

Soil and Water Conservation Dist., referendums

Number: INFORMAL

Date: March 21, 2008

Ms. Michele Moen
Supervisor
Volusia County Soil and Water
Conservation District
1342 East South Woodland Boulevard
Deland, Florida 32720

Dear Ms. Moen:

This is in response to your inquiry as to who may vote in a referendum to adopt land use regulations for the Volusia County Soil and Water Conservation District (district). You also ask what constitutes "due notice" for purposes of holding a referendum and whether municipalities and the county are required to comply with the land use regulation, if adopted, in granting land use and building permits.

Chapter 582, Florida Statutes, governs the establishment and operation of soil and water conservation districts in this state. The powers and duties of the district and its governing board of supervisors are set forth in section 582.20, Florida Statutes. Additionally, supervisors of the district are authorized to "formulate regulations governing the use of lands within the district in the interest of conserving soil and soil resources, and preventing and controlling soil erosion."^[1] In doing so, the supervisors may conduct public meetings and public hearings on the tentative regulations as necessary to assist them. Such regulations are subject to referendum approval by "the owners of lands lying within the boundaries of the district[.]"^[2] The statute further provides that "[a]ll owners of lands within the district shall be eligible to vote in such referendum" and that "[o]nly such landowners shall be eligible to vote."

Section 582.01(4), Florida Statutes, defines "[l]andowner" or "owner of land" as including "any person who shall hold legal or equitable title to any lands lying within a district organized under the provisions of this chapter." No other restrictions appear to apply.

Where the plain language of the statute directs how a thing is to be done, it acts as a prohibition against its being done in any other manner.^[3] In this instance, it is the landowners within the special district who are eligible to vote. Accordingly, only those individuals who own land within the boundaries of the soil and water conservation district are eligible to vote in a referendum to approve or disapprove land use regulations applicable within the district.

A secondary question has arisen, however, in instances where a parcel of land lying within the district's boundaries is owned by more than one individual, whether each person owning an interest in the land is entitled to vote. Generally, the manner in which title to property is held controls how votes are to be cast by property owners within a special district. For example, if a husband and wife hold property as tenants by the entireties, then the husband and wife are

considered "one" owner and would have one vote. If two or more individuals own a parcel as joint tenants or tenants in common, each holds an undivided interest in the whole property, such that both owners may vote.[4]

In regard to "due notice," section 582.25, Florida Statutes, makes all meetings of the board open to the public. Under section 286.011, Florida Statutes, all meetings of any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision at which official acts are to be taken must be open to the public. "The board or commission must provide reasonable notice of all such meetings." [5] The type of notice varies, depending on the facts of the situation and the board involved; however, an agency must give notice at such time and in such manner to enable the media and the general public to attend the meeting. [6] While this office has recommended publication of an agenda, if available, the courts of this state have held that the Sunshine Law does not mandate that an agency provide notice of each item to be discussed via a published agenda. [7]

More specifically, you ask what constitutes "due notice" in regard to the board's intention to conduct a referendum for passage of land use regulations. Section 582.01(7), Florida Statutes, states:

"'Due notice,' in addition to notice required pursuant to the provisions of chapter 120, means notice published at least twice, with an interval of at least 7 days between the two publication dates, in a newspaper or other publication of general circulation within the appropriate area or, if no such publication of general circulation be available, by posting at a reasonable number of conspicuous places within the appropriate area, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates."

The plain language of the definition controls what constitutes "due notice" required for the district to provide of its intention to conduct a referendum to approve or disapprove proposed land use regulations. This office may not read any additional requirements into the act.

Finally, section 582.21(2), Florida Statutes, recognizes that approval of the proposed land use regulation by a majority of the votes cast in such referendum does not require the supervisors of the district to adopt the proposed regulation. However, land use regulations adopted pursuant to the procedures prescribed in section 582.21, Florida Statutes, "shall be binding and obligatory upon all owners and occupiers of land within such districts." Supervisors of the district are authorized to go upon any lands within the district to determine whether adopted land use regulations are being observed. If such regulations are not being observed, the supervisors may petition the circuit court to order the landowner to perform the necessary work to comply with the land use regulations. If the landowner fails to perform the work, the supervisors may go on the land, perform the needed work to comply and recover the costs and expenses, with interest, from the owner of the land. [8] Landowners may seek exclusion from the regulations by petitioning a board of adjustment made up of the supervisors. [9]

Any questions as to whether the issuance of a land use permit or building permit would be

conditioned upon compliance with the district's land use regulations would need to be addressed by the local governmental entity involved in granting such permits. I trust that these informal comments will be of assistance in resolving the questions you have raised.

Sincerely,

Lagran Saunders
Assistant Attorney General

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Enclosure

[1] Section 582.21(1), Fla. Stat.

[2] *Id.*

[3] See *Alsop v. Pierce*, 19 So. 2d 799, 805 (Fla. 1944) (legislative directive as to how a thing shall be done is, in effect, a prohibition against its being done in any other way).

[4] See Op. Att'y Gen. Fla. 94-59 (1994) (s. 153.53[3][e], Fla. Stat., allows persons owning property within proposed district to vote; with no weighted voting or per parcel vote prescribed, a married couple holding property as tenants by the entireties, with one of the couple holding title to separate tract individually, would be limited to one vote); Letter to the Honorable Doris Shiver Hamm, Supervisor of Elections, Franklin County, dated July 26, 1993, from Mr. Michael Cochran, Assistant General Counsel, Division of Elections (state of title controls: if husband and wife hold property as tenants by the entireties, then they are considered "one" owner; if two people hold property as joint tenants or tenants in common, each holds undivided interest in the whole and both may vote), copy enclosed. See also *Quick v. Leatherman*, 96 So. 2d 136, 138 (Fla. 1957) (estate by the entirety is peculiar type of tenancy by husband and wife where each owns and controls the whole).

[5] Section 286.011(1), Fla. Stat.

[6] See Ops. Att'y Gen. Fla. 04-44 (2004), 80-78 (1980), and 73-170 (1973). For a more extensive discussion, you may wish to review the Government in the Sunshine Manual, available on-line at www.myfloridalegal.com.

[7] See *Hough v. Stenbridge*, 278 So. 2d 288 (Fla. 3d DCA, 1973), and *Yarbrough v. Young*, 462 So. 2d 515 (Fla. 1st DCA 1985).

[8] Section 582.23, Fla. Stat.

[9] Section 582.24, Fla. Stat.