit B Airport Imaginary Surfaces/FAA Notifications



- (f) It shall be the responsibility of the applicable permitting department of each governing political subdivision to ensure that applicants applying for permitting of such objects comply with the FAA notice provisions of this section, collect documentation of such filing, and transmit notices to the Pinellas County Director of Development Review Services for additional consideration by the airport director.

### Sec. 142-43. Variances.

- (a) The Pinellas County Board of Adjustment and Appeals (BAA) established under chapter 138, article II, division 2 shall have and exercise the following powers:
- (1) To hear and decide appeals from any order, requirement, decision or determination made by the development review services department, or the airport director or designee in the enforcement of this article;
  - (2) To hear and decide specific variances related to the enforcement of this article.
- (b) *Variances.* Any person desiring to erect or increase the height of any structure, or permit the growth of any tree, or use his property not in accordance with the regulations prescribed in this article, may apply for a variance from such regulations. Such a variance shall be heard by the Board of Adjustment and Appeals. Such variances may only be allowed where it is

duly found that a literal application or enforcement of this article would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but will do substantial justice and be in accordance with the spirit of this article. In determining whether to issue or deny a variance, the board of adjustment and Appeals shall consider:

- (1) The nature of the terrain and height of existing structures.
- (2) Public and private interests and investments.
- (3) The character of flying operations and planned developments of airports.
- (4) Federal airways as designated by the Federal Aviation Administration.
- (5) Whether the construction of the proposed structure would cause an increase in the minimum descent altitude or the descent height at the affected airport.
- (6) Technological advances.
- (7) The safety of persons on the ground and in the air.
- (8) Land use density.
- (9) The safe and efficient use of navigable airspace.
- (10) The cumulative effects on navigable airspace of all existing structures, proposed structures identified in the applicable jurisdictions' comprehensive plans, and all other known proposed structures in the area.
- (11) The need for the establishment of an aviation easement.

**Sec. 142-44. Appeals.**

- (a) Any person aggrieved, or any taxpayer affected, by any decision of the development review services department or the airport director or designee made in its administration of this article, if of the opinion that a decision of the development review services department, or the airport director or designee is an improper application of these regulations, may appeal to the board of adjustment and appeals.
- (b) All appeals must be taken within a reasonable time as provided by the rules of the board of adjustment and appeals, by filing with the agency from which the appeal is taken and the board of adjustment and appeals a notice of appeal specifying the grounds thereof. The agency from which the appeal is taken shall forthwith transmit to the board of adjustment and appeals all the papers constituting the record upon which the action appealed from was taken or properly certified copies thereof in lieu of originals as the agency involved may elect.

- (c) An appeal shall stay all proceedings in furtherance of the action appealed from unless the agency from which the appeal is taken certifies to the board of adjustment and appeals, after notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion, cause imminent peril of life or property. In such cases, proceedings shall not be stayed otherwise than by an order of the board of adjustment and appeals on notice to the agency from which the appeal is taken and on due cause shown.
- (d) The board of adjustment and appeals shall fix a reasonable time for hearing appeals, give public notice and due notice to the parties in interest, and decide the appeal within a reasonable time. At the appeal hearing any party may appear in person or by agent or attorney.
- (e) The board of adjustment and appeals may, in conformity with the provisions of this article, reverse or affirm, wholly or partly, or modify, the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the administrative agency from which the appeal is taken.

**SECTION 4.** Chapter 154 of the Pinellas County Land Development Code is hereby amended as set forth below. This ordinance does not repeal and replace Chapter 154. The only section(s) of Chapter 154 being amended are those with revisions reflected herein. Sections of Chapter 154 not included herein remain in full force and effect.

#### **Chapter 154**

##### **Sec. 154-127. Location and width.**

- (a) The location and width of all streets shall conform to the comprehensive plan or as required per this division.
- (b) New subdivision streets shall not be allowed adjacent to the rear of existing lots of record unless no other practical alternative exists as determined by the County Administrator or his or her designee.

**SECTION 5.** Chapter 158 of the Pinellas County Land Development Code is hereby amended as set forth below. This ordinance does not repeal and replace Chapter 158. The only section(s) of Chapter 158 being amended are those with revisions reflected herein. Sections of Chapter 158 not included herein remain in full force and effect.

#### **Chapter 158**

##### **Sec. 158-111. General.**

The county administrator or designee shall designate a Special Magistrate retained under contract with Pinellas County to hear and decide on requests for appeals and requests for variances from the strict application of this chapter. Pursuant to F.S. § 553.73(5), the Special Magistrate shall hear and decide on requests for appeals and requests for variances from the strict application of

the flood-resistant construction requirements of the Florida Building Code. This section does not apply to section 3109 of the Florida Building Code, Building.

**SECTION 6. Severability and Scrivener's Errors.** If any section, subsection, sentence, clause, phrase, or provision of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such holding shall not be construed to render the remaining provisions of this Ordinance invalid or unconstitutional. Any scrivener's errors unrelated to the substantive application and enforcement of this ordinance may be amended prior to codification.

**SECTION 7. Inclusion in Code.** The provisions of this Ordinance shall be included and incorporated in the Pinellas County Land Development Code, as an amendment thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Pinellas County Land Development Code.

**SECTION 8. Filing of Ordinance; Effective Date.** Pursuant to Section 125.66, Florida Statutes, a certified copy of this Ordinance shall be filed with the Department of State by the Clerk of the Board of County Commissioners within ten (10) days after enactment by the Board of County Commissioners. This Ordinance shall become effective upon filing with the Department of State.

PCAO 464022

APPROVED AS TO FORM  
By: Derrill McAteer  
Office of the County Attorney