

Board of County Commissioners

Workshop Item

Date of Meeting: September 18, 2007
Date Submitted: September 13, 2007
To: Honorable Chairman and Members of the Board
From: Parwez Alam, County Administrator
Vincent Long, Assistant County Administrator
Wayne Tedder, Planning Department Director
David McDevitt, Growth and Environmental Management Director
Subject: Continuation of the July 10, 2007 Workshop Regarding Options for Amending the Regulations Governing Policy 2.1.9 and Limited Partition Subdivisions

Statement of Issue:

This is a request to conduct a workshop regarding the options for amending the regulations governing Policy 2.1.9 and limited partition subdivisions. This workshop is a continuation of the July 10, 2007 workshop on the same subject.

Background:

On April 10, 2007, the Board conducted a workshop evaluating increasing densities in the Rural Land Use Map category located within District One. During the workshop staff provided a presentation on major issues in changing the density in District One Rural lands from one unit per ten acres to one unit per three acres. Board discussion followed and included Policy 2.1.9 subdivisions. The Board directed staff to review Policy 2.1.9 subdivision requirements on a Countywide basis and bring back options for amending these requirements. At the May 22, 2007 regular Board meeting, staff presented an agenda item with options for amending Policy 2.1.9 subdivision regulations. At that time, the Board requested a workshop on the proposed Policy 2.1.9 changes and possible changes to remedy improper subdivisions. At the workshop, on July 10, 2007, the Board directed staff to prepare a Comprehensive Plan amendment for the 2007-2 amendment cycle to sunset non-family heir subdivisions on February 1, 2009; currently in process as PCT070207. The Board also directed staff to work on an administrative procedure that would help eliminate the creation of improper subdivisions, and bring back options regarding family-heir subdivisions, including simplifying the relevant Land Development Code language. Additional analysis was requested and the workshop continued to September 18, 2007. The following summarizes current Policy 2.1.9 subdivision regulations and explains the issue of improper subdivisions.

Analysis:

This analysis is separated into the two issues raised by the Board: the Section I addresses changes to the 2.1.9 process, while Section II addresses the limited partition process.

I. Policy 2.1.9 Family Heir and Non-family Heir Subdivisions

At present, Policy 2.1.9 of the Comprehensive Plan Land Use Element allows for the subdivision of property at a maximum density of two dwelling units per acre up to a maximum of six units within the following Land Use Map categories: Rural, Urban Fringe, Lake Talquin Recreation/Urban Fringe, and Residential Preservation Overlay (applied over one of the three previous categories located outside of the Urban Services Area).

The full text of this Policy applicable to the County is as follows:

Policy 2.1.9: [L] (Leon County) (Rev. Effective 4/18/02)

To avoid a disproportionate impact on owners of small parcels of property, each parcel of property in single ownership as of February 1, 1990, in the Urban Fringe, and Rural and Lake Talquin Recreation/Urban Fringe areas may be developed at a maximum density of two units per acre, for the first six dwelling units on such parcel, including existing dwelling units. Property owners who are not able to use the above provision because of date of ownership/acquisition, or if the provision would not allow for an adequate number of lots for a property owner who wishes to subdivide a parcel for family members, may convey a portion of that property to their heirs (as defined by Chapter 163.3179, F.S.) for the sole purpose as a homestead, notwithstanding the density or intensity of use assigned to the parcel in the plan.

Either provision may apply only once to any individual, and may not be used in combination. Any parcel created through use of the non-heir provision of this policy shall not be further divided using the heir provision. Neither provision may be used to create a lot which is smaller than 1/2 acre in size.

Comprehensive Plan amendment PCT070274 is in process, which sunsets the non-family heir Policy 2.1.9 provision on February 1, 2009. The proposed amendment also simplifies Comprehensive Plan language related to family heir Policy 2.1.9 subdivisions. The full text of this amendment can be found within the attached staff analysis on amendment PCT 070207 (Attachment 1).

Policy 2.1.9, as implemented within the Land Development Code, allows for both family heir and non-family heir subdivisions. However, the requirements for each type of Policy 2.1.9 Subdivisions are different. The Land Development Code also contains some provision for platted-unrecorded subdivisions that seek to ensure compatibility with surrounding lots. Another requirement stipulates that newly created parcels within platted-unrecorded subdivisions must be a minimum of four acres in size. The Code provides for a limited review process Policy 2.1.9 subdivision applications, allowing the County Administrator or designee the ability to approve the application, unless they are located along a canopy road, in which case a full Type B site and development plan is required.

The following explains the key difference between family heir and non-family heir subdivisions as well the relationship between the two:

Non-Family Heir Policy 2.1.9 Provisions: If the Policy 2.1.9 subdivision is used for unrelated individuals (non-family heir), it applies only once to a parcel that has been held in fee simple title and has been in single ownership since February 1, 1990.

Family Heir Policy 2.1.9 Subdivisions: For property owners desiring to divide property among family members (family heir), the property does not have to be one that has been held in fee simple title and in single ownership since February 1, 1990.

Using Family and Non-Family Heir Subdivisions Simultaneously is Currently Prohibited: If the non-family related 2.1.9 provision was already utilized previously the family heir provision cannot be used on the previously created parcels. This particular requirement - not being able to use both the standard non-family heir 2.1.9 process and the family heir 2.1.9 provisions to the same parcel- is also within the Comprehensive Plan. This means that if a property owner has already divided property and sold it to unrelated individual(s), they cannot again divide any of those new parcels and give or sell parcels to a family member.

The Board requested that staff provide clarification of the two types of 2.1.9 subdivision processes by separating them in the Code. Draft language is included in Attachment 2, for reference.

Policy 2.1.9 Family Heir Subdivision Alternatives

Section 163.3179 of the Florida Statutes provides some limitations related to family heir subdivisions, specifically, that family heir subdivisions can only "apply once to any individual." In addition, Section 163.3194 of the Florida Statutes also provides that "a development order or land development regulation shall be consistent with the comprehensive plan if the land uses, densities or intensities, and other aspects of development permitted by such order or regulation are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government."

Below are three alternative Code changes that have been considered by staff to address the problems identified by the Board in regards to the family heir portion of Policy 2.1.9. Each alternative contains subsections describing any recommended policy changes or codifications of current administrative processes. All of the alternatives below would include the draft Code language, in Attachment 2 that would separate family heir from non-family heir subdivisions. In addition, all below options would sunset the non-family heir Policy 2.1.9 provision on February 1, 2009, consistent with the current Comprehensive Plan amendment text.

ALTERNATIVE 1, Policy 2.1.9: Establish clear restrictions on 2.1.9 family heir subdivisions

This option provides clarifying language and creates limitations on sale to non-family members, adds eligibility restrictions, and limits to the number of times the provision can be used.

- A. Date of Parcel Creation
 - Add a date of parcel creation (e.g. February, 1990), limiting the use to lots existing at the time of the Comprehensive Plan adoption.
- B. Eligibility
 - Limit use to once per parent parcel
 - Clarify that 2.1.9 family heir subdivision can be used only once per individual; *maintains current practices.*
 - Add language that clarifies that trusts, probates, etc. are not eligible; *maintains current practices.*
- C. Applicability
 - Prevent usage in recorded or unrecorded subdivisions
- D. Lot Size
 - No lot created shall have less than 1/2 acre buildable land; *maintains current practices.*
- E. Environmental Requirements
 - Clarify that lots created must meet all environmental regulations (EMA) and Code provisions; *maintains current practices.*
- F. Compatibility
 - *No change* [prevention of use in subdivisions negates any need for a compatibility test]
- G. Limitations on sale
 - Restrict deed or record affidavit so that lots created using the family-heir Policy 2.1.9 provision cannot be sold to unrelated individuals for a specified time period, e.g. 5 years

Advantages

- Provides for decreased usage of the Policy 2.1.9 provision and promotes growth where infrastructure is available.
- Creates a disincentive to divide properties among family members for immediate sale to unrelated individuals.
- Maintains character of previously recorded and unrecorded subdivisions.
- Codifies some existing practices (environmental limitations, eligibility, and prohibition in recorded subdivisions) and limits others (parcel creation date, sale restrictions, and prohibition in unrecorded subdivisions).

Disadvantages

- Implementation of deed restrictions or sale affidavits may be difficult.

ALTERNATIVE 2, Policy 2.1.9: Codify current processes for 2.1.9 family heir subdivisions

This option provides clarifying language that codifies current practices, in addition to limiting the use of 2.1.9 to once per parent parcel and provides for compatibility measures.

- A. Date of Parcel Creation
 - *No restriction; maintains current practices.*
- B. Eligibility
 - Adds language to the Code whereby lots as small as 1/2 acre are allowed, up to the number of family members, secured by affidavit; *maintains current practices.*
 - Limit use to once per parent parcel; *maintains current practices.*
 - Add language so that someone to who has benefited from a 2.1.9 subdivision can use the process on a parcel unrelated to the original parcel. This means that you can still use the 2.1.9 process if you benefited from a relative's use of the process via sale or gift, so long as the subject parcel was not part of the original parcel.
 - Add language that clarifies that trusts, probates, etc. are not eligible; *maintains current practices.*
- C. Applicability
 - Prevent usage in recorded subdivisions, allow in unrecorded subdivisions; *maintains current practices.*
- D. Lot Size
 - Adds language to the Code whereby no lot created shall have less than 1/2 acre buildable land; *maintains current practices.*
- E. Environmental Requirements
 - Clarify that lots created must meet all environmental regulations (EMA) and Code provisions; *maintains current practices.*
- F. Compatibility
 - Add language whereby new lots created can be no smaller than the smallest legally existing lot within the subdivision; *maintains current practices.*
- G. Limitations on Sale
 - *No restriction; maintains current practices.*

Advantages

- Does not provide for increased usage of the family heir Policy 2.1.9 provision.
- Includes a compatibility requirement consistent with the provisions in the Residential Preservation category and
- Codifies current practices, preventing confusion and interpretation.

Disadvantages

- Does not provide for increased usage of the family heir Policy 2.1.9 provision; does not provide for additional lots.

ALTERNATIVE 3, Policy 2.1.9: Allow for an expansion of Policy 2.1.9 family heir usage

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This option provides for language that allows for expanded use of the family heir process by allowing individuals to use the process on multiple parcels, removing minimum lot sizes for the "parent" parcel, removing density limitations, and allowing for use in all subdivisions.

A. Date of Parcel Creation

- *No restriction; maintains current practices.*

B. Eligibility

- Add language whereby the 2.1.9 process can be used on an unlimited basis for each parent parcel, until the minimum lot size is achieved; *maintains current practices.*
- Add language so that someone to who has benefited from a 2.1.9 subdivision can use the process on a parcel unrelated to the original parcel. This means that you can still use the 2.1.9 process if you benefited from a relative's use of the process via sale or gift, so long as the subject parcel was not part of the original parcel.
- Add language that clarifies that trusts, probates, etc. are not eligible; *maintains current practices.*

C. Applicability

- Allow in recorded and unrecorded subdivisions, as long as no new parcel created is smaller than the smallest lot in the subdivision.
- Include a reminder that a replat is still required for changes to a recorded subdivision.

D. Lot Size

- *No change to minimum lot sizes of created lots, as any Code change for this would require a Comprehensive Plan Amendment, as the Comprehensive Plan allows division down to 1/2 acre lots.*
- Remove four-acre minimum lot size requirement.
- Remove one unit per two acres maximum density requirement for existing platted unrecorded subdivisions.

E. Environmental Requirements

- Clarify that lots created must meet all environmental regulations (EMA) and Code provisions; *maintains current practices.*

F. Compatibility

- Add language whereby new lots created can be no smaller than the smallest legally existing lot within the subdivision; *maintains current practices.*

G. Limitations on Sale

- *No restriction; maintains current practices.*

Advantages

- Provides for increased usage of the family heir Policy 2.1.9 provision and allows for additional lots to be created.
- Includes a compatibility requirement consistent with the provisions in the Residential Preservation category.

Disadvantages

- Provides for increased usage of the family heir Policy 2.1.9 provision.

- Provides for additional lots where infrastructure may not be available.
- Could result in the installation of additional septic tanks.
- Could result in increased usage of the provision, thus compromising the standards set in the Comprehensive Plan.
- Does not provide a mechanism for ensuring that the newly created lots remain homesteads for family members and the resultant lots may immediately be sold for profit.

II. Nonconforming and Improper Subdivisions; Limited Partition Process

A. Non-Conforming Subdivisions

Non-conforming subdivisions, those that were created prior to the density regulations imposed by the Comprehensive Plan, generally are granted relief through the Land Development Regulations. Please see Attachment 4 for a description of the issues pertaining to non-conforming subdivisions.

B. Improper Subdivisions

Improper subdivisions are a significant issue for Leon County in that they are relatively common, create inconsistencies with the Land Development Code and Comprehensive Plan, and prevent well intended citizens from accessing building permits and other development tools. Improper subdivisions are currently difficult to rectify and make consistent with applicable regulations. Therefore, the Board indicated that they would like to see changes to the Limited Partition process to more fully address these issues. Please see Attachment 4 for a complete description of the issues pertaining to improper subdivisions.

C. Limited Partition Subdivisions

Staff is providing an option for amending the regulations governing limited partition subdivisions in response to an issue raised by a citizen at the April 10, 2007 Board meeting. Limited partition subdivisions, governed by Section 10-7.201 of the Land Development Code, are basically smaller subdivisions of less than ten lots; large lot subdivisions; or the subdivision of existing duplex, triplex, or quadraplex structures without platting or full-scale subdivision review.

Smaller lot limited partitions are the subdivision of an unrecorded residentially zoned lot or parcel on an existing public or private street, with legal access, into not more than ten single-family residential attached lots (maximum of ten dwelling units), provided that the density does not exceed the density that is allowed by the zoning district. Large lot limited partition subdivision are the division of any existing parcel outside of the urban services areas into new parcels that are at least 50 acres each in the Rural, Urban Fringe, or Lake Talquin Urban Fringe Districts or at least ten acres each in the Rural Community district.

Limited partition subdivision densities must be consistent with those established by the applicable future land use category and zoning district. The limited partition process may not be utilized when new streets are required to be created or if central water and sewer infrastructure extension is required. The Code also provides for a review process that allows the County Administrator or designee the ability to approve, approve with conditions, or

deny the application within ten working days of receipt of a complete application. The county administrator or designee may also refer the application to the Development Review Committee for full review if site conditions or features warrant more in-depth evaluation.

Improper Subdivision/Limited Partition Options

At the July 10 workshop, the Board directed staff to pursue two strategies in response to the problem of improper subdivisions, referred to as Alternatives F and I in that workshop agenda item. These alternatives are summarized below, and the full text can be found in Attachment 5:

Modify the Limited Partition Process: Allow improper subdivisions to be rectified through the limited partition process and limit the applicability to correcting improper subdivision in existence as of a stipulated date, e.g., July 1, 2007.

Administrative procedure: Require all persons creating lots through the recording of transfers of title to obtain a Permitted Use Verification or similar document from the Department of Growth and Environmental Management.

In response to the Board's direction to staff to implement these strategies, the following options are provided for the Board's consideration and endorsement:

- 1) Revise the Land Development Code so that the Limited Partition subdivision process can be more effectively used to resolve improper subdivisions;
- 2) Create a low-cost version of the Permitted Use Verification certificate to verify whether a parcel of property had been created through improper subdivision or whether the recording would constitute an improper subdivision;
- 3) Require the recording of a new "notice" document, for every parcel of property created through improper subdivision, to increase the potential of discovering this defect in title searches and require the recording of another "notice", to affirm that property has been properly subdivided;
- 4) Establish continuing educational training opportunities for real estate and land development professionals, to communicate how to avoid problems related to improper subdivision.

Option 1 was developed in collaboration with the County Attorney's Office, Planning Department, and Growth Management. Options 2, 3, and 4 were developed by staff from the Growth Management, County Attorney's Office, and the Clerk of the Court, and staff would be assisted by the Clerk's office in administering these Options. Staff recommends that the Board endorse all four Options, as described below.

Option 1) Revise the limited partition subdivision process to enhance the resolution of improper subdivisions.

Attachment 6 is a draft ordinance that revises Sections 10-7.201, "Limited partitions" and 10-7.301, "Prior improperly subdivided parcels," of the Land Development Code. The principal modifications included in the ordinance are: the establishment of the limited partition process as

a method resolve improper subdivisions, improving the ability to resolve improper subdivisions by eliminating for this purpose the requirement that lot sizes comply with applicable zoning district standards, and limiting the date of eligibility for resolution of improper subdivisions to those created prior to July 1, 2007.

In addition, staff has taken this opportunity to correct two unrelated defects in Section 10-7.201: the spelling of “quadruplex” is corrected; and, provisions indicating that an application may be approved, approved with conditions, or denied are modified to make clear that any of these dispositions must be based upon findings of compliance with the Land Development Code’s design standards and requirements, zoning district standards and requirements (except for lot size when curing an improper subdivision), and applicable requirements of other ordinances.

Advantages

- Eliminating the requirement to comply with zoning district minimum lot size will allow some improper subdivisions to be resolved.
- Will result in the creation of subdivisions that are consistent with the Comprehensive Plan and, except with regard to lot size, in compliance with the Land Development Code. (This option requires a Code amendment.)
- Creates an incentive for the landowners to resolve this issue without County intervention.
- Limits eligibility to improper subdivisions created before a “date-certain,” such as July 1 2007; therefore, would not create an incentive to improperly subdivide land.

Disadvantages

- A significant portion of improperly divided properties located outside the urban services area, particularly within the rural zoning district, would not contain sufficient land area to allow “proper” subdivision in a manner that would create enough lots to satisfy the needs of all of the property’s divided ownership interests. Therefore, this approach will not provide a resolution for all improper subdivisions.

Option 2) Create a low-cost version of the Permitted Use Verification certificate.

The loss of property use resulting from improper subdivision can be financially disastrous to persons buying property for a home site and create unanticipated consequences to those transferring property to family members. To reduce the frequency of this problem, staff recommends that the public be strongly encouraged to obtain a Permitted Use Verification (PUV) certificate, prior to purchasing property for a home site or recording transfers of title. The PUV, while it is not a development approval, is an official opinion provided by the DGEM, providing information regarding the ability to use property for a home site, or the appropriate method for property subdivision. As such, the PUV would convey information indicating whether property for a home site has been previously improperly subdivided and not eligible for residential permits; or, in the case of an application for subdivision, specify that recording transfers of title with the Clerk’s office and forgoing the Land Development Code subdivision process will create an improper subdivision, eliminating future eligibility to obtain permits.

The PUV costs \$202 and takes approximately one week to obtain. These costs and time considerations that make it impracticable for many persons about to purchase property for their home. In response, staff proposes the creation of a “short-form” PUV, with a cost in the range of

\$25 to \$50 and which could be processed in two to three days, maximum. This PUV would be available for determining whether a house or mobile home could be permitted on a property and whether a property could be divided into five or fewer lots for family members. DGEM, Planning, and the Clerk's staff would strongly encourage persons contemplating a purchase of property for a home site or recording a transfer of property to first obtain a short-form PUV. The cost of the short-form PUV could be deducted from the cost of a project status determination (\$100), which is a co-requirement for a building permit for construction of a home or placement of a mobile home. Staff conducts similar research for this determination as they do for a PUV, although the project status determination usually occurs after the property has been purchased.

Option 3) Creation of both an "improper subdivision" and a "proper subdivision" notice.

A title search is frequently used to determine whether a property has a defect. The Clerk's office and real estate professionals have informed staff that the defect of improper subdivision would not always be uncovered through a search of their records. To address this, the Clerk's office has recommended that some form of notice or document be filed for every "improperly subdivided parcel," thus providing a document that is easily found in a search of the Clerk's records.

This approach would require DGEM staff to identify and catalogue improperly subdivided properties, prepare documents with appropriate information, and to record those documents. Given current staff resources and assignments, it is estimated that approximately 25 - 50 such documents could be recorded per week. There would be a recording cost of \$10 for the first page of every such document recorded and \$8.50 for each additional page; though most of these documents would be one page. Given that DGEM staff estimates that there are 750 to 1000 improperly subdivided lots, recording fees would cost approximately \$10,000, a cost that would be assumed by the Board of County Commissioners. However, the Clerk's office notes that revenues collected in excess of their annual established fund balance are returned to the County's general revenue fund, and in recent years, revenues have exceeded their established fund balance, beyond \$20,000 annually. Therefore, expenditures by the Board to record these notices would likely be offset by the end of year transfer from the Clerk's office to the general revenue fund.

This process would require the Clerk's office, perhaps with the assistance of the County Attorney's office and DGEM, to draft generic document forms for recording. In a similar fashion, persons subdividing property should be required or encouraged to record a notice of subdivision approval from DGEM, which would be found in records searches and protect potential property owners in knowing their ability to obtain a permit. While the form for recording would be drawn up by the County, the costs for recording this document would be assumed exclusively by the applicant.

Option 4) Educational training for real estate and land development professionals.

Earlier this year, in an effort to raise general awareness of this issue, staff developed bookmark-sized information placards which are prominently placed within the lobby area of the DGEM office, handed out by the Clerk's office to persons recording transfers of title that create multiple lots, and provided to the Planning Department for their customers. The same information is on a

poster in the lobby of the DGEM office and appears on DGEM's web site.

Staff recommends increasing awareness of the consequences of improperly subdividing property and how to avoid them by providing educational training to real estate professionals, including: title company personnel, surveyors, real property attorneys, real estate brokers, and property appraisers. Staff could offer training one to two times per year, perhaps in conjunction with of private professional associations, e.g. Tallahassee Board of Realtors. In addition, brochures and online information can be developed. Other than the commitment of a small amount of staff time, this approach would not require a significant commitment or allocation of resources.

2.1.9 Options:

1. Approve **Alternative 1 (Page 3)**: Establish clear restrictions on 2.1.9 family heir subdivisions.
2. Approve **Alternative 2, (Page 4)**: Codify current processes for 2.1.9 family heir subdivisions
3. Approve **Alternative 3, (Page 5)**: Allow for an expansion of Policy 2.1.9 family heir usage.
4. Do not approve any of the alternatives provided.
5. Board direction.

Recommended Options:

1. Approve **Alternative 1 (Page 3)**: Establish clear restrictions on 2.1.9 family heir subdivisions.

Improper Subdivision Options:

1. **Approve Option 1 (Page 8)**: Draft ordinance revising regulations pertaining to limited partition subdivision that would enhance the ability to use this process to resolve improper subdivisions;
2. **Approve Option 2 (Page 9)**: Create a low-cost version of the Permitted Use Verification certificate to verify whether a parcel of property had been created through improper subdivision or whether the recording would constitute improper subdivision;
3. **Approve Option 3 (Page 9)**: The recording of a new "notice" document, for every parcel of property created through improper subdivision, to increase the potential of discovering this defect in title searches and the recording of another "notice", to affirm that property has been properly subdivided;
4. **Approve Option 4 (Page 10)**: Establish continuing educational training opportunities for real estate and land development professionals, to communicate how to avoid problems related to improper subdivision.
5. Do not approve Options 1 - 4.
6. Board direction.

Recommended Options:

Options 1 - 4

Attachments:

1. Staff Analysis of Comprehensive Plan Amendment PCT 070207
2. Draft Land Development Code changes to Section 10-1427 for simplification
3. Relevant Statutes and Policies
4. Further information on Non-Conforming and Improper Subdivisions

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5. Actions taken by the Board at the July 10, 2007 Workshop on options for amending the regulations governing Policy 2.1.9 and limited partition subdivisions
6. Limited Partition Ordinance

PA/VL/WT/ka/as/aab/rc

TEXT AMENDMENT #: PCT070207

APPLICANT: Leon County/Tallahassee Planning Department

TEXT/POLICY I.D. #: Land Use Policy 2.1.9

CITY X COUNTY X

DATE: July 11, 2007

STAFF RECOMMENDATION:

Staff recommends approval of Amendment PCT070207. (KA)

A. SUMMARY:

The proposed amendment modifies Policy 2.1.9, providing a sunset date of February 1, 2009 for the non-family heir subdivision provision. The proposed amendment also simplifies Comprehensive Plan language related to family heir Policy 2.1.9 subdivisions, creating consistency with Florida Statutes.

B. REASONS FOR RECOMMENDATION FOR APPROVAL:

- 1) The proposed amendment will create consistency with the currently adopted implementing land development regulations and Florida Statute;
- 2) Elimination of the non-family heir subdivision process will facilitate better planning for infrastructure and environmental protection;
- 3) Elimination of the non-family heir subdivision process will provide for better transparency in the Tallahassee-Leon County land use planning program by allowing the Land Use Map within the Comprehensive Plan to establish the sole density on properties within Tallahassee-Leon County; and
- 4) Elimination of the non-family heir subdivision process is internally consistent with other goals, objectives and policies found within the Comprehensive Plan such as those related to infill development, the Urban Services Area, environmental protection, and the provision of urban services.

C. EXISTING TEXT/POLICIES:

Policy 2.1.9: [L] (Leon County) (*Rev. Effective 4/18/02*)

To avoid a disproportionate impact on owners of small parcels of property, each parcel of property in single ownership as of February 1, 1990, in the Urban Fringe, and Rural and Lake Talquin Recreation/Urban Fringe areas may be developed at a maximum density of two units per acre, for the first six dwelling units on such parcel, including existing

dwelling units. Property owners who are not able to use the above provision because of date of ownership/acquisition, or if the provision would not allow for an adequate number of lots for a property owner who wishes to subdivide a parcel for family members, may convey a portion of that property to their heirs (as defined by Chapter 163.3179, F.S.) for the sole purpose as a homestead, notwithstanding the density or intensity of use assigned to the parcel in the plan. Either provision may apply only once to any individual, and may not be used in combination. Any parcel created through use of the non-heir provision of this policy shall not be further divided using the heir provision. Neither provision may be used to create a lot which is smaller than 1/2 acre in size.

Policy 2.1.9: [L] (City of Tallahassee) *(Rev. Effective 4/18/02)*

- a) To avoid a disproportionate impact on owners of small parcels of property, the owner of contiguous property 25 acres or less in size in single ownership as of February 1, 1990, in the Urban Fringe, Rural and Lake Talquin Recreation / Urban Fringe areas may be developed at a maximum density of two units per acre, for the first three dwelling units on such parcel, including existing dwelling units.
- b) Property owners who are not eligible to use Policy 2.1.9(a) because of parcel size, or date of ownership/acquisition, or if Policy 2.1.9(a) would not allow for an adequate number of lots for a property owner who wished to subdivide a parcel for family members, may convey a portion of that property to their heirs (as defined by Chapter 163.3179, F.S.) for the sole purpose as a homestead, notwithstanding the density or intensity of use assigned to the parcel in the plan.

Either provision may apply only once to any individual, and may not be used in combination with Policy 2.1.9(a). Any parcel created through use of the non-heir provision of this policy shall not be further divided using the heir provision. Neither provision may be used to create a lot which is smaller than 1/2 acre in size.

D. PROPOSED TEXT/POLICIES:

Policy 2.1.9: [L] (Leon County) *(Rev. Effective 4/18/02)*

~~To avoid a disproportionate impact on owners of small parcels of property, each parcel of property in single ownership as of February 1, 1990, in the Urban Fringe, and Rural and Lake Talquin Recreation/Urban Fringe areas may be developed at a maximum density of two units per acre, for the first six dwelling units on such parcel, including existing dwelling units. Property owners who are not able to use the above provision because of date of ownership/acquisition, or if the provision would not allow for an adequate number of lots for a property owner who wishes to subdivide a parcel for family members, may convey a portion of that property to their heirs (as defined by Chapter 163.3179, F.S.) for the sole purpose as a homestead, notwithstanding the density or intensity of use assigned to the parcel in the plan. Either provision may apply only once to any individual, and may~~

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Policy 2.1.9: [L] (City of Tallahassee) (Rev. Effective 4/18/02)

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Policy 2.1.9: [L] (Leon County)

Either provision described in Policy 2.1.9 (a) and (b) below may apply only once to any individual, and may not be used in combination. Any parcel created through use of the non-family heir provision of this policy shall not be further divided using the family heir provision. Neither provision may be used to create a lot which is smaller than 1/2 acre in size. The provisions described below shall be further described and regulated within the implemented land development regulations.

a) Family Heir Subdivisions

The use of a parcel of property solely as a homestead by an individual who is the grandparent, parent, stepparent, adopted parent, sibling, child, stepchild, adopted child, or grandchild of the person who conveyed the parcel to said individual is permitted per this policy, notwithstanding the density or intensity of use assigned to the parcel within this Plan.

b) Non-Family Heir Subdivisions

To avoid a disproportionate impact on owners of small parcels of property, each parcel of property in single ownership as of February 1, 1990, in the Urban Fringe, and Rural and Lake Talquin Recreation/Urban Fringe areas may be developed at a

maximum density of two units per acre, for the first six dwelling units on such parcel, including existing dwelling units. This provision for non-family heir subdivisions shall expire on February 1, 2009 at 12:01 a.m. when such subdivisions shall no longer be permitted.

Policy 2.1.9: [L] (City of Tallahassee)

Either provision described in Policy 2.1.9 (a) and (b) below may apply only once to any individual, and may not be used in combination. Any parcel created through use of the non-family heir provision of this policy shall not be further divided using the family heir provision. Neither provision may be used to create a lot which is smaller than 1/2 acre in size. The provisions described below shall be further described and regulated within the implemented land development regulations.

a) Family Heir Subdivisions

The use of a parcel of property solely as a homestead by an individual who is the grandparent, parent, stepparent, adopted parent, sibling, child, stepchild, adopted child, or grandchild of the person who conveyed the parcel to said individual is permitted per this policy, notwithstanding the density or intensity of use assigned to the parcel within this Plan.

b) Non-Family Heir Subdivisions

To avoid a disproportionate impact on owners of contiguous property 25 acres or less in size in single ownership-single ownership as of February 1, 1990, in the Urban Fringe, and Rural and Lake Talquin Recreation/Urban Fringe areas may be developed at a maximum density of two units per acre, for the first six dwelling units on such parcel, including existing dwelling units. This provision for non-family heir subdivisions shall expire on February 1, 2009 at 12:01 a.m. when such subdivisions shall no longer be permitted.

E. APPLICANT'S REASON FOR THE AMENDMENT:

The proposed amendment was initiated by the Board of County Commissioners during a July 10, 2007 workshop during which options for amending the regulations governing Policy 2.1.9 and limited partition subdivisions were presented and discussed.

F. STAFF ANALYSIS

Amendment Background

On April 10, 2007, the Board of County Commissioners conducted a workshop evaluating increased densities within the Rural Land Use Map category located within District One. During the workshop staff provided a power point presentation that identified major issues for consideration in evaluating changing the densities within the Rural Land Use Category located within District One from one unit per ten acres to one

unit per three acres. Following this presentation, Board discussion followed and additional discussion occurred regarding the Policy 2.1.9 subdivision requirements. The Board directed staff to review the Policy 2.1.9 subdivision requirements on a County-wide basis and bring back options for amendment to these requirements. At the May 22, 2007 regular Board meeting, staff presented an agenda item containing options for amendment to the regulations governing Policy 2.1.9 subdivisions. At that time, the Board requested a workshop on the proposed Policy 2.1.9 changes and including possible changes to remedy improper subdivisions. This workshop was conducted on July 10, 2007 during which the Board directed staff to initiate a Comprehensive Plan amendment to Policy 2.1.9 that would sunset the non-family heir subdivision provision on February 1, 2009. Staff has also provided this amendment for the City's consideration for consistency. However, this change will have very little impact within the City limits due to the lack of significant Rural and Urban Fringe lands located within the City limits. The following summarizes the current regulations regarding Policy 2.1.9 subdivisions.

Current Policy

Theoretically, Policy 2.1.9 was developed at the time of Comprehensive Plan adoption to avoid a disproportionate impact on owners of "small" properties that may have been impacted by a decrease in allowable densities upon adoption of the Comprehensive Plan. The version of Policy 2.1.9 applicable to the City of Tallahassee limits this to parcels less than 25 acres in size, however, the County version does not.

At present, Policy 2.1.9 of the Comprehensive Plan Land Use Element allows two types of subdivision, family-heir subdivision and non-family heir subdivision. Current plan language appears to limit both types of subdivision to a maximum density of two dwelling units per acre up to a maximum of six lots within the following Land Use Map categories:

- Rural;
- Urban Fringe;
- Lake Talquin Recreation/Urban Fringe, and;
- Residential Preservation Overlay applied over one of the three previous categories located outside of the Urban Services Area.

The County Land Development Code provides for a limited review process, allowing the County Administrator or designee the ability to approve Policy 2.1.9 subdivision applications unless they are located along a canopy road, in which case a full Type B site and development plan is required. The City Land Development Code establishes the limited partition subdivision review process for Policy 2.1.9 subdivision applications. The City land development regulations also require applicants for non-family heir subdivisions to represent, by affidavit, on a form approved by the city attorney that:

- 1) This special policy has not been approved or applied to any other parcel in the developer's ownership or control; and
- 2) The applicant held fee simple title to the parcel on February 1, 1990, and has continuously retained fee simple title since that date.

The following explains the key difference between family heir and non-family heir subdivisions as well as how they are treated when used together:

❑ Non-Family Heir Policy 2.1.9 Provisions

If the Policy 2.1.9 subdivision is for unrelated individuals (non-family heir), it applies only once to a parcel that has been held in fee simple title and has been in single ownership since February 1, 1990.

❑ Family Heir Policy 2.1.9 Subdivisions

For property owners desiring to divide property among family members (family heir), the property does not have to be one that has been held in fee simple title and in single ownership since February 1, 1990.

❑ Using Family and Non-Family Heir Subdivisions Simultaneously is Currently Prohibited

If the non-family related 2.1.9 provision was already utilized previously the family heir provision cannot be invoked on the previously created parcels. This particular requirement - not being able to apply both the standard non-family heir 2.1.9 process and the family heir 2.1.9 provisions to the same parcel- is also within the Comprehensive Plan. This means that if a property owner has already divided property and sold it to unrelated individual(s), they cannot again divide any of those new parcels and give or sell parcels to a family member.

Amendment Analysis

Current plan language appears to limit both types of subdivision to a maximum density of two dwelling units per acre up to a maximum of six lots. However the implementing City and County land development regulations appear to allow an unlimited number of new lots using the family-heir subdivision process. These regulations allow for the creation of an adequate number of lots for family members, whatever that number may be. The proposed amendment creates consistency with both land development codes by generalizing the Policy 2.1.9 family-heir subdivision language. This generalization also allows for future amendment to the land development regulations governing family-heir subdivisions while maintaining consistency with the Florida Statutes.

Section 163.3179 below of the Florida Statutes provides some limitations related to family heir subdivisions.

“Family homestead.--A local government may include in its comprehensive plan a provision allowing the use of a parcel of property solely as a homestead by an individual who is the grandparent, parent, stepparent, adopted parent, sibling, child, stepchild, adopted child, or grandchild of the person who conveyed the parcel to said individual, notwithstanding the density or intensity of use assigned to the parcel in the plan. Such a provision shall apply only once to any individual.”

Section 163.3194 of the Florida Statutes also provides that “all land development regulations enacted or amended shall be consistent with the adopted comprehensive plan, or element or portion thereof.... A development order or land development regulation shall be consistent with the comprehensive plan if the land uses, densities or intensities, and other aspects of development permitted by such order or regulation are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government.”

Section 163.3179, F.S. establishes that the Tallahassee-Leon County Comprehensive Plan cannot allow family homestead (family heir subdivisions) to be used repeatedly by the same individual. Further, Section 163.3193, F.S. requires that the Comprehensive Plan must establish allowable densities and that the implementing land development regulations must be consistent with these densities. Per the Statutes, the Tallahassee-Leon County Comprehensive Plan must include density provisions.

The family heir Policy 2.1.9 provision is fairly common throughout the state and is authorized by the statute discussed above. The non-family heir Policy 2.1.9 provision is more unique however because it, in effect, establishes an alternate density that to some degree lessens the effectiveness of the comprehensive planning program by allowing greater densities in land use categories otherwise planned for lower density development. This has made the Urban Services Area concept and planning for services and infrastructure through density regulation somewhat problematic. For instance, the installation of central sewer becomes problematic when insufficient densities or large lot barriers to expansion are created prohibiting cost feasible installation or retrofit.

G. CONCLUSIONS:

Based on the above data and analysis, Planning Department staff recommends approval of the amendment request for the following reasons:

- 1) The proposed amendment will create consistency with the currently adopted implementing land development regulations and Florida Statute;
- 2) Elimination of the non-family heir subdivision process will facilitate better planning for infrastructure and environmental protection;
- 3) Elimination of the non-family heir subdivision process will provide for better transparency in the Tallahassee-Leon County land use planning program by allowing the Land Use Map within the Comprehensive Plan to establish the sole density on properties within Tallahassee-Leon County; and
- 4) Elimination of the non-family heir subdivision process is internally consistent with other goals, objectives and policies found within the Comprehensive Plan such as those related to infill development, the Urban Services Area, environmental protection, and the provision of urban services.

**Proposed revisions to Section 10-1427
to separate the processes of family heir and non-family heir subdivisions**

Note: This draft language is a simple reworking of the current Code language, with the exception of an inclusion of the sunseting of the non-family heir subdivision process. This draft does not attempt to codify any of the alternatives presented in the agenda item and would be modified in the future to reflect any Board actions taken.

Existing Language (deleted):

~~Sec. 10-1427. Residential development pursuant to Comprehensive Plan Policy 2.1.9.~~

~~1. The following qualify for review as a Comprehensive Plan Policy 2.1.9. "Subdivision," which allows residential development at a maximum density of two units per acre for the first six dwelling units, whether subdivided or not, including existing dwelling units.~~

~~2. To qualify for use of Policy 2.1.9., the following conditions must be met:~~

~~(a) The parcel must be located in one or more of the following zoning districts:~~

~~(i) Rural;~~

~~(ii) Urban Fringe; or~~

~~(iii) Lake Talquin Recreation/Urban Fringe; or~~

~~(iv) Residential preservation overlay of one of the above only if outside the urban services area.~~

~~(b) This special policy has not previously been approved or applied to any other parcel in the applicant's ownership or control;~~

~~(c) The applicant held fee simple title to the parcel and in single ownership as of February 1, 1990, and has continuously retained fee simple title since that date, except for applicants covered by the Family Parcel Policy 2.1.9 as defined in section 10-1427, 3.(b) of this chapter; and;~~

~~(d) All lots proposed to be created utilizing the Policy 2.1.9 process shall meet all concurrency requirements.~~

~~3. Policy 2.1.9 "Subdivisions" shall be permitted only in the following categories:~~

~~(a) For metes and bounds property: Residential development is only allowed to a maximum density of two units per acre, whether previously subdivided or not, for the first six dwelling units, including any existing units.~~

~~(b) For metes and bounds property under the "Family Parcel Provision," residential development is applicable to property owners who cannot use the provision in 3(a), above, due to date of~~

~~ownership or acquisition, or because an adequate number of lots would not result for family members. The property owner may convey a portion of the property to each of their relatives, as defined by Florida Statutes (Section 163.3179), notwithstanding the density or intensity applicable to the subject parcel in the zoning district: (a) if the subdivision does not create lots which are less than one half acre in size; (b) such parcel has not been previously created through a Policy 2.1.9 non heir provision; (c) said "Family Parcel" provision has not been used reviously by the property owner; (d) the proposed subdivision meets all other applicable provisions of subsection 2 of this section, above.~~

~~(c) For previously platted unrecorded subdivisions: Residential development is permitted if the following criteria are met: (a) the parcel must be a minimum of four acres; (b) the parcel must lie outside the urban service area as defined in the comprehensive plan; (c) the density on the resulting parcels may not exceed one dwelling unit per two acres, including existing dwelling units, up to a maximum division of five lots; (d) the resulting parcels shall be compatible and consistent with the majority of lots within the subdivision; (e) the resulting parcels shall meet concurrency requirements; and, (f) and the parcel must meet all applicable items in subsection 2, above.~~

~~(d) For property that abuts a canopy road with existing physical access, Policy 2.1.9 may be utilized where no protected tree and/or vegetation removal is required, and which meets the provisions of subsection 2, shall qualify under this section. However, where the subject property abuts a canopy road and there is no existing physical access, full Type B site and development plan review shall be required.
(Ord. No. 96-02, § 13, 2-17-96)~~

Draft Language (added):

Sec. 10-1427. Residential development pursuant to Comprehensive Plan Policy 2.1.9.

1. Comprehensive Plan Policy 2.1.9. "Subdivision," review may be utilized for parcels located in one or more of the following zoning districts:

- (a) Rural;
- (b) Urban Fringe; or
- (c) Lake Talquin Recreation/Urban Fringe; or
- (d) Residential preservation overlay of one of the above only if outside the urban services area.

2. Either provision described in (a) and (b) below may apply once to any individual and may not be used in combination. Any parcel created through the use of the non-family heir Policy 2.1.9 provision shall not be further divided using the family heir provision. The provision for non-family heir Policy 2.1.9 subdivisions shall expire on February 1, 2009 at 12:01 a.m. when such subdivisions shall no longer be permitted.

(a) The following requirements apply to non-family heir Policy 2.1.9 subdivisions:

(i) This special policy has not previously been approved or applied to any other parcel in the applicant's ownership or control; and

(ii) The applicant held fee simple title to the parcel and in single ownership as of February 1, 1990, and has continuously retained fee simple title since that date;

(iii) All lots proposed to be created shall meet all concurrency requirements; and

(iv) For metes and bounds property: Residential development is only allowed to a maximum density of two units per acre, whether previously subdivided or not, for the first six dwelling units, including any existing units. Newly created parcels shall not be less than ½ acre in size.

(v) For previously platted unrecorded subdivisions: Residential development is permitted if the following criteria are met:

(1) the original parcel must be a minimum of four acres;

(2) the parcel must lie outside the urban service area as defined in the comprehensive plan;

(3) the density on the resulting parcels may not exceed one dwelling unit per two acres, including existing dwelling units, up to a maximum division of five lots;

(4) the resulting parcels shall be compatible and consistent with the majority of lots within the subdivision;

(5) the resulting parcels shall meet concurrency requirements; and

(iv) For property that abuts a canopy road with existing physical access, Policy 2.1.9 may be utilized where no protected tree and/or vegetation removal is required, and which meets the provisions of subsection 2, shall qualify under this section. However, where the subject property abuts a canopy road and there is no existing physical access, full Type B site and development plan review shall be required.

(b) The following requirements apply to family heir Policy 2.1.9 subdivisions

(i) Applicable only for the use of a parcel of property solely has a homestead by an individual who is the grandparent, parent, stepparent, adopted parent, sibling, child, stepchild, adopted child or grandchild of the person who conveyed the parcel to said individual.

(ii) For metes and bounds property: The subdivision must not create lots which are less than one-half acre in size; and

(iii) For previously platted unrecorded subdivisions: Residential development is permitted if the following criteria are met:

(1) the original parcel must be a minimum of four acres;

(2) the parcel must lie outside the urban service area as defined in the comprehensive plan;

- (3) the density on the resulting parcels may not exceed one dwelling unit per two acres, including existing dwelling units, up to a maximum division of five lots and no newly created parcel shall be less than ½ acre in size;
- (4) the resulting parcels shall be compatible and consistent with the majority of lots within the subdivision;
- (5) the resulting parcels shall meet concurrency requirements; and

(iv) For property that abuts a canopy road with existing physical access, Policy 2.1.9 may be utilized where no protected tree and/or vegetation removal is required, and which meets the provisions of subsection 2, shall qualify under this section. However, where the subject property abuts a canopy road and there is no existing physical access, full Type B site and development plan review shall be required.

(Ord. No. 96-02, § 13, 2-17-96)

Relevant Statutes and Policies

The full text of the 2.1.9 Comprehensive Plan Policy for the County:

Policy 2.1.9: [L] (Leon County) (Rev. Effective 4/18/02)

To avoid a disproportionate impact on owners of small parcels of property, each parcel of property in single ownership as of February 1, 1990, in the Urban Fringe, and Rural and Lake Talquin Recreation/Urban Fringe areas may be developed at a maximum density of two units per acre, for the first six dwelling units on such parcel, including existing dwelling units. Property owners who are not able to use the above provision because of date of ownership/acquisition, or if the provision would not allow for an adequate number of lots for a property owner who wishes to subdivide a parcel for family members, may convey a portion of that property to their heirs (as defined by Chapter 163.3179, F.S.) for the sole purpose as a homestead, notwithstanding the density or intensity of use assigned to the parcel in the plan.

Either provision may apply only once to any individual, and may not be used in combination. Any parcel created through use of the non-heir provision of this policy shall not be further divided using

the heir provision. Neither provision may be used to create a lot which is smaller than 1/2 acre in size.

Section 163.3179 of the Florida Statutes provides that:

Family homestead.--*A local government may include in its comprehensive plan a provision allowing the use of a parcel of property solely as a homestead by an individual who is the grandparent, parent, stepparent, adopted parent, sibling, child, stepchild, adopted child, or grandchild of the person who conveyed the parcel to said individual, notwithstanding the density or intensity of use assigned to the parcel in the plan. Such a provision shall apply only once to any individual.*

Section 163.3194 of the Florida Statutes provides that:

All land development regulations enacted or amended shall be consistent with the adopted comprehensive plan, or element or portion thereof.... A development order or land development regulation shall be consistent with the comprehensive plan if the land uses, densities or intensities, and other aspects of development permitted by such order or regulation are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government.

Further Information on Nonconforming and Improper Subdivisions

Non-conforming subdivisions are those that were created prior to the density regulations imposed by the Comprehensive Plan. Improper subdivisions are those that were created after the Comprehensive Plan went into effect and do not meet the density and or lot size requirements of the current Comprehensive Plan and Land Development Code. Improper subdivisions are created through two basic mechanisms. The first and most common mechanism is when an individual property owner records deeds for newly created lots at the Clerk of Courts offices without benefit of any review for consistency with the current Comprehensive Plan or Land Development Code. In effect, these lots are just created but may not be in compliance with the applicable zoning regulations, specifically the required densities and lot sizes. An individual property owner can indeed divide his or her property in any manner desired; however, doing so does not guarantee a building permit and in some cases may even result in the loss of some vested rights or non-conforming status. Individuals record new lots for various reasons and not all of them include the ability to construct a new home. The second and less prevalent mechanism for the creation on improper subdivisions is through some sort of court action ordering the division of property.

Pursuant to the Section 10-7.107 of the Leon County Land Development Code, no subdivision of any land may be effected nor shall any person undertake the development of any parcel in unincorporated Leon County except in conformity and strict accordance with the subdivision and site and development plan regulations of Leon County and applicable Florida Statutes. In addition, Section 10-7.109 states that no building permit, certificate of occupancy, certificate of completion, connection permit, or environmental management permit shall be issued for any structure or development on any parcel or lot undertaken in violation of Leon County Land Development Code. The act of recording deeds for lots in the Clerk of Courts office does not constitute compliance with nor substitute for the requirements for the subdivision of land set out in the Leon County Land Development Code.

Despite these regulatory barriers, it is estimated that there have been approximately 750 to over one thousand improperly subdivided lots created within unincorporated Leon County since October, 1990, when land development regulations intended to implement the recently adopted Comprehensive Plan and regulate subdivision went into effect. Based upon staff's interaction with affected persons, the practice of improper subdivision continues at an undiminished rate.

In many cases, improper subdivision results from transfer of property via deed to family members, often in wills and probate, and it would appear to be more the result of a combination of a family tradition of giving property to future generations and lack of awareness of the County's mandatory requirements for subdivision of land. In other instances, staff has clearly observed a pattern of abuse by persons made aware of the requirements for subdivision. Regardless, all improper subdivisions are treated equally and require rectification so that the resulting subdivision is consistent with the Comprehensive Plan and in compliance with the Land Development Code.

It should be noted that County Growth and Environmental Management has placed written notices in the Clerk of Court's office warning against such transfers stating that such transfer does not indicate compliance with the current Comprehensive Plan or Land Development Code and therefore may not result in the issuance of a building permit. This practice should be strengthened and continued so that individuals desiring to subdivide their property are properly noticed.

A. Non-Conforming Subdivisions

Non-conforming subdivisions are those that were created prior to the density regulations imposed by the Comprehensive Plan and are treated similar to non-conforming uses. The Code does currently provide some relief to individuals who had recorded non-conforming subdivisions prior to the adoption of the Comprehensive Plan. Non-Conforming Subdivisions are those created prior to the adoption of the Comprehensive Plan and are treated similar to non-conforming uses. Sec. 10-7.301, states that all single-family lots created by recorded transfers of title recorded on or before October 31, 1990, at 11:59 p.m., shall be deemed non-conforming within the meaning of the comprehensive plan and thus shall be excepted from the requirements for subdivision review. Such single-family lots are exempt from the residential density limitations imposed by the comprehensive plan. These lots are also exempt from residential density restrictions of the comprehensive plan and the December 1, 1970, Tallahassee-Leon County Zoning Codes, as amended. They are not, however, exempt from the other requirements and limitations of land development regulations implementing the local comprehensive plan.

This section of the Code, in effect, provides relief for those individuals who had created non-conforming subdivisions prior to the adoption of the Comprehensive Plan. However, there does exist many cases where lots have been created by recorded transfers of title since the adoption of the Comprehensive Plan as described below (improper subdivisions).

B. Improper Subdivisions

Improper subdivisions are those that were created after the Comprehensive Plan went into effect and do not meet the density and or lot size requirements of the current Comprehensive Plan and Land Development Code. Improper subdivisions are created through two basic mechanisms. The first and most common mechanism is when an individual property owner records deeds for newly created lots at the Clerk of Courts office without the benefit of a consistency review with the Comprehensive Plan or Land Development Code. These lots are allowed to be created because an individual property owner can indeed divide his or her property in any manner desired, for any number of reasons. However, the resulting lots may not be in compliance with the applicable zoning regulations, specifically the required densities and lot sizes, and doing so

does not guarantee a building permit and in some cases may even result in the loss of vested rights or non-conforming status. The second and less common mechanism for the creation of improper subdivisions is through a court action that orders the division of property.

Pursuant to the Section 10-1407 of the Leon County Land Development Code, no subdivision of any land may be effected nor shall any person undertake the development of any parcel in unincorporated Leon County except in conformity and strict accordance with the subdivision and site and development plan regulations of Leon County and applicable Florida Statutes. In addition, Section 10-1409 states that no building permit, certificate of occupancy, certificate of completion, connection permit, or environmental management permit shall be issued for any structure or development on any parcel or lot undertaken in violation of Leon County Land Development Code. The act of recording deeds for lots in the Clerk of Courts office does not constitute compliance with nor substitute for the requirements for the subdivision of land set out in the Leon County Land Development Code.

Despite these regulatory barriers, it is estimated that approximately 750 -1,000 improperly subdivided lots were created within unincorporated Leon County since October, 1990, when land development regulations went into effect. Based upon staff's interaction with affected persons, the practice of improper subdivision continues at an undiminished rate. In many cases, improper subdivision results from transfer of property via deed to family members, often in wills and probate, and appears to be the result of a family traditions of giving property to future generations as well as lack of awareness of the County's requirements for subdivision of land. In other instances, staff has clearly observed a pattern of abuse by persons made aware of the requirements for subdivision. Regardless, all improper subdivisions are treated equally and require rectification so that the resulting subdivision is consistent with the Comprehensive Plan and in compliance with the Land Development Code.

It should be noted that County Growth and Environmental Management has placed written notices in the Clerk of Court's office warning against such transfers stating that such transfer does not indicate compliance with the current Comprehensive Plan or Land Development Code and therefore may not result in the issuance of a building permit. This practice should be strengthened and continued so that individuals desiring to subdivide their property are properly noticed.

Rectification of improper subdivisions created after October, 1990, has proven difficult and is rarely accomplished. It requires the filing of an application with the Leon County Department of Growth and Environmental Management, for the subdivision of the entire affected land area, regardless of the present ownership pattern. To obtain approval, the application must be consistent with the Comprehensive Plan and meet all applicable development standards, including:

density limitations, minimum lot size, minimum yard setbacks, access standards, environmental protection regulations, including, protection of conservation and preservation features, etc.

Some reasons why existing improper subdivisions are difficult to remedy : 1) Often, improper subdivision of land occurs on lands classified as Rural on the Comprehensive Plan Land Use Map and that are zoned Rural. The minimum lot size in the Rural zoning district is 10 acres, as established by the Land Development Code. The Comprehensive Plan limits density to one dwelling unit per 10 acres of land. Unfortunately, many, if not most, of the improper subdivisions within the “Rural” area establish individual land holdings (not recognized as lots or parcels) of less than 10 acres. In order to meet the requirements of the Code and Comprehensive Plan, it is not possible to obtain the same number of lots. The reduction in the number of lots that can be obtained often deters the property owners from rectifying their improper subdivision. 2) Other standards, such as having to ensure that every lot in a subdivision has legal access can sometimes impact the layout and number of lots that can be created in a subdivision accomplished pursuant to Code, and would also act as a deterrent to rectifying an improper subdivision. 3) The costs involved with filing and producing a viable subdivision application create a barrier for some people. 4) It is common that for various land holders cannot agree to submit the application.

**Options endorsed by the Board at the July 10, 2007 Workshop
on options for amending the regulations governing
Policy 2.1.9 and limited partition subdivisions**

Alternative D) Sunsetting Non-Family Heir: Sunsets the Non-family heir Policy 2.1.9 provisions on February 1, 2010, or the end of the Comprehensive Plan's original planning time frame.

Note: Only a portion of the alternative was approved; this section is above.

Alternative F) Modify the Limited Partition Process: Allow improper subdivisions to be rectified through the limited partition process, where lots may be as small as one-half acre, but the aggregate density remains consistent with the Comprehensive Plan. This approach would not require an amendment to the Comprehensive Plan but require an amendment to the Land Development Code specifying that so long as applicable zoning district density limits are met, some individual lots created through the limited partition process could be smaller than presently allowed (for example, 3 acres in the urban fringe zoning district and 10 acres in the rural zoning district); perhaps as small as ½ acre. It would also be appropriate that any applicable regulation limit the applicability to correcting improper subdivision in existence as of a stipulated date, e.g., July 1, 2007, thus precluding someone from creating an improper subdivision and then use the amended limited partition process as a de facto method of accomplishing cluster development within the rural future land use category.

Alternative I) Administrative procedure: Require all persons creating lots through the recording of transfers of title to obtain a Permitted Use Verification or similar document from the Department of Growth and Environmental Management. Persons creating lots through the recording of transfers of title or similar action, pursuant to the Clerk of Courts, could be required to obtain an advisory from the Department of Growth and Environmental Management, specific to their proposed "subdivision," prior to the effective date of the recording. This is intended to provide the recipient with information regarding the implications of recording the transfer but forgoing subdivision pursuant to the County's standards, as well as additional information concerning how to appropriately subdivide their land pursuant to these standards.

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ORDINANCE NO. 07-__

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, FLORIDA, AMENDING SECTION 10-7.301 OF CHAPTER 10, ARTICLE VII, DIVISION 3 OF THE CODE OF LAWS OF LEON COUNTY, FLORIDA, ENTITLED PRIOR IMPROPERLY SUBDIVIDED PARCELS, BY PROVIDING PROCEDURES FOR CURING IMPROPER SUBDIVISION OF PROPERTY; AMENDING SECTION 10-7.201 OF CHAPTER 10, ARTICLE VII, DIVISION 2 OF THE CODE OF LAWS OF LEON COUNTY, FLORIDA, ENTITLED LIMITED PARTITION SUBDIVISION, BY DELETING REQUIREMENTS FOR LOTS CREATED TO COMPLY WITH ZONING DISTRICT MINIMUM LOT SIZE STANDARDS SO LONG AS THE DENSITY OF THE SUBDIVISION IS CONSISTENT WITH FUTURE LAND USE CATEGORY DENSITY LIMITS AND ALL LOTS SO CREATED ARE NO SMALLER THAN ONE-HALF ACRE; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the creation of new parcels without proper subdivision review may pose a threat to the health of the residents of Leon County if inadequate fire, ambulance, or sanitation and waste facilities are provided; and,

WHEREAS, the Board finds it to be in the best interest of the health, safety, and welfare of the residents of Leon County to provide reasonable regulations for such activities,

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, FLORIDA THAT:

Section 1. Chapter 10, Article VII, Division 3, Section 10-7.301 of the Code of Laws of Leon County, Florida, entitled “Prior improperly subdivided parcels,” is hereby amended by adding a new Section 10-7.301(2) is hereby amended to read as follows:

1 **Sec. 10-7.301[10-1452]. Prior improperly subdivided parcels.**

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- 1. In addition to the ~~vested rights provided for in section 10-1451, and~~ other provisions of this article notwithstanding, all single-family lots created by recorded transfers of title recorded on or before October 31, 1990, at 11:59 p.m., shall be deemed nonconforming within the meaning of the comprehensive plan and thus shall be excepted from the requirements for subdivision review as set forth in this article. Such single-family lots shall be excepted from the residential density limitations imposed by the comprehensive plan. These lots shall also be exempt from residential density restrictions of the comprehensive plan and the December 1, 1970, Tallahassee-Leon County Zoning Codes, as amended. Nothing herein shall exempt these lots from the other requirements and limitations of land development regulations implementing the ~~local~~ comprehensive plan.
- 2. Any lots created by recorded transfers of title recorded subsequent to October 31, 1990 and prior to July 1, 2007, wherein said lots were not previously approved pursuant to the subdivision regulations of Leon County, as established in this article, shall be deemed as improperly subdivided lots and thus may not be eligible for further development activities, as authorized by this article. Any improperly subdivided lots may become eligible for further development activities upon the subdivision of all of the affected lands in property, pursuant to the subdivision regulations of Leon County, if all of the following criteria

1 are met:

- 2
- 3 a) all owners of the affected lands in property shall demonstrate
- 4 their authorization for such subdivision to obtain approval;
- 5 b) the intensity of development must be consistent with the
- 6 Comprehensive Plan;
- 7 c) the owners of the affected lands in property shall apply for
- 8 limited partition subdivision, to properly create lots;
- 9 d) all lots so created shall demonstrate legal access;
- 10 e) all lots so created shall have a minimum of no less than one-
- 11 half acre of buildable land area;

12

13 3. Any lots created by recorded transfers of title recorded subsequent to

14 July 1, 2007, wherein said lots were not previously approved pursuant

15 to the subdivision regulations of Leon County, as established in this

16 article, shall be deemed as improperly subdivided lots and thus may

17 not be eligible for further development activities, as authorized by this

18 article. Any improperly subdivided lots may become be eligible for

19 further development activities upon the subdivision of all of the

20 affected lands in property, pursuant to the subdivision regulations of

21 Leon County, if all of the following criteria are met:

- 22 a) all owners of the affected lands in property shall demonstrate
- 23 their authorization for such subdivision to obtain approval;

- 1 b) the intensity of development must be consistent with the
- 2 Comprehensive Plan;
- 3 c) the owners of the affected lands in property shall apply for
- 4 limited partition subdivision, to properly create lots;
- 5 d) all lots so created shall demonstrate legal access;
- 6 e) all lots so created shall be able to comply with development
- 7 standards for the applicable zoning district, except minimum
- 8 lot size;
- 9 f) all lots so created shall have a minimum of no less than one-
- 10 half acre of buildable land area;

11

12 **Section 2.** Chapter 10, Article VII, Division 3, Section 10-7.201 of the Code
 13 of Laws of Leon County, Florida, entitled “Limited partitions,” is hereby
 14 amended by revising Section 10-7.201 to read as follows:

15

16 **Sec. 10-7.201 [10-1426]. Limited partitions.**

17

- 18 (1) The following shall qualify for review as a limited partition subdivision:
- 19 (a) (i) A subdivision of an unrecorded residentially zoned lot or parcel on
 - 20 an existing public or private street, with legal access, into not more than
 - 21 ten single-family residential attached lots (maximum of ten dwelling
 - 22 units), provided that the density does not exceed the density that is
 - 23 allowed by the zoning district. Further, no lot created under this section

1 within the Urban Service Area, except for a one into two lot division, shall
2 have new direct driveway access to a major or minor arterial or major
3 collector roadway; (ii) The subdivision of existing duplex or triplex or
4 ~~quadraplex~~ quadruplex structures provided that the resulting subdivided
5 units are certified to be in compliance with applicable zoning, subdivision
6 and building codes. Compliance with applicable building codes shall be so
7 certified by a registered professional, and such compliance subject to
8 verification by the chief building official; (iii) A division of an unrecorded
9 nonresidentially zoned lot or parcel of property into not more than ten lots,
10 provided the division meets the design criteria of Division 5 of Article
11 VII. When determined by the County Administrator or designee, site and
12 development plan review and approval may be processed concurrently if
13 determined to be a Type A site and development plan; ~~or~~; (iv) A division
14 of any existing parcel outside of the Urban Service Areas into parcels with
15 a minimum size of 50 acres each in the Rural, Urban Fringe, or Lake
16 Talquin Urban Fringe districts or a minimum size of ten acres each in the
17 rural community district. Subdivisions created under this provision shall
18 be exempt from subsection (b)(iii) of this section; or, (v) the division of
19 previously improperly subdivided land, pursuant to Section 10-7.301.

20
21 (b) (i) The division authorized pursuant to subsections (1)(a) of this
22 section shall not require the creation of a new street, as defined in Section
23 10-1.101 of this Code, to provide legal access to any subdivided lot
24 created pursuant to this section; and (ii) No division created pursuant to

1 subsection (1)(a) of this section will result in a requirement for the
2 extension of water and sewer mains to the site; extensions of water and
3 sewer service within the development are permitted; and, (iii) The
4 approval of a limited partition subdivision shall not be permitted where
5 any portion of the subject property has been previously involved in any
6 subdivision pursuant to this section.

7 (2) Land use and project determination: Prior to submittal of an application,
8 the applicant shall first obtain a Permitted Use Verification certificate
9 (PUV) from the Division of Development Services which verifies that the
10 development qualifies for review as a limited partition subdivision, based
11 on criteria in Section 10-7.201(1).

12 (3) The applicant shall make application on appropriate forms provided by the
13 County Administrator or designee for the review of limited partitions.

14 (4) A complete application shall include the following:

15 (a) An eight and one-half by 14-inch document acceptable to be recorded
16 in the Official Records of Leon County, which shall include: 1.
17 Boundary survey of the parcel, and a separate sketch plan showing
18 boundaries of the proposed individual lots and legal descriptions of the
19 overall parent tract and individual lots; 2. Signature and seal of
20 surveyor who prepared said boundary survey; 3. Existing structures
21 and parking area(s) on the parcel to be subdivided; 4. Date of
22 preparation; 5. Total acreage of the parcel to be subdivided; 6. Lot and
23 block numbers, if applicable; 7. All easements on the property to be
24

1 subdivided and each abutting street; 8. A statement on the face of the
2 plan stating that any further subdivision of the lot or lots shall be
3 subject to the platting requirements as specified in Section 10-7.203,
4 site and development plans, as applicable, of these regulations; and 9.
5 Scale of plan, both written and graphic.

6 (b) Supplemental information, which shall, upon the request of the growth
7 and environmental management director or designee, include the
8 following: 1. A vicinity map which depicts the location of the proposed
9 subdivision in relation to adjacent streets and properties; 2. The 100-year
10 flood frequency hazard area or a notation if not applicable; and 3. The
11 method by which utilities including, but not limited to, water, sewer,
12 electric, telephone, and cablevision will be provided to the subdivision.
13 All underground utilities will be constructed prior to placement of final
14 roadway surface. (c) A completed application form. (d) A Certificate of
15 Concurrence. (e) Payment of applicable fee. (f) Pro forma documents
16 which set forth any proposed conservation and preservation easements as
17 may be required by this section.

18
19 (5) Procedure: (a) Application: The applicant shall submit the required
20 subdivision application to the director of the Growth and Environmental
21 Management Department or designee. (b) Determination of completeness:
22 1. Within ten working days after receipt of the application for a limited
23 partition, the County Administrator or designee shall determine whether
24 the application contains all required information at the required level of

1 detail; and shall advise the applicant of all areas of deficiency. This
2 notification shall specify the additional information and level of detail
3 required in order to meet the requirements of this section. 2. In the event
4 that an applicant fails to submit the required additional information within
5 15 calendar days of the date of the notice of deficiency, the County
6 Administrator or designee shall consider the application to be withdrawn.
7 The County Administrator or designee may grant extensions of up to 30
8 days at the request of the applicant; provided any such request for an
9 extension is received prior to the expiration of the relevant time period. 3.
10 Upon a determination of completeness, the County Administrator or
11 designee shall approve, approve with conditions, or deny the application
12 within ten working days of receipt of a complete application and shall so
13 notify the applicant in writing. The County Administrator or designee may
14 also refer the application to the DRC for full review if site conditions or
15 features warrant more in-depth evaluation. The DRC shall then make a
16 recommendation at a regularly scheduled meeting.

17
18 The referral of an application to the DRC shall stay the time for decision
19 by the County Administrator or designee. (c) The determination of the
20 County Administrator or designee will become final 15 calendar days after
21 it is rendered unless a person who qualifies as a party as defined in
22 Division 7 of this article files a notice of intent to file a petition for formal
23 proceedings together with the filing fee within this time period, and
24 subsequently files within 30 calendar days after the decision is rendered,

1 the petition for formal proceedings before a special master. Failure to file
2 is jurisdictional and will result in a waiver of the hearing. Appeals heard
3 by a special master will be conducted in accordance with the procedures
4 outlined in Section 10-7.414.

5
6 Appeals of the special master's decision shall be reviewable by the circuit
7 court.

8 (6) Upon approval of the limited partition, the applicant shall provide the
9 County Administrator or designee with the following: (a) One original
10 eight and one-half by 14-inch copy of the plan with appropriate signatures,
11 which also depicts any revisions which have been made during the course
12 of the review; (b) A metes and bounds description of each lot in the
13 approved limited partition subdivision; and, (c) The required recording
14 fee.

15 (7) Any plan approved under this section shall be recorded in the Office of the
16 Clerk of the Circuit Court of Leon County by the department upon the
17 submittal of the approved plan and recording fee by the applicant. If the
18 applicant fails to submit either the approved plan with the appropriate
19 recording fees within 30 calendar days following final plan approval, said
20 approval shall be deemed to have been revoked and expired.

21 (8) ~~In deciding whether to~~ An application for limited partition subdivision
22 may be approved, approved with conditions, or denied. In order to
23 approve a limited partition application, the director of growth and
24 environmental management or designee shall ~~consider~~ find: (a) ~~Whether~~

