

**ORDINANCE NO.: 2023-**

AN ORDINANCE ENACTING PROCEDURES FOR THE FLORIDA LAND USE AND ENVIRONMENTAL DISPUTE RESOLUTION ACT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY  
COMMISSIONERS OF HERNANDO COUNTY:

## Section 1. Enacting Procedures for the Florida Land Use and Environmental Dispute

**Resolution Act.** A new Hernando County Code Chapter 23, Article 10, to be entitled “Procedures for Use in Conjunction with the Florida Land Use and Environmental Dispute Resolution Act,” is created to read as follows:

## **Procedures for Use in Conjunction with the Florida Land Use and Environmental Dispute Resolution Act**

### **Section 23-300. Purpose and Intent**

(1) These provisions establish procedures for the initiation, conduct and conclusion of a Special Magistrate proceeding under the Florida Land Use and Environmental Dispute Resolution Act (FLUEDRA), Fla. Stat. § 70.51, involving a development order or enforcement action by Hernando County. This proceeding is voluntary for the landowner.

(2) This is a nonadjudicatory settlement and expedited hearing procedure. A Special Magistrate may not impose a decision but is intended primarily to explore opportunities for compromise and to assist the parties in negotiation. Settlement

1 through the Special Magistrate process is intended to save time and money for  
2 everyone.

3  
4 (3) If a settlement is not reached, the Special Magistrate will conduct an  
5 independent and impartial assessment of the dispute and prepare a non-binding  
6 recommendation.

7  
8 (4) The Special Magistrate proceeding is intended to be a speedy, inexpensive,  
9 simple and solution-oriented method for settlement of land use and environmental  
10 disputes.

### 11 **Section 23-301. Definitions**

12  
13 The definitions provided for terms “development order,” “development permit,”  
14 “special magistrate,” “owner,” “proposed use of the property,” “governmental  
15 entity,” “land,” and “real property” in Fla. Stat. § 70.51(2), as they may be amended,  
16 are incorporated herein. Unless given a different meaning in this article or the context  
17 indicates to the contrary, words or phrases used in this article shall have the following  
18 meaning:

19  
20  
21 (1) “Board” means the Board of County Commissioners of Hernando County,  
22 Florida.

23  
24 (2) “Commence” and “commencement” shall refer to the date on which an owner  
25 formally instigates a non-judicial administrative appeal in full compliance with all  
26 of the County’s requirements for doing so, including the submission of a complete  
27 application and the payment of filing fees, if applicable.

28  
29 (3) “County” means Hernando County, Florida.

30  
31 (4) “Development” shall have the same meaning as provided for in Fla. Stat. §  
32 380.04.

33  
34 (5) “Enforcement Action” shall have the same meaning as is provided for the  
35 phrase “action of a government entity” in in Fla. Stat. § 70.001(3)(d), as it may be  
36 amended; provided, that “enforcement act” shall not encompass code enforcement  
37 proceedings that are governed by Fla. Stat. Chapter 125 (County Government), Fla.  
38 Stat. Chapter 162 (County or Municipal Code Enforcement), Hernando County Code,  
39 Chapter 2, Article III (General Code Enforcement), or by Hernando County Code

1 Chapter 8 (Buildings and Building Regulations), as they may be amended. Final  
2 orders that result from such code enforcement proceedings shall constitute  
3 enforcement actions.

4  
5 (6) “Initiate” and “Initiation” shall mean the filing of a request for relief with the  
6 County pursuant to Fla. Stat. § 70.51(3) and Hernando County Code § 23-306, as  
7 they may be amended.

8  
9 (7) “Participant” means:

10  
11 (a) A person holding title to land contiguous to the Owner’s property,  
12 who has been accepted by the Special Magistrate as a participant in the proceeding;  
13 or,

14  
15 (b) A substantially affected person who submitted oral or written  
16 testimony, sworn or unsworn, of a substantive nature which stated with particularity  
17 support for or objections to the development order or enforcement action in a prior  
18 proceeding, including a public hearing, and who has been accepted by the Special  
19 Magistrate as a participant in the proceeding.

20  
21 (8) “Party” or “Parties” shall include the owner, the County, and any other  
22 governmental entity to which the Special Magistrate grants party status pursuant to  
23 Fla. Stat. § 70.51(11), as it may be amended. A participant is not a party.

24  
25 (9) “Person” shall have the same meaning as provided for in Fla. Stat. § 1.01(3),  
26 as it may be amended.

27  
28 (10) “Proposed use of the property” means the proposal filed by the owner to  
29 develop or otherwise use the owner’s land.

30  
31 (11) “Special Magistrate Proceeding” means any combination of facilitation  
32 sessions or formal or informal hearings, of a public nature, authorized under Fla. Stat.  
33 § 70.51 and this Article, as they may be amended.

**Section 23-302. Time Requirements and Furnishing Copies**

(1) Unless the parties agree in writing to extend the time for performing any act under these guidelines, including the overall 165-day time period, a Special Magistrate proceeding may not continue longer than 165 days from the date the owner files the request for relief.

(2) Any copy which must be furnished to the Special Magistrate, a party or a participant may be sent by regular mail, email, or by hand delivery to the recipient's last known address. The burden of proving a copy has been furnished is on the person responsible for furnishing it.

(3) Except for an owner's request for relief, any document which must be submitted, or any copy which must be furnished, may be submitted or furnished by email. Emailed documents will be deemed submitted or furnished on the date transmitted as shown on the recipient's copy, if the copy is complete. The document shall include a certificate of service.

(4) Filing means that the signed original must be received by the office that is to receive the document by the date specified. Any document received after 5:00 p.m. will be deemed filed as of 8:00 a.m. the next regular business day.

**Section 23-303. Exhaustion of Administrative Remedies, Proceedings, and Appeals**

(1) Prior to filing a formal request for relief under these procedures, the owner must exhaust all non-judicial administrative appeals and proceedings; including, but not limited to, applications and appeals that are governed by Hernando County Code Chapter 3 (Airports and Aviation), Chapter 8 (Buildings and Building Regulations), Chapter 10 (Community Appearance), Chapter 13 (Floodplain Administration), Chapter 18, Article II (Pain Management Clinic Registration), Chapter 18, Article III (Sexually Oriented Businesses), Chapter 19 (Mining), Chapter 23 (Planning), Chapter 25.5 (Signs), Chapter 26 (Subdivision Regulations), Chapter 28 (Utilities), Appendix "A" (Zoning), or any and all other quasi-judicial processes that are authorized by the Hernando County Code.

(2) Once non-judicial local administrative appeals are exhausted and the development order or enforcement action is final, or within 4 months after issuance of the development order or notice of the enforcement action if the owner has

1 pursued local administrative appeals even if the appeals have not been concluded, the  
2 owner may initiate a proceeding under this Article.

3  
4 (3) The filing of a valid, non-judicial administrative appeal will toll the time for  
5 filing a request for relief.

6  
7 **Section 23-304. Administrative Appeals and Judicial Review**

8  
9 (1) A petition by the owner for judicial review of the development order or  
10 enforcement action or a formal administrative hearing pursuant to Fla. Stat. § 120.57,  
11 if applicable, will waive all rights to a Special Magistrate proceeding.

12  
13 (2) Invoking the procedures for a Special Magistrate proceeding is not a  
14 pre-condition for judicial review of the development order or enforcement action or  
15 a formal administrative hearing pursuant to Fla. Stat. § 120.57, if applicable.

16  
17 **Section 23-305. Pre-Initiation Meeting**

18  
19 (1) Prior to filing a request for relief, an owner may request in writing an  
20 informal meeting with the County Attorney and the County Administrator, or  
21 designees thereof, to ascertain whether the issues relating to a development order or  
22 enforcement action would be appropriate for a Special Magistrate proceeding or other  
23 form of alternative dispute resolution. The County Attorney and the County  
24 Administrator will convene such a meeting promptly and include staff necessary to  
25 address the owner's concerns.

26  
27 (2) The County may agree with the owner in writing to extend the time for filing  
28 a request for relief to create an opportunity for dispute resolution.

29  
30 (3) A Special Magistrate proceeding is intended to be an additional remedy for  
31 the owner. It does not supplant other lawfully available methods agreed to by the  
32 parties, such as arbitration, mediation or other form of dispute resolution.

33  
34 **Section 23-306. Request for Relief**

35  
36 (1) Any owner who believes a development order or enforcement action, by itself  
37 or in conjunction with the actions of other governmental entities, is unreasonable or  
38 unfairly burdens the use of the owner's land may file a request for relief.  
39

1       (2) A request for relief must be post-marked or hand-delivered to the County  
2       Administrator within 30 days after:

3  
4       (a) The owner's receipt of the development order or enforcement action;  
5       or,

6  
7       (b) If a non-judicial administrative appeal is available, the later of its  
8       conclusion or the expiration of four months after its commencement.

9  
10       (3) A signed original and one copy of the request for relief must be filed with the  
11       County Administrator's Office, 15470 Flight Path Drive, Brooksville, Florida 34604.  
12       No fee will be charged for filing a request for relief.

13  
14       (4) The request for relief must contain:

15       (a) A brief statement of the owner's proposed use of the property.

16  
17       (b) A summary of the development order or description of the  
18       enforcement action. A copy of the development order or documentation of the  
19       enforcement action must be attached.

20  
21       (c) A brief statement of the impact of the development order or  
22       enforcement action on the ability of the owner to achieve the proposed use of the  
23       property, including an explanation why the development order or enforcement action  
24       is unreasonable or an unfair burden.

25  
26       (d) The signature of the owner or, if the owner is a corporation,  
27       partnership or other organization, the signature of a responsible official, and the  
28       mailing address and telephone number at which the owner may be reached. An  
29       attorney may sign the request for relief on behalf of the owner.

30  
31       (e) A statement regarding whether a non-judicial administrative appeal  
32       is available and, if so, whether and when it was commenced by the owner and, if  
33       completed, the date of completion.

34  
35       (f) A certification by the signer of the request identifying the persons who  
36       have been furnished with copies of the request for relief.  
37  
38

1       (5)     Upon receipt of a request for relief, the County Administrator must forward  
2       the copy of the request to the County Attorney, who will:

3  
4             (a)     Notify appropriate staff that the request was filed and direct  
5       preparation of a response; and,

6  
7             (b)     Forward the request for relief to the assigned Special Magistrate no  
8       later than 10 days from the date the request for relief was received.

9  
10            (6)     Concurrently with the forwarding of the request for relief to the Special  
11       Magistrate, the County shall provide all participants with notice of the request for  
12       relief pursuant to Fla. Stat. § 70.51(5), as it may be amended. The County, in lieu of  
13       serving each participant with a complete copy of the request for relief, may opt to  
14       post a complete copy of the request for relief on the County's website and then  
15       provide the participants with the posted copy's web address in the notice. Any failure  
16       to notice potential participants shall be cured by posting of notices of the special  
17       magistrate proceedings in the Hernando County Courthouse.

18  
19            (7)     The owner may voluntarily dismiss the proceeding at any time by submitting  
20       a written request for dismissal to the Special Magistrate or, if one has not been  
21       selected, to the Chairman of the Board of County Commissioners. A voluntary  
22       dismissal will be effective upon filing with the Special Magistrate or, if one has not  
23       been selected, the Chairman of the Board of County Commissioners.

#### 24       **Section 23-307. Selection of Special Magistrate**

25  
26  
27            (1)     The County shall provide the property owner a list of special magistrates  
28       preapproved by the County Attorney and instructions for objecting to any person  
29       named on the list. Unless a property owner objects to a special magistrate in the  
30       property owner's request for relief, the County will presume that all of the listed  
31       special magistrates are mutually acceptable to the property owner, and the County  
32       will select one of them as the special magistrate to consider the request for relief.

33  
34            (2)     If the property owner objects to all of the persons on the pre-approved special  
35       magistrate list, the County shall file a request with the Florida Division of  
36       Administrative Hearings to appoint an administrative law judge to serve as the  
37       special magistrate.

1           **Section 23-308. Special Magistrate Agreement; Fees and Expenses**  
2

3           (1) The Special Magistrate and the parties shall enter into an agreement which  
4           provides for the compensation of the Special Magistrate and for the payment of all  
5           fees and expenses associated with the proceeding. If the owner fails to execute the  
6           agreement with the Special Master, the County shall consider the owner's request for  
7           relief to have been abandoned.  
8

9           (2) Payment of fees and expenses for the Special Magistrate, and costs of  
10           providing notice and effecting service, will be borne equally by the parties.  
11

12           **Section 23-309. Responses to Request for Relief**  
13

14           (1) Within fifteen (15) days following the filing of a request for relief with the  
15           County, the County shall file a response to the request for relief with the Special  
16           Magistrate in compliance with Fla. Stat. § 70.51(16)(a), as it may be amended.  
17

18           (2) Pursuant to Fla. Stat. § 70.51(16)(b), as it may be amended, any other  
19           government entity that is added by the Special Magistrate as a party must file a  
20           response prior to the hearing, but not later than fifteen (15) days following its  
21           admission as a party.  
22

23           (3) A party's response to the request for relief may include a request that the  
24           Special Magistrate dismiss the owner's request for relief for any failure to observe  
25           the requirements of Fla. Stat. § 70.51 or this Article, as they may be amended. If the  
26           request is dismissed, the owner will be permitted to file an amended request within  
27           ten days of the Special Magistrate's dismissal. Failure to file an adequate amended  
28           request within that time period will result in final dismissal of the matter without the  
29           right to submit another request. Final dismissal may not be appealed to the Board.  
30

31           (4) Any party may request, in its response or otherwise, a request to be dropped  
32           from the proceeding. The request must set forth facts and circumstances to aid the  
33           Special Magistrate in deciding on the request. All such requests must be disposed of  
34           prior to a hearing on the substance of the owner's request for relief. If the Special  
35           Magistrate denies a request to be dropped, that party must participate in the  
36           proceeding.  
37



1           **Section 23-310. Additional Parties to the Proceeding**

2           The Special Magistrate may add additional governmental entities as parties to the  
3           proceeding when:

4           (1)     The owner or County asks the Special Magistrate to add that governmental  
5           entity to the proceeding as a party; and,

6           (2)     The development order or enforcement action is the culmination of a process  
7           involving a governmental entity in addition to the County; or,

8           (3)     A complete resolution of all relevant issues would require active participation  
9           of that additional governmental entity.

10           **Section 23-311. Participants**

11           (1)     Within 21 days after receiving a copy of the request for relief, a participant  
12           must submit a written request to participate in the Special Magistrate Proceedings.  
13           The request must state:

14                   (a)     The person has a legal or equitable interest in land contiguous to the  
15                   owner's property and, if so, identify the land in relation to the owner's property; or

16                   (b)     How the person is substantially affected by the development order or  
17                   enforcement action at issue.

18           (2)     The request must be submitted to the Special Magistrate or, if one has not yet  
19           been selected, to the County Attorney for forwarding to the Special Magistrate after  
20           selection.

21           (3)     The Special Magistrate may decide any issue necessary to determine whether  
22           a person qualifies as a participant. If the Special Magistrate accepts a request to  
23           participate, the participant may address only those issues raised regarding  
24           alternatives, variances, and other types of adjustment to the development order or  
25           enforcement action which may impact the participant's substantial interests. Denial  
26           of a request to participate may not be appealed to the Board.

1       **Section 23-312. Consolidation**

2  
3       (1) If there are separate matters which involve similar issues or identical parties,  
4       they may be consolidated if the parties agree and it appears that consolidation would  
5       promote the speedy, efficient, and inexpensive resolution of the matters.

6  
7       (2) If the separate matters are pending before different Special Magistrates, the  
8       parties may decide which Special Magistrate will conduct the consolidated  
9       proceeding. If they cannot agree on one or multiple Special Magistrate to conduct the  
10       proceeding, the proceedings will not be consolidated.

11  
12       **Section 23-313. Representatives**

13  
14       (1) A party may be represented by an attorney at any phase of the proceeding, but  
15       such representation is not required.

16  
17       (2) At the mediation, each party must be represented by a person with authority  
18       to bind that party to a settlement, or to recommend a settlement directly to the  
19       persons with authority to bind the party. The Special Magistrate may ask a  
20       representative to provide assurances of such authority.

21  
22       **Section 23-314. Mediation Conference**

23  
24       (1) Since the Special Magistrate's first responsibility is to facilitate a resolution  
25       of the dispute and arrive at a settlement acceptable to the parties, the parties shall,  
26       and any participants may, participate in mediation at which the Special Magistrate  
27       shall serve as the mediator.

28  
29       (2) Within five (5) days of receipt of the request for relief, the Special Magistrate  
30       will provide written notice of the place, date, and time of the mediation conference  
31       to all parties, and to all persons who have requested such notice. The mediation  
32       conference must be held no less than seven (7) days prior to the date of the  
33       evidentiary hearing. The mediation conference must be held in Hernando County.

34  
35       (3) Except as specifically provided for herein, the Mediation Confidentiality and  
36       Privilege Act, Fla. Stat. §§ 44.401-44.406, as it may be amended, shall govern the  
37       mediation conference.

1       (4) The Special Magistrate will, among other things, suggest alternatives, analyze  
2       issues, question perceptions, use logic, stimulate and facilitate negotiations between  
3       the parties, and keep order. The Special Magistrate will at all times promote  
4       conciliation, cooperation, compromise and settlement of the dispute within the  
5       bounds established by law.

6  
7       (5) As alternatives, variances, and other types of adjustments to the development  
8       order or enforcement action are presented, the Special Magistrate will afford  
9       participants an opportunity to address the impacts of such adjustments on their  
10       substantial interests.

11  
12       (6) At any point in the mediation conference that the Special Magistrate believes  
13       it would advance the process, the Special Magistrate may meet separately in a caucus  
14       with a party. The Special Magistrate will notify all persons attending the mediation  
15       conference that statements made in the caucus are confidential and will not be  
16       disclosed, unless given permission to do so by the relevant party during the caucus  
17       meeting.

18  
19       (7) The parties and the Special Magistrate are encouraged to conclude the  
20       mediation conference in one (1) session, but if the Special Magistrate in his or her  
21       discretion concludes that an additional session will be helpful to resolution, and the  
22       parties agree to attend an additional session, an additional session will be scheduled.

23  
24       (8) Mediated settlement agreements shall be subject to the approval processes set  
25       forth in Hernando County Code § 23-320.

### 26 27       **Section 23-315. Evidentiary Hearing**

28  
29       (1) Within 5 days of receipt of the request for relief, the Special Magistrate will  
30       provide written notice of the place, date, and time of the hearing to all parties, and  
31       to all persons who have requested such notice. The hearing must be held within 45  
32       days of the Special Magistrate's receipt of the request for relief. The parties may  
33       agree to extend the date for the hearing.

34  
35       (2) The hearing must be held in Hernando County.

36  
37       (3) The proceeding will be open to the public and be held in a location accessible  
38       to the public, including the physically handicapped. The proceeding will be recorded  
39       by a certified court reporter.

1       (4) The Special Magistrate, if authorized, or the court reporter shall administer  
2       oaths to all witnesses.

3  
4       (5) Prior to any other portion of the hearing, the Special Magistrate will conduct  
5       a hearing on any pending request to dismiss the request for relief.

6  
7       (6) At any time after commencement of the information-gathering hearing, the  
8       Special Magistrate may recess the hearing to recommence mediation and facilitation.

9  
10       (7) The Special Magistrate will hear from anyone with information necessary to  
11       understand the matter.

12  
13       (8) Each party shall be limited to a total of one hour to present its case, provided  
14       that for good cause shown, the special magistrate may grant additional time.

15  
16       (9) The order of presentation at the hearing shall be as follows:

17  
18               (a) The Owner and the Owner's witnesses;

19  
20               (b) The County and the County's witnesses;

21  
22               (c) Any other participating government entities and their witnesses;

23  
24               (d) Any qualified participant; provided, that the scope of a participant's  
25       testimony is limited by Fla. Stat. § 70.51(12), as it may be amended;

26  
27               (e) The rebuttal and summation of the County, if any; and,

28  
29               (f) The rebuttal and summation of the Owner, if any.

30  
31               (g) Any part of the evidence may be received in written form, and all  
32       testimony shall be under oath. Hearsay evidence may be used for the purpose of  
33       supplementing or explaining other evidence, but it shall not be sufficient, in itself,  
34       to support a finding by the special magistrate unless it would be admissible over  
35       objections in a civil action.

36  
37               (h) At the discretion of the Special Magistrate, cross-examination of  
38       witnesses by the Parties shall be permitted, but such questioning shall be confined to

1 the scope of direct testimony. Participants can neither present witnesses or cross-  
2 examine the witnesses called by a Party.

3  
4 (10) The Special Magistrate will weigh all information offered at the hearing.  
5 Information will not be subject to the rules of evidence, but the criteria for  
6 determining and the determination of verification and authentication are within the  
7 Special Magistrate's discretion.

8  
9 (11) At any time, the Special Magistrate may require any party to provide  
10 additional information in the interest of gaining a complete understanding of the  
11 request for relief.

12  
13 (12) Any documents or tangible materials presented to the Special Magistrate at  
14 hearing will be submitted to the Chairman of the Board with the Special Magistrate's  
15 recommendation. Any notes or drafts produced by the Special Magistrate and not  
16 intended to record information in a permanent form will remain the property of the  
17 Special Magistrate.

18  
19 (13) If a party fails to appear at the hearing after notice, the Special Magistrate  
20 shall proceed without that party.

21  
22 (14) After the hearing, the Special Magistrate may reconvene the parties to present  
23 a written recommendation, in draft or final form, and seek to re-commence  
24 negotiations.

### 25 **Section 23-316. Witnesses and Materials**

26  
27  
28 (1) Each party must assure attendance at the hearing by those persons qualified  
29 by training or experience to address issues raised by the request for relief, the  
30 response, or by the Special Magistrate, or to address alternatives, variances, and other  
31 types of modifications to the development order or enforcement action.

32  
33 (2) The Special Magistrate may issue a subpoena for any nonparty witness in the  
34 state who will aid in the disposition of the matter. A subpoena issued by a Special  
35 Magistrate may require the witness to bring a specified document or thing.

36  
37 (3) The Special Magistrate may require and receive documents and other tangible  
38 materials from any party or participant. All parties and participants will have the  
39 opportunity to examine and respond to such submissions.

1       (4)     The Special Magistrate may weigh the credibility of witnesses.

2  
3       (5)     Although an attorney is not required, any person compelled to appear or  
4       furnish documents or tangible materials, or who appears voluntarily, may be  
5       represented and advised by legal counsel at his or her own expense.

6  
7       **Section 23-317. Access to the Property**

8  
9       A request for relief constitutes a consent by the owner for the Special Magistrate and  
10      parties or representatives to have reasonable access to the owner's land.

11  
12      **Section 23-318. Offer to Compromise**

13  
14      (1)     As provided by law:

15  
16           (a)     All actions or statements of the Special Magistrate, the parties and all  
17           participants are evidence of an offer to compromise and are inadmissible in any  
18           judicial or administrative proceeding.

19  
20           (b)     The proceeding may not be made known by a party or participant to  
21           any judicial or administrative tribunal, or be construed for any purpose as an  
22           admission against interest.

23  
24      (2)     A party or participant is not bound by anything said or done during the  
25      proceeding unless a written settlement is reached, in which case only the terms of the  
26      written settlement will be binding.

27  
28      (3)     The Special Magistrate may not be called to appear before the Board with  
29      respect to any aspect of the proceeding, nor may the Special Magistrate be compelled  
30      to furnish notes or drafts.

31  
32      **Section 23-319. Settlement**

33  
34      (1)     At any time during the special magistrate proceeding a party may submit an  
35      offer to compromise.

36  
37      (2)     At any time during the special magistrate proceeding, the owner and the  
38      County may enter into a settlement agreement or other agreement as to the  
39      permissible use of the owner's land; provided, that a settlement shall not be binding

1        on any party until approved by all parties, if the settlement concerns the use of land,  
2        approved by the County Commission following a duly advertised public hearing.

3  
4        (3)     If a proposed settlement agreement provides for relief that, if requested by the  
5        owner in the first instance, the Board could only approve after conducting a quasi-  
6        judicial hearing (e.g., rezoning, variance, special exception, overlay district, etc.), the  
7        Board shall conduct a quasi-judicial hearing to consider the proposed settlement  
8        agreement; provided, that an owner will not be required to duplicate processes that  
9        the owner previously has participated in order to effectuate the Special Master's  
10       recommendation (e.g., submitting a new application, appearing before the Planning  
11       and Zoning Commission, conducting public inquiry workshops, providing notice by  
12       mail, providing notice by signage, etc.). The planning department shall be responsible  
13       for placing the proposed settlement agreement on the Board's agenda and for  
14       promulgating due public notice of the public hearing.

15  
16       **Section 23-320. Special Magistrate's Recommendation**

17  
18       (1)     The Special Magistrate must file a recommendation with the Chairman of the  
19       Board of County Commissioners within 14 days after the conclusion of the hearing.  
20       The Special Magistrate must also furnish a copy to all parties and participants.

21  
22       (2)     Where such settlement or other agreement has been entered into, the Special  
23       Magistrate shall not thereafter render a recommendation on those matters covered by  
24       the settlement agreement.

25  
26       (3)     If a settlement agreement or other agreement as to the permissible use of the  
27       owner's land is not executed prior to the filing of the Special Magistrate's  
28       recommendation, the Special Magistrate will consider the facts and circumstances  
29       set forth in the request for relief, any responses, and any other information produced  
30       at the hearing to determine whether the development order or enforcement action, by  
31       itself or in conjunction with an action of the county or another governmental entity,  
32       is unreasonable or unfairly burdens the owner's land.

33  
34       (4)     In making a determination, the Special Magistrate shall consider, among other  
35       things, the factors set forth in Fla. Stat. § 70.51(18), as it may be amended.

36  
37       (5)     The Special Magistrate will utilize his or her expertise in formulating a  
38       recommendation and, in applying this expertise, must rely upon the sort of

1 information that a reasonable, prudent person would rely upon in the conduct of his  
2 or her affairs.

3  
4 (6) If the Special Magistrate determines the development order or enforcement  
5 action, by itself or in conjunction with another action of the county or another  
6 governmental entity, is reasonable and does not unfairly burden the owner's land, the  
7 Special Magistrate will recommend that the development order or enforcement action  
8 remain undisturbed.

9  
10 (7) If the Special Magistrate determines the development order or enforcement  
11 action, by itself or in conjunction with another action of the county or another  
12 governmental entity, is unreasonable or unfairly burdens the owner's property, and  
13 the owner has consented, the Special Magistrate will recommend one or more  
14 alternative actions that are set forth in Fla. Stat. § 70.51(19)(b), as it may be  
15 amended.

16  
17 (8) The Special Magistrate will furnish a copy of the written recommendation to  
18 the Florida Department of Legal Affairs.

19  
20 (9) The Special Magistrate's recommendation is a public record. A copy will be  
21 available for public inspection and copying at the office of the Clerk of the Board of  
22 County Commissioners.

### 23 **Section 23-321. Effect of Special Magistrate's Recommendation**

24  
25  
26 (1) The Special Magistrate's recommendation is advisory and not binding on the  
27 owner or the Board of County Commissioners.

28  
29 (2) A Special Magistrate's recommendation constitutes data which will be  
30 considered with respect to any pertinent amendment to the comprehensive plan.

31  
32 (3) A Special Magistrate's determination that the development order or  
33 enforcement action is unreasonable or unfairly burdens the owner's land will  
34 constitute a determination of hardship which will support a modification, variance,  
35 or special exception as otherwise authorized by applicable rules and regulations.



**Section 23-322. Disposition of Special Magistrate's Recommendation**

(1) Within 45 days of receipt of the Special Magistrate's recommendation, the Board must deliberate and determine whether to:

(a) Accept the recommendation as submitted and implement it in the ordinary course and consistent with all other rules and regulations; or

(b) Modify the recommendation as submitted and implement it in the ordinary course and consistent with all other rules and regulations; or

(c) Reject the recommendation as submitted. Failure to act within 45 days of receipt of the recommendation will be deemed a rejection, unless the owner and the county agree to an extension of time.

(2) The deliberations of the Board regarding whether to accept, reject or modify the Special Magistrate's recommendation will be made at a public hearing. If the Special Magistrate recommends that the Board grant relief that, if requested by the owner in the first instance, the Board could only grant following a quasi-judicial hearing (e.g., rezoning, variance, special exception, overlay district, etc.), the Board must conduct a quasi-judicial hearing to consider the Special Magistrate's recommendation; provided, that an owner will not be required to duplicate processes that the owner previously has participated in order to effectuate the Special Master's recommendation (e.g., submitting a new applications, appearing before the Planning and Zoning Commission, conducting public inquiry workshops, providing notice by mail, providing notice by signage, etc.). The planning department shall be responsible for placing the Special Master's recommendation on the Board's agenda and for promulgating due public notice of the public hearing.

(3) If the Special Magistrate recommends relief or other action in conjunction with another governmental entity, the County Attorney must confer with appropriate staff from the other entities to review the recommendation and determine whether a joint staff recommendation can be made to the heads of the respective governmental entities.

(4) Within 15 days after final action on the Special Magistrate's recommendation by the Board, the Clerk will send a copy of the order or other document memorializing final action to the Florida Department of Legal Affairs.

1       (5) Within 10 days of final action on the recommendation, the owner must notify  
2       the County Attorney in writing whether the owner accepts the decision on the  
3       recommendation.

4  
5       (6) If the Board and the owner both approve the Special Magistrate's  
6       recommendation, the Board shall proceed to implement it by resolution, development  
7       agreement, or any other method that is in the ordinary course and consistent with the  
8       rules and procedures of the County.

9  
10       (7) If the Board accepts the recommendation or modifies it and the owner rejects  
11       the acceptance or modification, or if the Board rejects the recommendation, the  
12       Board shall memorialize its decision in a resolution. The resolution shall describe,  
13       as specifically as possible, the available use or uses that are permissible on the  
14       owner's land. The resolution must be enacted within 30 days of the Board's final  
15       action on the recommendation.

16  
17       (8) After the Board has acted on the Special Magistrate's recommendation and  
18       a written decision has been issued describing the use or uses available on the owner's  
19       land, or if the Board of County Commissioners has not acted within 45 days, the  
20       owner may seek a formal adjudication on the development order or enforcement  
21       action as otherwise authorized by law.

22  
23       **Section 2. Severability.** It is declared to be the intent of the Board of County  
24 Commissioners that if any section, subsection, clause, sentence, phrase, or provision of this  
25 ordinance is for any reason held unconstitutional or invalid, the invalidity thereof shall not affect the  
26 validity of the remaining portions of this ordinance.

27       **Section 3. Inclusion in the Code.** It is the intention of the Board of County Commissioners  
28 of Hernando County, Florida, and it is hereby provided, that the provisions of this Ordinance shall  
29 become and be made a part of the Code of Ordinances of Hernando County, Florida. To this end, the  
30 sections of this Ordinance may be renumbered or re-lettered to accomplish such intention, and that  
31 the word "ordinance" may be changed to "section," "article," or any other appropriate designation.

**Section 4. Conflicting Provisions Repealed.** All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

**Section 5. Effective Date.** This ordinance shall take effect immediately upon receipt of official acknowledgment from the office of the Secretary of State of Florida that this ordinance has been filed with said office.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF  
HERNANDO COUNTY in Regular Session this                      day of                      2023.

**BOARD OF COUNTY COMMISSIONERS  
HERNANDO COUNTY, FLORIDA**

Attest: \_\_\_\_\_  
DOUGLAS CHORVAT, JR.  
Clerk and Comptroller

By: \_\_\_\_\_  
JOHN ALLOCCO  
Chair

Approved for Form and Legal Sufficiency

Jon Jouben  
County Attorney