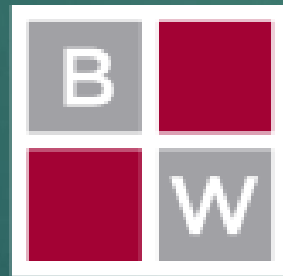




Florida Land Use and Environmental Dispute Act

FLORIDA ASSOCIATION OF COUNTY ATTORNEYS

Mark P. Barnebey, Esq. Blalock Walters, P.A.



BLALOCK
WALTERS
ATTORNEYS AT LAW

WE MAKE A DIFFERENCE



The Heart of the Dispute Resolution Act

Any owner who believes that a development order, either separately or in conjunction with other development orders, or an enforcement action of a governmental entity, is unreasonable or unfairly burdens the use of his real property, may apply within 30 days after receipt of the order or notice of the governmental action for relief under this section. Section 70.51(3), Florida Statutes.

What is a development order?

Any order or notice of governmental action which has the effect of

- Granting
- Granting with conditions, or
- Denying

An application for development permit, including rezoning.

What is not a development order?


- Actions regarding comprehensive plan amendments

Section 70.51 (2), Florida Statutes

What is a development permit?

1. Building permit
2. Zoning permit
3. Subdivision approval
4. Special exceptions
5. Variances, and
6. Any other permit authorizing development under Chapters 125, 161, 163, 166, 187, 258, 372, 378, 380 and 403, Florida Statutes

Section 70.51 (2), Florida Statutes



There are five key
points to consider
regarding the Act

Weird Roles for the Special Magistrate

1. Mediator, then
2. Recommender of Action

Section 70.51, Florida Statutes



The county does not control whether the owner files for Dispute Resolution

Therefore, enjoy the ride



Scott v. Polk County, 793 So.2d 85 (Fla. 2nd DCA 2001); Section 70.51(17), Florida Statutes

With nothing binding on the county without the approval of the county, then

You are dealing with house money



Section 70.51, Florida Statutes

Informal Process
And
Special Magistrate controls the
proceeding...
totally



Scott v. Polk County, 793 So.2d 85 (Fla. 2nd DCA 2001); Section 70.51(17),
Florida Statutes

The Act involves whether the county was:

- Unreasonable or
- Unfairly burdened the property

Not whether the action of the county was supported by substantial competent evidence

Section 70.51 (3), Florida Statutes

Process Summary

- A. Part I – Special Magistrate as Mediator
Mediation allows the parties to try to come to some compromise.
- B. Part II A – Special Magistrate as Recommender
If a proposed settlement cannot be achieved, then the special magistrate recommends settlement.
- C. Part II B – The recommendation may be persuasive, but is non-binding. If the county rejects the recommendation of the special magistrate, the County must produce a list of possible uses for the property

To initiate the proceeding:

The owner files a request for relief with the head of the county within 30 days of the order or notice of governmental action

- Explaining why the government has been unreasonable or unfairly burdens the use of real property
- Requesting relief to include:
 - A brief statement of the proposed use of the property
 - A summary of the development order or action
 - A copy of the documentation of the order or action
 - A brief statement of the impact of order or action
 - Certificate of service on the parties

Section 70.51 (4) and (6), Florida Statutes





The County may not charge for filing
the request for relief

Filing of the request stays the need to
file for judicial relief

Section 70.51 (4) and (10), Florida Statutes; See also, *Florida Peninsular
Props. Braden River, LLC*, 965 So.2d 160 (Fla 2nd DCA 2007)

Upon filing of the request for relief by the owner, the county must:

1. Work with the owner to find and retain a special magistrate acceptable to both parties within 10 days.

Special Magistrate must be

- Resident of the state
- Possess experience and expertise in mediation
- Working familiarity in one or more of the following:
 - Land use and environmental permitting
 - Land planning
 - Land economics
 - Local and state government and the applicable law



2. Notify

- a. Contiguous property owners

- b. Substantially affected parties who

- 1. Submitted oral or written testimony at the hearing before the County Commission; and

- 2. Indicated a desire to receive notice of any subsequent hearing (If have not done it send to everyone who testified or submitted written or electronic correspondence)

Section 70.51 (4) and (5), Florida Statutes

Exhaustion of Administrative Appeals

Owner must have exhausted all non-judicial administrative appeals...

If they take less than 4 months to complete

Section 70.51(10), Florida Statutes

Filing for Judicial Relief

If owner files for judicial relief, then owner waives any right to a special magistrate proceeding

Section 70.51(10), Florida Statutes

Who are the parties?

- Owner of the property
- The county which issues the order or takes the action
- Other governmental entities where a combination of orders or processes are involved.

Who are not parties?

- Contiguous property owners
- Substantially affected persons who submitted oral or written testimony

Section 70.51 (12), Florida Statutes



There are two phases to the Act –

1. Mediation (and if that does not work)
2. Special Magistrate Recommendation

Section 70.51 (17) and (19), Florida Statutes

Pre-hearing activity:

County selects someone who is qualified to:

- Address alternatives
- Variances
- Other types of modifications

and

- Make a recommendation

(Someone higher up in the organization than the original staff)

Section 70.51(13), Florida Statutes

Pre-hearing activity

Fifteen days after filing for the request for relief:

- County must prepare a response to the request for relief to include:
 - Response to issues raised by owner
 - Explain the public purpose for the order or action
- Send response to the:
 - Special Magistrate (must have a special magistrate)
 - Owner

Section 70.51(16), Florida Statutes

Pre-Hearing activity

County finds a suitable location for hearing

- Hearing room with capacity for the public
- Two or more breakout rooms for parties

Pre-hearing activity:

Do you need to transcribe? No.

Do you need to keep minutes? No.

Do you have to swear people in? No.

Do you have to advertise or post a notice of hearing? No.



Pre-hearing activity:

Parties and special magistrate to determine

- How will the hearing be held?
 - One hearing – mediation, then if that does not work, shift into hearing with arguments ...if impasse occurs
- Two hearings (recommended)
 - First hearing is solely focused on mediation
 - Second hearing would be scheduled only if impasse

Two Hearing process is preferable –

- Attitudes of parties will differ from mediation and hearing recommendation
- Gives owner an opportunity to determine if the second hearing and recommendation is desired. Owner may want to go directly to court

Mediation Hearing

In public

- Short opening (non-adversarial) statements
- Public Comments?

In breakout rooms

- Breakout sessions
 - In public
 - If settlement is proposed
 - Acceptable to owner
 - Will be recommended by county representative
 - Public given an opportunity to comment on proposed settlement and alternatives, variance and other modifications to the order or action
 - Settlement shall be in writing (may be after the hearing)

Section 70.51 (12) and (17), Florida Statutes

Mediation Hearing

- Special Magistrate may require additional information to be provided (by anyone?)
- Special Magistrate may hear from the public to get an understanding of the matter
- Special magistrate may subpoena any non-party witnesses

Section 70.51 (7), (14) and (17), Florida Statutes

If Settlement, then

County takes settlement to

- Entity which can take action on settlement
- If public hearing required, do they do this at meeting and then authorized consideration at a public hearing? Or
- Does it go straight to public hearing?

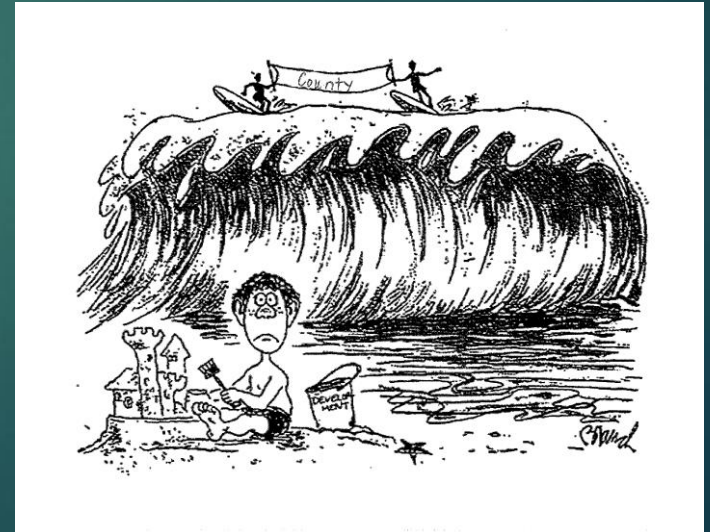


Recommendation

If mediation reaches impasse then

Special magistrate determines if the county action is unreasonable or unfairly burdens the property

Section 70.51(18), Florida Statutes



Recommendation

Special magistrate may consider

- History of the property
- History of development and use of the property
 - Includes dedications and public improvements
- History of land use controls and environmental protection on property
- Present nature of property
- Reasonable expectations by the owner
- Public purpose of the county order or action
 - Magnitude of issue
 - Necessary for public purpose
 - Alternatives to achieve public purpose
- Uses authorized on other similar properties
- Other relevant information to the special magistrate



Section 70.51(18), Florida Statutes

Recommendation

Within 14 days, special magistrate issues an order stating:

- The county order or action is not unreasonable or does not unfairly burden the owner's property (process ends)

or

- The county order or action is unreasonable or unfairly burdens the owner's property

Section 70.51(19), Florida Statutes

Recommendation

If it is found that the county action was unreasonable or unfairly burdens the use of the property. The special magistrate may recommend reduced restrictions which can include:

- An adjustment in the development order or action
- Increases in modification of density, intensity and use of the property
- The transfer of development rights
- Land swaps and exchanges
- Mitigation (including payments in lieu)
- Relocation of use on the property
- Requirements that adjustments be made in the county regulations
- Issuance of a development order, variance, special exception or other extraordinary relief
- Purchase of the property or an interest by the county

Section 70.51(19), Florida Statutes

Recommendation

- The Recommendation is a public record
- Actions and statements of all participants to the proceeding are not admissible in any subsequent judicial or administrative proceeding
- The Recommendation is filed with the Florida Department of Legal Affairs

Section 70.51 (20) and (27), Florida Statutes

Recommendation

The county must either:

- Accept the recommendation and proceed to implement it
- Modify the recommendation and proceed to implement the modification, or
- Reject the recommendation (failure to act on the recommendation within 45 days constitutes a rejection unless parties agree to extend the period)

Section 70.51 (21), Florida Statutes

Recommendation

If the county rejects the recommendation or the owner rejects the recommendation or modification:

Within 30 days, the county must issue a written decision that describes *as specifically as possible* the use or uses available. Once the list of possible uses is provided, the matter is ripe for judicial action.

Section 70.51 (22), Florida Statutes



Things to consider doing now:

- County may set up procedures related to conduct of the proceedings and may include:
 - Payment of special magistrate fees and expenses to be borne equally by the parties
- Revising public speaking forms to ask whether the speaker wants to be informed on such proceedings.



Questions