

**CITY OF BROOKSVILLE
COUNCIL WORKSHOP
201 Howell Avenue
Brooksville, FL 34601**

MINUTES

July 9, 2013

6:30 P.M.

Brooksville City Council met in workshop session with Mayor Lara Bradburn, Vice Mayor Kevin Hohn and Council Members, Frankie Burnett and Joseph E. Johnston, III present. Also present were City Attorneys Thomas S. Hogan, Jr., Debbie Hogan, James Fisher, and Butch Battista; T. Jennene Norman-Vacha, City Manager; Janice L. Peters, City Clerk, Bill Geiger, Director of Community Development and City Planner Steve Gouldman.

The workshop was called to order by Mayor Bradburn.

GROWTH MANAGEMENT

Review and discussion of current status of the State of Florida's Growth Management.

City Planner Steve Gouldman reviewed the history and processes of the State of Florida's Growth Management from 1985 as well as what changed in 2011 as documented in Attachment 1.

Regarding how Growth Management works, he advised it is long-term coordination between land use control and capital investment. The objective is that infrastructure precedes development, rather than following it. It is a pay-as-you go approach to capital facilities. Primarily, land use controls zoning, permitting, and other regulatory requirements; capital facilities are basically your capital improvements program. This allows control over what kind of impacts development will have, including those to the infrastructure, as well as surrounding uses. Population and natural environmental issues drove Growth Management in Florida. He advised that there were 2.8 million people in 1950, 6.8 million in 1970, 12.9 million in 1990, 16 million in 2000 and 18 million in 2010.

Planner Gouldman also pointed out that regional planning councils (RPC) were designated as the primary organization to address problems and plan solutions that are of greater-than-local concern or scope. RPCs are Florida's only multipurpose regional entity that is in a position to plan for and coordinate intergovernmental solutions to growth-related problems on a greater-than-local issues, provide technical assistance to local governments, and meet other needs of the communities in each region.

He reviewed the three C's, Consistency, Concurrence and Compact Urban Form, the basic growth management mechanisms that came out of the Growth Management Act.

- Consistency – Plans must be consistent with the overall state plan, regional plans, and other local plans. State agency plans must be consistent with the state plan and other local plans.

APPROVED BY BROOKSVILLE
CITY COUNCIL
ON 2/3/14 INITIALS AL

**GROWTH MANAGEMENT & QUASI JUDICIAL PROCEDURES
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- Concurrency – Local governments may not issue a development order unless it will not degrade mandated service levels for public facilities, i.e. Transportation; Sanitary Sewer; Solid Waste; Potable Water; Parks & Recreation; Stormwater Management; and in 2005, Schools.
- Compact Urban Form – Required governments to develop policies to combat sprawl.

Developments of Regional Impacts (DRIs), developments which would have a substantial effect upon the health, safety or welfare of citizens of more than one county, and of which RPCs are the lead agency in coordinating, were reviewed. DCA reviewed for compliance with state law and to identify the regional and state impacts of large-scale developments, making recommendations to local governments for approving, suggesting mitigation conditions or denying proposed developments. Local Government adopts or denies the Development Order.

Local Comprehensive Plans, which must address elements such as future land use, transportation, conservation, schools, housing, infrastructure, recreation and open space, capital improvements and intergovernmental coordination, were reviewed. Plans must also include goals, objectives and policies, plan monitoring and evaluation procedures as well as a map showing future land use. Plan monitoring and evaluation procedures make it a living document, being able to change the plan and evaluate how it is actually working.

Chapter 9-J(5) of the Florida Administrative Code as it relates to Comprehensive Plan, establishes minimum criteria for the preparation, review and determination of compliance of comprehensive plans and plan amendments pursuant to Chapter 163 Florida Statutes.

Planner Gouldman advised that the plan can be amended and monitored via the following:

- Small Comprehensive Plan Amendments, which are continuous, involves 10 or fewer acres, small cumulative effect, no change to the property within the last year, no text change, not in an area of critical concern and less than 10 units per acre in density.

Attorney Hogan asked what Planner Gouldman's understanding of the language that there are no text changes. Planner Gouldman advised you could not make a change to your goal or policy language and have it as a small scale amendment. It had to be a large scale amendment. An example would be when you have a property that wants to be changed from residential to commercial future land use. Director Geiger further explained that for example it would be a case of a 3-5 acre parcel the city would annex and give it a residential land use with no change to the overall objectives. To date, most small scale amendments have been annexations, although some were for already annexed properties that wanted to have a different land use. Most changes are at the request of the property owner. Attorney Hogan added that it is difficult to make those amendments without the land owner being the petitioner. Planner Gouldman expressed that it can be done but potential legal challenges may follow.

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- Large Comprehensive Plan Amendments, which can be made no more than two times per year, can be text or map amendments, require two public hearings and must be submitted for review by DCA, now known as the Department of Economic Opportunity, the Community Planning and Development Division, the RPC, and other agencies.
- Evaluation and Appraisal Reports (EARS), which are adopted by local government and identifies major issues facing the community.

Planner Gouldman advised there are strengths and weaknesses associated with the 1985 Growth Management Act.

The strengths are that:

- It was the infrastructure that developed linkage, that infrastructure had to be there before development occurred
- Protection of sensitive areas
- Linkage of broad state goals and local policies
- Promotion of compact urban form
- The attempts at vertical and horizontal consistency
- Procedures that make comp plans into living documents.

The weaknesses include:

- Lack of State funding for planning efforts
- Lack of State funding for desperately needed infrastructure and backlogs
- User unfriendly system
- Promotion of leap-frog development
- Inappropriateness to slow growing rural areas
- Consistency requirements.

He advised the 1985 act wasn't fully implemented until around 1993 and took some jurisdictions 2-3 years to get approved. Around 1996 Governor Childs appointed a Blue Ribbon Committee to look at ways to possibly improve the plan. Then, around 1998, Governor Bush convened another committee, who in 2001 presented a final report. This included redefining the proper role of the State with less command and control by the Department of Community Affairs, serving more as a mediator and promoter of good planning, renaming it to the Department of Community Assistance. The report also found that there should be better tying of the cost of development to the true cost of new development to the community. Fiscal impact modeling also came out of that report. It addressed improving citizen involvement, finding ways to make communities more livable and infrastructure funding, as well as better linkage of school and comprehensive planning.

It took 10 years for the recommendations of the 2001 report to finally get on the books in 2011 as HB 7207, the Community Planning Act. This act gave more power to the local level rather than having the state involved, in an effort to increase economic development, promote job growth, and to make the development process less costly for the developer.

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He added that the 7-year EAR update is approaching. One of the things they are working on with the Vision Foundation is developing a solid vision of what the vision is for the City. He advised transportation issues are coming in conjunction with Tampa's rail and TBARTA. These issues need to be addressed in the Future Land Use element. They're working on a land use plan to be added as an overlay which identifies the different land uses in general throughout the incorporated city.

QUASI JUDICIAL PRODECURES

Review and discussion of current status of Quasi Judicial procedures (Attachment 2).

Attorney Hogan advised their presentation dove-tails into the Growth Management presentation regarding procedures for zoning changes, comp plan amendments, etc. He advised that after the 2011 amendments as previously reviewed, the Schneider and Jennings cases still apply, quasi judicial hearing and ex parte communication rules still apply as well.

Attorney James Fisher advised the primary issues with quasi judicial hearings are, are they being done right and is there an adequate record being made?

He explained the difference between a quasi judicial act and a quasi judicial legislative act. The question being, is the board sitting as it's legislative or judicial capacity. As a general rule, is the board acting in a way that is creating policy or law OR is it applying the law. When Council is sitting in its judicial capacity, it's evaluating facts, the law, calling and confronting witnesses and applying law that has already been created.

Quasi legislative, or administrative order prescribes that the rule or requirement of administratively determined duty shall be with respect to transactions to be executed in the future, in order that same shall be considered lawful.

REQUIREMENTS

Due Process

Due process in this instance is more relaxed than criminal/civil court. Due process in this case requires notice and the opportunity to be heard. Parties to a quasi judicial process normally are residents located within the city. A participant can be someone who lives in the county.

The essential requirements of the law have to be observed. If you're a party acting before a quasi judicial board, it is considered strict scrutiny. If essential requirements and due process are not applied, and the decision of the Council is not based on competent substantial evidence, the process will go to the Circuit Court. He referenced the Bush/New Mexico Beach case of 2010 in which the due process was not applied.

Attorney Fisher advised the notice requirement for due process is typically one week but can be longer. Petitioners must be afforded a fair opportunity to be heard according to due process, the right to present evidence and cross examine adverse witnesses. He recommended that a court reporter be present at hearings.

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The important thing to consider when Council is acting in its quasi judicial capacity is, is it making policy or ruling on a policy.

The judgment of the Council should be made upon the showing made at the hearing. The question being, has the Council applied the law to the facts?

Attorney Hogan advised his concern is with Council denying petitions without competent substantial evidence, which he elaborated on. He stressed that there must be eyewitness evidence, by observation to deny and must be entered into the record.

Competent Substantial Evidence

Competent substantial evidence is defined as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred or such evidence as is sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached.

Attorney Fisher advised that hearsay, reports, non-sworn testimony, are all admissible.

Ex Parte Communications

Attorney Fisher, quoting the case of Caldwell v Division of Retirement from 1979, stating, ex parte communications are inherently improper and are anathema to quasi-judicial proceedings. Quasi judicial officers should avoid all such contacts where they are identifiable.

Mayor Bradburn, referring to the Planning and Zoning Board, asked if Council can have individual conversations with those board members outside the P&Z and Council hearings. Attorney Battista advised this type of communication would have to be divulged as ex parte communication. Attorney Hogan advised this type of ex parte communication is frowned upon to some degree by the courts. It would be much better to have that board member attend the public hearing to address.

Attorney Fisher found that while such communication is not fatal but will create a presumption. A decision should not be made on this type of communication. Every litigant is entitled to nothing less than the cold neutrality of an impartial judge and must be assured that they may controvert their differences in calm and dispassionate environment before and impartial judge and to have their rights adjudicated in a fair and just manner. This assurance is lacking where a judge interjects him or herself into the fact-gathering process.

Proper Rebuttal

He advised Council may want to revise the Code to require parties to submit evidence that will be presented and relied upon at the quasi judicial hearing 3, 7, 10 days before the hearing. However, Council could still consider other evidence submitted at the meeting, which was discussed at length.

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Continuances

Attorney Fisher reviewed the Bush/New Mexico Beach case regarding continuances.

Future Land Use Map (FLUM)

Mayor Bradburn asked for discussion on conflicts between current zonings, applications for rezoning and the Future Land Use Map (FLUM) and how they all fit together and how the City lacks a vision for a master plan.

City Attorney Hogan advised the FLUM is just a reflection of what the comp or growth plan is for the county or city; an illustration of what the text of that document says. When situations occur that someone has petitioned for a zoning that is consistent with the Comprehensive Plan, and therefore consistent with the FLUM, it's probable that staff would recommend the adoption or acceptance of that petitioner's request. On the other hand, the problem with denying someone's rights on a piece of property that are described in the map or text of the Comprehensive Plan, you breach the argument of vested rights and a number of cases talk about the concept of vested property rights in land use approval, also defined as legitimate claim of entitlement to property interest. This is followed by the basic 14th Amendment argument that if you deny someone's highest and best use of the property that is consistent with the Comp Plan and FLUM, you have taken the property from them almost the same as if you were condemning it.

Florida has the Burt Harris Act known as the Property Rights Protection Act, which talks about the efforts to protect the rights of property owners in this state.

Attorney Hogan advised changes to the FLUM would have to be supported, in his opinion, by an amendment to the Comp Plan. Mayor Bradburn felt there were several options for this to avoid conflict and angst. She then advised there are issues with city properties that are improperly zoned which need to be addressed, referencing the Underwood property as an example. She felt meeting with people on a one-on-one basis would be a successful way to make needed amendments. The first step is to identify conflicts, in existing zonings and on FLUM. The second thing would be to come up with a plan to approach people on a one-on-one basis. She felt the majority of conflicts may be resolved amicably, avoiding a vested rights debate.

Attorney Hogan advised the Comp Plan would still need to be amended and owners around the property in question could object. Regardless, the project could certainly be undertaken to clear up quite a few inconsistencies if it could be done by agreement, advertising and amending the Comp Plan. But, if a property owners highest and best use is industrial and he has vested rights in that, they could litigate against reducing the use of the property, thereby reducing the value of that property. In his research, vested rights are well described in the law.

Vice Mayor Hohn felt this issue, like the vision plan, keeps getting kicked down the road year after year. Although not a simple task, this just needs to get done, starting with the Comp Plan and come to an agreement.

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Mayor Bradburn expressed that a lot has been done in the last 6 years, referencing the rewriting of the Land Development Code. Vice Mayor Hohn agreed staff has done an amazing job putting it all together, but, the EAR is coming up and he advised beginning discussions.

City Manager Norman-Vacha advised the City has limited resources. The vision is the first step, that then goes to the Comp Plan, then to the FLUM. She advised that is the direction staff is trying and has been trying to head. If Council thinks staffs steps are out of line we need to hear that. We believe this is the way to get there and have committed staff to moving in that direction, although it doesn't always move as fast as we would like it to because of staff shortages. Council needs to set the priorities and talk through allocation of resources.

Vice Mayor Hohn advised there is a difference between creating new priorities and moving things forward but we cannot continue to push down the road extremely important decisions that will affect the future of the City. Discussions need to begin.

Attorney Hogan interjected that Council can't policy its way around vested rights unless the property owner and the surrounding property owners agree.

Council Member Johnston agreed with the City Manager that more is being done with less, but felt the problem may be that Council does not know what staff priorities are and what they are working on. He recommended departmental lists from staff with their top 5-10 priorities are and the deadlines with a monthly update.

Council Member Burnett advised some of the problem is the items are discussed but staff is not given direction. He referenced that Council had denied an additional person for Community Development.

City Manager Norman-Vacha advised that most of the discussions do not end in a consensus of Council for direction to move forward. She noted projects that are being worked on.

Mayor Bradburn felt step one is identifying the conflicts should not be a monumental task in the long range plan. City Manager Norman-Vacha asked, "conflicts in who's opinion"? Director Geiger agreed, stating that becomes an issue in how each property is evaluated at the staff level. He is very familiar with the zoning map, being with the City when it was first produced. Conflict is a matter of perspective. He advised that with the zoning, the map was updated to a digital map around 2003, at which point the zoning was updated to be consistent with the Comp Plan with the exception of where it would have been an up zoning, such as Mr. Smith's property on Howell Avenue, a residential property with potential future commercial use. He further advised there is little inconsistency between the zoning and future land use maps at this point.

Mayor Bradburn advised the inconsistency comes back to compatibility. Director Geiger agreed stating this needs to be addressed with each development as its proposed. Mayor Bradburn felt that to be a backwards approach. She would like to see Council embrace creativity involving petitions and not just rubber-stamp proposals. She felt there had been no

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less than a dozen properties in conflict. As an example, Director Geiger reference multi-family properties on the map has a general density allocation under the Comp Plan for a maximum not-to-exceed. That does not mean when it comes through the zoning process that they are vested to get that top density. The zoning process is when you evaluate things like compatibility and determine whether it's appropriate for a property to have a density of a certain amount.

City Manager Norman-Vacha suggested time be set to visit with each Council member and identify where you believe conflicts are.

Mayor Bradburn advised she is trying to understand the opposition of staff to correcting the problems. Director Geiger indicated he knows of only two parcels on the map that Mayor Bradburn has identified in the past as being in conflict. The white on the map are areas in Hernando County. City Manager Norman-Vacha advised that would be addressed in annexation and fits in with the updated JPA.

Mayor Bradburn advised she would be willing to build into the budget process for someone from the outside to review parcel by parcel.

City Manager Norman-Vacha asked for direction from Council to make sure their expectations are being met. Staff has been working with the Vision Foundation and has built a good group with community participation and feedback. Vice Mayor Hohn suggested updates on how these meetings are going.

Council Member Johnston advised this falls into his suggestion for updates on what staff is working on.

Mayor Bradburn was at a loss on the issue on moving forward. She didn't think that staff is hearing what is being directed by Council. City Manager Norman-Vacha advised that during budget time she will address staff's workload so Council can direct priorities better. Mayor Bradburn recommended looking at the cost of outside help if needed.

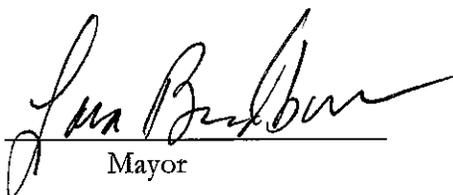
Attorney Hogan hoped their presentations were helpful. Vice Mayor Hohn asked for cheat sheets for when the hearings are held in order to make a better record. Council Member Burnett advised Roberts Rules of Order must be followed.

Mayor Bradburn thanked all for the information presented.

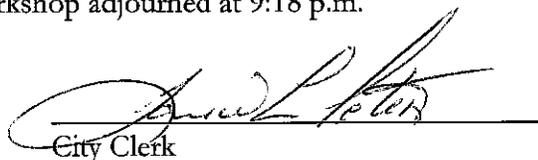
ADJOURNMENT

There being no further discussion, the workshop adjourned at 9:18 p.m.

Attest:



Mayor



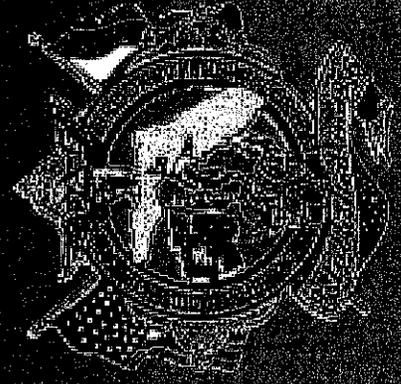
City Clerk



GROWTH MANAGEMENT

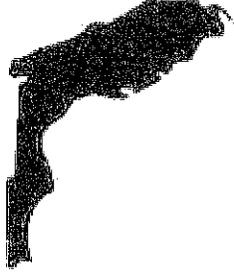
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FLORIDA





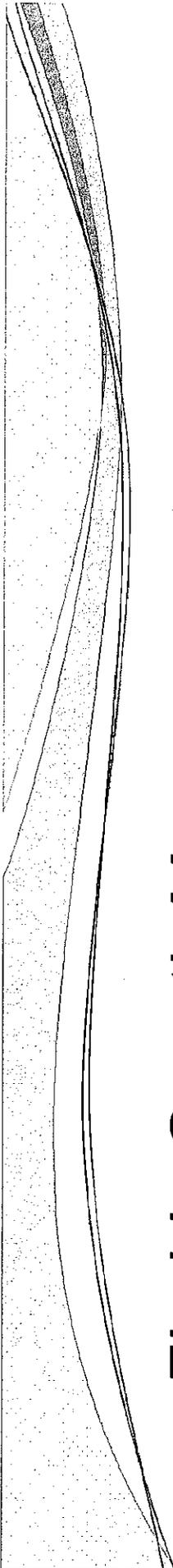
Florida Growth Management



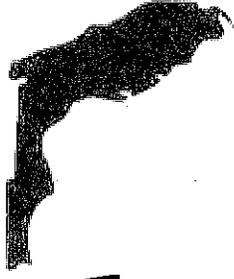
GROWTH MANAGEMENT IMPLEMENTATION

- Long-term coordination between land-use control and capital investment
- The objective is that infrastructure precedes development rather than follows it.
- A pay-as-you go type of approach to capital facilities. Running along with the rabbit instead of chasing it.
- Land-use control includes traditional zoning and other land-use tools developed by planners





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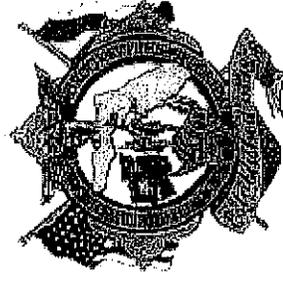
THE NEED FOR GROWTH MANAGEMENT IN FLORIDA

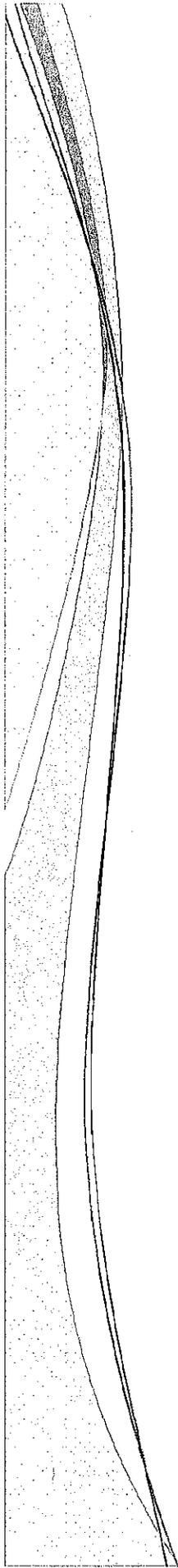
DEMOGRAPHIC:

- Population doubled from 1970 (6.8m) to 1990 (12.9m)
- Uneven population distribution: In 1980, 20% lived in North Florida, 43% lived in Central Florida, and 37% lived in South Florida .

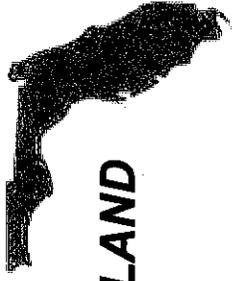
NATURAL AND/OR ENVIRONMENTAL

- Drought in 1970s pointed to the need for better management of resources
- Environmental legislation at the national level (Clean Water and Air Acts)
- Protection of Areas of Critical Concern: Everglades, Lake Okeechobee, Florida Keys





Florida Growth Management



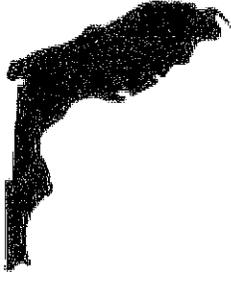
LOCAL GOVERNMENT COMPREHENSIVE PLANNING AND LAND DEVELOPMENT REGULATION ACT (1985 GROWTH MANAGEMENT ACT)

- Required the adoption of a **State Comprehensive Plan**.
- Required regional planning councils to prepare and adopt comprehensive **Regional Policy Plans** consistent with the state comprehensive plan.
- Required all of Florida's 67 counties and 476 municipalities to adopt **Local Government Comprehensive Plans** that would guide future growth and development in their jurisdictions.





Florida Growth Management



FLORIDA'S REGIONAL PLANNING APPROACH

- Established a system of regional planning councils.
- RPCs are designated as the primary organization to address problems and plan solutions that are of greater-than-local concern or scope.
- RPCs are Florida's only multipurpose regional entity that is in a position to plan for and coordinate intergovernmental solutions to growth-related problems on greater-than-local issues, provide technical assistance to local governments, and meet other needs of the communities in each region.





Florida Growth Management

BASIC GROWTH MANAGEMENT MECHANISMS : (THE THREE C'S)

- **Consistency:** Plans must be consistent with the overall state plan, consistent with regional plans and consistent with other local plans. State agency plans must be consistent with the state plan and other local plans.
- **Concurrency:** Local governments may not issue a development order unless the order will not degrade mandated service levels for seven kinds of public facilities:
 - 1) Transportation
 - 2) Sanitary Sewer
 - 3) Solid Waste
 - 4) Potable Water
 - 5) Parks and Recreation
 - 6) Stormwater Management
 - 7) Schools (2005)
- **Compact Urban Form:** The state administrative code governing the development of local comprehensive plans required local governments to develop policies to combat sprawl.



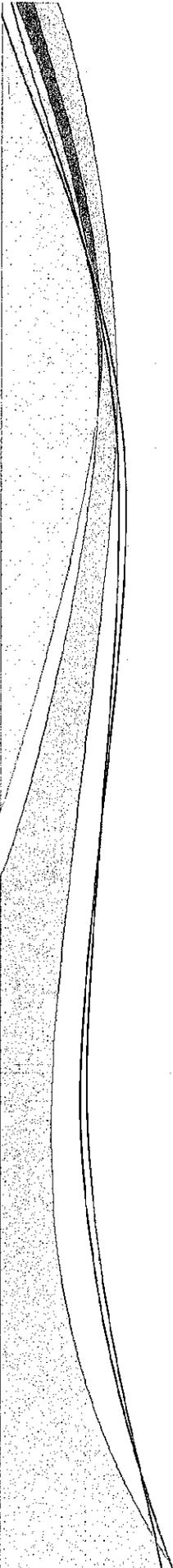


Florida Growth Management

DRIs: DEVELOPMENTS OF REGIONAL IMPACT

- DRIs are “any development which, because of its character, magnitude, or location would have a substantial effect upon the health, safety, or welfare of citizens of more than one county.”
- RPCs are the lead agency in coordinating DRIs.
- DCA (DEO) reviews DRIs for compliance with state law and to identify the regional and state impacts of large-scale developments. Also makes recommendations to local governments for approving, suggesting mitigation conditions or denying proposed developments.
- The Local Government adopts or denies the Development Order





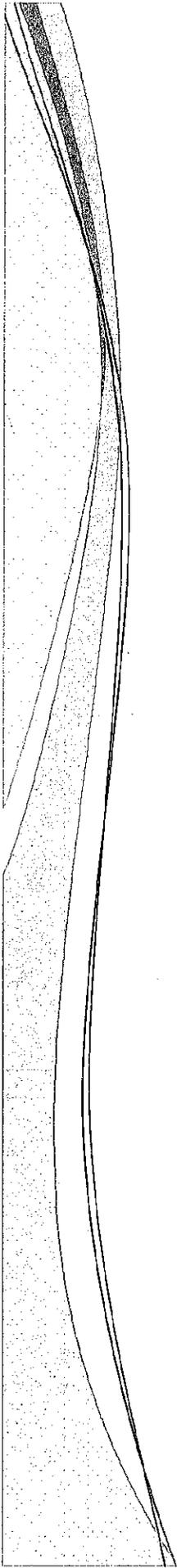
Florida Growth Management



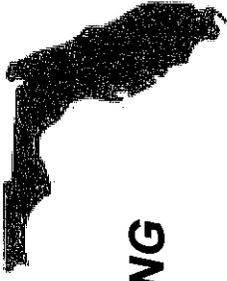
LOCAL COMPREHENSIVE PLANS

- Local comprehensive plans must contain “elements” (chapters) that address:
 - future land use
 - housing
 - transportation
 - infrastructure
 - conservation
 - recreation and open space
 - intergovernmental coordination
 - schools
 - capital improvements
- Comprehensive plans must also include:
 - Goals, Objectives, and Policies (GOPs)
 - Plan monitoring and evaluation procedures
 - A map showing future land use





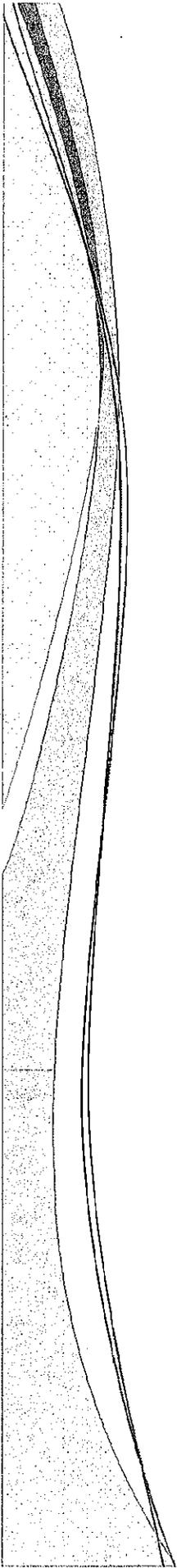
Florida Growth Management



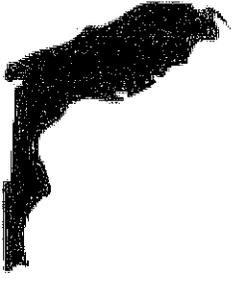
COMPREHENSIVE PLAN AMENDMENTS AND MONITORING

- Small Comprehensive Plan Amendments (continuous)
- Large Comprehensive Plan Amendments (bi-annual updates)
- Evaluation and Appraisal Reports (regular, but longer-term updates)





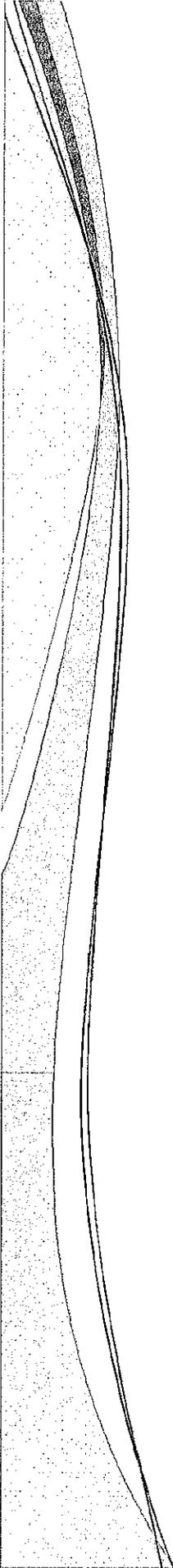
Florida Growth Management



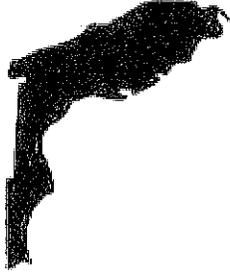
SMALL-SCALE PLAN AMENDMENTS

- Small-scale comprehensive plan amendments can be made at any time, provided they fit the following criteria:
 - The proposed amendment involves a use of 10 acres or fewer and:
 - The cumulative effect is small (thresholds in Chap 163)
 - Proposed property has not been changed in the last year
 - There is no text change to the GOPs of the plan
 - Property is not in an ACSC
 - Less than 10 units per acre density





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LARGE-SCALE PLAN AMENDMENTS

- Large-scale amendments can be made no more than two times per year.
- Two varieties of amendments:
 - 1) *Text Amendments*
 - 2) *Map Amendments*
- For large-scale amendments, two public hearings are required:
 - 1) A hearing to consider the amendment
 - 2) A hearing to consider the amendment for adoption
- Each amendment must be submitted for review by DCA (DEO), the RPC and other state agencies.



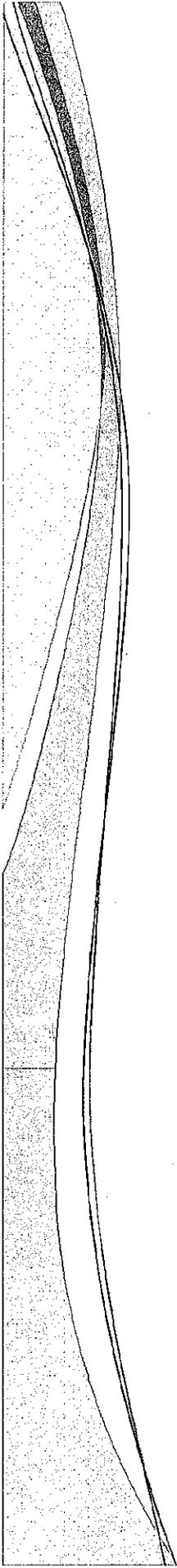


Florida Growth Management

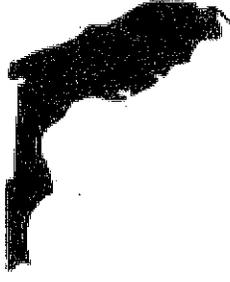
DCA (DEO) AMENDMENT PROCEDURES

- After a local government submits a proposed comprehensive plan amendment, the Department issues a report based on its review providing any objections, recommendations and comments (ORC Reports).
- After receipt of the ORC report from DCA, a local government has 60 days to adopt, adopt with changes, or decide not to adopt the amendment.
- Once the local government responds, the DCA issues a “Notice of Intent” indicating a finding of “in compliance” or “not in compliance.”
- The local government or other “affected persons” can challenge the compliance finding.



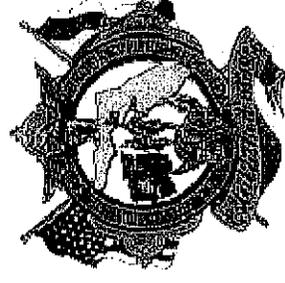


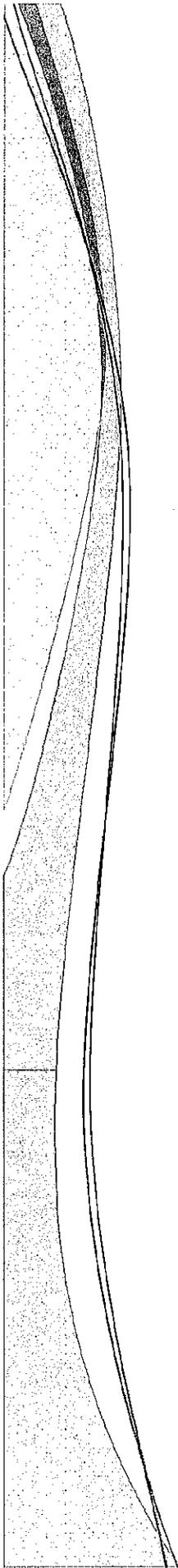
Florida Growth Management



EVALUATION AND APPRAISAL REPORTS (EARS)

- Per 163.3191, F.S., "each local government shall adopt an evaluation and appraisal report (EAR) once every seven years assessing the progress in implementing the local government's comprehensive plan."
- EARS are prepared at the local level and reviewed by the state, regional planning bodies, and adjacent local jurisdictions.





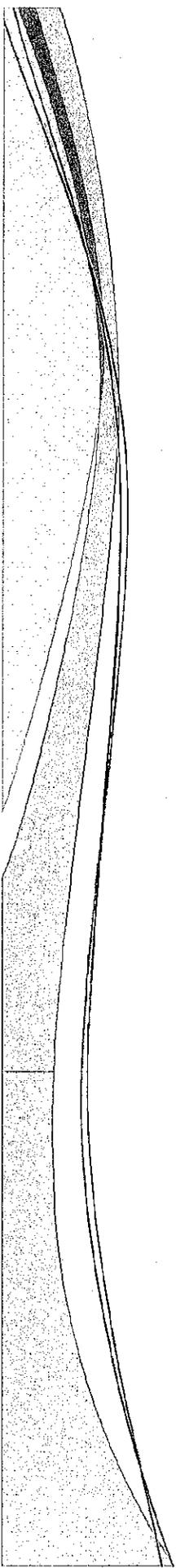
Florida Growth Management



THE PURPOSES OF EARS

- *Identify major issues facing the community*
- *Review past actions of the local government in implementing the plan since the last EAR*
- *Assess the degree to which plan objectives have been achieved*
- *Assess both successes and shortcomings of the plan*
- *Identify ways that the plan should be changed*
- *Ensure effective intergovernmental coordination*





Florida Growth Management

2011

HB 7207 – THE COMMUNITY PLANNING ACT

Major Legislative Changes – What is Eliminated?

- Rules 9J-5 and 9J-11.023 are repealed – several of the provisions of 9J-5 are incorporated into Ch. 163
- Financial feasibility for capital improvement plans – back to pre-2005 status.
- Twice per year plan amendment limitation.
- Evaluation and Appraisal Report (EAR) sufficiency review and mandatory plan updates.
- Energy efficiency & greenhouse gas reduction provisions

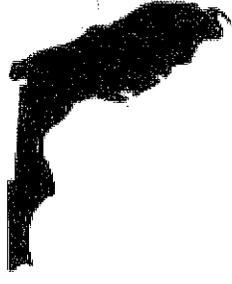




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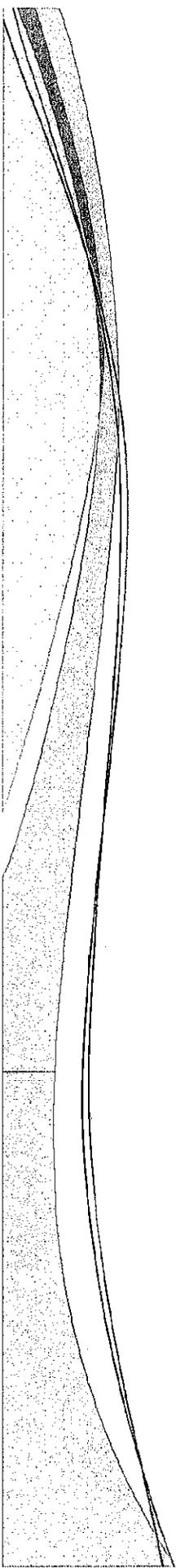
HB 7207 – THE COMMUNITY PLANNING ACT



Major Legislative Changes – What is Eliminated (cont.)?

- Use of the State Comprehensive Plan for local plan compliance determination.
- State mandated concurrency for transportation, schools and parks & recreation facilities (now a local option).
- State mandated Public School Element.

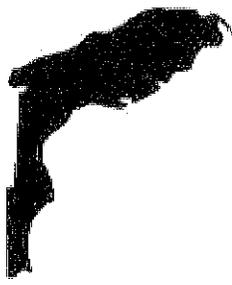




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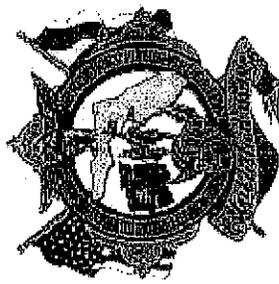
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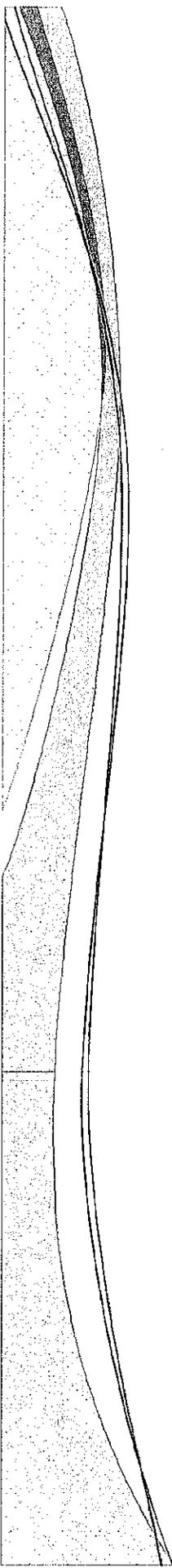
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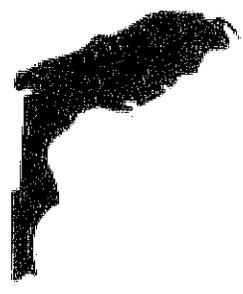
Major Legislative Changes – What is Changed?

- Large scale plan amendments: changed to *Expedited Review* Process with few exceptions (ACSC).
- Small Scale Map/Plan Amendments: total cumulative acreage increased (80 to 120 acres); no more density cap; no more ownership/distance limit.
- Text amendments: if associated with small scale, may be included with it.





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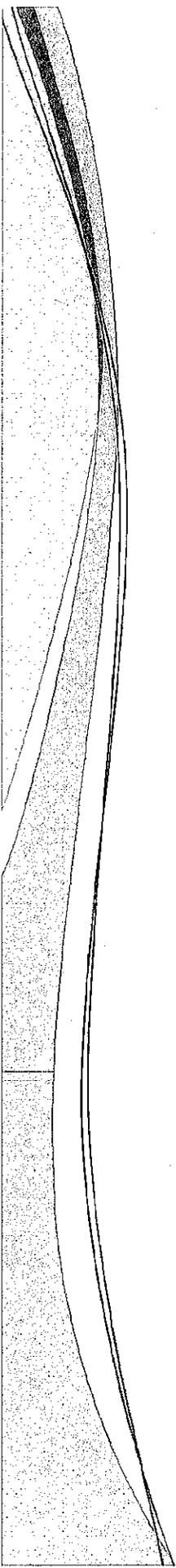
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Major Legislative Changes – What is Changed (cont.)?

- **EAR:** Localities required to review local Plan once every 7 years; must determine if State requirements necessitate any amendments and notify the State.
- The State Planning Agency's review of comprehensive plan amendments is limited to issues of state-wide interest.





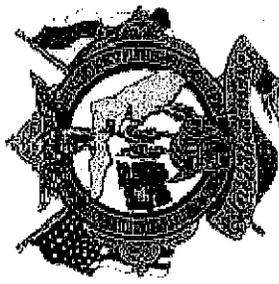
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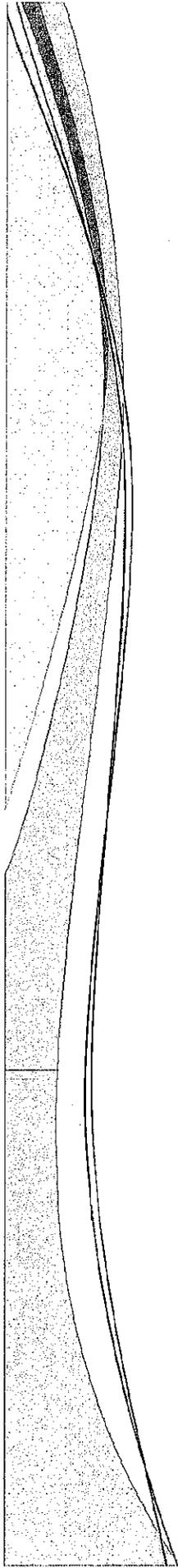
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Concurrency

- If a local government decides to *not* maintain concurrency for transportation, parks &/or schools, then it must amend the comprehensive plan to remove the concurrency provisions.
- The amendment is not subject to State review, but it does require public hearings.
- School Facility Elements can be retained with or without level of service standards & school concurrency.

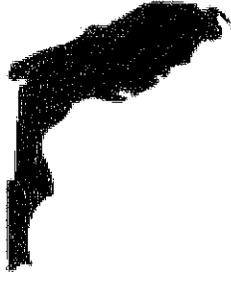




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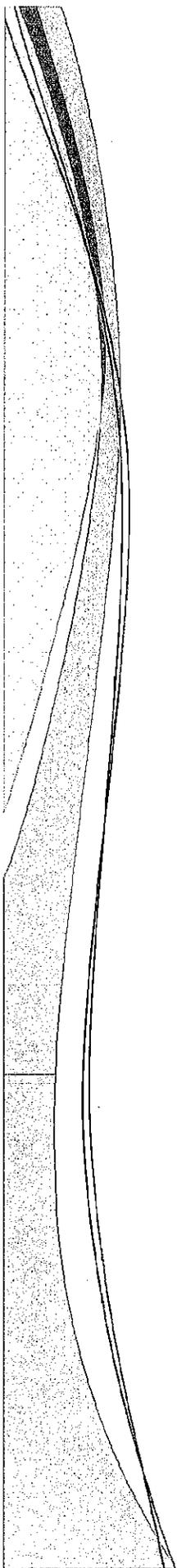
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Concurrency (cont.)

- If a local government elects to retain concurrency for transportation, schools &/or parks, then the local Plan must comply with specified requirements in new Act; many are similar to or same as current Plan requirements.
- Implementing the new statutory requirements will not require immediate action for all localities but changes are expected at the time of next scheduled EAR.
- New plan amendments affecting these concurrency issues must comply with the Act's statutory concurrency requirements.

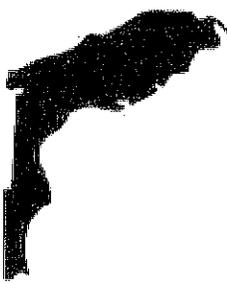




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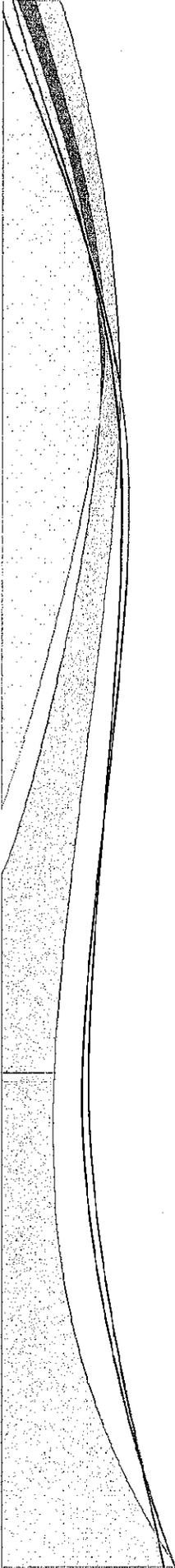
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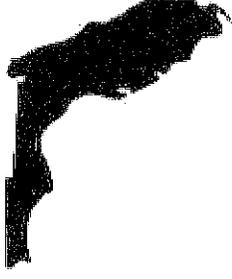
If Public School Concurrency is retained:

- Comprehensive plans must include specific guidelines and standards relating, including adopted levels of service (as they do now).
- When a County plus one or more of the cities representing at least 80% of the total, county-wide population elects to maintain school concurrency, then the failure of one or more of the (other) municipalities to adopt concurrency does not preclude its implementation within the school district.





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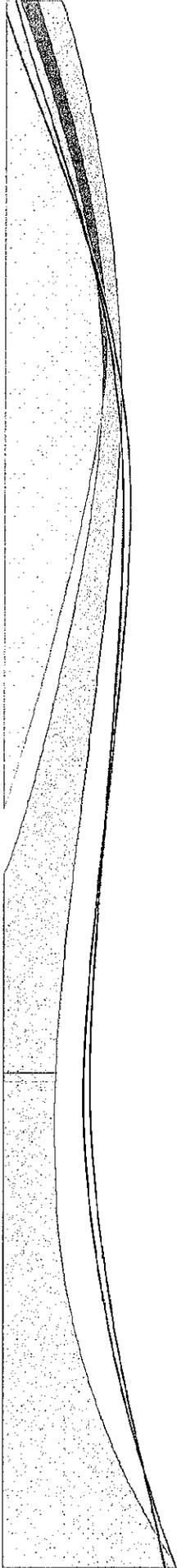
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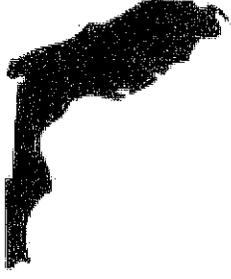
Land Use Need

- No longer a maximum need based strictly on population projections but should allow the operation of real estate markets to provide adequate choices for permanent and seasonal residents and businesses.
- Accommodate a minimum of 10 years growth based on BEBR medium population projections





Florida Growth Management



***If you are not a place where people want to live, then you
are not a place where people will want to invest.***



1  **QUASI-JUDICIAL HEARINGS**
BROOKSVILLE CITY COUNCIL

JULY, 9, 2013

- 2  Quasi-Judicial
x
vs.
Quasi-Legislative

- 3  Quasi-judicial act determines the rules of law applicable, and the rights affected by them, in relation to past transactions.

Quasi-legislative or administrative order prescribes what the rule or requirement of administratively determined duty shall be with respect to transactions to be executed in the future, in order that same shall be considered lawful

- 4  **REQUIREMENTS**
x Due Process
x
x Essential Requirements of the Law
x
x Competent Substantial Evidence

- 5  **QUASI-JUDICIAL HEARING**
There must be Notice
At which the affected parties are given a fair opportunity to be heard in accord due process
The right to present evidence and to cross-examine adverse witnesses
The judgment of the agency or board should be contingent upon the showing made at the hearing.

- 6  **THREE PART TEST**
The Court's scope of review upon a petition for writ of certiorari is limited to determining
1. Whether the board's actions accorded procedural due process;
2. Observed the essential requirements of law; and
3. Were supported by substantial competent evidence.

- 7  A quasi-judicial action results in the *application* of a general rule of policy.

Quasi-judicial hearings require that certain due process rights be granted to the affected parties. *See, e.g.,*

- 8  **EFFECTS OF QUASI JUDICIAL HEARING**

Application of a general rule of policy, whereas legislative action formulates policy

Contingent on facts arrived at from distinct alternatives.

Act determines the rules of law applicable, and the rights affected by them

9  **DUE PROCESS**

Quasi-Judicial Hearings must comply with Due Process.

The core of due process is the right to notice and an opportunity to be heard. U.S.C.A. Const.Amend. 14.

10  **DUE PROCESS**

Due process requires that a party to a quasi-judicial hearing, by virtue of its direct interest that will be affected by official action, must be able to present evidence, cross-examine witnesses, and be informed of all the facts upon which the commission acts. U.S.C.A. Const.Amend. 14.

11  **PARTY / PARTICIPANT**

A party to a quasi-judicial hearing that will be affected by official action,
Must be able to present evidence
Cross-examine witnesses, and
Be informed of all the facts upon which the commission acts.

12  **PARTICIPANT**

Quasi-judicial hearings are attended by more than just the parties.
They are open to the public. In the case of rezoning hearings, neighboring landowners may attend and want to be heard on a proposed zoning change to a nearby property. A participant in a quasi-judicial proceeding is clearly entitled to some measure of due process ...

13  **CERTIORARI REVIEW**

As a rule, only quasi-judicial actions are reviewable via certiorari.

14  **THE RECORD**

A review of councils and boards acting in a quasi-judicial capacity has been by certiorari.

The reviewing court examines the record to determine whether the action taken below was in accord with essential requirements of law and supported by competent substantial evidence

15  **THE RECORD CONTINUED**

When exercising this standard of review, the "circuit court is not permitted to reweigh the evidence or substitute its judgment for that of the agency."

"The court was not empowered to conduct a fact-finding mission..."

16  **MATTER OF LAW**

Where a party is entitled as a matter of right to seek review in the circuit court from quasi-judicial action, the circuit court must determine whether procedural due process is accorded, whether the essential requirements of law have been observed, and whether the findings and judgment are supported by competent substantial evidence.

17  **COMPETENT SUBSTANTIAL EVIDENCE**

Defined: As "such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred" or such evidence as is "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached."

18  **COMPETENT SUBSTANTIAL EVIDENCE**

Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred.

We have stated it to be such relevant evidence as a reasonable mind would accept as adequate to support a conclusion.

✘

19  **EX PARTE COMMUNICATIONS**

Ex parte communications are inherently improper and are anathema to quasi-judicial proceedings; quasi-judicial officer should avoid all such contacts where they are identifiable.

Allegation of prejudice resulting from ex parte contacts with decision makers in quasi-judicial proceeding is a cause of action.

20  **EX PARTE**

"[E]very litigant is entitled to nothing less than the cold neutrality of an impartial judge." State ex rel. Davis v. Parks, 194 So. 613, 615 (1939).

Litigants must be assured that they may "controvert their differences in calm and dispassionate environment before an impartial judge and have their rights adjudicated in a fair and just manner." Williams v. State, 143 So.2d 484, 488 (Fla.1962).

That assurance is lacking where a judge injects him- or herself into the fact-gathering process.

✘

21  **HEARSAY EVIDENCE**

✘Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

22  **PROPER REBUTTAL**

May want to revise the code

Require Parties to submit evidence that will be presented and relied upon at the Quasi-Judicial Hearing 3 days before the hearing.

(Unless Waived by Council)

23  **CONTINUANCES**

Bush Case

Split Land

Multiple Continuances in Land Use

Comply with Land Zone

24  **EFFECT OF CONTINUANCES**

Bushes assert that the newly-passed ordinance cannot be applied to the application and that they neither had been advised that the City was relying on these future land use policies nor given an opportunity to argue in support of their application.

✘