



**CURRENT ISSUES IN
FLORIDA LAND USE LAW**



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**LEWIS
LONGMAN
WALKER**

ISSUES IN FLORIDA LAND USE LAW

- Florida Land Use Law Overview
- Issues related to Developments of Regional Impact (DRIs)
- Issues related to Comprehensive Land Use Planning
- Issues related to Zoning, Plats, Subdivisions and other Local Development Orders
- Litigation Update
- Florida's Growth Management Laws – Legislative Update
- Questions



FLORIDA LAND USE LAW OVERVIEW

Land use in Florida is governed by a combination of state, regional and local laws

From broadest to most specific:

- DRIs
- Comprehensive Plans and Sector Plans
- Zoning
- Plats/Subdivisions
- Site Plans
- Building and Construction Permits



FLORIDA LAND USE LAW OVERVIEW: RELEVANT STATUTES

- Developments of Regional Impact – § 380.06, Fla. Stat.
- Comprehensive Planning – Chapter 163 Part II, Fla. Stat.
 - Growth Policy Act
 - Agricultural Lands and Practices Act
 - Community Planning Act
- Administrative Procedures Act – § 120.50 et seq, Fla. Stat.



FLORIDA LAND USE LAW OVERVIEW: OTHER CONSIDERATIONS

- Environmental Permitting
- Areas of Critical State Concern
- Community Redevelopment Areas
- Transportation Planning
- Notice Requirements



FLORIDA LAND USE LAW OVERVIEW

The State has given responsibility for oversight over land use issues to the Department of Economic Opportunity

- Areas of Critical State Concern
- DRIs
- Comprehensive Planning



ISSUES RELATED TO DRIs

A Development of Regional Impact (“DRI”) – “means 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.”

- § 380.06(1), Fla. Stat.



WHEN IS DRI REVIEW REQUIRED?

- DRI review is required for developments that exceed certain density and intensity thresholds established by State Statute and rules adopted pursuant to it ... BUT
- DRI review is not required for new developments or in jurisdictions designated as Dense Urban Land Areas or “DULAs”



DRI REVIEW

- Binding Letters
- DRI Review Process and Concurrent Comprehensive Plan Amendments
- Preliminary Development Agreements
- DRI-Required Mitigation and Impact Fees
- Monitoring
- Substantial Deviations
- Abandonment
- Areawide DRIs



WHY DRI?

- Development in process
- Mitigation completed
- Areawide DRI involving multiple landowners



ISSUES RELATED TO COMPREHENSIVE LAND USE PLANNING

All local governments in Florida are required to adopt a comprehensive plan to “provide the principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental and fiscal development of the area that reflects community commitments to implement the plan and its elements.”

- § 163.3177(1), Fla. Stat.



REQUIRED ELEMENTS OF A COMPREHENSIVE PLAN

§ 163.3177, FLA. STAT.

- Future Land Use element/Future Land Use Map
- Capital Improvements element
- Transportation element
- Sanitary Sewer, Solid Waste, Drainage, Potable Water and Natural Groundwater Aquifer Recharge element
 - Water Supply Plan
- Conservation element
- Recreation and Open Space element
- Housing element
- Coastal Management element (where applicable)
- Intergovernmental coordination element



REQUIRED ELEMENTS OF A COMPREHENSIVE PLAN

§ 163.3177, FLA. STAT.

- Meaningful and predictable standards
- Relevant and appropriate data and analysis from professionally accepted sources
- Consistency among various elements of the Comprehensive Plan
- Consideration of comprehensive plans of adjacent municipalities, counties and the region, including water management districts
- Long and short term planning periods



UNIQUE ISSUES IN COMPREHENSIVE PLANNING

- **Agricultural Practices Act, § 163.3162, Fla. Stat.** - Unique process for comprehensive plan amendments for qualifying agricultural parcels surrounded by existing residential, commercial or industrial development
- **Sector Planning, § 163.3245, Fla. Stat** – Tool that permits a local government to adopt as a part of its Comprehensive Plan, a long term master plan to direct the development of large geographic areas with special planning needs within its jurisdiction.



CONCURRENCY - § 163.3180, FLA. STAT.

Concurrency is a requirement that local governments coordinate development with the timely/concurrent provisions of public facilities

- Level of Service (“LOS”) Standards
- Development Contributions/Proportionate Share



CONCURRENCY - § 163.3180, FLA. STAT.

- Sanitary sewer, solid waste, drainage, and potable water are the only public facilities and services subject to statewide concurrency requirements pursuant to § 163.3180, Fla. Stat.
- Local governments can adopted concurrency requirements for other public facilities such as roads
- Comprehensive plans are required to show that LOS standards adopted for each public facility can be reasonably met in the long and short term planning timeframes
- Land Development Regulations are required to ensure that public facilities and services do not exceed adopted LOS standards and that such facilities are available when needed by development - § 163.3202, Fla. Stat.



ZONING, PLATS, SUBDIVISION AND OTHER LOCAL DEVELOPMENT ORDERS

- Land Development Regulations
- Zoning Map
- Plat/Subdivision
- Site Plan



LAND DEVELOPMENT REGULATIONS

§ 163.3202, FLA. STAT.

- Comprehensive plans must “provide meaningful guidelines for the content of more detailed land development and use regulations” - § 163.3177, Fla. Stat.
- Comprehensive plans establish maximum densities and intensities for property and provide broad standards to guide the development of land
- Land Development Regulations provide detailed development criteria and zoning requirements consistent with the provisions of the Comprehensive Plan
- Land Development Regulations must be consistent with Comprehensive Plan



LAND DEVELOPMENT REGULATIONS

§ 163.3202, FLA. STAT.

Land Development Regulations must include specific and detailed provisions to implement the Comprehensive Plan and must, at a minimum:

- Regulate the subdivision of land
- Regulate the use of land and water to ensure compatibility of adjacent uses and to provide for open space
- Provide protection for potable water wellfields
- Regulate areas of flooding and provide for drainage and stormwater management
- Ensure protection of environmentally sensitive lands
- Regulate signage
- Provide for concurrency
- Ensure safe and convenient onsite traffic flow
- Maintain existing density of residential properties or recreational vehicle parks



ZONING MAP

- Every jurisdiction has a zoning map identifying the specific residential density and non-residential intensity permissible on a given property
- Changes to the Zoning Map must be consistent with the Comprehensive Plan's Future Land Use Map



PLATS/SUBDIVISIONS

Subdivision is “the division of land into three or more lots, parcels, tracts, tiers, blocks, sites, units, or any other division of land; and includes establishment of new streets and alleys, additions, and resubdivisions; and, when appropriate to the context, relates to the process of subdividing or to the lands or area subdivided.”

- §177.031(18), Fla. Stat.



PLATS/SUBDIVISIONS

Plat or replat means “a map or delineated representation of the subdivision of lands, being a complete exact representation of the subdivision and other information in compliance with the requirement of all applicable sections of this part and of any local ordinances.”

- §177.031(14), Fla. Stat.



JUDICIAL REVIEW OF LAND USE DECISIONS

- Comprehensive Plans –
 - Decisions to amend a comprehensive plan are legislative in nature
 - Courts review under the deferential “fairly debatable” standard
- Rezoning and Site Plans –
 - Decisions are quasi-judicial in nature
 - Courts do not apply deferential standard of review
- Plats/Subdivision
 - Plats/Subdivisions as development orders?



LITIGATION UPDATE: LAKE COUNTY WELLNESS WAY SECTOR PLAN COMPREHENSIVE PLAN AMENDMENTS

- DEO challenged Lake County's Wellness Way Sector Plan amendments as inconsistent with the requirements of Chapter 163, Fla. Stat. The challenge is one of the few filed by DEO since the sweeping changes made to the Community Planning Act in 2011, which limited the agency's scope of review. DEO cited lack of water supply, lack of minimum and maximum densities and intensities and transportation issues as the bases of its challenge.
- DEO and Lake County entered into a Stipulated Settlement Agreement in December of 2015 and the County transmitted remedial amendments in January 2016.



SEMINOLE TRIBE OF FLORIDA V. HENDRY COUNTY,
CASE NO. 14-1441GM (FLA.DIV.ADMIN.HRGS. 2015)

The Administrative Law Judge held that Hendry County's amendments to its Comprehensive Plan allowing large scale industrial and commercial uses in rural agricultural areas were not supported by adequate data and analysis and violated Florida's Community Planning Act by creating urban sprawl and failing to contain adequate criteria to guide future development.



ALERTS OF PBC, INC., ET. AL V. PALM BEACH COUNTY ET AL.,
DOAH CASE NO. 14-5657GM (FLA.DIV.ADMIN.HRGS. 2015)

In this case involving an Agricultural Enclave, the Administrative Law Judge and Department of Economic Opportunity found that comprehensive plan amendments for a 4,000 acre agricultural site adopted by Palm Beach County were in compliance with Florida's growth management laws.



SEMINOLE TRIBE OF FLORIDA V. HENDRY COUNTY ET AL.,
CASE NO. 2011-CA-540 (FLA. 20TH CIR. CT. 2014); AFFIRMED, HENDRY COUNTY ET
AL., V. SEMINOLE TRIBE, CASE NO. 2D-14-4965 (2D DCA 2015) —

The Circuit Court ruled that the County's rezoning of agricultural land to permit the construction of a regional natural gas power plant next to the Big Cypress Seminole Indian Reservation was inconsistent with the Hendry County Comprehensive Plan, and therefore void and unenforceable.



GRAVES V. CITY OF POMPANO BEACH, 74 SO.3D 595 (4TH DCA 2011)

In this challenge to the consistency of a plat adopted by the County with its Comprehensive Plan, the appellate court reversed the lower court's holding that a plat is not a development order.



MIDBROOKS 1ST REALTY CORP. V. MARTIN COUNTY, CASE NO. 13-003397GM
(FLA.DIV.ADMIN.HRGS. 2015)

In this challenge to amendments adopted by Martin County to implement its Evaluation and Appraisal Report, the Administrative Law Judge found the plan amendments not "in compliance" where the methodology used to calculate demand and supply of residential housing was neither based on data and analysis nor professionally acceptable.



FLORIDA'S GROWTH MANAGEMENT LAWS: LEGISLATIVE UPDATE

- 2011 Revisions to Florida's Growth Management Act (Community Planning Act)
- Concurrency/Proportionate Share
- Clarifications regarding DRIs
- Clarifications to administrative hearing procedures for challenges to Comprehensive Plans and Plan Amendments



QUESTIONS & ANSWERS



Tara W. Duhy, Esq.

Shareholder

Lewis, Longman & Walker, P.A.
515 N. Flagler Drive, Suite 1500
West Palm Beach, FL. 33401

(561) 640-0820

www.llw-law.com

tduhy@llw-law.com