

ORDINANCE NO. 14-2006

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AMENDING CHAPTER 67 "THE LAND DEVELOPMENT CODE" ARTICLE II, TO CREATE NEW SECTION 67-42 TO BE ENTITLED "EXPIRATION OF LAND DEVELOPMENT APPROVALS"; AND TO CREATE NEW SECTION 67-43 TO BE ENTITLED "RECONSIDERATION AFTER DENIAL"; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ALL LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Lake Park, Florida ("Town") is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town Commission has adopted a Land Development Code which has been codified in Chapter 67 of the Code of Ordinances of the Town of Lake Park, and which includes in Article II, of that Code, provisions pertaining to platting, and development plan approvals; and

WHEREAS, Town staff has recommended to the Town Commission, that Sections 67-42 and 67-43 in Chapter 67, Article II be created to provide for specific time limitations on the validity of land development approvals and limitations on re-application for development approval after denial; and

WHEREAS, the Town Commission, after due notice and public hearings, deems it to be in the interest of the public health, safety and general welfare to amend the Town's Code to provide for time limitations for specific land development approvals.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA:

Section 1: The whereas clauses are hereby incorporated herein by reference as true and correct findings of the Town Commission.

Section 2. Chapter 67, Article II, Section 67-42 and 67-43 are hereby created to read as follows:

Sec. 67-42. Expiration of land development approvals.

(a) Intent and purpose. The intent and purpose of this section shall include:

(1) In conformity with, and in furtherance of, the purpose of F.S. Ch. 163, Part II, entitled "The Local Government Comprehensive Planning and Land Development Regulation Act" (hereinafter "the Act"), this section establishes and implements time limitations upon the initiation of development, to ensure that public facilities and services shall be available concurrent with the impacts of development. The provisions of this section ensure the efficient and equitable distribution of facilities and services to proposed developments, which due to their approval have necessarily caused the Town to reserve capacity for capital facilities, and to plan for the delivery of services to the proposed development within the time prescribed. In order to ensure that development has been initiated and is proceeding consistent with this section, the Town shall monitor and review approved building permits and other development orders, as defined in F.S. Ch. 163, to

ensure consistency with the intent and purpose of this section, the goals, objectives and policies of the comprehensive plan, and compliance with the act by:

a. Preserving the availability of public facilities and services for other proposed developments by removing capacity reserved for developments that do not meet the requirements of this section regarding the initiation of development;

b. Minimizing the creation of an inventory of residential, commercial and industrial development which is artificially inflated;

c. Enhancing the value and use of land within the Town by identifying and providing a system to eliminate obsolete approvals which distort the official land use inventory; and

d. Encouraging compliance with amended performance and site design standards by requiring all approved developments, which have not initiated construction or other development within 18 months, to thereafter conform with any development standards adopted or amended subsequent to the original development approvals.

(2) To ensure compliance with the conditions of development approval, and with specific time requirements for the completion of activities associated with approvals as provided within this chapter, provisions are hereby created to monitor the initiation and progress of development and to authorize the extension of previously-approved developments within the time frames established pursuant to this section.

(3) To require a property owner to initiate new development within the time limits specified herein.

(b) Variances and special exceptions that are associated with, or approved in

conjunction with a site plan, shall be subject to the same time limitations for development.

(c) All development orders and permits including variances and special exceptions shall be subject to the following regulations:

(1) Time limitation of approvals.

a. Unless otherwise provided in this section, the owner of record or authorized agent shall initiate the bona fide and continuous development of the property within 18 months from the effective date of development approval.

b. Such development shall be completed within 18 months from the effective date of initiation of development as defined herein, unless otherwise provided for in the original development order or unless the Town Commission grants an extension for completion of said development.

c. Requests for extension of the completion date shall follow the procedure outlined in Section 67-42 (d) herein.

(2) Accountability. It shall be the responsibility of the owner of record or authorized agent to monitor and adhere to the time limitations imposed by this section. Failure of the owner of record or authorized agent to request an extension prior to the expiration of the approval, shall render the development approval null and void if the time limitations are not complied with. In such instances, the owner of record or authorized agent shall be deemed to have waived the owner's right to seek an extension and shall be estopped from seeking any retroactive extensions of the time limitations imposed by subsection 67-42(c)(1) above.

(3) Notification. Notwithstanding that it is the owner's responsibility to monitor and adhere to the time limitations imposed by this section, the Department of Community Development may in its sole discretion and without further responsibility, provide the owner of record or authorized agent a written courtesy notice of the pending expiration of a development approval. This notification is not intended to supplement state law or to provide the property owner with a basis to allege that the owner's rights to due process rights have been violated, if the owner does not receive a courtesy notice.

(4) Initiation of development. Initiation of development shall include receipt of a Town engineering or building permit, and approval receipt of the first building inspection by the Community Development Department.

(5) Continuation of development. Following initiation of development, the owner of record must exhibit a good faith effort to continue development and shall be required, when requested by the Community Development Department, to produce evidence that development is continuing. The information listed below shall be evidence of good faith continuation of development:

a. Receipts indicating a regular scheduling of inspections by the building official. No more than 2 months shall elapse between scheduled inspections.

b. If continuation is delayed or stopped by other government agency review or approvals evidence of application for such reviews shall be submitted to the Department of Community Development by the owner of record or authorized agent.

c. Affidavit from the contractor, engineer or other professional associated with the proposed development certifying that construction is continuing.

(6) Items not considered initiation or continuation of development. These items may include, but are not limited to, those listed below.

- a. Dividing, subdividing or re-subdividing a parcel of land.
- b. Demolition of a structure.
- c. Removal of vegetation or clearing of land whether pursuant to an appropriate permit or not.
- d. Payment of impact fees, connection fees or other fees associated with obtaining development approval shall not individually indicate the initiation or continuation of development.
- e. Dedication of property for a public purpose, including but not limited to rights-of-way, conservation easements, etc.
- f. Performance of work by a highway or road agency or railroad company for the maintenance or improvement of a road or railroad track, if the work is carried out on land within the boundaries of the right-of-way.
- g. Performance of work by governmental agencies or utilities and other persons engaged in the distribution or transmission of gas or water, for the purpose of inspecting, repairing, renewing or constructing on established rights-of-way any sewers, mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks or the like.
- h. Performance of work for the maintenance, renewal, improvement or alteration of any structure, if the work affects only the interior or the color of the structure or the decoration of the exterior of the structure.

i. Utilization of any structure or land devoted to dwelling uses for any purpose customarily incidental to enjoyment of the dwelling.

j. Utilization of any land for the purpose of growing plants, crops, trees and other agricultural or forestry products, raising livestock, or for other agricultural purposes.

k. Implementation of a change in use of land or structure from a use within a class specified in an ordinance or rule to another use in the same class.

l. Implementation of a change in the ownership or form of ownership of any parcel or structure.

m. Creation or termination of rights of access, riparian rights, easements, covenants concerning development of land, or other rights in land.

(d) Extension of time limitation. The procedure described below shall govern the review of an application to extend the time limit for development approvals.

(1) Following the receipt of an application to extend a development approval, Town staff shall determine whether or not the application contains sufficient information to evaluate the need for an extension. The application shall be evaluated based upon the standards of subsection 67-42(e) below, as well as any other information staff determines to be relevant.

(2) Upon completing a review of the information submitted, staff may schedule the request for a time extension for consideration by the Town Commission. The Town Commission may grant time extensions, in increments of up to 6 months, to a previously-approved development order. However, in no event shall the sum total of any extensions

granted exceed 18 months. The time extension shall commence upon the date of the expiration of the previously-granted development approval.

(3) Any project which is subject to this section and which has received one or more development approval extensions, totaling 18 months or more, from the time of expiration of the originally-approved development order, shall not be eligible to apply for an extension of development approval pursuant to this section.

(4) Any project which has received one or more six-month extension, shall only be eligible to apply for an extension which does not exceed 18 months, including any extensions previously granted prior to the enactment of this section. However, any project approved prior to the enactment of this section, and which has not previously received an extension of development approval, may be eligible for one or more development extension approvals of up to a total of 30 months, provided the initial development approval and all time extensions do not exceed a total of 48 months.

(5) Any project which has received development approval prior to the enactment date of this section, and which is not eligible for an extension and has not initiated development, may initiate development only upon the determination by the Town Commission, that the owner or authorized agent has relied in good faith upon the previously-rendered development order as provided herein. In the event the Town Commission determines that based upon this good-faith reliance, the owner or authorized agent has made such a substantial change in position or incurred such extensive obligations and expenses pursuing the development, such that it would be unjust to deny the property owner the right to continue development, the Town Commission may

authorize the initiation of such development, the Town Commission may authorize the initiation of such development.

(6) At the discretion of the Director, the Department of Community Development may issue one 90-day administrative extension of a development approval expiration date, subject to the owner of record or authorized agent satisfying all criteria listed below:

a. The submission of a complete application for a request for extension of time received by the Town at least 60 calendar days prior to the expiration date of the development approval. An application fee of \$500.00 shall be required to apply for an administrative extension.

b. The owner of record or authorized agent has submitted an application for a building and/or engineering permit for the principal use or structure.

c. The Community Development Department has substantially completed its review of the building permit application and intends to issue a building permit and/or engineering permit within 60 calendar days.

d. The submission of all receipts evidencing payment of applicable fees to the Town for the following:

1. Plan review;

2. Building permit;

3. Engineering permit;

4. Fees associated with an executed potable water service agreement.

e. Information required to support an application for a development approval extension. The information listed below, at a minimum, shall serve as evidence of

an applicant's good faith effort to initiate development, and shall be required with each application for a development approval extension. The existence or non-existence of such information shall be the basis of reviewing the merits of each application.

(1) Affidavits from architects, engineers or other professionals associated with the proposed development, regarding the expenditure of funds for the preparation of building and engineering construction plans. Each affidavit shall be supported by written documentation such as the contract for hire, invoices paid-to-date and other supporting documents. The owner or authorized agent shall have substantially completed the engineering or building construction plans.

(2) If the development approval requires other local government agency reviews or approvals, evidence of application for applicable agency reviews or approvals and the receipt of such approvals or the status of a pending request, shall be submitted to the Department of Community Development by the owner of record or authorized agent.

(3) Receipt evidencing payment of all applicable fees to the Town Public Works Department, pursuant to an executed water service agreement between the developer and that department.

(4) Receipt evidencing payment of all applicable, outstanding plan review fees.

(5) In order to receive a time extension, the owner of record or authorized agent must provide a notarized statement together with the application for a

development extension approval, or send to the Town by certified mail, return receipt requested, a written agreement to comply with the minimum requirements of the various code provisions indicated below, as exist at the time of the application for the extension. These code provisions may include, but are not limited to:

- a. Landscaping regulations;
- b. Vegetation/environmental preservation regulations;
- c. Sign regulations;
- d. Off-street parking and loading regulations;
- e. Palm Beach County and Town of Lake Park traffic performance standards;
- and
- f. Town of Lake Park Comprehensive Plan.

(6) The owner of record or authorized agent, upon Town Commission approval of the request for an extension of the development approval, shall submit to the Department of Community Development within 90 calendar days of the approval of the extension, any revised documents, plans, analysis, studies, etc., as may be required to comply with the time extension approval of the Town Commission or the extension shall automatically be rendered null and void.

f. *Application requirements for extension of time.* The owner of record or authorized agent shall submit to the Department of Community Development, an application for a "request for extension" for all time extensions of development

approvals. The owner or authorized agent must submit a complete application together with the appropriate fee, to the Department of Community Development no later than 60 calendar days prior to the expiration date of the development approval.

Sec. 67-42 Reconsideration after denial.

An applicant must wait a period of 180 consecutive days before re-applying for a development order or variance which was the subject (in whole or in part) of an application for a development order, which was previously denied by the Town Commission or the Town Planning & Zoning Board in the case of a variance, whichever is the applicable body with jurisdiction. The change in the name of the applicant shall not create an exemption to the requirements of this section.

Section 3. Severability. If any section, subsection, sentence, clause or provision of this Ordinance is held invalid, the remainder of this Ordinance shall not be affected by such invalidity.

Section 4. Repeal of laws in conflict. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed to the extent of such conflict.

Section 5. Codification. The sections of the Ordinance may be made a part of the Town Code of Laws and Ordinances and may be renumbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section," "article," or any other appropriate word.

Section 6. Effective date. This Ordinance shall become effective immediately upon adoption.

