

1 HB739
2 120974-3
3 By Representatives McMillan, Davis, Shiver, Faust and Baker
4 (A) (N & P)
5 RFD: Baldwin County Legislation
6 First Read: 23-MAR-10

1
2 ENROLLED, An Act,

3 Relating to Baldwin County; to amend Sections
4 45-2-261.01, 45-2-261.02, 45-2-261.07, 45-2-261.10,
5 45-2-261.13, 45-2-261.17, and 45-2-261.40 of the Code of
6 Alabama 1975, relating to the county planning and zoning
7 commission, to further provide for the members, jurisdiction
8 of the commission, procedure for the implementation of
9 planning and zoning, provisions for appeals from a planning
10 district board of adjustment to the county commission, and
11 provisions regarding conflicts of authority and setbacks.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. Sections 45-2-261.01, 45-2-261.02,
14 45-2-261.07, 45-2-261.10, 45-2-261.13, 45-2-261.17, and
15 45-2-261.40 of the Code of Alabama 1975, are amended to read
16 as follows:

17 "§45-2-261.01.

18 ~~"Commencing April 26, 2006, the~~ The planning
19 commission shall be composed of ~~those persons serving as~~
20 ~~members and officers of the Planning Commission of Baldwin~~
21 ~~County on April 26, 2006. Their terms on the planning~~
22 ~~commission shall run concurrently with their existing terms on~~
23 ~~the county planning commission. A minimum of eight members of~~
24 ~~the planning commission shall be qualified electors from the~~
25 ~~unincorporated areas of Baldwin County~~ nine regular members,

1 each of whom shall be a qualified elector and an actual
2 resident of the county. One and only one regular member of the
3 planning commission may be a qualified elector of the county
4 who resides in the corporate limits of a municipality in the
5 county. All regular members shall be appointed by the Baldwin
6 County Commission for a term of four years. Upon the
7 affirmative vote of a majority of the qualified electors in a
8 district election held pursuant to Section 45-2-261.07, the
9 membership of the planning commission shall be increased by
10 appointment by the county commission of a qualified elector
11 from that district for a temporary one-time term of three
12 years. In the event of any vacancy on the planning commission,
13 such vacancy shall be filled by appointment of the Baldwin
14 County Commission. The Baldwin County Commission may remove
15 any member for cause upon written charges and after a public
16 hearing. All members shall serve without compensation, and no
17 member shall be a county officer or employee; however,
18 reasonable and necessary expenses of the members of the
19 planning commission shall be paid from the General Fund of
20 Baldwin County.

21 "§45-2-261.02.

22 "The jurisdiction of the planning commission for
23 planning and zoning by district pursuant to Section
24 45-2-261.07 shall apply to all unincorporated areas of Baldwin
25 County. The planning commission shall not have authority over

1 removal of natural resources growing on, placed on, or
2 naturally existing on or under private lands or properties. In
3 ~~any district which has adopted a zoning ordinance, undeveloped~~
4 ~~land or land zoned or used for agricultural purposes or timber~~
5 ~~growing shall automatically be rezoned for single family use~~
6 ~~upon the request by the owner.~~ Provided further, that any
7 owner of record of real property upon the date of the adoption
8 by the Baldwin County Commission of the zoning ordinance for
9 the district in which the property is located shall
10 automatically obtain a variance, if needed, for a single
11 family dwelling notwithstanding the type of dwelling to be
12 ~~placed or constructed on the property. Notwithstanding any~~
13 ~~provisions, rules, or regulations to the contrary, for the~~
14 ~~purposes of filing any application required by the ordinances~~
15 ~~and zoning regulations promulgated hereunder, any owner of~~
16 ~~record or holder of any interest in the real property made the~~
17 ~~subject of such application shall have standing and be~~
18 ~~authorized and entitled to file such application and request~~
19 ~~action authorized by such ordinances and zoning regulations in~~
20 ~~order to exercise his or her rights in the subject property.~~
21 placed or constructed on the property. Notwithstanding any
22 provisions, rules or regulations to the contrary, no applicant
23 called for or required by the ordinances and zoning
24 regulations promulgated hereunder may be rejected solely on
25 the grounds that the applicant is not the record owner of the

1 subject land, provided that such applicant maintains or owns
2 an interest in the real property made the subject of the
3 application and is seeking to exercise the applicant's rights
4 in such property. The Baldwin County Commission may enter into
5 agreements with municipalities for planning purposes with the
6 extraterritorial planning jurisdiction of the municipalities.
7 The county commission may designate the planning commission to
8 administer subdivision regulations adopted pursuant to the
9 provisions of Sections 11-19-1 to 11-19-24, inclusive, and
10 11-24-1 to 11-24-7, inclusive, and Act 1094 of the 1973
11 Regular Session (Acts 1973, p. 1860).

12 "§45-2-261.07.

13 "The Baldwin County Commission shall not exercise
14 its planning and zoning powers and jurisdiction in any
15 district established hereunder until the majority of the
16 qualified electors of the district voting in an election shall
17 have voted their desire to come within the planning and zoning
18 authority of the Baldwin County Commission. The election shall
19 be held if 10 percent of the qualified electors in any
20 district submit a written petition to the county commission
21 expressing a desire to be subject to the planning and zoning
22 jurisdiction of the Baldwin County Commission under authority
23 of this subpart ~~or upon a resolution of the county commission.~~
24 For the purposes of the establishment of districts after the
25 effective date of the act amending this section, a district

1 shall correspond to a voting precinct or precincts in the
2 county unless the county governing body determines that the
3 use of voting precinct boundaries is not feasible. A party or
4 parties seeking to file a petition shall notify the county
5 governing body in writing that the parties will petition for
6 the formation of a district and the proposed boundaries of the
7 district. The judge of probate within 15 days shall give a
8 preliminary estimate of the number of signatures needed to
9 call the election. The county governing body shall notify the
10 principal party in writing within 30 days of written
11 notification by petitioners of intent to request a referendum,
12 by U.S. mail, return receipt requested, that the proposed
13 district is acceptable for planning, zoning, and voting
14 purposes and shall furnish forms to the petitioner for use in
15 seeking the number of signatures required to call an election.
16 The parties shall have 120 days thereafter to obtain the
17 necessary signatures and file the petition. The county
18 commission and the Judge of Probate of Baldwin County shall
19 certify or reject the accuracy of the petition no later than
20 45 days after receiving the petition, ~~or in the case of an~~
21 ~~election to be held by resolution of the county commission,~~
22 ~~the county commission shall certify the adoption of its~~
23 ~~resolution to the judge of probate. If the number of~~
24 ~~signatures is not sufficient, the parties shall have another~~
25 ~~60 days to complete the petition and have it certified. If the~~

1 petition is not certified, a petition for the proposed
2 district may not be refiled for ~~one year~~ two year after the
3 final denial of certification. Upon certification, the county
4 commission shall then instruct the Judge of Probate of Baldwin
5 County to provide for an election within that district no
6 later than 90 days after the certification. Notice of the
7 election shall be published four times during the 30-day
8 period immediately preceding the date of the election in a
9 newspaper of general circulation in Baldwin County. In
10 addition, the county commission shall notify by U.S. mail each
11 elector in a district of the election and the process to
12 obtain additional information. The notification shall state
13 the date of the election and the polling place or places for
14 voting. The judge of probate shall conduct the election. All
15 costs for the notification and election shall be paid from the
16 General Fund of Baldwin County. If a majority of the qualified
17 electors in a district vote in the negative in the election,
18 then the district shall not be subject to the zoning and
19 planning jurisdiction of the Baldwin County Commission, and
20 the qualified electors of the district shall not be eligible
21 to petition for another election until one year from the date
22 of the last election. If a majority of the qualified electors
23 in a district vote in the affirmative, then the district shall
24 be subject to the zoning and planning jurisdiction of the
25 Baldwin County Commission.

1 "§45-2-261.10.

2 "The Baldwin County Commission shall provide for the
3 appointment of boards of adjustment and the regulations and
4 ordinances adopted pursuant to the authority of this subpart
5 shall provide that the boards of adjustment, in appropriate
6 cases and subject to appropriate conditions and safeguards,
7 may make special exceptions to the terms of the ordinances and
8 regulations in harmony with their general purposes and
9 interests and in accordance with general or specific rules
10 therein contained. Four district boards of adjustment shall be
11 appointed by the Baldwin County Commission with the same
12 boundaries as the county commission districts as currently
13 provided for by law on April 26, 2006. If a planning district
14 is in more than one commission district, the board of
15 adjustment for the planning district shall be the board of
16 adjustment for the county commission district which contains
17 the greatest part of the planning district. Each board of
18 adjustment shall consist of not less than three and not more
19 than the same number of regular members as the number of
20 planning districts within the jurisdiction of a board of
21 adjustment. Each member of a board of adjustment shall be a
22 qualified elector of a planning district within the territory
23 of the respective board of adjustment. The board of adjustment
24 for each county commission district shall be composed of at
25 least one member from each planning district and shall reflect

1 as nearly as practical the diversity of land use in the
2 commission district. The initial appointment of members to
3 boards of adjustment and the alternates provided by Act
4 2006-609 shall be from nominations by the boards of adjustment
5 of the local planning districts on April 26, 2006. ~~No more~~
6 ~~than 25 percent of the members~~ Not more than one member of a
7 board of adjustment shall be directly engaged in real estate
8 sales, development, or construction or any directly related
9 field. The county commission shall consider the size of the
10 territory which has formed planning districts under a board of
11 adjustment district in determining the size of a board of
12 adjustment. Each regular member shall be appointed for a term
13 of three years in such a manner to serve staggered terms. A
14 regular member shall continue service until a successor is
15 duly appointed. The members of each board of adjustment shall
16 elect a chair. In addition to the regular members provided for
17 in this section, one alternate member for each regular member
18 shall be appointed to serve on each board of adjustment only
19 in the absence of the regular member for the place for which
20 he or she was appointed an alternate and while serving shall
21 have and exercise authority of a regular member. The alternate
22 member shall have the same qualifications as a regular member
23 and shall serve for a term concurrent with the regular member
24 for the district. Members of each board of adjustment may be
25 removed for cause by the Baldwin County Commission upon

1 written charges and after a public hearing. Vacancies shall be
2 filled for the unexpired term of any member whose term becomes
3 vacant. Each board of adjustment for each district shall adopt
4 bylaws in accordance with the provisions of any ordinance or
5 regulation promulgated pursuant to this subpart. Meetings of
6 each board of adjustment shall be held at the call of the
7 chair of the board and at such other times as each board may
8 determine, provided that no board of adjustment shall meet
9 less than once every three months on a day to be determined by
10 the board. The chair, or in his or her absence, the acting
11 chair may administer oaths and compel the attendance of
12 witnesses. All meetings of the boards of adjustment shall be
13 open to the public. The board shall keep minutes of its
14 proceedings showing the vote of each member upon each
15 question, or, if absent or failing to vote, indicating that
16 fact, and shall keep records of its examinations and of other
17 official actions, all of which shall immediately be filed in
18 the office of the board and shall be a public record.

19 "§45-2-261.13.

20 "(a) Any party aggrieved by a final judgment or
21 decision of a board of adjustment ~~may~~, except a decision on
22 the approval or disapproval of a platted subdivision, within
23 15 days thereafter, may appeal therefrom to the Circuit Court
24 of Baldwin County, Alabama, by filing with the circuit court
25 and the board of adjustment a written notice of appeal

1 specifying the judgment or decision from which the appeal is
 2 taken. In case of the appeal, the board of adjustment shall
 3 cause a transcript of the proceedings and the action to be
 4 certified to the court to which the appeal is taken.

5 "(b) Any party aggrieved by a final judgment or
 6 decision of a board of adjustment on the decision on the final
 7 approval or disapproval of a ~~platted~~ subdivision, within 15
 8 days thereafter, may appeal therefrom to the county
 9 commission. Any party aggrieved by the final judgment or
 10 decision of the county commission within 15 days thereafter,
 11 may appeal therefrom to the Circuit Court of Baldwin County,
 12 Alabama, by filing with the circuit court and the county
 13 commission a written notice of appeal specifying the judgment
 14 or decision from which the appeal is taken. In case of an
 15 appeal to circuit court, the county commission shall cause a
 16 transcript of the proceedings and the action to be certified
 17 to the court to which the appeal is taken.

18 "§45-2-261.17.

19 "The authority of the Baldwin County Commission
 20 under this subpart shall not conflict with present or future
 21 regulations or policies of the Alabama Department of Health.
 22 ~~No~~ Except as expressly set forth in this subpart, no provision
 23 of this subpart shall infringe upon the existing authority of
 24 the Baldwin County ~~Planning~~ Commission to regulate the
 25 development of subdivisions under Act 1094 of the 1973 Regular

1 Session (Acts 1973, p. 1860), and any amendments thereto, or
2 any additional power or authority granted to the Baldwin
3 County Commission by local legislative act. Notwithstanding
4 any authority otherwise conferred by this subpart or any local
5 act applicable to Baldwin County, after June 15, 1973, once a
6 subdivision has been approved in accordance with the
7 subdivision regulations applicable to the subdivision at the
8 time of approval, the Baldwin County Commission and the
9 Baldwin County Planning Commission shall have no authority to
10 impose, by amendment to any subdivision regulations, zoning
11 regulations, or otherwise, any new or additional front, side,
12 rear, or wetland setback requirements on any lot contained
13 within a previously approved subdivision which would increase
14 the setback requirements or impose a more restrictive setback
15 requirement on the use of the lot. After June 15, 1973, all
16 subdivisions and lots approved in accordance with the
17 applicable subdivision regulations prior to the date the
18 Baldwin County zoning regulations become applicable to the
19 subdivision or lot, or prior to the amendment of any
20 applicable zoning regulations, shall not be subject to any new
21 or additional front, side, rear, or wetland setback
22 requirements which would increase the setback requirements or
23 impose a more restrictive setback requirement on the use of
24 the lot, and the lot shall not be deemed a nonconforming lot
25 for the purposes of any zoning or subdivision regulations and

1 may be used and improved without regard to the new or
2 additional requirements and without any limitation applicable
3 thereto based on any nonconformity with subsequently enacted
4 regulations. No provision of this subpart shall affect any
5 existing statute or regulation promulgated pursuant to any law
6 creating historic or preservation districts within Baldwin
7 County; however, historic or preservation districts are
8 subject to the provisions of this subpart.

9 "§45-2-261.40.

10 "(a) The Baldwin County Commission may appoint real
11 estate agents or other persons in the real estate field to the
12 Baldwin County Planning Commission. The appointed real estate
13 agents or other persons in the real estate field to the
14 Baldwin County Planning Commission shall not exceed ~~25 percent~~
15 ~~of the composition~~ three members of such commission.

16 "(b) The operation of this section shall be
17 retroactive to January 1, 1976."

18 Section 2. All laws or parts of laws which conflict
19 with this act are repealed.

20 Section 3. This act shall become effective on June
21 1, 2010, following its passage and approval by the Governor,
22 or its otherwise becoming law.

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 01-APR-10, as amended.

Greg Pappas
Clerk

Senate	21-APR-10	Amended and Passed
House	21-APR-10	Concurred in Senate Amendment