

CITY OF TALLAHASSEE

CITY COMMISSION AGENDA ITEM

ACTION REQUESTED ON: February 14, 1996

SUBJECT/TITLE: Approve Proposed Resolution Adopting City Commission Policy for Special Master Proceedings

TARGET ISSUE: N/A

STATEMENT OF ISSUE

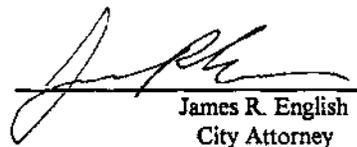
The 1995 Florida Legislature adopted an act relating to private property rights. Part I is known as the Bert J. Harris, Jr. Private Property Rights Protection Act and Part II is known as the Florida Land Use and Environmental Dispute Resolution Act. The Dispute Resolution Act contemplates special master proceedings to mediate the rights of owners who feel that local governments have issued development orders or enforcement actions which are unreasonable or unfairly burden the use of real property. To implement the legislation, staff has prepared a City Commission policy setting forth procedures for the special master process.

RECOMMENDED ACTION

Approve Option 1: Approve Resolution No. 96-R-0004, adopting proposed City Commission Policy No. 414CP which creates a procedure to govern the special master proceedings required by the Florida Land Use and Environmental Dispute Resolution Act; and authorize transfer of \$20,000 from the City contingency fund to the Code Board and Special Projects section within the Neighborhood and Customer Service Department.

FISCAL IMPACT

It is estimated that there may be six requests for relief under the new legislation, and that \$20,000 be transferred from the City's contingency fund to cover this unanticipated cost.


James R. English
City Attorney

For Information, please contact: Linda R. Hurst Legal 8554
Name Department/Office Extension

SUPPLEMENTAL MATERIAL

ITEM TITLE:

Approve Proposed Resolution Adopting City Commission Policy for Special Master Proceedings

ISSUE ANALYSIS

HISTORY/FACTS & ISSUES

In 1995, the Florida Legislature, under persistent pressure from a statewide property rights movement, passed the Florida Land Use and Environmental Dispute Resolution Act (Dispute Resolution Act), which became effective October 1, 1995. Under the Dispute Resolution Act, an owner who believes that the City has taken action which is unreasonable or unfairly burdens the use of his/her real property may have the issues referred to a special master for informal dispute resolution proceedings. Costs of the proceedings are borne equally by the City and the owner. The special master proceedings are voluntary; the owner is not required to take advantage of the process. The owner may choose the traditional judicial or administrative remedies available to him/her instead of, or in addition to, the special master process. Prior to filing a request for relief under the Dispute Resolution Act, the owner must exhaust any administrative appeals that are available to him/her under the City's regulations.

Under the Dispute Resolution Act, and the proposed City Commission policy, the first responsibility of the special master is to facilitate a resolution of the conflict between the parties. If the matter is not resolved, and the special master finds that the City has acted unreasonably or that the City's action unfairly burdens the owner's real property, the special master makes a non-binding recommendation to the City Commission. If the matter is not resolved following the special master's recommendation, the City must issue a written decision that describes the permitted uses for the property. The City's decision is then considered ripe for subsequent judicial proceedings. Time frames for judicial or administrative proceedings are tolled during the pendency of the special master proceedings.

The scope of the act is broad; every permit application acted on or enforcement action taken after October 1, 1995, by the City presents a potential dispute resolution proceeding. Any order or notice of City action which is or will have the effect of granting, denying, or conditioning a development permit, including any building permit, zoning permit, subdivision approval, certification, special exception, variance, or any other similar action which has the effect of authorizing the development of real property are subject to the act. The Act also provides for informal mediation for a property owner whose request for a Comprehensive Plan amendment is denied.

The Act includes specific time frames for completion of the special master process. The entire special master proceeding must be concluded within 165 days from the date the owner files a request for relief.

The special master hearings must be informal and open to the public. The parties must be prepared to present evidence and expert testimony, if necessary; and the special master may subpoena additional witnesses if necessary. The informality of the process is designed to avoid the need for attorneys; however, parties may have attorneys if they wish. There are provisions for interested parties affected by the outcome of the proceedings other than the owner to be notified and to have limited participation.

The proposed City Commission policy, No. 414CP, is based on a model prepared by the Florida Growth Management Conflict Resolution Consortium. This model was chosen from several because it is a single source reference for the special master proceedings, eliminating the need to refer to several documents. The proposed policy tracks the legislation, and assigns responsibility for the administration of the process to the City Attorney's Office and the Code Board Coordinator. The Code Board Coordinator will maintain files, and serve as liaison with the special masters selected under the proceedings.

The Office of Organizational Effectiveness participated in the review of the proceedings, and has recommended that the Code Board and Special Projects section within the Neighborhood and Customer Service Department bear the expense of the City's portion of the cost of the special master proceedings. The Code Board Coordinator, who is largely responsible for administering the policy, is located in this department. The estimated cost to the City for the process of \$20,000 is based on six cases requiring 20 hours of special master's time at \$175-\$200 an hour, plus administrative costs and expenses. This amount takes into account that the owner who requests relief under the Act must bear half of the expenses. Staff expects only the most troublesome developments to go through this process since there is already a process in place to attempt to resolve disputes before permitting.

The policy authorizes a department head to sign the required special master agreement up to the amount of \$10,000.00 of City funds. Special master agreements for City expenditure of between \$10,000.00 and \$50,000.00 would be approved by the City Manager; and agreements for over \$50,000.00 would be approved by the City Commission. Staff services may be provided through the Code Board Coordinator for the special master proceedings, if the special master requests such services.

The process will lead to increased expense estimated at \$20,000 for the City in the form of staff time spent on requests for relief under the Act, the cost of mailing notices required by the Act, and payments to the special masters. As of this date, there have been no requests for relief under the Dispute Resolution Act, and there is no reliable way to predict how many requests for relief may be filed, but the estimate of expenses is based on six.

OPTIONS

Option 1. Approve Resolution No. 96-R-0004, adopting proposed City Commission Policy No. 414CP which creates a procedure to govern the special master proceedings required by the Florida Land Use and Environmental Dispute Resolution Act, and authorize transfer of \$20,000 from the City contingency fund to the Code Board and Special Projects section within the Neighborhood and Customer Service Department.

Option 2. Approve Resolution No. 96-R-0004, adopting proposed City Commission Policy No. 414CP, as modified by the City Commission, and authorize transfer of \$20,000 from the City contingency fund to the Code Board and Special Projects section within the Neighborhood and Customer Service Department.

Option 3. Do not approve Resolution No. 96-R-0004, with instructions to the City Attorney on alternative action.

ATTACHMENTS/REFERENCES

Attachment 1 - Proposed Resolution 96-R-0004

Attachment 2 - Proposed City Commission Policy No. 414CP

Attachment 3 - Copy of Florida Land Use and Environmental Dispute Resolution Act

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RESOLUTION NO. 96-R-0004

A RESOLUTION OF THE CITY OF TALLAHASSEE, FLORIDA, CREATING A NEW CITY COMMISSION POLICY ESTABLISHING PROCEDURES FOR SPECIAL MASTER PROCEEDINGS REQUIRED BY THE FLORIDA LAND USE AND ENVIRONMENTAL DISPUTE RESOLUTION ACT, CHAPTER 95-181, SECTION 2, LAWS OF FLORIDA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the 1995 Florida Legislature passed legislation known as the Florida Land Use and Environmental Dispute Resolution Act, Chapter 95-181, Section 2, Laws of Florida, to be codified as Section 70.51, Florida Statutes (Dispute Resolution Act); and,

WHEREAS, the Dispute Resolution Act applies to the City's regulatory action on applications for development orders and permits, and enables owners who believe that the City's action is unreasonable or unfairly burdens the use of real property to request informal dispute resolution by a special master; and,

WHEREAS, it is desirable and advantageous for the City to adopt procedures for conducting the special master proceedings in a manner consistent with the legislation and establishing certain standards of conduct for the special master and participants.

NOW, THEREFORE, BE IT RESOLVED BY THE PEOPLE OF THE CITY OF TALLAHASSEE, FLORIDA:

SECTION 1. City Commission Policy Number 414CP is hereby created to govern the special master proceedings required by the Florida Land Use and

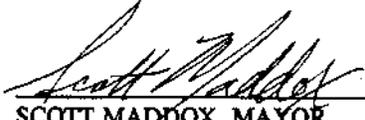
CODING: Words are deletions from existing language; words underlined are additions.

1 Environmental Dispute Resolution Act adopted by the Florida Legislature in Chapter
2 95-181, Section 2, Laws of Florida, which policy is attached hereto as Exhibit A, and
3 incorporated by reference herein.

4 SECTION 2. This Resolution is effective immediately upon approval by the
5 City Commission.

6 PASSED AND ADOPTED by the City Commission of the City of Tallahassee
7 in regular meeting assembled this 14th day of February, 1996.

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SCOTT MADDOX, MAYOR

ATTEST:	APPROVED AS TO FORM:
	
ROBERT B. INZER Treasurer-Clerk	JAMES R. ENGLISH City Attorney

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