



# Florida Planning Officials Handbook



**Florida Resilient Communities Initiative  
University of Florida**

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# About the Florida Planning Officials Training Program

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The Florida Planning Officials Training program was developed by the University of Florida's Urban and Regional Department – a PAB-accredited graduate planning program in collaboration with agencies and organizations committed to the advancement of planning and growth management in Florida.

## **Sponsors**

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**The University of Florida  
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Florida Planning and Zoning Association  
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Orange County Department of Growth Management**

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## Introduction

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The American Planning Association defines *Planning Officials* as *any appointed or elected officials involved in planning decisions for the betterment of a community, region, state, or country*. In Florida, a lot of people fit that description including elected officials, planning commissioners, zoning board members, board of adjustment members and others who serve on a variety of commissions and boards involved in planning and growth management decisions.

The job of the *planning official* is one of public trust and is one of the most rewarding ways you can serve your community. This handbook is designed to help you do that job. It serves as the text for a short course covering the basic elements of planning in Florida.

This course offers a mixture of fact, advice and commentary about the practice of planning in Florida. There is no attempt to comprehensively cover the subject. Rather our objective is to provide an overview of this important work and some basic survival skills for the *planning official*. You will not be an expert when you complete this course, but you should have a much greater understanding of planning and how you can play an effective role in shaping the future of your community.

**Chapter One: Planning and Growth Management in Florida** outlines the purposes of planning, how the growth management system in Florida evolved and how it works and who the players are in Florida's growth management system

**Chapter Two: The Constitutional and Legal Framework of Planning** explores the constitutional provisions that relate to planning, the "property rights" issue, the "primacy" of the comprehensive plan, the constitutional basis for zoning, subdivision regulations and growth management, and the substantive due process and procedural due process requirements.

**Chapter Three: The Ethics of Planning** examines the important ethical concepts that affect the work of the *planning official*. The "sunshine law", "public records", "ex parte communication", and "conflicts of interest". The AICP Code of Ethics and Professional Conduct is discussed.

**Chapter Four: Making Planning Work** explores the qualities of an effective planning officials. How a *planning official* relates to the public, the conduct of meetings, visioning exercises and other techniques and requirements for citizen participation are presented. Five Principles for Effective Planning are of-

ferred along with a discussion of “Smart Growth” and its application in Florida.

**Chapter Five: The Comprehensive Plan** provides an overview of the Comprehensive Plan, what it contains, its legal status, the process for its development, evaluation and amendment. Current issues and priorities including water supply planning and school coordination are also presented.

**Chapter Six: Implementing the Comprehensive Plan** provides a primer on land development codes including zoning, subdivision review, concurrency, planned development, traditional neighborhood development, variances, non-conforming uses, review procedures and other regulatory topics. Other implementation tools, techniques and procedures including “community redevelopment areas”, “concurrency”, capital improvements programs”, “impact fees”, “transfer of development rights”, “rural land stewardship”, and “sector planning” are discussed with emphasis on what the *planning official* needs to know.

**Appendix.** Reference material includes:

Appendix A: Definitions

Appendix B: Acronyms

Appendix C: AICP Code of Ethics & Professional Conduct

Appendix D: The Principles of Smart growth

Appendix E: The Charter of the New Urbanism

Appendix F: Information Sources

# Chapter One: Planning and Growth Management in Florida

## Chapter One - Planning Basics

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**Public planning is an organized way of meeting community needs through a local decision-making process.**

**Communities plan to prepare for the future, to maximize strengths and minimize weaknesses.**

### What is Planning?

Planning is the word we use to describe how a community shapes and guides growth and development. The process may be called city planning, urban planning, or sometimes land use planning. The results of the planning process are contained in documents called comprehensive plans or growth management plans.

- An organized way of determining community needs and setting goals and objectives
- The art of anticipatory problem solving
- The thought that precedes decision making
- The process localities use to move from the reality of today toward the possibilities of tomorrow.

### Why Do Communities Plan?

Communities may engage in public planning for a variety of reasons.

- Prepare for the future
- Accommodate the present
- Anticipate change
- Maximize community strengths
- Minimize community weaknesses
- Respond to legislative charge
- Secure a sense of community coordination
- Deal with a scarce resource
- Build a sense of community
- Foster public health, safety, and welfare.

In short, communities plan because planning provides a benefit to the people of the community.

### What Are the Benefits of Planning?

Effective planning ensures that future development

**If you want to make  
a great community  
happen, you must  
plan for it.**

will occur where, when, and how the community wants. Several benefits are realized from the planning process:

- Quality of life is maintained and improved
- A vision, clearly stated and shared by all, described the future
- Private property rights are protected
- Economic development is encouraged and supported
- There is more certainty about where development will occur, what it will be like, when it will happen, and how the costs of development will be met.

### **What Happens Without Planning?**

Planning does make a difference. While some may argue that our communities today are poorly planned and fail to reap the benefits of planning, the cycle of development and redevelopment is carried out over many years. Through effective planning, our communities are constantly moving in the direction the people want. In this way, we avoid, mitigate, or correct the problems that occur with no planning at all. Those problems include:

- Sprawl
- Incompatible land uses
- No sense of place
- Disconnected development
- Congestion
- Loss of natural resources

If you do not plan, you have little say in the future of the community. If you want to make a great community happen, you must plan for it.

### **A Plan Belongs to the Whole Community.**

Planning is about balancing competing interests and almost always involves difficult trade-offs. An effective plan reflects those trade-off decisions. The importance of the plan rests partially on the process

of preparing the plan. A plan belongs to the whole community and the members of the community should be part of the process to create, update, and amend the plan. Chapter 4, Making Planning Work, addresses the importance and processes of engaging the public in the planning process.

### **What is the Planning Process?**

In Florida, we pay significant attention to the process of planning. Chapter 2 of this manual addresses a wide range of legal issues. However, as a process, the statutes focus more on the adopting process and the processes that occur at the state level to review the plan for compliance with the law than on the local processes that most citizens see. In contrast, *planning officials* are more likely to see the whole process, as they are responsible for the local comprehensive plan.

What exactly is the process for a local government to follow?

The process – the steps that lead to adopting a plan or plan amendment – can be summarized simply. Answer these three questions: 1) what do you have? 2) what do you want? And 3) how will you get it?

The contents and legal processes are described in Chapter 5. However, thinking about all of the statutory requirements and minimum state criteria in terms of these three simple questions may help planning officials and citizens better understand the overall planning process.

**What do you have?** This is called data and analysis. It means the collection of accurate, current information about the community. A community cannot maintain or change the current situation without knowing what the situation is for the community. It is the foundation for the planning process.

Planning for the future requires an understanding of the past and present. Collecting information and analyzing trends provides the basis for understanding and conclusions.

**What do you want?** Many communities conduct a visioning process to define the preferred future. Others discuss the future in meetings and agree on goals or other methods of defining the preferred future. This is the heart and soul of planning – people from all parts of the community and all interest areas coming together to describe the future they want to achieve.

Will this future community be exactly what any one person or group wants? Of course not, but it will be a collective statement of the future that we want together.

**How will you get it?** The document called a comprehensive plan describes in words, maps, and other graphics what the future community will be like and contains the policies to guide decision-making toward that future.

In Florida, plans are comprehensive, meaning the plan is not limited to land use or other physical design issues, but includes housing, recreation, coordination with other governments and agencies, financing the plan, and providing adequate public facilities for support current and future development.

Another important aspect of this question is the implementation of the comprehensive plan. Chapter 6 of this manual, *Implementing the Comprehensive Plan*, addresses implementation to make the plan a reality.

## **The Evolution of Planning**

Planning and growth management in Florida is an evolving process. Its purposes and its legal and constitutional foundation are rooted in the framework for public planning that emerged in the United States during the twentieth century and in the specific acts of the Florida Legislature since the early 1970's.

## **Origins of Planning in the United States**

The history of public planning in the United States



**Planning and growth management in the United States evolved during the twentieth century. Key events framed the system in place today in Florida and throughout the nation.**

**Florida planning and growth management has its roots in the early 1970's with the passage of the Environmental Land & Water Management Act of 1972.**

**The Community Planning Act of 2011 provides the legislative mandate for the current system.**

may be traced back to colonial days but public planning as practiced today was shaped primarily by events of the twentieth century.

The milestones shown on page 5 represent a very brief synopsis of the origins of public planning.

### **Origins of Planning in Florida**

Florida's modern planning and growth management system has its origins in the early 1970's. Three major statutes constituted the legal framework for planning in Florida in the 1970s.

*The Florida State Comprehensive Planning Act of 1972* established a state comprehensive planning process and the formulation of a "State Comprehensive Plan". In 1978, the Legislature specified that the State Comprehensive Plan was *advisory only*.

*The Environmental Land and Water Management Act of 1972* focused on *areas of critical state concern* and *developments of regional impact*. These elements remain as important components of the current system.

*Local Government Comprehensive Planning Act of 1975* required local governments to adopt and implement local plans.

### **A New Mandate for Planning in the 1980s**

In 1980, the **Governor's Resource Management Task Force** concluded that the mandates for local planning had not been widely supported and that the vague goals and constant amendment process made the implementation of these local plans difficult, if not impossible.

**An Environmental Land Management Study Committee** convened in 1984 reached a similar conclusion regarding the effectiveness of planning in Florida. The findings of this study committee contributed to the dramatic overhaul of the legislative framework for planning and to the sys-

tem described in the remainder of this chapter.

**Legislative Foundation.** The State of Florida has developed an integrated planning system intended to ensure the coordinated administration of policies that address the multitude of issues posed by the state's continued growth and development.

### **Planning and Growth Management in the United States**

- 1907** First local planning board created in Hartford., Connecticut
- 1913** New Jersey requires local planning board approval of plats – first control of land subdivision as a function of city planning
- 1915** US Supreme Court (Hadacheck vs. Sebastian) rules that the restriction of future profitable uses was not a taking of property without just compensation
- 1925** First Comp Plan adopted for Cincinnati - Cornerstone of American city planning (Alfred Bettman)
- 1926** Village of Euclid vs Amber Realty Co (Ohio) – Established constitutionality of zoning
- 1928** Standard City Planning Enabling Act published by US Dept of Commerce
- 1934** FHA created. Established minimum housing standards adopted as part of zoning and building codes
- 1970** EPA & NEPA – National Environmental Policy Act of 1970 created the Environmental Impact Assessment process
- 1972** US Supreme Court (Golden vs. Ramapo) – Upheld growth management.

The primary elements of this system were created by three key legislative acts:

- Chapter 163, Part II, *Florida Statutes (FS)*, Local Government Comprehensive Planning and Development Regulation Act. *The provisions of this act in their interpretation and application are declared to be the **minimum requirements** necessary to accomplish the stated intent, purposes, and objectives of this act; to protect human, environmental, social, and economic resources; and to maintain, through orderly growth and development, the character and stability of present and future land use and development in this state.*
- Chapter 186, *FS*: State and Regional Planning. Provides direction for the integration of state, regional and local planning efforts, and specifically requires the development of Strategic Regional Plans. Chapter 380, *FS*: Environmental Land and Water Management Act directs the integration and coordination of land and water management activities, and outlines the process and requirements for Developments of Regional Impacts and authorizes Areas of Critical State concern

Supporting legislation includes:

- Chapter 373, *FS*: Florida Water Plan / Regional Water Supply Plans
- Chapter 120, *FS*: Administrative Procedures Act
- Chapter 70 *FS* Relief from Burdens on Real Property Rights
- Chapter 1013, *FS* : Educational Facilities Act

In 2011, the Florida legislature enacted sweeping amendments to Florida's planning and growth management system. "*The Community Planning Act*" placed increased emphasis on the authority and responsibility of local governments to plan for and manage their while sharply reducing the role of the state land planning agency and the state in general.

## **A Coordinated System**

The *Community Planning Act* recognizes the authority and responsibility of local government to plan while envisioning a coordinated system of planning at the state and regional levels

### **Local Level Planning**

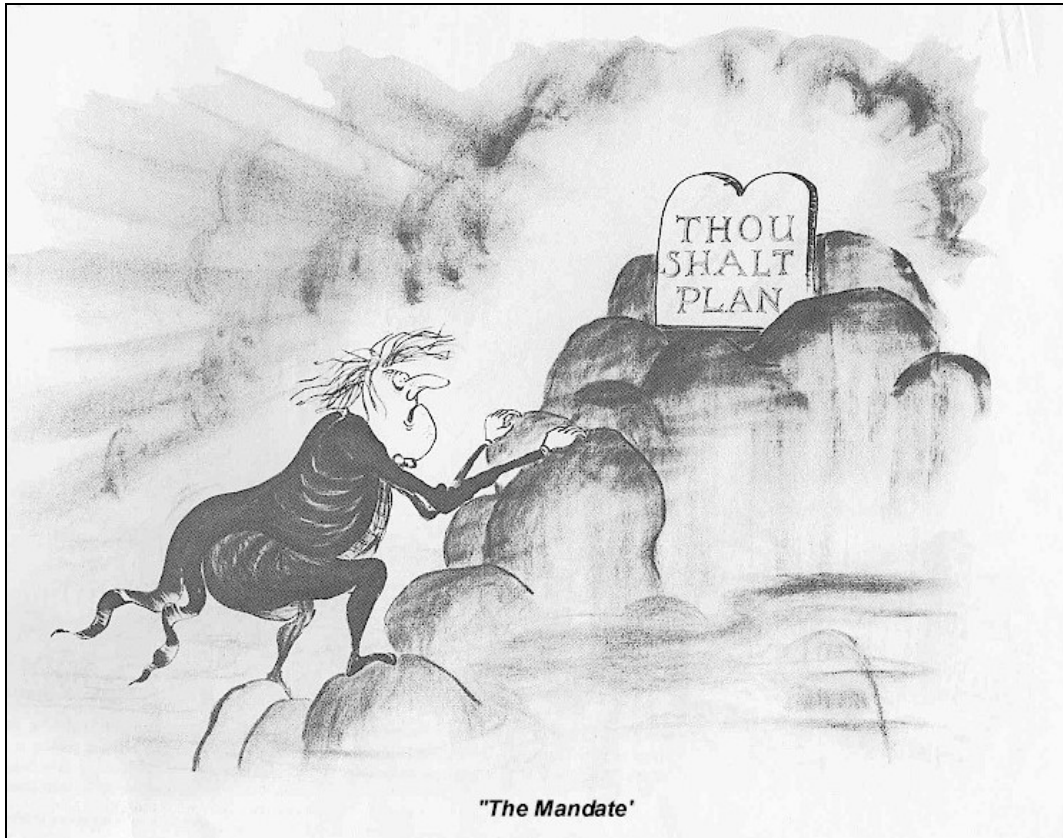
- Local Comprehensive Plan
- Land Development Regulations
- Capital Improvements Programming

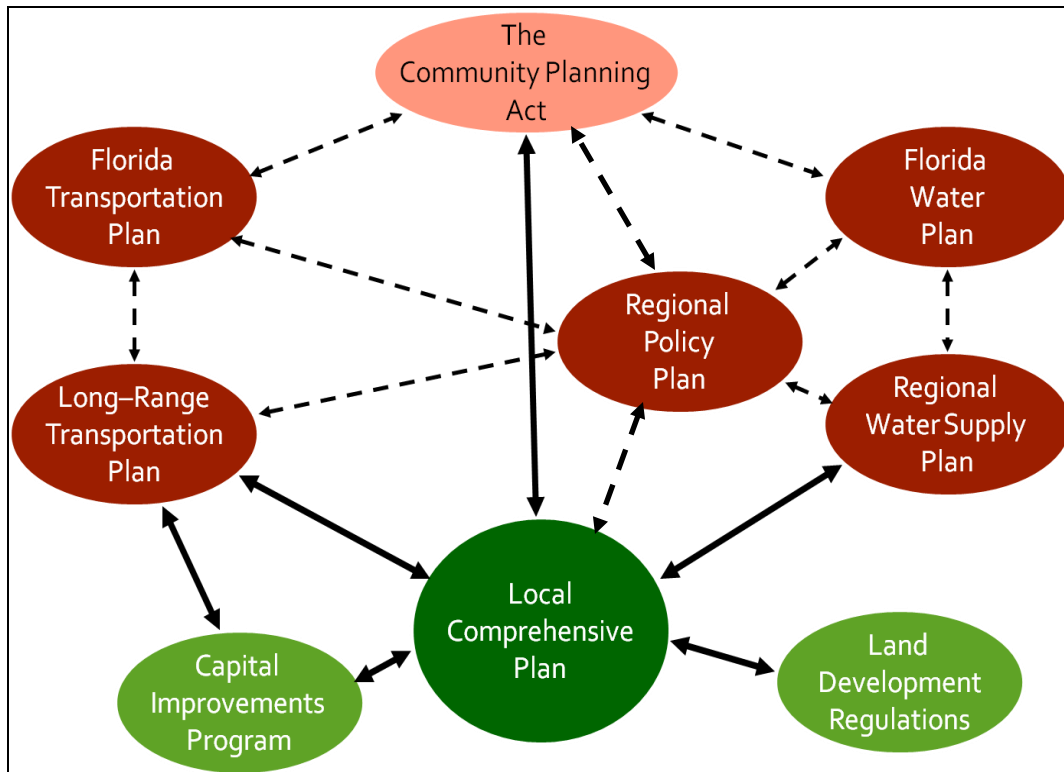
### **State Level Planning**

- State Land Planning Agency
- Florida Transportation Plan
- Florida Water Plan
- Areas of Critical State Concern

### **Regional Level Planning**

- Strategic Regional Policy Plan
- Long-Range Transportation Plan
- Regional Water Supply Plan
- Developments of Regional Impact





## Local Level

### The Local Government Comprehensive Plan

The Local Government Comprehensive Plan is the centerpiece of planning and growth management in Florida. The Community Planning Act requires that all counties and municipalities adopt and maintain a comprehensive plan.

The Comprehensive Plan is a blueprint to guide economic growth, development of land, resource protection and the provision of public services and facilities. The Comprehensive Plan implements the community vision typically through a series of "elements" that provide a framework for development and community building.

### Land Development Regulations

Each local government is required to adopt and

enforce regulations implement its comprehensive plan. These regulations are required to address the subdivision of land, the use of land and water, the protection of potable water sources, drainage and stormwater management, the protection of environmentally sensitive lands, signage, the adequacy of public facilities and services and traffic flow.

### **Capital Improvements Program**

Each local government is required to maintain a timetable or schedule of future capital improvements that may be necessary to support the growth contemplated by the Comprehensive Plan. This schedule will typically identify the start and completion date of projects, their estimated cost, the source of funding and their priority.

### **State Level**

#### **Florida Transportation Plan**

The Florida Transportation Plan (FTP) is maintained by the Florida Department of Transportation (FDOT). The FTP establishes long range goals that provide a policy framework for the expenditure of federal and state transportation funds. Every five years, the FDOT updates this plan to respond to new trends and challenges to meet future mobility needs. The current FTP looks at a 50 year horizon (2060). Information about the 2060 FTP and other FDOT programs and activities can be found at <http://www.dot.state.fl.us/planning/ftp/> .

#### **Florida Water Plan**

The Florida Department of Environmental Protection (FDEP) is responsible for protecting the quality of Florida's drinking water as well as its rivers, lakes, wetlands, springs and sandy beaches. To meet this responsibility the FDEP provides a range of programs and activities that are collectively referred to here as the Florida Water Plan. Information about these programs and activities can be found at <http://www.dep.state.fl.us/water/> .

#### **Areas of Critical State Concern**

The ACSC program protects resources and public facilities of major statewide significance.

Designated Areas of Critical State Concern are:

- City of Apalachicola
- City of Key West
- Green Swamp
- Florida Keys (Monroe County)
- Big Cypress Swamp (Miami-Dade, Monroe and Collier counties)

The Community Development Division of the Department of Community Affairs reviews all local development projects within the designated areas and may appeal to the Administration Commission any local development orders that are inconsistent with state guidelines. The Division also is responsible for reviewing and approving amendments to comprehensive plans and land development regulations proposed by local governments within the designated areas.

## **Regional Level**

### **Strategic Regional Policy Plans**

A strategic regional policy plan contains regional goals and policies that address affordable housing, economic development, emergency preparedness, natural resources of regional significance, and regional transportation, and may address any other subject which relates to the particular needs and circumstances of the comprehensive planning district as determined by the regional planning council. Regional plans identify and address significant regional resources and facilities.

In preparing the strategic regional policy plan, the regional planning council seeks the full cooperation and assistance of local governments to identify key regional resources and facilities and document present conditions and trends with respect to the policy areas addressed; forecast future conditions and trends based on expected growth patterns of the region; and analyze the problems, needs, and opportunities associated with growth and development in the region, especially as those problems, needs, and opportunities relate to the subject areas addressed in the strategic regional policy plan.



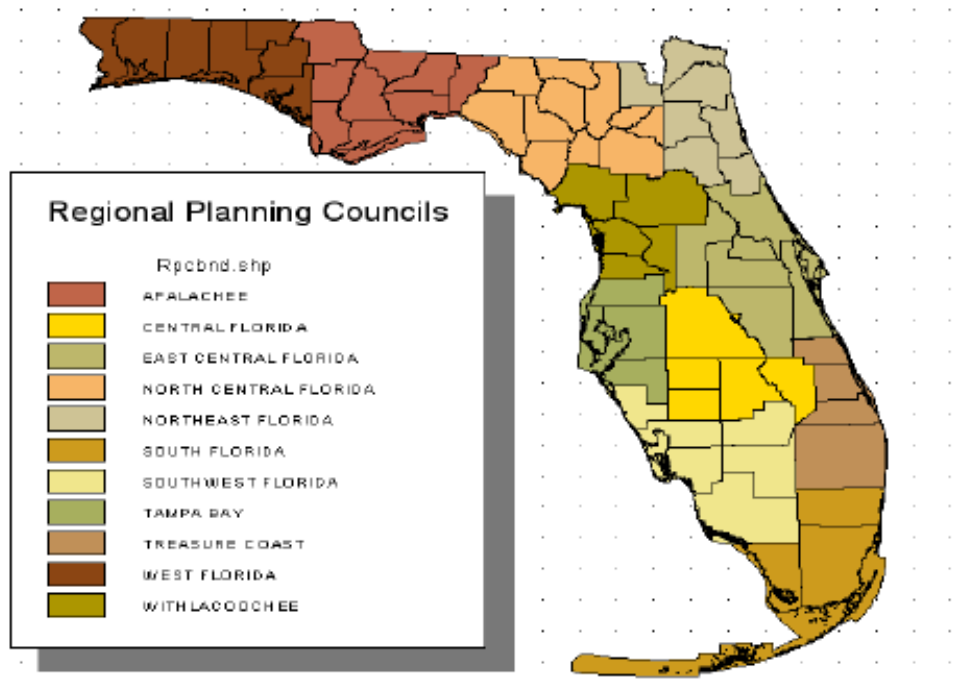
### Long Range Transportation Plans

Long Range Transportation Plans (LRTP) are typically prepared by a Metropolitan Planning Organization (MPO). The LRTP normally covers a 20 year period and identifies current and future transportation needs based on population projections and travel demand. More about MPOs and their role can be found at <http://www.mpoac.org>.

### Regional Water Supply Plans

Regional Water Supply Plans (RWSP) are maintained by those water management districts where water sources were not adequate to meet projected needs. All water management districts with the exception of the Suwannee River Water Management District meet this criteria.

The RWSPs identify water resource and supply options that could meet the projected water needs. Each year the district prepares a 5 Year Water Resource Development Work Program describing im-



plementation strategies for the water for water resource development. More information about RWSPs can be found at <http://www.dep.state.fl.us/water/waterpolicy/>.

### **Developments of Regional Impact**

The DRI process was created by the Environmental Land and Water Management Act of 1972 and is the State's longest standing growth management tool. The process requires regional and state oversight of large-scale land development projects deemed to have a regional impact.

The State defines the thresholds of development intensity that constitutes a regional impact (i.e. impact beyond the boundaries of a county). Developments exceeding this threshold must undergo regional and state review in addition to the local development review process.

### **Who are the Players in the Planning Process?**

The types of participants in the Florida planning process are varied and range from state and regional agencies to local governing bodies, appointed committees and boards, organized interest groups, and – most importantly – citizens. Who are these players?

#### **Local Level**

- Local government including the elected governing body
- Local Planning Agency (LPA)
- Appointed boards, commissions and committees
- Local school board
- Property owners
- Homeowners associations
- Business owners
- Civic and business groups and organizations
- Citizens
- Professionals such as planners, engineers, architects, landscape architects, environmental consultants and attorneys

The *governing body* in every Florida city and county has final approval authority for most of the local growth management decisions. In particular these bodies must adopt and amend the Comprehensive Plan and the Land Development Code for their jurisdiction.

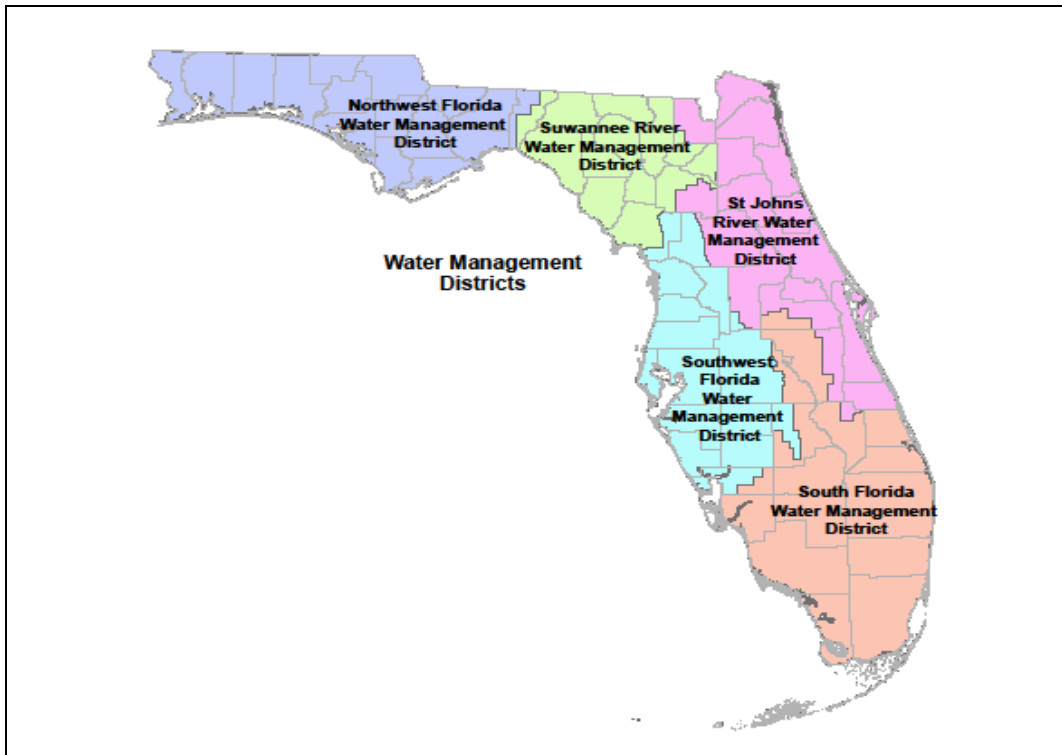
The *Local Planning Agency (LPA)* plays a pivotal role. The LPA is the agency responsible for preparing and maintaining the Comprehensive Plan, as well as recommending the plan to the governing body. Although the LPA can be the governing body, or even the planning department, in most cases this duty falls to a "planning commission" or a "land use and zoning board".

The implementation of the land development regulations normally involves another level of "citizen" boards. Typical examples include a zoning board, a board of adjustment, an "historical district review board", and others. Recently, the local school board has been given specific responsibility in the planning process.

Another type of local organization also derives its authority from the planning and growth management system. Authorities and special purpose districts are frequently created to carry out specific implementing actions. Community Redevelopment Authorities, special improvement districts and neighborhood associations are examples.

Citizens, individually and as part of organizations or groups, are a central part of the planning process. Citizens and organizations may be involved in working groups or task forces during the formulation of a plan or plan amendment, or may participate in workshops and public hearings conducted by the LPA and governing body. When a citizen or organization wants to challenge a plan because they believe it does not comply with the requirements of law, they must be recognized as an "affected party". Legal issues regarding the process to challenge a plan are addressed in Chapter Two.

Participation in planning and growth management activities at the local level involves numerous organizations – both public and private. It is in fact at the local level where the public participation and intergovernmental interaction is the greatest..



### State Level

- Governor and cabinet
- Department of Community Affairs
- Department of Environmental Protection
- Department of State
- Department of Transportation
- Fish and Wildlife Conservation Commission
- Department of Agriculture and Consumer services
- Special interest and advocacy organizations such as 1000 Friends of Florida, the Sierra Club, the Florida Homebuilders Association, the Florida League of Cities and the Florida Association of Counties

The *Governor* is the Chief Planning Official for the State and the *Governor and Cabinet* serve as the Administration Commission. As the Administration Commission, the Governor and Cabinet is involved in matters such as final orders following a chal-

lenge to a comprehensive plan.

The *Florida Department of Community Affairs (DCA)* serves as the State Land Planning Agency. The Secretary of DCA supervises and administers the activities of DCA and advises the Governor, the Cabinet, and the Legislature with respect to matters affecting community affairs and local government. The Secretary participates in the formulation of policies which best utilize the resources of state government for the benefit of local government.

The *Florida Department of Transportation (FDOT)* is responsible for the formulation, maintenance, and implementation of the Florida Transportation Plan. FDOT also reviews local plans and plan amendments as part of the compliance review process specifically related to transportation resources and facilities of state importance

The *Florida Department of Environmental Protection* is responsible for the formulation, maintenance, and implementation of the State Water Plan, as well as reviewing plans and plan amendments regarding air and water pollution, wetlands and other surface waters of the state, federal and state-owned lands, greenways and trails, solid waste, water and wastewater treatment, and the Everglades ecosystem restoration.

The *Department of State* reviews plans and amendments with regard to historic and archeological resources.

The *Fish and Wildlife Commission* reviews plans and plans amendments as they may relate to fish and wildlife habitat and listed species and their habitats.

The *Department of Agriculture and Consumer services* reviews plans and plans amendments as they may relate to agriculture, forestry and aquaculture.

The *Department of Education* reviews plans and plans amendments as they may relate to public

school facilities.

### **Regional Level**

- Regional planning councils
- Water management districts
- Metropolitan Transportation Planning Organizations

*Regional planning councils (RPCs)* are established to provide a regional perspective and to enhance the ability and opportunity for local governments to resolve issues transcending their individual boundaries. Regional planning councils are specifically charged with the preparation of a Strategic Regional Policy Plan (SRPP) and may review plans and plans amendments for adverse impact on regional resources and facilities identified by the SRPP. RPCs also review plans and plan amendments regarding extrajurisdictional impacts that are inconsistent with the comprehensive plan of any affected local government within the region.

The regional planning council is recognized as 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. Consequently, the regional planning councils have a specific role in review of developments of regional impact within their region.

*Water management districts* prepare regional or district water supply plans. The districts are review agencies for proposed plans and plan amendments and are concerned primarily with matters of stormwater and water supply.

The *Metropolitan Transportation Planning Organizations* are concerned with long range transportation planning and transportation improvement plans. Local government plans must be coordinated with these plans.



## **Planning Officials Are Elected or Appointed Citizens Involved in the Planning Process**

The term "*Planning Officials*" was created by the American Planning Association to include a wide range of citizen participants in planning who have specific roles. City and County Commissioners are elected officials who serve on the governing bodies of local government. In Florida, these elected officials play a significant role in planning and growth management. They are the final authority for the adoption of a community's comprehensive plan, the enactment of its land development regulations and the approval of major development applications. City and County Commissions also typically appoint the officials who serve on the planning commissions and other boards of their community.

Planning Commissioners are appointed to serve on local planning commissions. Planning commissioners are the keepers of the Comprehensive Plan. They initiate and guide long-range planning efforts, conduct public meetings and hearings on proposed plans and projects, review development proposals for conformance with local plans and development regulations, and develop new planning programs.

Zoning Board members are appointed to serve on boards that review development applications. Zoning boards normally make recommendations to the local governing body regarding rezonings and other development approvals but may serve as the final approval authority for some actions prescribed by the local regulations. Planning commissions may serve as a zoning board to perform this function in many communities.

Board of Adjustment members are appointed, volunteer officials who serve on a board that hears appeals or requests for variances and conditional use approvals, all zoning and land use matters. The work of the board is generally limited to review of applications for conditional use permits, variances, and other appeals. In some communities, the functions of a planning board and a zoning board of appeals are performed by a joint planning and zoning commission.



### **The Work of the Planning Commission**

The Planning Commission's goal is to make the comprehensive plan work. The Planning Commission's first responsibility is to recommend a comprehensive plan that reflects the vision and values of the community. The planning commission is a lay body that in many ways speaks for the community. These volunteer citizens give their time, energy, and intelligence to evaluating their community and its future, and advise the elected officials about future directions.

The Planning Commissions second goal is to move the plan from vision to reality. To do this, the planning commission must examine each issue and every application and ask the question, "Does this proposal further the goals and objectives of the comprehensive plan?" If so, the proposal conforms to the public interest as expressed in the plan and should normally be approved. If not, the proposal runs contrary to the public interest as expressed in the plan and should normally be rejected. All of this seems straightforward enough, but in practice things are much more complex. The comprehensive plan, for example, while offering guidance and showing direction, will not often provide automatic answers.

In addition to ensuring that the decisions of the planning commission conform to the comprehensive plan, it is also the duty of planning commission members to ensure that the plan is kept up to date. As technology changes, for example, what is practical or possible in the plan will also change. Further, as a community evolves, so too will the goals and objectives of its citizenry. New ideas will be introduced. Existing land uses will change. It may become evident that aspects of the plan are no longer relevant. For all of these reasons and more, a key task of the planning commission is to make certain that the plan is current and, if not, that the plan be updated and amended.

Evaluating and amending the plan should be a regular part of the planning commission's annual agenda. At least once per year, the commission should schedule time to review the existing plan and then develop any changes as required. This

will ensure that the plan remains an accurate reflection of community values and will also serve to reinforce the importance of the plan to the members of the planning commission itself.

### **The Work of the Zoning Board**

The "Zoning Board" reviews development applications and makes recommendations to the local governing authority. The "zoning board" reviews development applications for consistency with the comprehensive plan, compliance with the land development regulations of the community and adherence to accepted planning practices and principles. The development review process normally involves an analysis and recommendation by an appointed body before a final decision is made by the local governing body. The procedures that guide this review are prescribed by the community's land development code and typically involve rezonings, subdivision review, site plan review and other processes.

A community may not have a "zoning board" but the review function described above does exist by one name or another within the planning structure. Often a planning commission will perform this role. In other communities, a hearing officer may be used. Regardless of where the responsibility is assigned, it is an essential function and one that typically involves the planning officials' most active and direct involvement in community issues.

### **The Work of the Board of Adjustment**

Communities have "boards of appeal" or "boards of zoning adjustment". For convenience, the term "board of adjustment" is used. The moment a land development code is adopted, the work of the board of adjustment begins. As the name implies, the focus of the board's work is zoning code related appeals, but just as with the planning commission and zoning board, a second goal of the board of adjustment is to implement the comprehensive plan, or to at least assure that its decisions don't violate the comprehensive plan.

The "board of adjustment" is charged with a complex set of duties that typically include:

- Deciding on variances to the land development code;
- Reviewing appeals to decisions of the code administrator;
- Interpreting the meaning and the intent of the land development code; and often
- Evaluating special exceptions or conditional uses.



## Chapter Two - The Constitutional and Legal Framework of Planning

**Planning officials are involved in both legislative and quasi judicial decisions and the planning official must understand the distinction**

**Legislative: Making the law or policy. In Florida, usually the exclusive province of the governing body, but may involve a recommendation from planning board members.**

**Quasi-Judicial: Applying the law or policy. Planning officials sometimes exercise final decision-making authority, and otherwise make recommendations to the governing body**

Community planning must be conducted within a constitutional and legal framework. The decisions made in this process must meet established constitutional and legal standards of **due process, fairness and equity for all participants in the planning process.**

**Decisions made by Planning Officials can be classified as:**

**Legislative.** Legislative actions are decided by an elected body such as a city or county commission. In these decisions, appointed officials (planning commissioners or zoning board members) may recommend the rules to be used for the planning process in the community. Public officials may exercise broad discretion in the discharge of their legislative responsibilities.

**Quasi-judicial.** Local governments have the discretion to act within the range of options established within their comprehensive plan and code of ordinances. When making such decisions, a planning official must weigh the facts and determine whether a proposal is consistent with existing plans and requirements. The degree of discretion is limited to a determination of consistency with established standards. For example, is the zone change consistent with the criteria laid out for granting of the zone change and with the land use category?

In Florida, the adoption of the Comprehensive Plan (and plan amendments) is legislative, as is the adoption and amendment of the text of the Land Development Code. Large scale, jurisdiction-wide rezonings involving policy making on general scale are also legislative. Site-specific zoning changes, special uses, special exceptions, site plans and subdivision review are quasi-judicial. This distinction is critical because the rules of conduct and degree of discretion for a legislative act vary significantly from a quasi-judicial decision.

**The U.S. and Florida Constitutions protect speech and religion from excessive regulation, and require that similarly situated persons be treated similarly unless there is a rational basis to treat them differently.**

**No person may be deprived of property without due process of law, nor property taken for public use without just and full compensation.**

## **The Constitutional Foundation**

### **US Constitution**

*FIRST AMENDMENT: CONGRESS SHALL MAKE NO LAW RESPECTING AN ESTABLISHMENT OF RELIGION, OR PROHIBITING THE FREE EXERCISE THEREOF; OR ABRIDGING THE FREEDOM OF SPEECH, OR OF THE PRESS; OR THE RIGHT OF THE PEOPLE PEACEABLY TO ASSEMBLE, AND TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES. (APPLIED TO STATE AND LOCAL GOVERNMENTS THROUGH THE FOURTEENTH AMENDMENT).*

*FIFTH AMENDMENT: NO PERSON SHALL BE . . . DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR SHALL PRIVATE PROPERTY BE TAKEN FOR PUBLIC USE WITHOUT JUST COMPENSATION.*

*FOURTEENTH AMENDMENT: SECTION 1. . . . NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS.*

### **Florida Constitution**

*ARTICLE I, SECTION 9. DUE PROCESS.--NO PERSON SHALL BE DEPRIVED OF LIFE, LIBERTY OR PROPERTY WITHOUT DUE PROCESS OF LAW . . . .*

*ARTICLE II, SECTION 7. NATURAL RESOURCES AND SCENIC BEAUTY.—(a) IT SHALL BE THE POLICY OF THE STATE TO CONSERVE AND PROTECT ITS NATURAL RESOURCES AND SCENIC BEAUTY. ADEQUATE PROVISION SHALL BE MADE BY LAW FOR THE ABATEMENT OF AIR AND WATER POLLUTION AND OF EXCESSIVE AND UNNECESSARY NOISE AND FOR THE CONSERVATION AND PROTECTION OF NATURAL RESOURCES.*

*ARTICLE X, SECTION 6. EMINENT DOMAIN.-- (a) NO PRIVATE PROPERTY SHALL BE TAKEN EXCEPT FOR A PUBLIC PURPOSE AND WITH FULL COMPENSATION THEREFOR PAID TO EACH OWNER OR SECURED BY DEPOSIT IN THE REGISTRY OF THE*

*COURT AND AVAILABLE TO THE OWNER.*

## **The Property Rights Issue in Florida**

### **Federal Law**

The U.S. Constitution states that "private property may not be taken for public use without just compensation." It is important to note that takings are not prohibited; rather, they are required to be for a public use and to be accompanied by the payment of just compensation. The most obvious kinds of takings are physical appropriations, such as where the government occupies private property and displaces the private property owner in a time of war or emergency.

In the 1920s, the U.S. Supreme Court first recognized that there could be a taking that was not physical in nature – a "regulatory taking" where a regulation of property would be so severe in its impacts on the property owner that it could fairly be considered analogous to a physical occupation of the property. *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922) considered a challenge to a Pennsylvania statute which prohibited the underground mining of coal if such mining would cause the subsidence of dwellings on the surface.

The Court famously said that, while property may be regulated to a certain extent, if the regulation "goes too far," it can constitute a regulatory taking. It also offered that "a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change." While the court invalidated the statute, a strong dissent by Justice Brandeis made the case that a "reciprocity of advantage" existed in this regulation, so that the advantage flowing to an individual property owner from uniform regulation of property to assure civilized living conditions was in proper relationship with the advantages flowing to society from the regulatory constraints on an individual property owner's use.

Exactly how far was "too far" for a regulation was left for another day. It was not until the 1970s, and the case of *Penn Central*, that the Court began

to answer the question by picking up on Justice Brandeis' notion of analyzing the balance of the benefits and burdens of the regulation. In 1987, the Court considered a challenge to a very similar Pennsylvania coal mining regulation and, this time, concluded that it did not result in a regulatory taking. *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470 (1987). With *Lucas* in 1992, the Court completed its outline of those instances which would automatically result in a taking: physical occupation as in *Penn Coal*, and denial of all economically beneficial use, as in *Lucas*. Where a regulation posed neither of these extreme circumstances, the *Penn Central* balancing test would be applied, as recently reaffirmed unanimously in 2005 in *Lingle*. In *Tahoe-Sierra Preservation Council*, the Court decided that reasonable moratoria do not constitute per se takings under *Lucas*; rather, they are also analyzed under *Penn Central*'s balancing test..



***Lingle v. Chevron, USA, 544 U.S. 528***  
**U.S. Supreme Court (2005)**

*The typical regulatory taking case requires a balancing of benefits and burdens in order to determine if there is taking liability.*

**Facts:** The State of Hawaii regulated the maximum rent that the oil companies could charge dealers who sought to rent service stations.

**Issue:** Can a regulation's failure to "substantially advance" a legitimate state interest result in takings liability and require compensation?

**Rule:** No. A unanimous court held that "substantially advance" is a substantive due process concept, with no place in takings analysis. Absent a physical occupation or denial of all economically viable use, regulations must be analyzed under the balancing test of *Penn Central Transp. Co. v. New York City*, 438 U.S. 104 (1978), which considers the regulation's economic impact on the claimant, the extent to which it interferes with distinct investment-backed expectations, and the character of the government action.

**Analysis:** The "substantially advance" test fails to address the issues of public and private benefit and burden which are key to any takings inquiry, so it sheds no light on whether the regulation is tantamount to a physical expropriation of the property. It also implicitly calls into question legislative judgments as to the efficacy of regulatory strategies -- judgments which federal courts are ill-suited to make and to which the courts have traditionally deferred. Because a failure to "substantially advance" a legitimate interest is not relevant to the takings analysis, the statute was upheld. The Court explains all of the key takings cases, and how they should be applied to different factual circumstances.

**The State of Florida is a "strong" property rights state and has expanded upon the property rights protections afforded in the US Constitution**

### State Law

The Florida Constitution, Article I, Section 2, states that *"All natural persons.... are equal before the law and have inalienable rights, ... to acquire, possess and protect property...."*

Article X, Section 6 states that "no private property shall be taken except for a public purpose and with full compensation therefore."

Florida cases interpreting the takings clause are very similar to federal regulatory takings law in all respects, except that the state measure of "full compensation" is somewhat different than the federal measure of "just compensation." However, Florida's Legislature has adopted additional protections for private property rights. The growth management statutes include a statement of legislative intent regarding property rights:

*It is the intent of the Legislature that all govern-*

***Lucas v. South Carolina Coastal Council, 505 U.S. 1003  
U.S. Supreme Court (1992)***

***Denying all economically viable use is a per se regulatory "taking" requiring compensation.***

**Facts:** Lucas bought beachfront property on an island in order to build a residential development. Two years later, after the development was largely complete, the South Carolina Legislature passed a law that prohibited development of Lucas' remaining land because most of it was located seaward of the state's coastal setback and subject to erosion. Lucas filed suit to allow the development of the last two lots, purchased for \$975,000, claiming that the law constituted a taking of his property without just compensation.

The trial court ruled his in favor and found that the new law deprived Lucas of 100% of the economic value of the land, and ordered the Council to pay \$1.2 million to Lucas. The Supreme Court of South Carolina reversed, saying that the statute served a valuable public purpose and therefore no compensation was required by the Fifth Amendment. Lucas appealed to the U.S. Supreme Court.

**Issue:** Did the law's effect on the economic value of Lucas's remaining land constitute a "taking" under the Fifth and Fourteenth Amendments requiring "just compensation"?

**Rule:** When the state deprives a property owner of 100% of the economic value of their land for some public purpose, it is a compensable taking unless the use that is being taken away was never part of the title to the land in the first place. For example, it's not a taking to deprive the owner of the right to create a nuisance on their land, because that wasn't part of their property rights anyway.

**Analysis:** The Court says that there are two clear-cut cases of regulatory "takings":

1. Physical occupation of private property
2. Denial of all economically productive use of private property

This case falls into the latter category. The Court acknowledges that there are many occasions when such regulation falls short of a compensable taking. The Court even recognizes that deprivation of 90% or more of value may not constitute a taking. It is reasonable for property owners to expect that their property will be restricted in some ways. One way to look at this is to say that certain implied limitations exist in the title to the land. The government doesn't need to compensate for making *explicit* limitations that were previously *implicit*. In order for South Carolina to prevail on remand, it must show that common law principles of nuisance and property forbid the intended use of the land. These principles involve the balancing of social harm against private rights and evolve over time as society evolves. On remand, the state court decided that the law of South Carolina did not prohibit the development of these lots.

***Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 535 U.S. 302  
U.S. Supreme Court (2002)***

***While generally upheld without the requirement of compensation, moratoria can constitute a compensable taking if they go on too long.***

**Facts:** The regional planning agency placed two temporary moratoria on development of the slopes surrounding Lake Tahoe, lasting a combined total of 32 months. The purpose of the moratoria was to allow time to complete a comprehensive land-use plan for the area and impose regulations to protect the Lake's water quality.

**Issue:** Does a 32-month prohibition on development constitute a compensable taking under *Lucas* by depriving the owner of all economically beneficial use?

**Rule:** No, by a 6-3 majority. The regulation was temporary in nature, and thus *Lucas* did not apply. Moratoria are analyzed under *Penn Central*, and the challenger had admitted that there was no taking under *Penn Central*. If moratoria last longer than a year, they may deserve "special skepticism." Here, the combined 32-month moratoria were justified on the factual circumstances.

**Analysis:** The "essentially ad hoc, factual" analysis of *Penn Central* applied. Looking at the parcel as a whole, full use of the property returned at the end of the moratoria and thus all use was not taken. While the Court has long stated that protecting property owners from bearing public burdens "which, in all fairness and justice, should be borne by the public as a whole" is a principal purpose of takings law, deeming a temporary loss to be a complete deprivation of value would be neither fair nor just. Moratoria involve a clear reciprocity of advantage. However, a moratorium that drags on too long could constitute a taking. "Too long" is determined by the good faith evidenced in and scope of the planning effort, the reasonable expectations of the property owner, and the extent of the moratorium's actual impact on property value. The balance weighs more strongly in favor of the moratorium when it is directed to a broad range of properties rather than singling out one property owner for delay. A *per se* time limit could work to rush the process such that interested parties would be denied their opportunity for input into the plan, because regulations would need to be quickly completed before additional property owners develop and thereby evade regulation. However, moratoria lasting more than one year may deserve special skepticism.

*mental entities in this state recognize and respect judicially acknowledged or constitutionally protected private property rights. It is the intent of the Legislature that all rules, ordinances, regulations, and programs adopted under the authority of this Act must be developed, promulgated, implemented, and applied with sensitivity for private property rights and not be unduly restrictive, and property owners must be free from actions by others which would harm their property. Full and just compensation or other appropriate relief must be provided to any property owner for a governmental action that is determined to be an invalid exercise of the police power which constitutes a taking, as provided by law. Any such relief must be determined in a judicial action.....*

The Legislature also has adopted the "**Bert J. Harris, Jr., Private Property Rights Protection Act**," Chapter 70, Florida Statutes, which expands property rights in Florida and addresses how property rights are to be treated in the planning and growth management process.

1. *The Legislature recognizes that some laws, regulations, and ordinances . . . , as applied, may inordinately burden, restrict, or limit private property rights without amounting to a taking under the State Constitution or the United States Constitution. The Legislature determines that there is an important state interest in protecting the interests of private property owners from such inordinate burdens. Therefore, it is the intent of the Legislature that, as a separate and distinct cause of action from the law of takings, the Legislature herein provides for relief, or payment of compensation, when a new law, rule, regulation, or ordinance . . . , as applied, unfairly affects real property.*

***When a specific action of a governmental entity has inordinately burdened an existing use of real property or a vested right to a specific use of real property, the property owner of that real property is entitled to relief***  
.....

*(3)(a) The existence of a "vested right" is to be determined by applying the principles of equitable estoppel or substantive due process under the*

**The Bert Harris Act provides a property owner's right to seek compensation for governmental actions that inordinately burden the use of property, after first filing a claim with the government and allowing the government the opportunity to change its mind and provide regulatory relief in lieu of compensation.**

*common law or by applying the statutory law of this state.*

*(3)(b) The term "existing use" means an actual, present use or activity on the real property, including periods of inactivity which are normally associated with, or are incidental to, the nature or type of use or activity or such reasonably foreseeable, nonspeculative land uses which are suitable for the subject real property and compatible with adjacent land uses and which have created an existing fair market value in the property greater than the fair market value of the actual, present use or activity on the real property.*

*(3)(d) The term "action of a governmental entity" means a specific action of a governmental entity which affects real property, including action on an application or permit.*

*(3)(e) The terms "inordinate burden" or "inordinately burdened" mean that an action of one or more governmental entities has directly restricted or limited the use of real property such that the property owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use of the real property or a vested right to a specific use of the real property with respect to the real property as a whole, or that the property owner is left with existing or vested uses that are unreasonable such that the property owner bears permanently a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large. The terms "inordinate burden" or "inordinately burdened" do not include temporary impacts to real property; impacts to real property occasioned by governmental abatement, prohibition, prevention, or remediation of a public nuisance at common law or a noxious use of private property; or impacts to real property caused by an action of a governmental entity taken to grant relief to a property owner under this section.*

*(4)(a) Not less than 180 days prior to filing an action under this section against a governmental entity, a property owner who seeks compensation under this section must present the claim in writing to the head of the governmental entity . . . . The property owner must submit, along with the*

*claim, a bona fide, valid appraisal that supports the claim and demonstrates the loss in fair market value to the real property.*

*(4)(c) ....., the governmental entity shall make a written settlement offer to effectuate:*

- 1. An adjustment of land development or permit standards or other provisions controlling the development or use of land.*
- 2. Increases or modifications in the density, intensity, or use of areas of development.*
- 3. The transfer of developmental rights.*
- 4. Land swaps or exchanges.*
- 5. Mitigation, including payments in lieu of onsite mitigation.*
- 6. Location on the least sensitive portion of the property.*
- 7. Conditioning the amount of development or use permitted.*
- 8. A requirement that issues be addressed on a more comprehensive basis than a single proposed use or development.*
- 9. Issuance of the development order, a variance, special exception, or other extraordinary relief.*
- 10. Purchase of the real property, or an interest therein, by an appropriate governmental entity.*
- 11. No changes to the action of the governmental entity.*

There are many defenses to Harris Act claims: they do not apply to temporary restrictions such as moratoria, to actions taken prior to May 11, 1995, or to actions related to transportation facilities, for example.



## Primacy of the Comprehensive Plan in Florida

The **local comprehensive plan** was intended by the framers of Florida's 1985 Growth Management Act to be the centerpiece of planning and growth management in Florida. The courts have consistently upheld this legal structure. The Community Planning Act enacted in 2011 retains this emphasis.

Each local government in Florida is required to adopt a comprehensive plan. Once this plan is adopted and found to be "in compliance" by the State planning agency, the Department of Community Affairs, all actions related to planning and growth management, including the regulation of land use and development, must be consistent with the comprehensive plan.

The Florida Supreme Court defined the role of the local comprehensive plan in relation to zoning in the *Board of County Commissioners of Brevard County v. Snyder* (see *insert*). The court held that a property owner who is seeking rezoning or development approval must demonstrate that its application is consistent with the comprehensive plan and complies with the land development regulations. Once the owner has met this legal requirement, the burden shifts to the local government to demonstrate that denial of the petition accomplishes a legitimate public purpose and is not arbitrary, discriminatory or unreasonable. A tie goes to the local government. If the record contains substantial competent evidence in favor of the local government and in favor of those opposing the local government's action, and the action is reasonable, the local government's judgment will be upheld.

In *Yusem*, the Court later clarified that all amendments to the comprehensive plan are legislative, even if they only affect a small number of properties.



**Martin County v. Yusem, 690 So. 2d 1288  
Supreme Court of Florida, 1997**

**Facts:** Yusem sought to change the plan designation for his 54 acres from Rural Density to Estate Density and concurrently obtain approval of a rezoning from A-1 to PUD. The County denied the request.

**Issue:** Is a plan amendment affecting only one parcel legislative?

**Rule:** All plan amendments are legislative decisions subject to fairly debatable standard of review, regardless of size.

**Analysis:** Decisions about the plan are legislative because they set policy. That policy is then implemented by quasi-judicial zoning decisions.

**Brevard County v. Snyder, 627 So. 2d 469  
Supreme Court of Florida, 1993**

**Facts:** The Snyders applied to rezone their half-acre property on Merritt Island from general use (GU) (one single-family unit) to medium density multi-family residential development (RU-2-15) (7.5 multi-family units). The planning and zoning board and the County planning staff supported the rezoning, but the County Commission denied it without stating a reason for the denial.

**Issue:** Is the decision whether to rezone the Snyders' property legislative or quasi-judicial? Does a property owner that seeks to rezone their property have the burden of proving that the application is consistent with the city's plan and that it complies with all aspects of the zoning ordinance?

**Holding:** The formulation of the general rule of policy is in adoption of the comprehensive plan. Because Florida adopted mandatory comprehensive planning in 1985 and zoning decisions are now required to be consistent with the plan, zoning decisions applicable to a limited number of persons or properties should no longer be considered legislative and instead should be treated as quasi-judicial applications of plan policy to specific circumstances. Consistency with the plan must be judged strictly, but local governments are not required to immediately grant the full rights available under the land use designation because comprehensive plans anticipate gradual and orderly growth over a long period of time. However, comprehensive, city-wide rezonings may still be considered as formulating policy and treated as legislative; the character of the hearing is a relevant factor. In a quasi-judicial hearing on a rezoning, a property owner has the burden to prove that its application is consistent with the comprehensive plan and land development regulations. If it does, then the burden will shift to the County to demonstrate that maintaining the existing zoning classification accomplishes a legitimate public purpose, and is not arbitrary, discriminatory or unreasonable. If the County meets this burden, the rezoning should be denied. If any of several zoning categories would be consistent with the plan, then the County's decision will be upheld if reasonable. The property owner is entitled to a hearing before an unbiased decisionmaker, to present its case, and to cross-examine witnesses. Findings of fact and conclusions of law are not required; rather, there must be substantial competent evidence in the record supporting the local government's decision.

**Pinecrest Lakes v Shidel  
4th District Court of Appeals (2001)**

**Facts:** In 1981, Pinecrest Lakes, Inc. bought 500 acres of land which they developed into the 10-phased Pinecrest Lakes development. In 1986, the Shidels bought a one-acre lot in Phase 1 and built their home. Phases 1 thru 9 were single family detached homes on large lots. Phase 10 consisted of 21 acres and was designated in the Martin County Comprehensive Plan for "medium density" allowing attached housing with a maximum of 8 units per acre. Phase 10 - the Villas at Pinecrest Lakes—was transferred to a separate entity in 1997. The developer requested approval of 136 multi-family units at 6.5 units per acre. Martin County approved the application. The Comprehensive Plan allowed a maximum of 168 units, but also required that "for structures immediately adjacent, any new structures must be comparable to and compatible with those already built." The residents, including the Shidels, filed suit, alleging that the approved development was inconsistent with the comprehensive plan because the multi family phase was "immediately adjacent" and not "comparable to or compatible with" the prior single family, large lot phases.

**Procedure:** The trial court dismissed residents' suit, ruling that the development was consistent with the County's comprehensive plan. The residents appealed. In the meantime, the developer proceeded with the construction of 5 of the planned 19 multi-family buildings at its own risk as the litigation proceeded. The appeals court reversed and sent the case back to the trial court. The trial court then ruled that the apartments were in violation of the comprehensive plan. As a remedy, the residents demand removal of the 5 buildings. In response, the developer offered to construct a buffer. On July 6, 1999, the trial court granted the residents' remedy and ordered destruction of the 5 apartment buildings, and the developer appealed the remedy. In February 2000, the residents and the developer settle for \$400,000. The Shidels, however, did not settle. On September 26, 2001, the appeals court upheld the remedy and ordered the buildings torn down. On September 5, 2002, the buildings were torn down.

**Issue:** When a developer proceeds at its own risk to construct buildings that are the subject of litigation, can a court order the buildings to be demolished when the developer is ultimately unsuccessful in the litigation and the buildings are determined to be inconsistent with the comprehensive plan?

**Holding:** Yes. If the buildings are inconsistent with the plan, removal is an appropriate remedy. Implementation of the plan, whether through rezonings or approvals of individual developments, is quasi-judicial. The planning statute allows affected individuals, broadly defined, to challenge such decisions on the basis of inconsistency with the plan, and the County's decision must be reviewed by strict scrutiny.

## Zoning

**Zoning is the division of a city or county into districts for the purpose of regulating the use of private land**

Zoning is the division of a city or county into districts for the purpose of regulating the use of private and, in some cases, public land. Such zones are mapped and, within each district, the text of the zoning ordinance will typically specify the permitted principal and accessory uses, the bulk of buildings, the required yards, the necessary off-street parking and other prerequisites for development. Florida's growth management statute requires that the land development regulations adopted by local governments include a zoning component.

**Zoning is an exercise of the police power i.e. the power to regulate activity by private persons for the health, safety and general welfare of the public**

Zoning was first found to be constitutional by the US Supreme Court in 1926 in *Village of Euclid v Ambler Realty Co* (see insert). Prior to that case, there were scattered efforts on the part of communities to regulate the use of land. While ordinances to control height in designated areas had been upheld, the regulation of uses in specified blocks of a municipality had been less successful when challenged in the courts. Zoning represented the first effort on the part of the public to regulate all private land in a comprehensive fashion.

Zoning is an exercise of the "police power:" the power to regulate activity by private persons for the health, safety and general welfare of the public. As noted in the constitutional excerpts above, county governments enjoy no such home rule or police power authority except as it may be delegated to them by the state. Charter counties and municipalities, however, do possess home rule police powers to regulate in any manner they see fit, as long as the regulation is not inconsistent with general law (such as a statute). In general, charter counties and municipalities can be stricter than general law and still be considered consistent with it, unless it is determined that an entire field of regulation has been preempted to the state or federal government (such as gun control).

**Village of Euclid v. Ambler Realty Co.  
U.S. Supreme Court (1926)**

**Facts:** The Village of Euclid, Ohio enacted zoning regulations affecting Ambler's 68 acre tract of land. Ambler sought an injunction restraining the enforcement of the ordinances. The ordinance establishing a "comprehensive zoning plan," based upon 6 classes of use, 3 classes of height and 4 classes of area regulations. Euclid was one of the earliest suburbs. It was located near the edge of Cleveland and zoning was adopted to prevent the expansion of Cleveland into Euclid. The zoning was cumulative; for example, each more liberal zone contained within it all the uses permitted in the more restrictive zones. This is where the term "euclidean" zoning originates. Ambler claimed that this ordinance substantially reduced the market value of the property by limiting its use and violated the Fourteenth Amendment because it deprived the owner of liberty and property without due process of law and denied it the equal protection of the law. Ambler offered no evidence that any specific part of the regulation actually had any appreciable effect on the value or marketability of its lands, but instead attacked the ordinance as it might apply to anyone.

**Issue (s):** Does zoning violate the due process and equal protection clauses of the Fourteenth Amendment on its face? Is it unreasonable and confiscatory?

**Holding:** No. In general, zoning is adopted for the public health, safety and welfare and represents a proper use of the police power. However, depending on the circumstances and conditions, a specific zoning ordinance might be unconstitutional if it had no rational basis and failed to protect a legitimate governmental interest. Euclid's ordinance was constitutional on its face. The ordinance did not pass the bounds of reason and assume the character of merely arbitrary fiat, and was therefore not constitutional.

## Subdivision Regulation

Subdivision regulations provide standards and a set of procedures for dividing land into separate parcels, which are intended to assure minimum public safety, health, welfare and amenity standards. The regulation of subdivisions is based on the police power, similar to zoning. Local government regulation of subdivisions must be in accordance with, but can be stricter than state enabling legislation if the local government is a home rule jurisdiction.

The purpose of subdivision regulations is to protect future owners or occupants of newly developed land from unhealthy, unsafe, or inadequate conditions, and to prevent current residents from footing the entire bill for providing supportive infrastructure for the newly developed land.

The original, and still an important, function of subdivision regulation is to accurately and legally define each parcel of land to permit transfer of the lots from one owner to another, and to allow each owner

to be clear about, and have legal claim to, exactly what is owned. Through surveying and the recording of a plat, subdivision regulations help to avoid land disputes between neighbors as well as assign responsibility and ownership for each parcel of land.

From this original purpose, subdivision regulations have come to serve many other purposes. Modern regulations provide detailed standards governing the geometric shape, sizes and configuration of lots; required levels of access to surrounding roads; the minimum width and design of streets; whether curbs, sidewalks, and gutters will be built and to what specification; required water and sewer lines; requirements for street lights and trees; and the dedication of land for public use. In addition to protecting public safety, subdivision regulations serve an increasingly complex set of planning goals.

Subdivision regulations have also been expanded to include environmental and local government fiscal concerns. Regulations typically contain requirements for the prevention of flooding, water quality control, the provision of roads to handle increased traffic, and the provision of school and park sites, and may also require the establishment of special districts or homeowners associations to assume responsibility for the care and maintenance of the amenities of the development, thereby protecting the taxpayers at large from being subject to this expense.

## Growth Management

Growth management programs address the timing and sequence of development, and the adequacy of public infrastructure and services to serve new development. Florida's "top-down" planning approach depends heavily upon growth management concepts.

Growth management refers to a community's use of a wide range of techniques to determine the amount, type and rate of development desired by the community and to direct that growth into designated areas. Growth management policies can be implemented through future land use planning, zoning, capital improvement programming, adequate public facilities ordinances, urban service areas, urban growth boundaries, level of service standards and other programs.

In *Golden v Planning Board of Town of Ramapo* (1972) (see insert), the US Supreme Court held that local governments may condition development approval on the provision of public services and facilities. Notably, the Town of Ramapo based its program on a comprehensive plan and an 18 year capital improvement program designed to provide infrastructure throughout the community.

As discussed above, the regulatory "takings" issue is critical in growth management programs. A "takings" issue may arise when a growth management program temporarily delays development. The US Supreme Court addressed this issue in *Tahoe-Sierra Preservation Council v Tahoe Regional Planning Agency* (2002) (see insert), holding that a delay in development during a moratorium is not a categorical *per se* taking. However, it left open the possibility that a moratorium could be a regulatory taking as applied to individual circumstances.

The preservation of lands for future public use, such as transportation corridors and greenways, while critically important for effective growth management, are especially problematic. Like moratoria, an official map, for example, can present an "as-applied" takings problem if a landowner is not able to make any use of the property for a period of time. But also like moratoria, if properly done,

official maps can be a useful tool for controlling growth. The Florida Supreme Court in *Palm Beach County v Wright* (see *insert*) held that an unrecorded county thoroughfare plan adopted as part of a mandatory county plan was not a facial taking, even though it prohibited all development in a transportation corridor that would impede future highway construction. *Palm Beach County* suggests that a corridor preservation law may withstand a “takings” challenge if it provides alternative development options that can avoid severe restrictions on development while preserving a highway corridor from damaging development.

**Golden v Planning Board of Town of Ramapo  
New York Court of Appeals (1972)**

**Facts:** The Town of Ramapo adopted a growth management program deferring development in the community for as long as eighteen years. It implemented the program through a residential development permit system which allowed development only if adequate facilities were available. The plaintiff objected that the plan as implemented through the permit system was a taking because development could be deferred in some areas for the eighteen year growth management period.

**Issue:** Does a zoning ordinance which requires a special permit, only available when public facilities and services are deemed adequate, in order to subdivide property step outside of the authorized objectives of zoning enabling legislation?

**Holding:** The zoning ordinance is valid and its objectives are within those defined by the zoning enabling legislation.

**Rationale:** The court examined the effects of the scheme as a whole and its role in producing viable land use and planning policy. This ordinance provides for sequential and orderly development. The objectives of the zoning enabling legislation are as follows: secure safety, avoid undue concentrations of people and ensure adequate provision of transportation, water, sewerage, schools and parks. Based on this, the challenged ordinances are proper zoning techniques.

Plaintiffs argue that timing controls are not authorized since they prohibit subdivision without action by the Town. The Planning Board may not completely deny the right to subdivide. However, a plan is in place to ensure action by the Town. Protection from abuse of this mechanism comes from the mandatory on-going planning and development requirement.

Some properties will not be able to be developed for 18 years according to the general plan. They still are not valid as takings. Landowners are still able to put the property to some use, maybe not the most profitable one (single family residences are allowed). Reducing the value of property does not amount to confiscation unless it is unreasonable or the value is diminished to nearly nothing. These restrictions, while harsh, are not absolute. The court must assume that the Town will act on their plan. If this assumption is shown later to be unwarranted, the restrictions may be undone.

The court uses presumption of validity and cast the burden of proving invalidity to those challenging the action. Legitimate public purpose is forwarded by the ordinance as it ensures all new homes will have adequate public services. It is not exclusionary, instead it enables a cohesive community and efficient utilization of land. Population is not frozen but instead growth is maximized through efficient land use.



**Palm Beach County v Wright  
Florida Supreme Court (1994)**

**Facts:** Wright claimed that a map reserving land for future road development through his property as (part of Palm Beach County's comprehensive development plan) was a taking under all circumstances. This map protected Wright's property (amongst others) from being developed with certain land uses that would later make it more difficult to and increase the cost of building out the roadway network.

**Issue:** Does a map which reserves land for future uses constitute a taking if the owner is denied substantially all of the economic benefits and productive use of the land?

**Holding:** The Supreme Court ruled that a map which reserves land for future use is not on its face unconstitutional but that such a map may make certain properties useless and thus result in individual takings. The adoption of the map was legal, but its impact on Wright's parcel could have constituted a taking under the Fifth Amendment and some Florida laws in particular circumstances.

**Rationale:** Each owner has the opportunity to conduct an inverse condemnation proceeding to determine if its particular circumstance is a taking. The map is constitutional in the same way that setbacks for potential roadway expansions are constitutional. However, if the filing of the map produces demonstrable loss of all economic benefit or productive use, then the owner has the right to seek just compensation at the time the map is adopted.

**Decisions rendered by planning officials must satisfy the standards of (1) substantive due process and 2) procedural due process**

**Substantive due process issues involve (1) the proper exercise of the "police power", (2) the "vagueness" inquiry and (3) the "nexus" issue.**

## Due Process

Due process has two components. **Substantive due process** is the fundamental right to be free from arbitrary, capricious, and irrational legislation.

**Procedural due process** is the right to notice and a hearing when governmental action is taken affecting property rights.

**Legislative** land use decisions by elected officials must satisfy the standards for substantive due process and procedural due process.

**Quasi-judicial decisions** need only satisfy the requirements of procedural due process. *Lewis v. Brown*, 409 F.3d 1271, 1273 (11th Cir. 2005).

## Substantive Due Process

Substantive due process is concerned with the overall propriety of the action taken, or the limits of the "police power" in general.

**Does the regulation seek to achieve a "legitimate public purpose"?**

In most cases, planning enactments seek to protect stated community values; the "object" or "purpose" of the planning effort will be deemed legitimate. For example, regulations aimed at protecting public health and water quality seek to achieve a legitimate public purpose.

**Is there a rational basis to think that the means used to accomplish the lawful purpose are "reasonably related" to achieving that purpose?**

Even when a stated aim is proper, courts will examine whether the means chosen are appropriate. In protecting neighborhood values, for example, a municipality might decide to require modern construction techniques and adequate storage before permitting modular housing in a community. The municipality could be challenged, however, if it assumes that modular housing is always inferior (a demonstrably false assumption), and seeks to ban modular housing or "mobile homes" to "protect the

quality of single-family neighborhoods.”

While not strictly required as part of the substantive due process inquiry, it is appropriate for governments to try to balance its interests with those of the regulated property owner. The greater the public harm, up to a point, the greater the public intrusion warranted in solving the harm. The greater the intrusion on the use of the property, the closer the scrutiny required. Would a less intrusive alternative would have accomplished the same result? Is it fair to make the property owner bear the burden of solving a community problem?

### **Exactions-The Nexus Issue**

All land use regulation must have a rational basis. There must be a logical connection between the problem the community is trying to solve and the limitation, regulation or exaction sought by municipal action.

Exactions are requirements that an individual developer provide as a part of its development, or contribute, something in relation to receiving approval of that development. Examples include a requirement to dedicate land for roadways or for a school, build a lift station, or contribute to a fund for beautification of the nearby medians of public streets. A particular type of rational basis review applies to such exactions, known as the nexus requirement. If the nexus requirement is not satisfied, as set forth in the *Nollan* and *Dolan* cases, then the exaction may be deemed to be a taking.

The "nexus" doctrine arose in a United States Supreme Court case known as *Nollan*. There, the California Coastal Commission sought to require a property owner to dedicate a beach front public walkway as a condition to a request to remodel and increase the size of a home for the expressed public purpose of protecting the ability of the public to see the ocean from the public roadways and areas landward of the Nollans' lot. The court noted that a municipality could acquire a beach front walkway at any time by condemnation. The question in the case is whether the municipality could require the owner to dedicate the walkway without compensation, based on the owner seeking a permit to remodel the house. The court's answer was

"no."

In deciding the case, the court said ***there must exist some logical connection between the problem identified, the municipal interest expressed, and the solution proposed.*** Thus, a municipality could require setbacks from side yards for safety or aesthetic reasons, because construction of a house raises both issues. But appropriation of a walkway across a back yard for public use did not solve the problem of the decreased visual access to the ocean created by construction of the house. It only contributed to solving a separate public need, i.e. a linear park along the waterfront to increase public access along the shoreline. **Since there was no connection between the purpose of the regulation and the exaction sought, the exaction could not be required no matter how important the purpose was to the community.** The question is not the importance of the public need, but the relationship between the requirement and the purpose it served.

*Nollan* was incomplete because it merely stated that a nexus was required without giving any indication of how close the fit must be between the legislative end and the regulatory means. The "nexus" requirement was further developed in *Dolan*. There, the municipality imposed conditions on a building permit requiring the applicant to permanently dedicate a portion of its land for storm drainage and as a pedestrian/ bicycle path. The applicant argued that the City failed to adequately justify the conditions with the required *Nollan* "nexus." The United States Supreme Court agreed with the applicant/ property owner. The court reaffirmed *Nollan*, and added that the "nexus" test also asks whether there is a **"rough proportionality"** between the condition imposed and the impact intended to be mitigated by that condition. *Dolan* required local governments to prove that there was not only a nexus between the end and the means, but also that they were roughly proportionate in scope.

It is important to note that the courts have generally not applied *Nollan* and *Dolan* to **legislative** requirements for growth to contribute to the impact of development. For example, an impact fee is de-

**There must exist some logical connection (a "nexus" and a "rough proportionality") between the problem identified, the government interest, and the solution proposed.**

veloped and adopted legislatively. A study is prepared, looking at the level of service of a particular facility or service that is provided to the existing community (i.e., roads or parks) and then deriving a fee based on the cost of requiring each unit (i.e., a dwelling unit or 1000 square feet of nonresidential development) of growth to pay to receive the same level of service. Once in place, all development participates equally in paying for the system to serve growth. Such an approach is less likely to result in arbitrary, excessive or discriminatory charges, and ensures equal treatment for all development of the same type.

Instead, impact fees must be justified as fees rather than unauthorized taxes. In order to show that the fee is not an unauthorized tax, local governments must demonstrate that there is a special benefit to development resulting from the payment of the fee. The courts have described this as the requirement there be a dual rational nexus: a nexus between the need for the facilities to be provided and the impact of the development on the one hand, and the expenditure of the fee revenues and the benefits that development receives on the other. See, e.g., *Contractors & Builders Ass'n of Pinellas County v. City of Dunedin*, 329 So. 2d 314 (Fla. 1976). In practice, there is not much difference. Both the exactions cases and the impact fee cases look to whether there is enough of a relationship between development's impacts and what development is being asked to do.

## **Procedural Due Process**

### **The Vagueness Inquiry**

Procedural due process applies to both legislative and quasi judicial governmental actions, and is satisfied by the provision of notice and a hearing, regardless of any concerns about whether the action makes sense or is effective.

An important corollary of procedural due process, particularly for legislative actions, is the vagueness doctrine, which states that any law is facially invalid if persons of "common intelligence must necessarily guess as at its meaning and differ as to its application." In other words, if the law does not plainly state its scope, persons are not put on no-

**Nollan v. California Coastal Commission, 483 U.S. 825  
US Supreme Court (1987)  
Exactions: rational relationship**

**Facts:** The appellants leased, with option to buy, a 504 square-foot bungalow in Ventura County which they rented to summer vacationers. In order to purchase the property, they were required to demolish the bungalow and replace it. The California Coastal Commission granted a permit to appellants to replace the structure with a larger house upon the condition that they allow the public an easement to pass across their beach, which was located between two public beaches.

**Issue:** Does the California Coastal Commission's condition requiring an easement for public access serve a valid public purpose and represent a proper exercise of the police power? Or is it a taking?

**Holding:** The regulatory purpose must have a rational nexus with the regulatory requirement. The stated rationales for requiring the easement – (a) protecting the public's ability to see the beach, assisting the public in overcoming a perceived psychological barrier to using the beach below the timeline, which is public property, and (b) preventing beach congestion – did not relate to the easement's effect, which was to enhance pedestrian access along the shoreline for those already on the beach. California's comprehensive program for providing a continuous strip of accessible beach for the public purpose may be valid, but California chose the wrong means to bring it about.

**Dolan v. City of Tigard, 512 U.S. 374**  
**US Supreme Court (1994)**  
**Exactions: Roughly Proportionate**

**Facts:** Florence Dolan owned a plumbing and electric supply store in the Central Business District of Tigard, Oregon. Fanno Creek runs through the southwest corner of her property, which is located on Main Street. The City enacted several requirements to implement Oregon's statewide planning goals, including an open space and bikeway requirement in the Central Business District and a drainage plan along Fanno Creek. When Dolan sought a permit to redevelop her site, the Planning Commission granted her request, subject to the following conditions: 1) dedicating the portion of her property lying within the 100 year floodplain for improvement of a storm drainage system, and 2) dedicating an additional 15 foot strip of land next to the flood plain for a bicycle/pedestrian path. Together, these conditions constrained the use of about 10% of plaintiff's property, and could be counted towards the mandatory 15% open space requirement. The drainage plan specified that costs should be shared, resting more heavily on owners along the floodplain such as Dolan, as they would benefit most from flood mitigation it provided.

**Issue:** Do these conditions constitute a taking? Does the *Nollan* "essential nexus" exist between the "legitimate state interest" and the permit condition exacted by the city and, if so, what is the required degree of connection between the exactions and the projected impact of the proposed development?

**Holding:** *Nollan* was satisfied. The Court found a legitimate public interest in the City's desire to prevent flooding and reduce traffic congestion. It also found a nexus between those interests and the conditions imposed upon the permit -- the plaintiff's expansion of her store would increase the impervious surface of the property and increase the amount of storm water runoff, and it makes sense to limit development within the floodplain. Also, a bicycle/pedestrian path may reduce traffic congestion that may be a result of the increased number of trips predicted by the new development (about 500 a day).

However, when the Court turned to look at whether the degree and nature of the exactions bore the "required relationship" to the projected impact of the project, it did not defer to the City's findings (as the Oregon Supreme Court had). Instead, the Court determined that the proper level of scrutiny in cases of this type was whether the findings presented by the city showed a "reasonable relationship", in the Court's words, a **"rough proportionality"** between the projected impact and the conditions of the permit.

"No precise mathematical calculation is required, but the city must make some sort of **individualized determination** that the required dedication is related both in nature and extent to the impact of the proposed development." The burden of proof is on the city, because the permit conditions are an adjudicative decision on whether to approve Dolan's redevelopment of her site.

tice of its potential impacts on them, and thus are not motivated to take advantage of any hearing provided to raise their concerns, or may unintentionally violate it. Vague drafting also leaves the door open to arbitrary and discriminatory enforcement. Thus, it is not only good practice to ensure that a code of ordinances is written in plain English so it is easier to administer and enforce, it is also required by the Constitution.

If a land use regulation is to be enforceable, it cannot be unconstitutionally vague. People enforcing the regulation, and those affected by it, must have a sense of the nature and extent of the regulation and the conduct it permits or prohibits. For example, a city adopted a design review ordinance that called for buildings to be "in good relationship" with the surrounding views, have "appropriate proportions" and "harmonious colors," and be "interesting." In the transition between the old town and a nearby development area, the court found the design review commission could not express the code requirements in anything other than personal preferences. As such, the code as applied to the building in question was unenforceable.

If a local government is to avoid a claim of vagueness, it must create a standard (in words and pictures, if needed) that permits those involved in the process to understand what is expected or required.

An even higher decree of clarity is demanded when the law in question threatens First Amendment or other fundamental constitutional rights.

Courts will always try to find a way to avoid the constitutional issue if possible, but in cases of vagueness, doubts are resolved in favor of the person affected by the law. Sometimes, the court can narrow the effect of a law by a clarifying interpretation, to cure a vagueness problem that appears on the face of the statute, but governments should not rely on this happening.

### **Procedural Due Process in Quasi-Judicial Decision Making**

**Procedural due process is intended to ensure**



**that government acts in a fundamentally fair and reasonable manner when making decisions that affect private individuals.** Broad concepts like "fundamental fairness" frequently become the basis for challenging land use decisions.

Procedural due process is intended to ensure that government acts in a fundamentally fair and reasonable manner when making quasi-judicial decisions.

**Essential elements to ensure fairness of a quasi-judicial hearing or decision:**

- adequate notice;
- an unbiased decision-maker;
- an opportunity to be heard;
- the right to present evidence;
- prompt decision-making;
- a record of the proceeding; and
- a written decision based on the record and supported by reasons and findings of fact.

**Quasi – Judicial Land Use Hearings**

Most of the decisions made by *planning officials* are quasi judicial in nature. As noted in the discussion of *Snyder* above, once the decision is made on the applicable comprehensive plan policies and land use map designation, all zoning, subdivision and other decisions related to approving development on a parcel are legally considered to be quasi judicial.

The manner in which procedures and meetings are conducted and the basis for decisions are critical issues for quasi judicial land use decisions. In particular, a quasi-judicial proceeding must address the following elements if it is to withstand scrutiny under the requirements of procedural due process:

**Ex Parte Communication  
Substantial Competent Evidence  
Conduct of the Hearing**

## Findings of Fact

### Ex Parte Communication

An ex parte communication is a one-on-one communication between an interested party and the decisionmaker, outside the presence of the other interested parties and outside of the hearing. An example might be the developer meeting with a member of the City Council privately and outside the presence of the neighbor who opposes the development (or vice versa – the councilwoman meeting with the neighbor without the developer present). The law presumes such communications to be prejudicial, because they allow the decisionmaker to be exposed to information that may be incorrect in such a manner that other interested parties will not have a chance to correct the error before the decision is made. See, e.g., *Jennings v. Dade County*, 589 So. 2d 1337 (Fla. 3rd DCA 1991).

Ex parte communication is permissible in relation to a quasi judicial proceeding only in accordance with procedures adopted by a local government pursuant to Chapter 256, Florida Statutes. The Legislature adopted a statute that attempts to remove the *presumption of prejudice* resulting from any ex parte communication related to a quasi-judicial matter “*if the subject of the communication and the identity of the person, group or entity with whom the communication took place is disclosed and made part of the record before the final action on the matter.*” If the communication is disclosed, then other parties have the chance to correct any errors or offer an alternative viewpoint, and ensure that the decision is based on correct information and full exposure to all points of view.

If your community does not have an ordinance establishing guidelines for ex parte communications during quasi-judicial proceedings, you should discuss the adoption of such an ordinance with your city or county attorney. Inappropriate actions in the realm of ex parte communication can potentially invalidate quasi-judicial decisions made by your community and, of equal importance, create an appearance of impropriety and prejudice.

### Substantial Competent Evidence

**Ex Parte communication is generally not permissible in quasi-judicial proceeding**

In Florida, the quasi-judicial decisions made by *planning officials* are to be based on *substantial competent evidence* and must be consistent with the comprehensive plan.

One definition of competent evidence is "*evidence a reasonable mind could accept as adequate to support a conclusion*". Competent evidence is generally testimony based on personal observation or testimony by an "expert" who has special knowledge of a relevant topic. For example, when addressing a question of traffic concurrency, the professional opinion of a traffic engineer is competent and may be relied upon as a basis for the decision. The opinion of a lay person who lives near a proposed development is not competent, and may not be relied upon. Neighbor testimony based on personal observation or on facts about which they have relevant knowledge is competent and, in some cases, critical to the decision. ("I have coffee on my porch every morning at 7:30, and consistently observe that the traffic backs up from the intersection to my driveway, a half mile away"). See, e.g., *Metropolitan Dade County v. Blumenthal*, 675 So. 2d 598 (Fla. 3d DCA 1995).

Both expert and layperson witnesses must testify to the factual basis of their positions and not to their subjective preferences. Florida's courts have also established a strict standard for consistency with the comprehensive plan. Consequently, some evidence accepted as a basis for decision must have bearing on the application's consistency with the comprehensive plan. Evidence relating to specific plan requirements, such as transportation concurrency, is clearly relevant. More ethereal issues, such as how the application might affect local quality of life, may not be relevant unless the comprehensive plan has policies specifically addressing that issue.

### **Conduct of the Hearing**

Quasi-judicial proceedings provide procedural due process protections not available in legislative proceedings. While the Florida courts have not precisely specified what is required, the basics of due process are generally accepted to include (1) notice, (2) a hearing before a neutral decision-maker, (2) presentation of evidence, (4) sworn

**Decisions must be based on "substantial competent evidence"**

testimony and (5) the questioning of witnesses.

Information related to a quasi-judicial proceeding should be available in a timely manner and accessible to all the parties throughout the process. Many communities use an "application file" for this purpose. The application file is a public document that is made available to the public during business hours. The file contains a complete record of the application, including all information submitted by the applicant, all staff reports, all comments and information submitted by other parties interested in the decision, and all actions taken by reviewing or decision-making agencies.

In a quasi-judicial hearing before a collegial body such as a City Council, the Mayor or Chair often has a challenging task of ensuring that all parties are adequately heard in a fair and equitable manner, while facilitating an efficient hearing and avoiding repetitive testimony or public comment that is off the topic and not relevant to the criteria governing the decision. While the Chair should adhere to established procedure, he or she does not have to be rigid. Rather, the hearing should be sufficiently flexible to provide a fair hearing for all parties, including lay persons who may be new to the land use process.

Uniform time limits for general comment are permissible, but the applicant, local government planning staff, and any other persons who demonstrate that they are affected parties and wish to provide evidence should be provided sufficient time to put on their case.

Although there may be some debate and the cases are not conclusive, most attorneys agree that constitutional due process requires the swearing of witnesses. Consequently, most local governments follow this practice. A mass swearing of witnesses at the beginning of the hearing will suffice.

The Florida Supreme Court has also ruled that, in a quasi judicial hearing, all affected parties must be "given a fair opportunity to be heard in accord with the basic requirements of due process, including the right to present evidence and to cross-examine witnesses, and the judgment of the agency or board should be contingent upon the showing

made at the hearing.” Hearings should be conducted to ensure that cross examination of witnesses is controlled and that the public is not discouraged from testifying while ensuring that all affected parties, as well as the decision-makers, have the opportunity to bring out and explore all relevant facts and testimony. Some communities require all questioning to be through the Chair of the proceedings, in order to assure that it does not become abusive.

### **Findings of Fact**

The Florida courts do not specifically require “findings of fact” to be included in the record of every quasi-judicial decision. However, because quasi-judicial decisions must be based on substantial competent evidence and will be reviewed for strict compliance with the comprehensive plan, *Snyder* suggests that after-the-fact rationales may not be persuasive to a reviewing court. To assist applicants, interested persons and reviewing courts in determining the factual basis for a decision, the basis for the quasi-judicial decision should be clearly established at a public hearing.

Very often, this is accomplished by moving approval or denial of the item in accordance with the staff report and recommendation, which should contain within it the relevant facts and legal standards for making the decision and may also provide a professional planning recommendation to support the action.

If there is no staff report or the decision maker disagrees with the staff report, then the motion and explanation of the action must be more extensive and provide a proper factual and legal basis, on which the local government can rely in defending its action in court if needed. Such a basis may be found in evidence offered by the applicant or a third party such as an environmental or neighbor group, or in the decision maker’s own analysis and interpretation of the facts and legal standards before it at the hearing.

In any case, it is very important to ensure that any relevant commitments by the developer are reflected in the conditions of approval, so that the decision maker does not rely on an oral represen-

tation and later find, to its disappointment, that it is unenforceable.

**Quasi judicial proceedings provide due process protections not available in legislative proceedings.**

**While the Florida courts have not precisely specified what is required, the basics of due process are generally accepted to include (1) notice, (2) a hearing before a neutral decision-maker, (3) presentation of evidence, (4) sworn testimony and (5) the questioning of witnesses**

**Decisions made by  
Planning Officials  
should be documented  
and supported by  
“findings of fact”**





## Chapter Three - The Ethics of Planning

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**Ethics is a set of principles or values that govern the actions of an individual or a group. The principles must be commonly accepted by the group, coherently expressed, and uniformly applied if the group wishes to act in an ethically responsible manner.**

**Serving as a planning official is a public trust.**

Ethics is a set of principles or values that govern the actions of an individual or a group. The principles must be commonly accepted by the group, coherently expressed, and uniformly applied if the group wishes to act in an ethically responsible manner.

### **Why Ethics Is Important for the Planning Official**

**Serving as a planning official requires treating the office as a public trust.** Planning officials have been given public authority and must use that authority with integrity and honor. Today, planning officials have a special role in the political process and want to know how to do the right thing in the context of that role. However, it is not always clear what the right thing is, and sometimes doing the right thing entails risk to one's position as a planning official.

While no single, absolute set of rules has emerged to guide planning officials in dispatching their sometimes difficult duties, consensus has emerged on the purpose of planning – to serve the broad interests of the community in developing thoughtfully into the future. This chapter explores the various rules, statutes and codes that serve as a guide for ethical conduct.

### **Conduct of the Planning Official**

As a *planning official* - you are a public official. As such your actions are sure to be under scrutiny by members of the public and by your local media. A misstep in how you deal with ethical issues has the potential to flare up into controversy.

### **Financial Disclosure**

*Local officers* are required by statute to disclose their financial interests and clients they represent before public agencies. The term *local officer* specifically in-

**Planning officials are required by state law to disclose financial interests and clients represented before agencies.**

**Florida's "Sunshine Law" provides a right of access to public proceedings. Planning officials are subject to the Sunshine Law.**

**The Sunshine Law requires that meetings be open to the public, reasonable notice is given and minutes are taken.**

cludes those persons serving on (1) A board having the power to enforce local code provisions and (2) a planning or zoning board, board of adjustment, board of appeals, or other board having the power to recommend, create, or modify land planning or zoning within the political subdivision.

Each state or local officer who is appointed and each specified state employee who is employed shall file a statement of financial interests within 30 days from the date of appointment.

Each state or local officer and each specified state employee shall file a statement of financial interests no later than July 1 of each year.

Your city or county should have an established procedure for properly filing the necessary disclosure documents. Check with your planning director or attorney if you have questions.

### **Florida's Government in the Sunshine Law**

Florida's Sunshine Law provides a right of access to governmental proceedings at both the state and local levels. The law is equally applicable to elected and appointed boards and has been applied to any gathering of two or more members of the same board to discuss some matter which will come before that board for action.

The three basic requirements are:

1. meetings of public boards or commissions must be open to the public;
2. reasonable notice of such meetings must be given; and
3. minutes of the meetings must be taken.

Are all public agencies subject to the Sunshine Law? The Sunshine Law applies to "any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision." Florida courts have stated that it was the Legislature's intent to extend application of the Sunshine Law so as to bind "every board or commission of the state, or of any county or political subdivision over which it has dominion and control.

Are advisory boards which make recommendations or

**Presume that any action you may take as a *planning official* is subject to the Sunshine Law**

committees established for fact-finding only subject to the Sunshine Law? Advisory boards whose powers are limited to making recommendations to a public agency and which possess no authority to bind that agency in any way are subject to the Sunshine Law. There is no "government by delegation" exception to the Sunshine Law, and public agencies may not avoid their responsibilities or conduct the public's business in secret by use of an alter ego.

This definition clearly extends to all boards and commissions – state, regional and local – engaged in planning decisions. If you – as a *planning official* – have any doubt about the application of the Sunshine Law, the following steps are recommended:

- Presume that your action is subject to the Sunshine Law
- Seek legal advice from your city or county attorney
- If any doubt remains, presume that your action is subject to the Sunshine Law

**After all, government-in-the-sunshine is not only required by Florida law – it is good public policy**

### **Public Records**

**Every person has the right to inspect any public record made in connection with public business.**

The citizen's access to public records is established by the Florida State Constitution. *"Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf,"*

*"All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public"*

*"The legislature shall enact laws governing the enforcement of this section, including the maintenance, control, destruction, disposal, and disposition of records made public by this section"*

What materials are "public record"? The state statutes define "public records" as: *"all documents, papers, letters, maps, books, tapes photographs, films, sound re-*

**Treat all materials as a "public record". Seek advice to understand the procedures used by your jurisdiction for the handling of public records.**

*cordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with official business by any agency."*

The term "public record" is not limited to traditional written documents. Also as technology changes, the means by which public agencies communicate, manage, and store information, public records will take on increasingly different forms. Yet the comprehensive scope of the term "public records" will continue to make the information open to inspection.

When are notes or nonfinal drafts of agency proposals considered "public records"? There is no "unfinished business" exception to the public inspection and copying requirements established by state statute. If the purpose of a document prepared in connection with the official business of a public agency is to perpetuate, communicate, or formalize knowledge, then it is a public record regardless of whether it is in a final form or the ultimate product of an agency.

Accordingly, any agency document, however prepared, if circulated for review, comment or information, is a public record regardless of whether it is an official expression of policy or marked "preliminary" or "working draft" or similar label. The fact that the records are part of a preliminary process does not detract from their essential character as public records.

It is also important to emphasize, however, that a non-final document need not be communicated to anyone in order to constitute a public record. So called "personal" notes are public records if they are intended to perpetuate or formalize knowledge of some type.

Accordingly, it is only those uncirculated materials which are merely preliminary or precursors to final documents, and which are not in and of themselves intended to serve as final evidence of the knowledge to be recorded, which fall outside of the definitional scope of public records.

How long should public records be kept? All agencies are required to maintain its public records in accordance with state statutes and rules. The criteria for records maintenance and their eventual disposal are complex and not the responsibility of individual officials.

### **Recommended guidelines for planning officials regarding public records**

- Assume all communication related to your job as a *planning official* is a "public record"
- Encourage your agency to develop clear policies and procedures for the handling of public records.
- Do not destroy any record that may be deemed a public record
- Seek legal advice from your city or county attorney.

### **Ex Parte Communication**

Ex parte contacts are those communications that occur outside the public forum. The literal meaning of the term "ex parte" is "one-sided." This, of course, suggests that when you engage in an ex-parte contact, you are engaging in a one sided discussion, without providing the other side an opportunity to respond and state their case.

Ex parte communications are generally not allowed in quasi judicial proceedings. In 1991, the Third District Court of Appeals in *Jennings vs. Dade County* held that communications between a party to a pending development proposal and an official who will be voting on the proposal can invalidate the subsequent decision. In 1993, the Florida Supreme Court in the *Snyder vs Board of County Commissioners of Brevard County* prohibited individuals from lobbying local officials on petitions regarding "quasi-judicial" decisions. The Court included zoning changes affecting specific parcels, conditional uses and variances in this definition but did not extend this prohibition to large-scale, jurisdiction-wide rezonings that involve policy making on a general scale.

Nonetheless, ex parte contacts are permissible in Florida. In 1995, the Florida Legislature authorized local governments to adopt ordinances that permit lobbying so long as the lobbying is disclosed in the public hearing and the opponents have an opportunity to respond. If your community has not adopted such an ordinance, discuss it with your legal counsel. Having a clear set of rules and guidelines about ex parte communications is good public policy.

For the *planning official*, ex parte communication presents a murky legal and ethical dilemma and one that

**Ex parte communication presents a dilemma for the *planning official*. The best advice is to avoid such contacts.**

**A local government  
may adopt an ordinance  
establishing a process to  
disclose ex parte commu-  
nications related to quasi  
judicial proceedings.**

will frequently and continuously present itself.

While no one is asking you to abandon your values, beliefs, and political orientations when you become a planning official, you are accepting allegiance to certain principles that transcend your personal political beliefs and these principles have clear ethical and legal implications.

When you agree to serve on a planning commission or board you accept the obligation to treat all persons fairly, even if those persons happen to have radically different viewpoints than you.

Clearly there is a benefit in public knowledge of matters before the planning commission. However, you should not provide certain information to one group while withholding it from another, or selectively encourage participation only by those who share your views.

While there is nothing wrong with your encouraging public participation, it is often best, if you have a planning director or staff planner, that they be the ones principally responsible for ensuring that all segments of the community are aware of pending or future items that may be of interest.

Is there a problem with your working behind the scenes to assist certain groups or individuals on matters pending before the commission? In a word, yes. Invariably that involvement comes out, often in the form of rumors and innuendo. A commissioner's greatest asset is credibility; once damaged, that credibility may be impossible to restore.

An even more serious problem raised when a commissioner becomes a "behind the scenes" advocate is that it implies that the commissioner has taken a position on a particular issue before it has been aired through the public hearing or review process.

From a due process standpoint, planning commissions must provide equal access to information to all interested parties. If you are going to consider information in making a decision, then that information must be in the public realm, so that anyone has the opportunity to agree or dispute it.

The concern is more with the appearance of impropriety. The integrity of your commission is paramount, and it does not take much for that integrity to be damaged.

Another mistake is to accept something as confidential information. Planning officials are, in fact, public officials. Any public official, including those serving on commissions, should as a general rule consider information provided to them to be public information. If information you obtained through a confidential discussion ends up having relevance to a public matter before the commission, you will have an ethical obligation to disclose it.

### **Politely, Say "No"**

Don't discuss a case privately and as a single member of a body with an applicant or objector prior to the filing and prior to the hearing if it can be politely avoided. In the event that it is not avoidable, and many times it is not, be very non-committal, ... explain that you are only one member of the body, that you have not had an opportunity to study the matter thoroughly, that you have not seen the staff recommendation, and that you have no way of knowing what opposition there may develop or what will occur at the public hearing.

Be certain that the person concerned understands that you cannot commit yourself in any manner, except to assure him that he may expect a fair and impartial hearing.

### **Conflict of Interest**

Conflict of interest questions are part of the larger due process consideration of the impartiality of the planning board or commission. Simply stated, every party before your board is entitled to a fair hearing and decision, free from bias or favor. Having a conflict of interest can threaten that impartiality. Therefore, it is critical that conflicts be identified and dealt with in an appropriate manner.

The issue of conflicts of interest is particularly acute when a planning official has an interest in developable real estate. While none of us like to think that we have given up some right by agreeing to serve on the planning board, the most sensitive ethical area involves a perception that a planning board member is acting in a way to advance his own interests in private property development.

Florida's statute defines a conflict of interest and tells you what to do about it:

**In Florida, a conflict of interest exists if a special private gain or loss would inure to the planning official, a relative or a business associate**

*"No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss.... or .... would inure to the special private gain or loss of any principal (including corporate) by whom he or she is retained .....or ... would inure to the special private gain or loss of a relative or business associate .....* "

**I think I have a conflict of interest. What do I do?**

- **Acknowledge the potential conflict (When in Doubt, Disclose).** If you have any question or unease about a potential conflict of interest, do not hesitate to disclose it.
- **Seek a legal opinion (city or county attorney).** Your first and best point of inquiry about a conflict of interest is your city or county attorney.
- **If a conflict exists, publicly acknowledge it as required by statute.** *"Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes."*
- **Disqualify Yourself.** Don't fail to disqualify yourself if you have a conflict of interest under Florida law. Conversely, as a public official, you are expected to participate meet your responsibility as a decision-making and to vote except when a conflict of interest as defined by Florida law exists. That is why it is important that you consult your city or county attorney when in doubt.
- **Abstain from voting.** If a conflict of interest exists, you cannot cast a vote.
- **Do not participate in the discussion (leave the room).** Out of sight, out of mind. Continuing to sit silently with the commission or even moving to the audience is not good enough.
- **Err on the Side of Caution.** If you have any reason to believe that you have a conflict of interest, do not hesitate to consult your legal counsel.



**Conflicts of Interest are serious matters. Err on the side of caution in disclosing potential conflicts of interest.**

And do it well before the item comes before your commission or board for review. You want to be the one who raises the conflict – not an applicant or effected citizen.

### **American Institute of Certified Planners Code of Ethics and Professional Conduct**

Professional planners, subscribe to AICP's Code of Ethics and Professional Conduct. Highlights of the code are outlined below (see Appendix C for the full text)

The principles to which professional planners subscribe derive from the special responsibility of the profession to serve the public interest with compassion for the welfare of all people and an obligation to act with high integrity.

As the basic values of society can come into competition with each other, so can the aspirational principles espoused under this Code. An ethical judgment often requires a conscientious balancing, based on the facts and context of a particular situation and on the precepts of the entire Code.

Certified Planners are also members of the American Planning Association and share in the goal of building better, more inclusive communities. Professional planners want the public to be aware of the principles by which the profession is practiced in the quest of that goal.

### **A: Principles to Which Professional Planners Aspire**

#### **Overall Responsibility to the Public**

The planning profession's primary obligation is to serve the public interest. Allegiance is owed to a conscientiously attained concept of the public interest that is formulated through continuous and open debate. Professional planners shall strive to achieve high standards of professional integrity, proficiency, and knowledge. To comply with its obligation to the public, the profession aspires to the following principles:

- a. Always be conscious of the rights of others.
- b. Have special concern for the long-range consequences of present actions.
- c. Pay special attention to the interrelatedness of decisions.

**The AICP Code of Ethics provides a sound foundation for the conduct of the planning official**

**The planning profession's primary obligation is to serve the public.**

**Professional planners shall strive to achieve high standards of professional integrity, proficiency and knowledge**

- d. Provide timely, adequate, clear, and accurate information on planning issues to all affected persons and to governmental decision makers.
- e. Give people the opportunity to have a meaningful impact on the development of plans and programs that may affect them. Participation should be broad enough to include those who lack formal organization or influence.
- f. Seek social justice by working to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of the disadvantaged and to promote racial and economic integration. We shall urge the alteration of policies, institutions, and decisions that oppose such needs.
- g. Promote excellence of design and endeavor to conserve and preserve the integrity and heritage of the natural and built environment.
- h. Deal fairly with all participants in the planning process. Those of us who are public officials or employees shall also deal evenhandedly with all planning process participants.

#### **Responsibility to Clients and Employers**

Certified planners owe diligent, creative, and competent performance of the work done in pursuit of a client or employer's interest. Such performance, however, shall always be consistent with faithful service to the public interest.

- a. Exercise independent professional judgment on behalf of clients and employers.
- b. Accept the decisions of a client or employer concerning the objectives and nature of the professional services unless the course of action is illegal or plainly inconsistent with our primary obligation to the public interest.
- c. Avoid a conflict of interest or even the appearance of a conflict of interest in accepting assignments from clients or employers.

#### **Responsibility to the Profession and Colleagues**

Certified planners shall contribute to the development

**Certified planners owe diligent, creative and competent performance of work done consistent with faithful service to the public interest**

of, and respect for, the profession by improving knowledge and techniques, making work relevant to solutions of community problems, and increasing public understanding of planning activities.

- a. Protect and enhance the integrity of our profession.
- b. Educate the public about planning issues and their relevance to our everyday lives.
- c. Describe and comment on the work and views of other professionals in a fair and professional manner.
- d. Share the results of experience and research that contribute to the body of planning knowledge.
- e. Examine the applicability of planning theories, methods, research and practice and standards to the facts and analysis of each particular situation and do not accept the applicability of a customary solution without first establishing its appropriateness to the situation.
- f. Contribute time and resources to the professional development of students, interns, beginning professionals, and other colleagues.
- g. Increase the opportunities for members of underrepresented groups to become professional planners and help them advance in the profession.
- h. Continue to enhance professional education and training.
- i. Systematically and critically analyze ethical issues in the practice of planning.
- j. Contribute time and effort to groups lacking in adequate planning resources and to voluntary professional activities.

### **Should Your Commission Adopt Its Own Code of Ethics?**

Some planning commissions adopt their own code of ethics and conduct. The Hillsborough County City-County Planning Commission follows this practice.

**Certified planners shall contribute to the development of , and respect for, the planning profession**

**Oath of Office  
Planning Commissioner  
Hillsborough County City-County Planning Commission**

I, (state your name), a Planning Commission appointee of the (local government name), do solemnly swear or affirm that I will faithfully perform the duties of my appointed office, and will support and honor to the best of my ability all applicable laws of the State of Florida, Hillsborough County, (the City of name if applicable) as well as the bylaws, beliefs, vision, mission, policies, procedures, code of ethics and code of conduct of the Hillsborough County City-County Planning Commission. I hereby through this oath affirm that I will perform the duties of this public trust in a fair, equitable and ethical manner befitting the dignity and responsibilities of the office.

\_\_\_\_\_  
Planning Commissioner Signature

\_\_\_\_\_  
Planning Commissioner Printed Name

Sworn before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Name (Clerk of the Court or Designee) Seal

\_\_\_\_\_  
Witness

## **Code of Ethics**

### **Hillsborough County City-County Planning Commission**

**MEMBERS SHALL ETHICALLY SERVE THE PUBLIC INTEREST BY MAKING DECISIONS AND TAKING ACTIONS WHICH WILL ENHANCE THE PUBLIC HEALTH, SAFETY AND WELFARE OF THE REGION AND THE CITIZENS SERVED BY THE PLANNING COMMISSION AND BY PROMOTING PUBLIC CONFIDENCE IN THE INTEGRITY, INDEPENDENCE, ABILITY AND IMPARTIALITY OF THE PLANNING COMMISSION**

1. Members shall uphold the prestige of their office and avoid impropriety and the appearance of impropriety.
2. Members shall not convey the impression that they are in a position to influence the outcome of a decision of the Planning Commission and shall not attempt to use their office to influence or sway the professional staff recommendation.
3. Members shall discharge their duties and responsibilities without favor or prejudice toward any person or group. Members shall not allow personal or business relationships to impact upon their conduct or decisions in connection with Planning Commission business and shall not lend their influence towards the advancement of personal interests or towards the advancement of the interests of friends or business associates.
4. Members shall avoid creating the appearance of impropriety by refraining from engaging in private discussions with the applicant or their representative about specific upcoming Planning Commission agenda items. If a Member receives a private written, telephonic or electronic communication about an agenda item, the Member will promptly forward the information to the Executive Director so that it may be shared with all other members. Members shall refrain from any private discussion of Planning Commission business with other Members per the requirements of Florida's Government-in-the-Sunshine Law, Chapter 286, Florida Statutes.
5. Members shall not accept or solicit a gift, loan, payment, favor, service, promise of employment or business contract, meal, transportation or anything else of value, if such thing is given with the understanding or possibility that it will influence the official action of the Member during the Planning Commission proceedings. The same standard shall apply to a gift, loan, favor, etc. for the spouse, child, relative or business partner of the Member.
6. A Member who announces or files as a candidate for public office shall resign immediately from the Planning Commission. No Member shall solicit funds from any other Member in support of any person's campaign for election for local or state public office.
7. Members shall refrain from participating in any proceeding in which their impartiality may be reasonably questioned. A Member whose personal, employment or business relationship with a person or entity that is subject to a recommendation of the Planning Commission shall seek advice and counsel of the Planning Commission Attorney, if such relationship could conceivably influence the Member's impartiality during the Planning Commission's discussion of the subject. The provisions of Chapter 112, Florida Statutes, the Code of Ethics for Public Officers and Employees, shall govern conflict of interest determinations.
8. Members shall remain vigilant against deviations from Planning Commission by-laws, policies and mission statement.

## **Code of Conduct**

### **Hillsborough County City-County Planning Commission**

**RECOGNIZING THAT PERSONS HOLDING A POSITION OF PUBLIC TRUST ARE UNDER CONSTANT OBSERVATION, AND RECOGNIZING THAT MAINTAINING THE INTEGRITY AND DIGNITY OF THE PUBLIC OFFICE IS ESSENTIAL FOR MAINTAINING HIGH LEVELS OF PUBLIC CONFIDENCE ON OUR INSTITUTIONS OF GOVERNMENT, EVERY MEMBER OF THE PLANNING COMMISSION PLEDGES TO ADHERE TO THE FOLLOWING**

#### ***CODE OF CONDUCT***

1. Regularly attend all scheduled meetings of the Planning Commission as well as special or called meetings relevant to the office.
2. Prepare for each meeting.
3. Create a positive environment in meetings of the Planning Commission.
4. Maintain an attitude of courtesy and consideration toward colleagues, citizens and staff during all discussions and deliberations.
5. Allow citizens, colleagues and staff sufficient opportunity to present their views, within the prescribed rules for conduct of meetings of the Planning Commission.
6. Avoid the use of abusive, threatening or intimidating language or gestures directed at colleagues, citizens or staff.
7. Avoid comments, body language or distracting activity that conveys a message of disrespect and lack of interest.
8. Respect all local, state and federal laws, rules and other regulations.
9. Submit completed financial disclosure forms to the Hillsborough County Supervisor of Elections by the specified deadline.
10. Publicly acknowledge the adopted position when asked about a decision of the Planning Commission.

The performance of the Planning Commission and Planning Commissioners in meeting this Code of Conduct is affirmed by the following signatures:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name





## Chapter Four - Making Planning Work

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### Effective Planning Officials

As a *planning official*, there are techniques and practices that will make you more effective:

- **Roll up your sleeves.** Being an effective *planning official* is hard work. Get to know your comprehensive plan and your land development regulations. Read books and articles about planning. And take the time to know about the matters coming before you for decisions. The job of a *planning official* requires more than attendance at monthly meetings.
- **Prepare for meetings.** Public meetings are the window of planning to the community. It is in this forum that the business of planning is conducted. Spend some time to prepare for each meeting no matter how routine.
- **Take advantage of staff briefings.** The planning staff is an extension of you. They conduct the necessary analysis that serves as the foundation for your decisions. Do not miss an opportunity for staff input.
- **Listen – engage & stay on target.** Listen to all the people and not just to those who fit into a neat stereotype of “desirable citizens”. It is important to give attention to everyone. Those appearing before you have probably spent hours preparing and rehearsing their arguments. You owe them your consideration. At the time, stick to the issues at hand.
- **Seek input and ask questions.** The only dumb question is the “one not asked”. Ask questions at your board meetings. Don’t be reluctant to ask questions of other board members and the planning staff.
- **Know the protocol for moving the meeting along.** Learn the rules that govern your meetings and do your part in creating an efficient meeting environment.

- **Check the record for accuracy.** The accuracy of records is very important to the planning process and everyone involved bears responsibility for maintaining this accuracy. Check the minutes and don't hesitate to question apparent discrepancies in supporting material and testimony.
- **Reap dividends by getting training; travel to other cities & meet your peers.** Find out what your peers are doing in other communities. There is no subject related to planning that other communities have not encountered and taken steps to resolve.
- **Keep the "Vision" - The vision of your community belongs in the forefront of everything you do as a commissioner.** The *planning official* that understands the community's vision and is committed to achieving that vision has a *leg up* in the effectiveness category. This *sense of direction* is extraordinarily powerful as a catalyst for positive change.

### Building Relationships

Planning officials work with, and independently of, a variety of groups and people. Key among them are the petitioner seeking action, the planning staff, other governmental staff or agencies, the local legislative body, official and unofficial citizen groups, individual citizens, and the courts. The relationship of the *planning official* the local legislative body and to the professional staff are discussed here.

### Getting Along With the Elected Officials

The commission's relationship to the legislative body may be the most significant single reason for strong planning ethics. The legislative body is political. Legislative representatives are responsive to constituents' interests and subject to election campaigns that encourage attention to immediate concerns rather than to long range problems.

Planning commissions and boards exist independently to balance this tendency. They do so by emphasizing the long range interests of the community. Much of the work of commissions and boards is making recommendations to the legislative body that makes the final decision.

A delicate balance exists in the relationship between elected officials and their advisory boards that inevitably surrounds local land use issues. Often it is rooted in a lack

**A positive and productive working relationship between the Council and the Planning Commission requires a clear understanding of their different roles, a regular communications system and a healthy understanding of, appreciation and respect for each other's jobs.**

of clarity about their different roles.

A misunderstanding of roles is the most frequent barrier to a positive relationship between councils and planning boards. What are the roles? The Council begins with the responsibility of appointing the members of the Board. It is the Council's job to create a capable Board with a balance of experience and expertise. However, the Council then needs to leave the Board to do its job.

The two groups have distinctly different jobs. Elected officials are policy makers. They are elected by and are responsive to the public whom they represent in all its various constituencies. The Board members, on the other hand, are not policy makers. They are appointed to work within the policies and ordinances adopted by the legislative body. They work within already established policy and do not change policy based on public comment. Even if the room is packed with citizens arguing that a permitted use be denied in a site plan hearing, it is not the Planning Board's role to change what is or is not permitted. It is their role to apply the given ordinance. If the public does not like what the ordinance permits, then the Council is the place to get it changed. Similarly, if the Board is concerned about the impacts of applying a given ordinance, their option is to recommend changes to the Council.

Even in the process of rewriting or developing new ordinances, the Council is still the policy maker. The Board functions like a technical consultant to the Council recommending effective ways to accomplish the general community goals requested by the Council. The Council gives a sense of direction to the Board. The Board then uses its specialized background and expertise to make recommendations back to the Council. The recommendations may be creative and far reaching. They may be more complex or technically innovative than the Council ever imagined. But, it is the Council that makes the final decision with whatever political considerations it deems appropriate. Each role is vital to a smoothly functioning community. But they are separate. If the Board tries to set policy or the Council tries to interfere with the application of the ordinance or fails to value the technical advice of the Board, confusion and trouble will follow.

**Effective and appropriate communication is important to a positive relationship.**

When and how should the Council and the Board com-

municate? Should elected officials lobby Board members as the Board carries out its work? Should Board members consult with individual elected officials before making decisions or recommendations? Neither is likely to be helpful. There needs to be a way for the Council to provide collective guidance, rather than disjointed or individual points of view which might not represent the view of the whole. There needs to be a way for the Board to share with the Council the background and thought process that leads up to a recommendation for a zone change or a new ordinance. Although much of the work in small towns seems to get done around people's kitchen tables or in the aisles of the grocery store, clear and formal avenues of communication are important.

**Some specific steps that should enhance communication:**

- A yearly workshop to review and agree on roles, to discuss common community goals, and to establish the general work agenda for the year.
- A regular update letter or progress report from the Board to the Council and vice versa on issues of mutual interest.
- Facilitated joint workshops on issues that have created or have the potential to create difficulties between the two groups.
- Agreement on ground rules for joint meetings, public statements and informal workshops which include mutual respect.
- Development review processes that provide for early community input, thus reducing the likelihood of conflict.

**What to Expect From Staff?**

In those communities where there is a permanent planning staff or a regular consulting planner, the commission or board and the staff or consultants must work together to establish an effective framework. Citizens' first contact with the planning process will often be with the planning staff and the planning staff represents the Planning Board's primary source of information and professional advice.

Planning commissions should be staffed by individuals

**The Planning Director and staff are the *planning official's* primary source of professional and technical support. This staff should meet high ethical and professional standards.**

who will provide them with objective analyses. Commissions help define the objectives and nature of planning work through adoption of plans, work programs, and studies. This does not mean, however, that commissioners and board members should defer to staff or minimize their own responsibility to plan. But planning officials should not steer the planning staff toward a single finding or reject conclusions that are out of sync with a common community value simply because they are unpopular.

The planner has a responsibility to serve the public interest, particularly in terms of the long-range consequences of present actions and the interrelatedness of decisions. Serving the public interest also means striving to expand choice and opportunity for everyone. The code requires planners to establish rules and procedures that guide the operation of the planning office. This means, in a practical way, that facts should not be adjusted to meet someone's political objectives, and rules cannot be changed according to the political or social status of applicants.

Several characteristics are paramount in defining the nature of the relationship between the Planning Director and his/her staff, planning bodies, and the larger community:

- High ethical standards
- Full, clear, and accurate information.
- Independent professional judgment
- A fair and open input process
- Courtesy, frankness, forthrightness, responsiveness, accountability
- Work program
- Standard Operating Procedures
- Informal retreats or scoping meetings

## **Engaging the Public**

### **What is Citizen Participation?**

Citizen participation in community affairs is as old as democracy and is an indispensable element of any effective planning program.

Citizen participation in local government involves the people, in some fashion, in land use decisions. The traditional roots of contemporary participation are found in the town hall form of direct democracy. The fundamental justification for citizen participation is the prem-

ise that people have a right to participate in decisions that affect them.

Citizen participation means different things to different people. Some view it as the task of electing representatives and voting on specific issues. Others define it as having an active voice in influencing local government decisions.

In planning activities citizens can testify at a public hearing; attend a workshop to create goals for the community comprehensive plan; serve a term on the planning commission; or answer a public opinion survey to identify community planning priorities. In other words, citizen participation in local government involves the people, in some fashion, in land use decisions.

**Citizen participation is an indispensable element of an effective planning program. People have a right to participate in decisions that affect them.**

**Citizen participation is an established part of the land use planning and regulatory process in Florida.** State planning laws require citizen participation through public hearing before plans or regulations are adopted, or before granting land development permits. Chapter 163.3181 F.S. states:

***It is the intent of the Legislature that the public participate in the comprehensive planning process to the fullest extent possible. .... local planning agencies and local governmental units are directed to adopt procedures designed to provide effective public participation in the comprehensive planning process and to provide real property owners with notice of all official actions which will regulate the use of their property.***

***..... the procedures shall provide for broad dissemination of the proposals and alternatives, opportunity for written comments, public hearings as provided herein, provisions for open discussion, communications programs, information services, and consideration of and response to public comments.***

Rule 9J-5 FAC expands on the requirement for citizen participation. The local governing body and the local planning agency must adopt procedures to :

*...provide for and encourage public participation in the planning process .....*

**Florida's planning and growth management laws mandate citizen participation.**

*The procedures shall include the following:*

*(a) **Provisions to assure that real property owners are put on notice**, through advertisement in a newspaper of general circulation in the area or other method adopted by the local government, of official actions that will affect the use of their property;*

*(b) Provisions **for notice to keep the general public informed**;*

*(c) Provisions to assure that there are **opportunities for the public to provide written comments**;*

*(d) Provisions to assure that the **required public hearings are held**; and*

*(e) Provisions to assure **the consideration of and response to public comments**.*

*Local governments are encouraged to make executive summaries of comprehensive plans available to the general public and should, while the planning process is ongoing, release information at regular intervals to keep its citizenry apprised of planning activities.*

These requirements provide overall guidance, but leave local governments free to tailor a more detailed definition of citizen participation to fit community needs.

### **Community Visioning**

Local governments are encouraged to develop a community vision that:

- provides for sustainable growth;
- recognizes its fiscal constraints; and
- protects its natural resources.

The 2005 Florida Legislature provided incentives for local governments to develop a community vision and to incorporate this vision into its comprehensive plan. Under the statute, a local government that has adopted a community vision and urban service boundary may subsequently adopt plan amendments without state or regional review.

To avail itself of this streamlined amendment process, a local government must develop its community vision in accordance with certain rules of procedure and must address key issues identified by the legislation. Most

**Local governments are encouraged to develop a community vision that provides for sustainable growth, recognizes its fiscal constraints; and protects its natural resources.**

notably, the process must involve stakeholder groups such as neighborhood associations, community organizations, businesses, private property owners, housing and development interests, and environmental organizations.

In preparing the community vision, the local government must, at a minimum, discuss at least five of the following topics:

- future growth in the area using population forecasts from the Bureau of Economic and Business Research;
- priorities for economic development;
- preservation of open space, environmentally sensitive lands, and agricultural lands;
- appropriate areas and standards for mixed-use development;
- appropriate areas and standards for high-density commercial and residential development;
- appropriate areas and standards for economic development opportunities and employment centers;
- provisions for adequate workforce housing;
- an efficient, interconnected multimodal transportation system; and
- land use patterns that accommodate the above elements.

The local government must discuss strategies for addressing the key issues:

- strategies to preserve open space and environmentally sensitive lands, and to encourage a healthy agricultural economy, including innovative planning and development strategies, such as the transfer of development rights;
- incentives for mixed-use development, including increased
- height and intensity standards for buildings that provide residential use in combination with office or commercial space;
- incentives for workforce housing;
- designation of an urban service boundary; and
- strategies to provide mobility within the community and to protect the Strategic Intermodal System.

And finally, the community vision must reflect the community's shared concept for growth and development of the community, including visual representations depicting the desired land-use patterns and character of



the community during a 10-year planning timeframe. The community vision must also take into consideration economic viability of the vision and private property interests.

### **Who Should Be Involved?**

State planning laws and local ordinances spell out the need to involve elected and appointed officials closely in local land use planning. A broad range of citizen groups and committed individuals must also be involved.

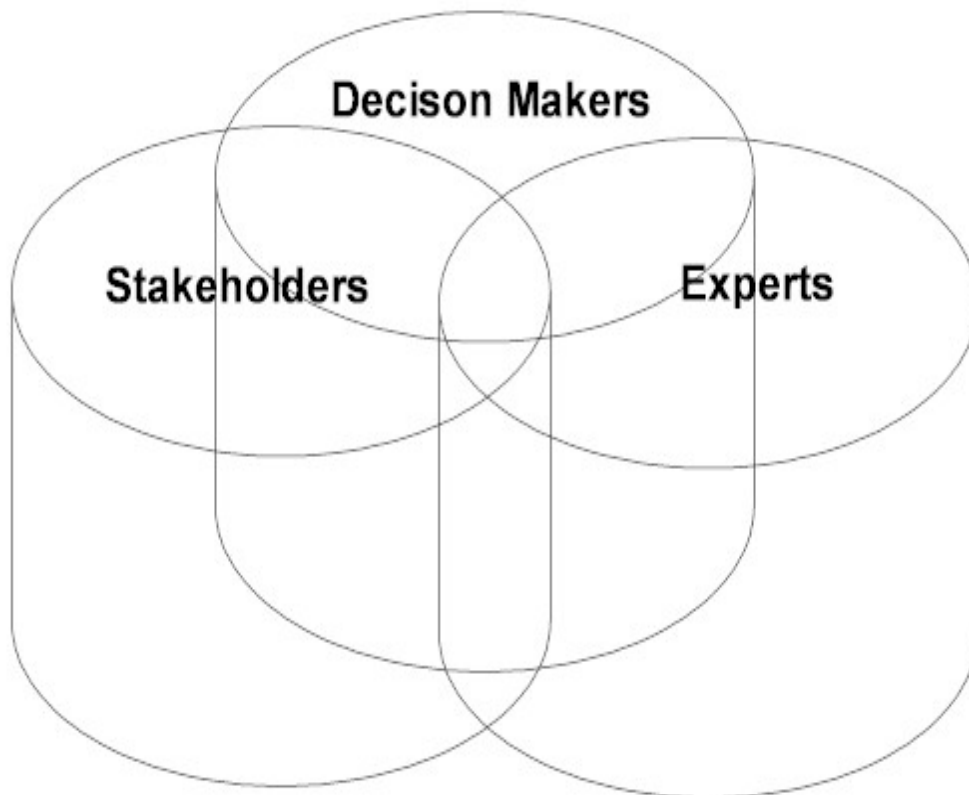
The public decision-making process involves three distinct groups:

- **Decision-makers**
- **Stakeholders**
- **Experts**
-

**The public decision making process involves three groups:**

- (1) decision-makers,**
- (2) stakeholders and**
- (3) experts.**

**Each plays a distinct and essential role.**



**Decision makers** include the elected and appointed officials who render the final decisions of planning matters. *Planning officials* - by definition - comprise this group.

City councils and boards of county commissioners set policy, make final decisions on plans and land development permits, adopt ordinances, approve budgets for planning, and appoint members of the planning commissions and boards.

*Planning officials* are volunteer citizens with a responsibility to review plans and projects. They may not make final decisions, but typically must make recommendations before elected officials can adopt comprehensive plans. Planning commissioners are non-partisan appointed officials who represent the general values of the community in land use decision making. They also serve as a sounding board for new ideas, promote community interest in planning, and furnish leadership in formal citizen participation programs.

Planning board members may make final decisions on quasi judicial decisions. Actions on special uses, appeals from administrative decisions, interpretations and variances often are delegated to such bodies.

**Stakeholders** include nearly everyone outside this formal structure who could be involved in the land use planning process. Citizens in a community are not a single homogeneous entity. They represent a broad spectrum of ideas and opinions, often with conflicting goals and values. The "citizens" are a diverse collection of individuals and groups: neighborhood associations; public interest groups, such as the local chapter of the Sierra Club; or special interest groups like the local chamber of commerce.

**Experts** include professional planners, engineers, attorneys and other specialists who provide advice, analysis, research and evidence to support the planning process.

Many cities and counties in Florida have a professional planning staff that brings technical expertise and knowledge to the planning process. In smaller communities without professional staff, consultants sometimes are hired to provide technical assistance. Historically, the planning staff serves as advisers to planning officials and planning commissions.

They conduct studies, administer planning regulations

**As a general rule – the  
earlier citizen  
participation occurs in the  
process – the better**

and are a resource for the public on land use planning activities.

Expert input also is frequently offered by the staffs of governmental agencies especially in the comprehensive planning process and during the development review for large scale projects. For example, transportation specialists representing regional and state interests often supply traffic analysis and transportation impact projections. Testimony regarding water and environmental issues is frequently provided by the water management districts and the input of school districts is often routinely included in the background information available to the decision-makers.

Consultants are also frequent participants in the planning process and across a broad range of issues. Consultants are sometimes employed by government but most frequently enter the planning process on behalf of stakeholders.

#### **Citizen Involvement: A Matter of Timing**

No matter when officials invite or recruit citizen participation in land use planning, it will not be soon enough for some interest groups. Others will complain that participation is starting too early. Controversy over the topic of when to invite or recruit citizen involvement can only be settled by local officials.

Citizen mistrust, or lack of support for plans and projects, often has more to do with a lack of opportunity to participate early in the project than on its merits.

**Citizen Participation in the earliest stages of planning will save time in the long run.** The longer participation is put off, especially in major planning or development issues, the more likely that rumor and misinformation will spread. When this happens, officials spend more time explaining what is not true than reviewing the pros and cons of the project.

Another good reason for early participation is to identify disagreements or conflicts. Conflicts are abundant in land use planning. A healthy airing of conflicting views early on encourages creative problem solving and productive conflict management. Delaying citizen participation does not reduce or avoid conflicts. Conflict can cause poor utilization of resources, delay important planning efforts, and result in the loss of desirable development projects.

**Successful citizen participation involves  
(1) public information and  
(2) interaction**

### **Methods for Encouraging Citizen Participation**

Citizen participation must be carefully planned and organized. Activities should be simple, straightforward, and manageable by officials, planning commissioners and staff; and designed to fit local values and available resources.

#### **The extent and intensity of any participation activity should match the importance of the issue.**

Widespread participation is desirable when comprehensive plans or land development ordinances are being created or updated. Participation efforts can be on a smaller scale if the issue mainly interests a particular neighborhood or area.

The best that can be done in any community is to see that citizen participation activities are open and accessible to anyone who wishes to be involved; that they do not require citizens to have special technical knowledge; and that there are clear lines of responsibility and accountability.

Two methods are key to successful citizen participation: **public information** and **interaction**. Public information methods are a time-honored way to inform citizens about land use plans and projects. Interactive methods create a dialog between citizens, elected and appointed officials, and professionals.

### **Creating an Effective Citizen Participation Program**

Does your organization have a citizen participation strategy or program? Is citizen participation given considerable time and thought or is it something that just happens because someone scheduled a meeting? If you don't have such a strategy or program, **talk to your planning director** about creating one. Here are some simple guidelines you might follow:

**Determine Objectives** of the participation program. Write them down, in plain English, so everyone can understand the purpose of the program. In most cases you will have multiple objectives. For example, the citizen participation program for developing a "vision" or updating a "comprehensive plan" may be quite different than that required for the review of a major land development.

**Identify Who Should Be Involved** by identifying

**Effective citizen Participation programs do not simply happen. They are the result of thought and deliberate action with clear objectives in mind.**

who will be impacted by the plan, ordinance, or project. These are the citizens who need an invitation to participate.

**Decide When to Invite / Recruit Citizen Involvement.** This step must be consistent with Step 1. For example, if the objective is to have citizens develop initial ideas for plans, people must be involved at the beginning of the process. If the objective is to have people review and comment, it will not be necessary to plan for involvement until draft proposals are available.

**Identify and Evaluate a Variety of Methods** that are appropriate to carry out the program objectives. Typical evaluation criteria are: the cost of the method; the ability of staff (volunteer and professional) to administer the method; the amount of time needed by citizens; the amount of time needed by staff to process data generated; and the quality of that data.

**Select the Best Methods** to achieve each program objective. Be sure they are within the resource capabilities, both financial and human, of the community.

**Carry Out** the citizen participation program.

**Evaluate the Program** when it has been completed. Decide if objectives have been met, list what went well and what could be changed or improved.

### **Public Information**

**Citizens need to be informed about land development plans and projects, and armed with the facts they need to participate constructively.** Citizens must also be informed of specific opportunities for involvement and how their participation will influence land use decisions. Public information methods reach large audiences, stimulate interest in community planning, announce citizen participation activities and events provide notice of public hearings, and inform the public of actions and decisions.

The best way to select public information tools is to **identify the objective and audience to be informed, and choose the methods based on skills and available budget.** Local planning agencies should include **funding for public information activities** in their yearly budgets.

Planning agencies need to let their citizens know what they are doing. A systematic approach to this task may

**Planning agencies need to provide timely, relevant and accurate information to the public. Advances in technology have made this task much more cost-effective.**

**Interactive methods encourage two-way communication and innovative solutions. All of these methods create a dialog among decision makers and stakeholders**

contain the following elements.

**Publish** – Plans, studies and reports should be made available to the public. Make these reports available at cost and open for review in public places such as city hall and the public library. Prepare summaries for widespread distribution. Take advantage of technology such as electronic mail or Compact Disks (CD) for the distribution of large volume reports at low cost. Publish your comprehensive plan and land development code on a CD.

**Websites** – Almost all communities – even small ones – have websites. Websites provide an excellent way to publish important information and to keep it current. If your community doesn't have a website – lobby for one. If they have a website, make sure planning is well represented. Publish your agendas and your minutes on the website.

**Television** – Many Florida communities televise public meetings. If planning meetings are not being televised – lobby to have them televised. A juicy zoning controversy can compete with "Judge Judy" any day!). Video tape your meetings even if they are not televised live. These recordings make for invaluable records of the proceedings and can be used later in a variety of ways.

• **Ask the Media for Help** – Feature stories, editorials, news coverage and public service messages are all methods for communication through the media. Invite the media to cover planning issues but remember that you must be open and accessible and be willing to accept both favorable and unfavorable coverage.

### **Citizen Interaction**

If citizen participation is to be effective and not simply "window-dressing" people need opportunities to:

- clarify values and attitudes
- express their opinions and priorities
- create proposals for plans and projects
- develop alternative approaches
- resolve conflict

Interactive methods encourage two-way communication and innovative solutions. All of these methods create a dialog among decision makers, experts and stakeholders who will be affected by those decisions. Some interactive methods, such as public meetings

and workshops, are effective throughout a planning process. Others, like surveys, are best limited to specific steps. Interactive methods most frequently used in Florida are public meetings and hearings, community workshops and community surveys.

### **Public Meetings**

**The public meeting is the forum where planning officials most frequently interact with the public.** Designed to inform, educate, or facilitate extensive interaction and dialogue, public meetings are a widely used form of citizen participation. Information and educational meetings are a valid first step in any citizen participation process. Technical information can be distributed, along with an orientation to citizen participation opportunities and general or detailed descriptions of plans and projects.

Problems can occur when the purpose of a public meeting is not clearly stated. Citizens become frustrated and angry if they attend a meeting believing they will be able to express their views, only to discover that the meeting was designed to educate or inform them about plans or projects. The purpose of a public meeting must be announced openly and honestly in pre-meeting publicity.

### **Preparing For Public Meetings**

Proper preparation for public meetings and workshops goes a long way toward ensuring their success. Here are a few important tips.

- Tell people the purpose of the meeting
- Have a written agenda.
- Make sure that the meeting date and time is convenient for the people who are being asked to attend.
- Notify people well in advance, approximately one to two weeks before the meeting date.
- The meeting site should be easy to get to, serviced by public transportation, and have ample parking.
- Select a meeting room that is appropriate for the size of the expected audience. Avoid rooms with pillars, other structural supports, and fixed seats.
- Make certain there is adequate lighting, ventilation, and a comfortable room temperature.
- Assure that people will be able to hear speakers and converse in small groups.



**The public meeting is the forum where planning officials most frequently interact with the public**

**Proper preparation for public meetings goes a long way toward ensuring their success**

### **Managing the Agenda.**

All planning boards and commissions have some form of agenda. By treating it seriously, you will find it is an important tool toward orderly and productive meetings.

Who sets the agenda for your planning board meetings? How are decisions made about the order, public comment, and other important matters? Do you allot specific times or just go with the flow? In other words, does your agenda work for you as well as it should?

If your planning board uses its agenda as a tool to efficient and productive meetings, these questions may seem elementary and even trivial. But if you are one of many whose agenda is either inadequate or even an impediment to effective meetings, it may be wise to consider how it can be improved.

**The agenda is the template for your meetings.** It should be developed thoughtfully so that the planning board has adequate time for matters that require attention and/or decisions and less time for "housekeeping" or more routine subjects. It should delineate plainly when public comment is invited and the actions expected of each item (review only; action; referral, etc.).

Many commissions leave the agenda writing to staff and may see it for the first time when they come to the meeting. This does not serve you or the public well. The best approach is for the chair, or a committee of your board, to review the agenda before it is final and for commissioners to receive it and any backup materials several days in advance. Upcoming meeting agendas should also be posted in public places, such as public libraries and town or city halls. A growing number of communities also are posting agendas on their Web sites.

**Allow ample and early time for issues which most concern the public.** Too often, planners put them last or next to last on the agenda even though they are well aware of one or more matters certain to attract a big crowd. People get restless and cranky if they have to sit through several hours of deliberations that do not concern them. Put the contentious or controversial issues on the agenda early, and give them the time they deserve. Do not be offended if most of the crowd leaves as soon as you turn to other matters.

- Consider setting aside a general comment period

**The agenda is the template for your meetings. It should be treated seriously.**

where people can talk to you about any planning items that concern them. Fifteen minutes at the beginning of the agenda usually is adequate and can serve as a "safety valve" for testing the pulse of the community.

- Place together routine items that require little or no discussion on the agenda and consider them in a group. Some bodies call this the "consent agenda" and require one motion and one vote to approve them all. But be careful that they are, indeed, routine items and not anything controversial you can be accused of "sneaking through."
- Print the allotted time for each item on the agenda...7-7:05, Roll Call; 7:05-15, Correspondence; 7:15-7:45, Major item # 1, Public Comment, etc. ... and follow the schedule as much as you can.
- Do everything possible to make the public comfortable. Print sufficient agendas for all to have one, with the aforementioned time allotments. Also, make sure there are sufficient copies of any graphics or explanatory material.
- At the start of the meeting, ask people who wish to speak on specific agenda items to sign up. This allows the chair to control the agenda and perhaps ask the board to extend the time if it is obvious the stated comment period is not sufficient for all the people who wish to be heard.
- Make sure the agenda is written in words and phrases easily understood by the public. How long did it take you, as a layperson, before you finally understood planning jargon? If you are expecting a turnout of non-English speaking citizens, translate the agenda into one or more other languages beforehand and engage interpreters to be available at the meeting. Put yourself in the shoes of the citizen who is attending his or her first meeting.

### **Public Hearings**

A public hearing is a special meeting which allows the public to comment on proposed plans and projects before officials make a final decision. The purpose of a public hearing is to guarantee that citizens' comments on land use issues will be heard and a public record is made. Testimony is typically given under oath.

**The structure of the agenda contributes greatly to orderly and productive meetings**

Operating under a set of laws and formal procedures, it is an open public meeting. All citizens must be permitted to present their views for the official record, verbally and in writing, before the hearing body makes its decision.

Public hearings are conducted by city councils, boards of county commissioners, planning commissions, and, for certain designated zoning issues, the board of adjustment. Some jurisdictions in Florida have hearings examiners who conduct quasi-judicial public hearings related to land development orders and permits.

It is in the community's best interest to see that public hearings are carefully planned. In addition to the legal aspects of conducting a hearing, the points listed below can significantly increase the productivity of public hearings.

**Before a hearing takes place:**

- The responsible agency should carefully examine the proposal or application to see that it is complete, and that all procedures and regulations have been followed.
- All interested parties should receive ample notice of the hearing.
- At least several working days prior to the hearing, staff reports, environmental assessments, economic analysis, and any other documents relevant to the hearing should be available for members of the hearing body and the general public. Often this timeline is established by statute, ordinance or rules of procedure.
- Printed copies of the hearing body's rules and procedures should be on hand.

Members of the hearing body need to keep a fair and open mind until all testimony is presented. Citizens should be adequately prepared to testify, know the hearing rules and procedures, have a clear statement of purpose for their testimony, and back up their statements with solid information. It is also helpful to the hearing body if citizens prepare written testimony and present only summary remarks at the hearing.

The public hearing provides proponents and opponents of land development projects an opportunity to comment. However, legally required public hearings offer

**Public hearings are formal meetings required by law before officials can make a final decision. Rules of procedure and the making of a public record are paramount**

**Proper preparation for a public hearing is necessary if the meeting is to meet its procedural and legal requirements**

**Public hearings are not a very effective method for resolving conflict and can be counter-productive if used as a method to rubber stamp plans or projects**

only a limited opportunity for two-way communication. They are most effective if used in combination with other citizen participation methods. Public hearings are not a very expedient method for resolving conflict and can be counter-productive if used as a method to rubber-stamp plans or projects.

### **Community Workshops**

One of the most popular citizen participation methods is the community workshop. Encouraging extensive interaction, workshops offer a structure that typically divides many people into small work groups. The value in this method is the data citizens develop in the work groups. Each small group prepares a written report, communicated at the end of the workshop to all attendees. Data developed at community workshops can be used throughout the planning process. When people see the goals, priorities, and ideas they have developed in community workshops reflected in land use decisions, they are more likely to support local government plans and projects.

Other advantages of this method are: 1) everyone can participate at meetings; 2) it is an excellent means of developing community consensus; and 3) it is relatively inexpensive. To be successful, workshop managers must have good group facilitation and data management skills.

Informal arrangements with chairs and tables for small groups are appropriate for workshops. Meeting sponsors often serve coffee, tea, or juice as a way to make people comfortable and help them become acquainted during meeting breaks. Having materials for people to look at and study prior to a meeting, and setting up audio visual equipment well in advance of the starting time are other simple ways to make meetings less stressful for organizers and participants.

### **Charrettes**

Charrettes are a form of community workshop that has become increasingly popular in recent years.

**Charrette** is a French word that means "little cart." At the leading architecture school of the 19th century in Paris, students would be assigned a tough design problem to work out under pressure of time.

**Community workshops are an excellent means of developing community consensus. Workshops facilitate extensive interaction and are relatively inexpensive**

They'd continue sketching as fast as they could, even as little carts (*charrettes*) carried their drawing boards away to be judged and graded.

"Charrette" has come to describe the rapid, intensive, and creative work session, usually lasting several days or more, in which a design team focuses on a particular design problem and arrives at a collaborative solution. Charrettes are product-oriented and hands-on. The public charrette is fast becoming a preferred way to face the planning challenges confronting American cities and has been widely applied in Florida.

Charrettes typically require extensive preparation. Information – both statistical and graphic – is required by the participants if a competent product is to emerge from the charrette exercise. Consequently, the process can be expensive and require a high level of facilitation for success.

### **Community Surveys**

A citizen survey is often used to gather information about citizen attitudes, values, and priorities. It can also gather data about a community's residents, such as age, income, and employment. Surveys are not a truly interactive participation method; citizens do not communicate directly with decision makers in a survey, but they can express their opinions on land use issues. Several types of surveys are used in land use planning.

- The formal scientific survey systematically measures community attitudes, values, and priorities. Data collected by scientific surveys can statistically represent all citizens' views in a quantifiable manner. Crucial elements in a formal scientific survey are properly designed questionnaires, careful tabulation of results, and a written analysis and interpretation of the data. Survey results must be reported in a straight-forward manner and be widely distributed throughout the community. If the local government staff is not experienced in survey design and analysis, they should seek assistance.
- The community self-survey is popular in smaller communities and neighborhoods. This method makes extensive use of community volunteers with a minimum of outside assistance. Citizens organize and conduct all aspects of the survey, from developing and distributing questionnaires to tabulating and distributing results to the community. The advantages of this type of survey are that it encour-

**The "Charrette" is a rapid, intensive and creative work session in which a design team develops a collaborative design solution or plan. The technique is "product oriented" and "hands-on"**

ages broad citizen participation and it collects information about community attitudes and priorities. Conducting a community self-survey is a large undertaking. This method should be chosen only if enough volunteers are available and when the survey results are not needed immediately.

- New methods, such as interactive computer simulations, interactive websites and cable television, are being introduced in citizen participation activities. In selecting among these, communities should be open to new and innovative techniques. However, they must carefully evaluate their ability to execute a particular method. Guiding factors in making a selection are 1) match the appropriate method to each citizen participation objective; and 2) have the skills and resources to carry out the method properly.

### **Community Image Survey**

**The Community Image Survey uses visual images to educate local decision-makers and stimulate public participation in the planning process.** The Community Image Survey is an extremely effective and simple tool that promotes lively discussion and analytical thinking by residents, business owners, staff, and officials alike. Because the Survey assumes that participants have no prior knowledge of sometimes complex urban design and planning principles, the Community Image Survey effectively allows everyone, regardless of their training or knowledge about the subject, to participate fully in the process.

**"A Picture Is Worth A Thousand Words!"** By focusing on concrete visual images, instead of using words like "mixed use," - "human scale," "pedestrian-friendly," "higher density," and "transit-oriented" to describe development, survey participants are able to move beyond static arguments about use and density toward useful, and often intense, discussions about the specifics of a particular place. The process of identifying what makes a place feel welcoming, exciting or unique often helps formerly divided groups find common ground.

The Community Image Survey is a set of 40 to 100 slides that can be shown at as part of a conference, workshop, community meeting or website. Survey participants are asked to look at each slide, then assign it a number value (for example -10 to +10), based on how much they like or dislike the image, and its appro-

**The Community Image Survey uses visual images to educate local decision-makers and stimulate public participation in the planning process**

priateness for the area. The average "score" the group has given the different images are then tabulated and the slides are roughly paired based on subject for discussion purposes.

Next comes the most interactive and interesting part of the survey process: a facilitated discussion in which everyone is asked to participate. In what is often a lively process, participants brainstorm what they like about each image, as well as what they don't like. Participants are encouraged to go beyond the obvious, to focus on identifying all of the design details that make a place feel "safe," "comfortable," and "friendly", as well as "boring", "scary", and "unremarkable. These responses are all recorded on for all participants to see, and for later use as a product of the process.

The goal of the survey process is to help people begin to see and articulate the positive and negative details in each of the images. By using slides taken from throughout a region, the Community Image Survey encourages objectivity by presenting relevant examples that may be recognizable, but are not "too close to home."

**Community surveys can be used to gather information about citizen attitudes, values, and priorities**



**PRINCIPLE #1**  
**BEGIN WITH THE PUBLIC**  
**– IT MUST BE THE PLAN**  
**OF THE COMMUNITY.**

## **Five Principles for Effective Planning**

### **Principle #1 Begin With The Public**

Effective planning can only be achieved if there is “ownership” by the community. This objective requires a commitment to public involvement.

- Acknowledge the community's **concern** by listening. There are issues that your community has and you need to listen and hear. Only then can you begin to build the trust necessary to proceed.
- Seek the real and meaningful **involvement** of interested parties in your community. Involvement is the means to dialogue, understanding and solutions.
- By showing concern and seeking involvement you will have built **acceptance** in the process. This is the first step in building a consensus.
- By the community accepting the process, a clear **direction** can be set to attack the problem.
- Having a clear direction leads to **buy-in** on the part of the community. This begins the process of problem solving.
- As a result of buy-in, the community obtains **ownership** of the process and thus the solutions.
- The mere acceptance of ownership leads to the **empowerment** of the community to work with you to find solutions.
- Empowerment on the part of the City means little without the **transfer of responsibility** to the community. More choices are not necessarily the answer if the groundwork is not laid to assume responsibility for their implementation of those choices. The plan is not the plan of the planner, the Mayor or the Council member; **it must be the plan of the community**. Neither the planner nor the local government can take responsibility for successful community building.

**PRINCIPLE # 2 - DEVELOP  
A CLEAR VISION THAT IS  
SHARED BY THE  
COMMUNITY**

## **Principle #2 Develop a Clear Community Vision**

### **What Is a Vision?**

**A vision is a community based strategic planning effort in which citizens and leaders work together to identify a series of shared goals encompassing all aspects of community life.** These goals can cover such areas of common concern as the natural and built environment, economic and community development, transportation, education, culture, recreation, sports, race relations and human needs.

In addition to community goals, the vision process defines specific strategies for each goal and, if desired, can outline a short -term action plan to jump-start the implementation phase of the vision.

The rewards of a grass-roots community-based vision process can be extraordinary, as has been demonstrated by the many communities that have undertaken similar efforts throughout the country.

An agreed-upon agenda for the future of a community will boost that community's ability to develop and grow in ways that are sustainable and in harmony with its unique cultural and physical identity. It will also develop the leadership potential of its citizens, generate community pride and expedite the implementation of projects and programs.

A vision requires re-defining the terms of public/private partnerships to include citizen input and support.

A vision requires a renaissance of the original concept of citizenship - the recognition that citizenship is both a privilege and a responsibility. It requires the re-positioning of the citizen as a pro-active participant in the decision-making process as well as in the implementation of programs.

The core ideas of visioning are:

- People are more likely to change if they articulate what they actually want, rather than discuss the problems that have created the current conditions.

- The future can not be predicted, but people can express what they desire for the future. By doing this, they are more likely to work together toward the desired condition.

Belief in these ideas has enabled communities of all sizes to develop a shared vision for the future, overcome the status-quo, and successfully implement agreed-upon projects and initiatives.

### **Benefits of Visions**

Visioning has demonstrated the ability to accomplish objectives which are hard to achieve in any other way.

These include:

- **Creating shared goals** for a community's, a region's or a complex organization's future.
- **Identifying concrete strategies** for the long- and short term actions needed to accomplish the shared goals.
- **Building consensus and good will** between factions that are commonly perceived to be at odds with each other.
- **Spurring and facilitating action** by building consensus on projects and initiatives, and by creating a strong sense of "ownership" in them.
- **Energizing local networks** of special interest groups and civic organizations by bringing them into the vision process.
- **Developing new leadership** in communities by giving citizens an opportunity to become intimately involved in the decision making process.

## The Principles of Smart Growth

**American Planning Association – Principles of Smart Growth.** Smart growth means using comprehensive planning to guide, design, develop, revitalize and build communities that:

- have a unique sense of community and place;
- preserve and enhance valuable natural and cultural resources;
- equitably distribute the costs and benefits of development;
- expand the range of transportation, employment and housing choices in a fiscally responsible manner;
- value long-range, regional considerations of sustainability over short term incremental geographically isolated actions; and
- promote public health and healthy communities

### Core principles of Smart Growth include:

**RECOGNITION THAT ALL LEVELS OF GOVERNMENT, AND THE NON-PROFIT AND PRIVATE SECTORS, PLAY AN IMPORTANT ROLE IN CREATING AND IMPLEMENTING POLICIES THAT SUPPORT SMART GROWTH.**

Every level of government - federal, state, regional, county, and local -- should identify policies and practices that are inconsistent with Smart Growth and develop new policies and practices that support Smart Growth. Local governments have long been the principal stewards of land and infrastructure resources through implementation of land use policies. Smart Growth respects that tradition, yet recognizes the important roles that federal and state governments play as leaders and partners in advancing Smart Growth principles at the local level.

**STATE AND FEDERAL POLICIES AND PROGRAMS THAT SUPPORT URBAN INVESTMENT, COMPACT DEVELOPMENT, AND LAND CONSERVATION.**

State and federal policies and programs have contrib-

**The principles of “smart growth” provide a solid foundation for the development of a shared vision**

uted to urban sprawl and need to be re-examined and replaced with policies and programs that support Smart Growth, including cost effective, incentive-based investment programs that target growth-related expenditures to locally-designated areas.

**PLANNING PROCESSES AND REGULATIONS AT MULTIPLE LEVELS THAT PROMOTE DIVERSITY, EQUITY AND SMART GROWTH PRINCIPLES.**

Appropriate citizen participation ensures that planning outcomes are equitable and based on collective decision-making. Planning processes must involve comprehensive strategies that engage meaningful citizen participation and find common ground for decision-making.

**INCREASED CITIZEN PARTICIPATION IN ALL ASPECTS OF THE PLANNING PROCESS AND AT EVERY LEVEL OF GOVERNMENT.**

Appropriate citizen participation ensures that planning outcomes are equitable and based on collective decision-making. Planning processes must involve comprehensive strategies that engage meaningful citizen participation and find common ground for decision-making.

**A BALANCED, MULTI-MODAL TRANSPORTATION SYSTEM THAT PLANS FOR INCREASED TRANSPORTATION CHOICE.**

Land use and transportation planning must be integrated to accommodate the automobile and to provide increased transportation choices, such as mass transit, bicycles, and walking. Development must be pedestrian-friendly. All forms of transportation must be reliable, efficient and user-friendly, allowing full access by all segments of the population to housing, employment, education, and human and community services.

**A REGIONAL VIEW OF COMMUNITY.**

Smart Growth recognizes the interdependence of neighborhoods and municipalities in a metropolitan region and promotes balanced, integrated regional development achieved through regional planning processes.

**ONE SIZE DOESN'T FIT ALL - A WIDE VARIETY OF APPROACHES TO ACCOMPLISH SMART GROWTH.**

Customs, politics, laws, natural conditions, and other factors vary from state to state and from region to region. Each region must develop its own approach to problem solving and planning while involving the public, private and non-profit sectors. In some areas, this may require a significant change in perspective and culture, but such changes are necessary and beneficial in obtaining the results that Smart Growth aims to achieve.

#### **EFFICIENT USE OF LAND AND INFRASTRUCTURE.**

High-density development, infill development, redevelopment, and the adaptive re-use of existing buildings result in efficient utilization of land resources and more compact urban areas. Efficient use of public and private infrastructure starts with creating neighborhoods that maximize the use of existing infrastructure. In areas of new growth, sewers, water lines, schools and other infrastructure should be planned as part of comprehensive growth and investment strategies. Regional cooperation is required for large infrastructure investments to avoid inefficiency and redundancy.

#### **CENTRAL CITY VITALITY.**

Every level of government should identify ways to reinvest in existing urban centers, to re-use former industrial sites, to adapt older buildings for new development, and to bring new development to older, low-income and disadvantaged neighborhoods.

#### **VITAL SMALL TOWNS AND RURAL AREAS.**

APA recognizes that inefficient land use and low-density development is not confined to urban and suburban areas, but also occurs around villages and small towns. Once thriving main streets are checkered with abandoned storefronts while a strip of new commercial springs up on the edge of town together with housing and public facilities. Programs and policies need to support investment to improve the economic health of small town downtowns, and rural community centers. The high cost of providing basic infrastructure and services in rural communities demands efficient use of existing facilities, and compact development. Housing choices in rural areas need to take into account changing needs resulting from shifting demographics, the cost of providing services and infrastructure, the cost

of services and infrastructure capacity, and must address upgrading of existing housing as an alternative or complement to new development. Smart Growth is critically important in rural and small town economic development initiatives because the limited availability of public funding means each dollar must accomplish more.

**A GREATER MIX OF USES AND HOUSING CHOICES IN NEIGHBORHOODS AND COMMUNITIES FOCUSED AROUND HUMAN-SCALE, MIXED-USE CENTERS ACCESSIBLE BY MULTIPLE TRANSPORTATION MODES.**

Mixed-use developments include quality housing, varied by type and price, integrated with shopping, schools, community facilities and jobs. Human-scale design, compatible with the existing urban context and quality construction contribute to successful compact, mixed-use development and also promote privacy, safety, visual coherency and compatibility among uses and users.

**CONSERVATION AND ENHANCEMENT OF ENVIRONMENTAL AND CULTURAL RESOURCES.**

Biodiversity, green infrastructure, and green architecture are integral to Smart Growth. Smart Growth protects the natural processes that sustain life; preserves agricultural land, wildlife habitat, natural landmarks and cultural resources; integrates biodiversity, ecological systems and natural open space (green infrastructure) into the fabric of development; encourages innovative storm water management; is less consumptive and more protective of natural resources; maintains or improves air quality, and enhances water quality and quantity for future generations. Energy conservation is a major benefit and result of Smart Growth, helping to create more sustainable development and allow people to meet current needs without compromising the needs of future generations. Green architecture incorporates environmental protection and reduced natural resource consumption into the design and construction of buildings, also enhancing the comfort and health of the occupants.

**CREATION OR PRESERVATION OF A "SENSE OF PLACE".**

A "sense of place" results when design and development protect and incorporate the distinctive character of a community and the particular place in which it is

located. Geography, natural features, climate, culture, historical resources, and ecology each contribute to the distinctive character of a region.



**PRINCIPLE #3 – BE  
PROACTIVE****Principle # 3 Proactive Planning**

The most effective way to achieve any planning objective is through the use of proactive planning. By engaging the community to define goals and means, specific design objectives can be achieved. By working with residents and property owners, town planning can lay the framework for the creation of totally integrated communities - integrated in the terms of jobs-housing balance, residential shopping and entertainment opportunities, environmental protection, and a balanced transportation framework. Planning projects must have at their base a clear understanding of the inter-relationship between physical, social, and environmental elements. It is this balance that is critically important to establishing a long-term sustainable community.

Proactive planning is hard work. It is time-consuming and requires the commitment of considerable resources. More importantly, proactive planning requires an understanding that **planning is a continuous process** – one of constant evaluation and improvement.

Despite the rigorous requirements that Florida's planning and growth management system places upon its cities and counties, a community can satisfy the letter of the law without any meaningful commitment to the underlying principles. An effective public planning program requires more than response to a checklist and awaiting the next development proposal to appear for review.

**PRINCIPLE #4 – BE  
THOROUGH AND  
CONSISTENT****Principle # 4 Be Thorough and Consistent**

**Every decision is important and will affect the community.** Understand this and focus on the interrelationships. Begin by instituting a 'smart growth' culture in-house through training and setting the right example. Integration of planning policies and the actions of other departments such as public works, parks, water and sewer are especially critical.

***"Every increment of construction should be done in such a way as to heal the city."*** Christopher Alexander

**Each planning decision should be weighed against the vision.** This means that the requirement for "consistency" should be applied for each action taken at the local level. It does not mean that local officials have no discretion. Quite the contrary is true. The *planning official* has the responsibility of evaluating complex and often conflicting information in making decisions. Without a clear understanding of what the community is trying to accomplish and the direction it wishes to go, these decisions can become isolated and detached and subject to whim, to emotion and to the politics of the moment.

**Insist on sound information and thorough analysis.** As a *planning official*, you cannot make sound decisions without trustworthy and competent information. Your staff is the primary source for the "substantial competent evidence that you require and you should strive to create an environment that encourages objectivity and professional competence.

**Be consistent and predictable.** A shared vision offers – perhaps more than any other attribute of your planning program – an opportunity for the consistent and predictable application of planning principles. Almost every planning success story can point to the sustained application of a concept or principles over a period of time.

**PRINCIPLE #5 – MAKE  
IT EASY TO DO THE  
RIGHT THING****Principle # 5 Make It Easy to do the  
Right Thing**

How do we make the system work more effectively? We must find ways to better educate our *planning officials* and make it easier for developers to do the right thing.

It is important to recognize that the growth and development of any community is driven by private investment decisions. These decisions tend to follow a “path of least resistance” and despite good intentions will be negatively affected by uncertainty, excessive approval requirements and delay. Without realizing it, communities often penalize the best development by erecting procedural, regulatory and political barriers to the type of development that they want.

The use of administrative review procedures and clear understandable codes and practices can be successful. Too often we get lost in the details of code compliance and entirely miss that the fundamental purpose of plan review is to improve the quality of the overall environment. So, whether the issue is the need to provide a pedestrian interface, improve the building scale to fit with surrounding development or simply changes to the location and design of the stormwater system, strive to understand what the “right thing” is for your community and to ensure that the system rewards such actions.



## Chapter Five - The Comprehensive Plan

**In Florida, all local governments are required by State law to adopt a comprehensive plan.**

**The planning process is universal. Its basic steps form the framework for planning in Florida**

**The Comprehensive Plan is the only public document that views the community as a whole.**

**The Comprehensive Plan forms a basis for how a community regulates development and how it invests in infrastructure and services**

All 67 counties and 410 cities in Florida must adopt a Comprehensive Plan

### The Planning Process

The planning process involves a series of essential steps:

- Identify the Problem or the Opportunity
- Collect Information on the Problems and Opportunities
- Compare the Alternatives
- Select a Plan and Put It to Work
- Monitor Progress

The Comprehensive Plan is the only public document that describes the community as a whole in terms of its complex and mutually supporting networks. As a statement of long term goals, objectives and policies, it provides both a broad perspective and a guide to short-term community decisions.

In short, the comprehensive plan is:

- A public guide to community decision making
- An assessment of the community's needs
- A statement of community values, goals, and objectives
- A blueprint for the community's physical development
- A public document adopted by government
- Continuously updated as conditions change

Three basic products emerge from the planning process

- The Comprehensive Plan
- Land Development Regulations
- Capital Improvement Programs

**The purposes of planning and growth management are enunciated in state law. The authority for local government to engage in planning is guided by these statements of purpose**

### **Purposes of Planning in Florida**

***Each local government shall prepare a comprehensive plan ....***

*Comprehensive Planning is necessary so that:*

- *local governments can preserve and enhance present advantages;*
- *encourage the most appropriate use of land, water, and resources, consistent with the public interest;*
- *overcome present handicaps; and*
- *deal effectively with future problems that may result from the use and development of land within their jurisdictions.*

*Through the process of comprehensive planning, it is intended that units of local government*

- *can preserve, promote, protect, and improve the public health, safety, comfort, good order, appearance, convenience, law enforcement and fire prevention, and general welfare;*
- *facilitate the adequate and efficient provision of transportation, water, sewerage, schools, parks, recreational facilities, housing, and other requirements and services; and*
- *conserve, develop, utilize, and protect natural resources within their jurisdictions.*

### **General Requirements of the Comprehensive Plan**

The Comprehensive Plan is required to provide *principles, guidelines, standards and strategies for the orderly and balanced future economic, social, physical, environmental and fiscal development* of the community.

All elements of the Comprehensive Plan must be based on relevant and appropriate data and analysis by the local government.

The several elements of the comprehensive plan are required to be internally consistent.

### **Mandatory Elements**

The Community Planning Act requires that a local comprehensive plan contain certain elements:

**The Comprehensive Plan must include and be based on supporting data and analysis, and be internally consistent**

**The Future Land Use Element must provide for sufficient land to accommodate projected growth**

**Future Land Use Element** based on

- the amount of land required to accommodate anticipated growth;
- the projected permanent and seasonal population of the area;
- the character of undeveloped land;
- the availability of water supplies, public facilities and services;
- the need for redevelopment, including the renewal of blighted areas and the elimination of nonconforming uses;
- the compatibility of land uses in close proximity to military installations;
- the compatibility of uses on lands near airports;
- the discouragement of urban sprawl;
- the need for job creation, capital investment, and economic development that will strengthen and diversify the community's economy; and
- the need to modify land uses and development patterns within antiquated subdivisions.

The Community Planning Act mandates that the amount of land designated for future land use must (1) provide a balance of uses that foster *vibrant, viable communities and economic development opportunities* and (2) *allow the operation of real estate markets to provide adequate choices for residents and business*. At a minimum, sufficient land must be provided to accommodate the medium projections of the University of Florida's Bureau of Economic and Business Research for at least a 10 year planning period.

The Future land Use Element is comprised of a land use map or map series supplemented by goals, policies, and measurable objectives that

- designates proposed future general distribution, location, and extent of the uses of land for residential uses, commercial uses, industry, agriculture, recreation, conservation, education, public buildings and grounds, other public facilities, and other categories of the public and private uses of land.
- Establishes standards for the control distribution of population densities and building and structure intensities.

The Future Land Use Element must also include criteria to:

- Achieve the compatibility of lands near military installations, and airports;
- Encourage the preservation of recreational and commercial working waterfronts for water dependent uses in coastal communities;
- Encourage the location of schools proximate to urban residential areas to the extent possible;
- Coordinate future land uses with the topography and soil conditions, and the availability of facilities and services;
- Ensure the protection of natural and historic resources;
- Provide for the compatibility of adjacent land uses; and
- Provide guidelines for the implementation of mixed use development

**Transportation Element** addressing mobility issues. The purpose of the transportation element is *to provide for a safe, convenient multimodal transportation system that is coordinated with the future land use map or map series and designed to support all elements of the comprehensive plan.* The element must be *coordinated with the plans and programs of the metropolitan planning organization (MPO), transportation authority, Florida Transportation Plan and the Department of Transportation's work program.*

Each local government's transportation element is required to address *traffic circulation including the types, locations and extent of existing and proposed major thoroughfares and transportation routes including bicycle and pedestrian ways.* If transportation corridors are designated, the local government may then adopt a transportation corridor management ordinance. The element must also contain a map or map series that depicts the existing and proposed features and coordinated with the future land use map.

Local governments within a metropolitan planning area designated as a MPO must also address:

- all alternative modes of transportation such as public transportation, pedestrian and bicycle travel;



- aviation, rail, seaport facilities and intermodal terminals;
- evacuation of coastal populations;
- airports, projected airport and aviation development and land use compatibility around airports;
- the identification of land use densities and intensities and transportation management programs to promote public transportation systems in designated public transportation corridors.

If outside of MPO boundaries, municipalities with populations greater than 50,000 and counties with populations greater than 75,000 must include mass-transit provisions showing methods for the moving of people, rights-of-way, terminals and related facilities.

**General Sanitary Sewer, Solid Waste, Drainage, Potable Water, and Natural Groundwater Aquifer Recharge Element** correlated to guidelines for future land use and indicating ways to provide for future potable water, drainage, sanitary sewer, solid waste, and aquifer recharge protection requirements for the area.

The element must specifically address *water supply* by demonstrating consistency with the regional water supply plan.

**Conservation Element** prescribing the conservation, use, and protection of natural resources in the area, including air, water, water recharge areas, wetlands, waterwells, estuarine marshes, soils, beaches, shores, flood plains, rivers, bays, lakes, harbors, forests, fisheries and wildlife, marine habitat, minerals, and other natural and environmental resources including factors that effect energy conservation.

The element must specifically assess the community's current and projected water needs and sources based on the demands for industrial, agricultural and potable water use and analyze the quality and quantity available to meet those demands.

**Recreation & Open Space Element** indicating a comprehensive system of public and private sites for recreation, including, but not limited to, natural reservations, parks and playgrounds, parkways, beaches and public access to beaches, open spaces, and other

recreational facilities.

**Housing Element** consisting of standards, plans, and principles to be followed in:

- *the provision of housing for all current and anticipated future residents of the jurisdiction;*
- *the elimination of substandard dwelling conditions;*
- *the structural and aesthetic improvement of existing housing;*
- *the provision of adequate sites for future housing, including housing for low-income, very low income, and moderate-income families, mobile homes, and group home facilities and foster care facilities, with supporting infrastructure and public facilities;*
- *the provision for relocation housing and identification of historically significant and other housing for purposes of conservation, rehabilitation, or replacement;*
- *the formulation of housing implementation programs;*
- *the creation or preservation of affordable housing to minimize the need for additional local services and avoid the concentration of affordable housing units only in specific areas of the jurisdiction.*

**Coastal Management Element** is required coastal counties and municipalities within their boundaries. The element must establish policies that:

- *maintain, restore, and enhance the overall quality of the coastal zone environment;*
- *preserve the continued existence of viable populations of all species of wildlife and marine life;*
- *protect the orderly and balanced utilization and preservation of all living and nonliving coastal zone resources;*
- *avoid irreversible and irretrievable loss of coastal zone resources;*
- *use ecological planning principles and assumptions to be used in the determination of suitability and*

*extent of permitted development;*

- *limit public expenditures that subsidize development in high-hazard coastal areas;*
- *protect human life against the effects of natural disasters;*
- *direct the orderly development, maintenance, and use of ports;*
- *preservation of historic and archaeological resources.*

As an option, a local government may adopt an *adaptation action area* including policies intended to *improve resilience to coastal flooding resulting from high-tide events, storm surge, flash floods, stormwater runoff, and the related impacts of sea level rise.*

**Capital Improvement Element** is designed to consider the need for and the location of public facilities.

The element must :

- outline principles for construction, extension, or increase in capacity of public facilities and principles for correcting existing public facility deficiencies;
- estimate public facility costs, including a delineation of when facilities will be needed, the general location of the facilities, and projected revenue sources to fund the facilities;
- provide standards to ensure the availability of public facilities and the adequacy of those facilities to meet established acceptable levels of service;
- provide a schedule of capital improvements which includes any publicly funded projects of federal, state, or local government, and which may include privately funded projects for which the local government has no fiscal responsibility. The schedule must include transportation improvements included in the applicable metropolitan planning organization's transportation improvement program.

**Intergovernmental Coordination Element** shows the relationships and states the principles and guidelines to be used in coordinating with the plans of school boards, regional water supply authorities, and with the plans of adjacent municipalities, the county,

adjacent counties, or the region.

The element must state principles and guidelines to be used in coordinating the adopted comprehensive plan with the plans of school boards and other units of local government providing facilities and services but not having regulatory authority over the use of land. In addition, the intergovernmental coordination element must describe joint processes for collaborative planning and decision making on population projections and public school siting, the location and extension of public facilities subject to concurrency, and siting facilities with countywide significance, including locally unwanted land uses whose nature and identity are established in an agreement.

### Optional Elements

Comprehensive plans may contain optional elements in addition to or as a supplement to the mandatory elements. Some examples are listed below.

- **Public School Facilities Element** was a required element until 2011. Consequently each local government in Florida has adopted such an element and may elect to retain it especially if school concurrency is retained as a local option.
- **Airport Master Plan** prepared for a licensed publically owned and operated airport may be incorporated into the comprehensive plan.
- **Public Buildings Element** showing locations and arrangements of civic and community centers, public schools, hospitals, libraries, police and fire stations, and other public buildings. This plan element should show particularly how it is proposed to effect coordination with governmental units having public development and service responsibilities, capabilities, and potential but not having land development regulatory authority.
- **Community Design Element** which may consist of design recommendations for land subdivision, neighborhood development and redevelopment, design of open space, and similar matters to serve as guides for future planning and development.
- **Redevelopment Element** consisting of plans and programs for the redevelopment of slums and blighted locations and for community redevelopment.

**Florida cities and counties may include optional elements in their comprehensive plan depending on their community's character and needs**

ment, including housing sites, business and industrial sites, public buildings sites, recreational facilities, and other purposes.

- **Public Safety Element** for the protection of residents and property of the area from fire, hurricane, or manmade or natural catastrophe.
- **Hazard Mitigation / Post Disaster Plans.** Local governments that are not required to prepare coastal management are strongly encouraged to adopt hazard mitigation/post disaster redevelopment plans. These plans establish policies regarding redevelopment, infrastructure, densities, nonconforming uses, and future land use patterns.
- **Historic and Scenic Preservation Element** setting out plans and programs for those structures or lands in the area having historical, archaeological, architectural, scenic, or similar significance.
- **Economic Element** setting forth guidelines for the commercial and industrial development, if any, and the employment within such areas. The element may detail the type of commercial and industrial development sought, correlated to employment needs of the area, and may set forth methods by which a balanced and stable economic base will be pursued.

### **Special Emphasis**

Certain issues and subjects merit high priority and emphasis for planning and growth management in Florida.

### **School Coordination**

School Coordination has been the target of legislative change in recent years due to the impact of development and growth on schools and the challenges of maintaining a quality public education system. The 2005 Florida Legislature enacted sweeping changes most notably mandating "school concurrency". While the Community Planning Act of 2011 reversed some of these mandates, school planning is now well established as an important component of comprehensive planning.

The highlights of the current statutes and rules regarding school coordination are as follows:

**School coordination is an issue of statewide concern. Current statutes and rules require a high degree of coordination among local governments and the school district and have significant implications for planning and how schools are treated in local comprehensive plans**

- School concurrency is optional. If school concurrency is to be retained, the county and municipalities representing at least 80% of the county population must participate and the comprehensive plan must:
  - demonstrate that the adopted levels of service can be reasonable met;
  - provide principles, guidelines, standards and strategies for the establishment of a concurrency management system;
  - Provide the means for development to proceed by the mitigation of deficiencies including the payment of a proportionate share contribution.
- The Public School Facilities Element is optional for all local governments within a school district (with some exceptions for counties and municipalities not experiencing growth in school enrollment).
- The Future Land Use Element
  - must clearly identify the land use categories in which public schools are an allowable use;
  - must allocate sufficient land proximate to residential development to meet the projected needs;
  - must encourage the location of schools proximate to urban residential areas; and shall require that the local government seek to collocate public facilities, such as parks, libraries, and community centers, with schools to the extent possible and to encourage the use of elementary schools as focal points for neighborhoods.
- The Intergovernmental Coordination Element
  - must state principles and guidelines for coordinating the adopted comprehensive plan with the plans of school boards.
  - must describe joint processes for collaborative planning and decisionmaking on population projections and public school siting, the location and extension of public facilities subject to concurrency, and siting facilities with countywide significance, including locally unwanted land uses.
- Public Schools Interlocal Agreement. The county and municipalities located within the geographic area of a school district must enter into an interlo-

**School coordination is an issue of statewide concern. Current statutes and rules require a high degree of coordination among local governments and the school district and have significant implications for planning and how schools are treated in local comprehensive plans**

cal agreement with the district school board that jointly establishes how plans and processes of are to be coordinated

### **Urban Sprawl**

In 1994, Rule 9J-5 was amended to provide criteria for reviewing local comprehensive plans and plan amendments for adequacy in discouraging the proliferation of urban sprawl. The Community Planning Act of 2011 repealed Rule 9J-5 but codified the guidelines pertaining to sprawl.

The discouragement of urban sprawl accomplishes many related planning objectives. The presence and potential effects of multiple indicators are evaluated to determine whether they collectively reflect a failure to discourage urban sprawl.

**Primary indicators.** The primary indicators that a plan or plan amendment does not discourage the proliferation of urban sprawl

- allows substantial areas to develop as low intensity, low-density, or single-use development;
- allows urban development to occur in rural areas at substantial distances from existing urban areas while leaping over undeveloped lands;
- allows urban development in radial, strip, isolated or ribbon patterns generally emanating from existing urban developments;
- allows the premature or poorly planned conversion of rural land to other uses;
- fails to protect and conserve natural resources;
- fails adequately to protect agricultural areas and activities;
- fails to maximize use of existing and future public facilities and services.
- allows land use patterns that disproportionately increase the cost in time, money and energy, of providing and maintaining facilities and services;
- fails to provide a clear separation between rural and urban uses;

**Discouraging the proliferation of urban sprawl serves many planning objectives**

- discourages or inhibits infill development or the re-development of existing neighborhoods and communities;
- fails to encourage an attractive and functional mix of uses;
- results in poor accessibility among linked or related land uses;
- results in the loss of significant amounts of open space.

**Remedies.** The local comprehensive plan will not be deemed to encourage urban sprawl if four of the following eight criteria are satisfied:

- Directs or locates economic growth and associated land development to geographic areas of the community in a manner that does not have an adverse impact on and protects natural resources and ecosystems;
- Promotes the efficient and cost-effective provision or extension of public infrastructure and services;
- Promotes walkable and connected communities and provides for compact development and a mix of uses at densities and intensities that will support a range of housing choices and a multimodal transportation system, including pedestrian, bicycle, and transit;
- Promotes conservation of water and energy;
- Preserves agricultural areas and activities, including silviculture, and dormant, unique, and prime farmlands and soils.
- Preserves open space and natural lands and provides for public open space and recreation needs.
- Creates a balance of land uses based upon demands of residential population for the nonresidential needs of an area.
- Provides uses, densities, and intensities of use and urban form that would remediate an existing or planned development pattern in the vicinity that constitutes sprawl or if it provides for an innovative



development pattern such as transit-oriented developments or new towns as defined in s. 163.

### **Urban Infill and Redevelopment**

The "Growth Policy Act" (Chapter 163.2511) declares that:

- Fiscally strong urban centers are beneficial to regional and state economies and resources and for the reduction of future urban sprawl.
- Healthy and vibrant urban cores benefit their respective regions conversely, the deterioration of those urban cores negatively impacts the surrounding area
- Governments need to work in partnership with communities and the private sector to revitalize urban centers
- State urban policies should guide in preserving and redeveloping existing urban cores and promoting the adequate provision of infrastructure, human services, safe neighborhoods, educational facilities, and economic development to sustain these cores
  - through an integrated and coordinated community effort
  - incentives to promote urban infill and redevelopment

Local government comprehensive plans and implementing land development regulations must include strategies which maximize the use of existing facilities and services through redevelopment, urban infill development, and other strategies for urban revitalization.

A local government may designate a geographic area or areas within its jurisdiction as an urban infill and redevelopment area for the purpose of targeting economic development, job creation, housing, transportation, crime prevention, neighborhood revitalization and preservation, and land use incentives to encourage urban infill and redevelopment within the urban core. Such a designation requires an amendment of the Comprehensive Plan and must include:

- a collaborative and holistic community participation process that encourages communities to participate in the design and implementation of the plan, in-

cluding a "visioning" of the urban core;

- ongoing involvement of stakeholder groups including community-based organizations, neighborhood associations, financial institutions, faith organizations, housing authorities, financial institutions, existing businesses, businesses interested in operating in the community, schools, and neighborhood residents;
- the neighborhood participation process must include a governance structure whereby the local government shares decision making authority with communitywide representatives.

A local government seeking to designate an urban infill and redevelopment area must prepare a plan demonstrating the local government and community's commitment to comprehensively address the urban problems. The plan must:

- identify activities and programs to accomplish locally identified goals
- identify enterprise zones, community redevelopment areas, community development corporations, brownfield areas, downtown redevelopment districts, safe neighborhood improvement districts, historic preservation districts, and empowerment zones or enterprise communities
- identify a memorandum of understanding with the district school board regarding public school facilities
- identify each neighborhood within the proposed area
- state community preservation and revitalization goals and projects identified through a collaborative and holistic community participation process
- identify how the local government and community-based organizations intend to implement affordable housing programs
- identify strategies for reducing crime.
- identify and adopt a package of financial and local government incentives such as:
  - waiver of license and permit fees

**Urban infill and redevelopment is necessary to maintain healthy urban centers. Florida's planning process emphasizes the importance of infill and redevelopment and provides techniques and incentives to achieve this objective**

- exemption of sales from local option sales surtaxes
- waiver of delinquent local taxes or fees
- expedited permitting
- lower transportation impact fees
- prioritization of infrastructure spending
- local government absorption of developers' concurrency costs.

- Identify the governance structure

The 2005 Florida Legislature provided additional incentives for the designation of urban infill and redevelopment areas. Notably, development within a designated urban infill and redevelopment area is exempt from Development of Regional Impact (DRI) review provided (1) the local government has entered into a binding agreement with the Department of Transportation and with impacted jurisdictions to mitigate impacts and state and regional facilities and (2) has adopted a proportionate share methodology.

### **Water Supply**

Adequate water supply is critical to all Floridians. Growth places enormous demands on the State's water resources and the management of these resources is receiving considerable statewide attention.

The 2005 Florida Legislature coupled growth management reform with water resource protection and sustainability to ensure that:

- potable water provisions of local comprehensive plans are firmly linked with the water management districts' regional water supply plans. Local plans include availability of water supplies and public facilities to meet existing and projected water use demands;
- local plans include a work plan for building public, private and regional water supply facilities to meet projected needs;
- local plans identify alternative water supply projects, including conservation and reuse, necessary to meet the water needs identified within the local government's jurisdiction;

- funding alternative water supply development is a shared responsibility between local water providers, users, the water management districts and the State;
- proposed uses of the same source by more than one local government are identified;
- in addition to the treatment and distribution facilities being ready for new development, a confirmed source of raw water is identified to send to the facilities;

### **Evaluating the Comprehensive Plan**

Each local government shall determine at least every seven years whether plan amendments are necessary to reflect changes in state requirements since the last update of the comprehensive plan and notify DCA by letter on its determination. DCA publishes a schedule indicating to local government when such determination should be made.

If the local government determines that such amendments are necessary, then the plan amendments will be prepared and transmitted to DCA within one year of the determination.

If the local government fails to either timely notify DCA of its determination to update the comprehensive plan or to transmit such update amendments, it may not amend its comprehensive plan until it complies with these requirements.

Amendments submitted to DCA to update comprehensive plans will be reviewed through the *state coordinated process*.

### **Amending the Comprehensive Plan**

The Community Planning Act significantly altered the process for amending the local government comprehensive plan. The Act eliminated the "twice-a-year" restriction and established three distinct review procedures:

- Expedited State Review Process
- State Coordinated Review Process
- Small Scale Amendments

### **Expedited State Review**

**Local comprehensive plans are required to consider the Regional Water Supply Plan and to include a ten-year work plan for constructing water supply facilities.**

Most comprehensive plan amendments are expected to follow the Expedited State Review Process.

**Step 1: Local Planning Agency (LPA) Stage—** The LPA conducts at least one public hearing on the comprehensive plan amendment in accordance with the public notice requirements established by statute.

**Step 2—Transmittal Stage—**The governing body considers transmittal of the proposed amendment at a public hearing in accordance with the notice requirements established by statute.

**Step 3—Proposed Amendment Package—**The local government prepares the Proposed Amendment Package and submits the package to the State Land Planning Agency and to the state, regional agencies and local agencies identified by the statutes.

**Step 4—Review and Comment Stage—**The State Land Planning Agency and the review agencies send comments directly to the Local Government. Comments must be received by the Local Government within 30 days.

**Step 5—Adoption Stage—**The Local Government (governing body) holds its second public hearing within 180 days of receipt of agency comments. If adopted (by ordinance), the Local Government transmits the adopted amendment package to the State Land Planning Agency. The State Land Planning Agency has 5 days to determine completeness of the adopted amendment package.

**Step 6—Challenge Stage—**Any “affected party” has 30 days from the date the adopted amendment package is deemed complete to file petition challenging the amendment.

**Step 7—Effective Date—**The amendment becomes effective 31 days after the State Land Planning Agency determines the amendment package is complete and no petition is filed by an affected party.

### **State Coordinated Review**

Types of amendments that must follow the State Coordinated Review guidelines include

1. Areas of Critical State Concern
2. Rural Land Stewardship

**Every local government is required to evaluate their progress toward implementing their comprehensive plan at least once every seven years.**

3. Sector Plans
4. Comprehensive Plans based on Evaluation and Appraisal Reports
5. A new plan for newly incorporated municipalities

Step 1: Local Planning Agency (LPA) Stage— The LPA conducts at least one public hearing on the comprehensive plan amendment in accordance with the public notice requirements established by statute.

Step 2—Transmittal Stage—The governing body considers transmittal of the proposed amendment at a public hearing in accordance with the notice requirements established by statute.

Step 3—Proposed Amendment Package—The local government prepares the Proposed Amendment Package and submits the package to the State Land Planning Agency and to the state, regional agencies and local agencies identified by the statutes. The transmittal letter must indicate that the amendment is subject to the State Coordinated Review Process.

Step 4—Review and Comment Stage—The State Land Planning Agency must notify the Local Government and the reviewing agencies that the amendment has been received. Within 30 days of receipt, the reviewing agencies send their comments to the State Land Planning Agency.

Step 5—State Land Planning Agency Review—Within 60 days of receipt of the complete amendment, the State Land Planning Agency issues its Objections, Recommendations and Comments Report (ORC) to the Local Government.

Step 6—Adoption Stage—The Local Government (governing body) holds its second public hearing within 180 days of receipt of agency comments. If adopted (by ordinance), the Local Government transmits the adopted amendment package to the State Land Planning Agency with a copy to any other agency or local government that provided comments. The State Land Planning Agency has 5 days to determine completeness of the adopted amendment package.

Step 6— Challenge Stage—Any “affected party” has 30 days from the date the adopted amendment package is deemed complete to file petition challenging the amendment.

Step 7—Effective Date—Within 45 days of receipt of a

complete adopted plan amendment, the State Land Planning Agency issues Notice of Intent to find the plan “in compliance” or “not in compliance”

The plan amendment goes into effect if the State Land Planning Agency finds the amendment “in compliance” and no challenge is filed by an affected party.

### **Small Scale Amendments**

Local governments may adopt small scale amendments under the following conditions:

1. The proposed amendment involves a use of 10 acres or fewer;
2. The cumulative annual effect of the acreage for all small scale development amendments adopted by the local government does not exceed a maximum of 120 acres in a calendar year.
3. The proposed amendment does not involve a text change to the goals, policies, and objectives of the local government’s comprehensive plan, but only proposes a land use change to the future land use map for a site-specific small scale development activity. However, text changes that relate directly to, and are adopted simultaneously with, the small scale future land use map amendment shall be permissible under this section.

**Step 1— Local Planning Agency (LPA) Stage—** The LPA conducts at least one public hearing on the comprehensive plan amendment in accordance with the public notice requirements established by statute.

**Step 2—Adoption Stage—**The Local Government (governing body) holds a public hearing to consider the small scale amendment in accordance with the notice requirements prescribed by statute.

**Step 3—Effective Date—** The plan amendment goes into effect upon adoption (by ordinance) by the governing body.

The Local Government is invited (but not required) to transmit a copy of the small scale amendment to the State Land Planning Agency.





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## Chapter Six - Implementing the Comprehensive Plan

The Florida legislature intends that the Comprehensive Plan be implemented. The Plan must describe how programs, activities and land development regulations will be initiated, modified or continued to implement the Comprehensive Plan

Each local government in Florida is required to adopt and enforce land development regulations that are consistent with the Comprehensive Plan

### Land Development Regulations

***Relationship of comprehensive plan to exercise of land development regulatory authority.-*** -It is the intent of this act that adopted comprehensive plans or elements thereof shall be implemented, in part, by the adoption and enforcement of appropriate local regulations on the development of lands and waters within an area.

***Plan Implementation Requirements.*** Recognizing that the intent of the Legislature is that **local government comprehensive plans are to be implemented.....**, the sections of **the comprehensive plan containing goals, objectives, and policies shall describe how the local government's programs, activities, and land development regulations will be initiated, modified or continued to implement the comprehensive plan in a consistent manner.....**

#### ***Land development regulations***

..... each county and each municipality shall adopt .... and enforce land development regulations that are consistent with and implement their adopted comprehensive plan.

Local land development regulations shall contain specific and detailed provisions necessary or desirable to implement the adopted comprehensive plan ... as a minimum:

- ***subdivision of land;*** must meet the requirements of Chapter 177, Part I, F.S., and include review procedures, design and development standards, provisions for adequate public facilities, mitigation of development impacts, land dedications,

*fees, and administrative provisions.*

- ***the use of land and water ...*** *The implementation of the land use categories in the Future Land Use Element consistent with the future land use map and goals, objectives and policies, including provisions for ensuring appropriate densities and intensities, compatible adjacent land uses and providing for open spaces.*
- ***protection of potable water wellfields ...*** *The control of land uses and activities that may affect potable water wells and wellfields, including identified cones of influence, in order to protect the potable water supply.*
- ***seasonal and periodic flooding .... provide for drainage and stormwater management;*** *The control of areas subject to seasonal and periodic flooding which may include the type, location, density and intensity of land uses located within these areas, in order to provide for drainage and stormwater management and mitigate the impacts of floods, including loss of life and property damage. Adequate drainage facilities may be provided to control individual and cumulative impacts of flooding and nonpoint source pollution in drainage basins existing wholly or in part within the jurisdiction.*
- ***protection of environmentally sensitive lands ....;*** *The protection of environmentally sensitive lands, as designated in the comprehensive plan, from development impacts, including ensuring the protection of soils, groundwater, surface water, shorelines, fisheries, vegetative communities and wildlife habitat.*
- ***signage;*** *The regulation of signage, including but not limited to type, location, size, number and maintenance.*
- ***public facilities and services*** *meet or exceed the standards established in the capital improvements element ..... and are available when needed for the development, ....(concurrency): Provisions assuring that development orders shall not be issued unless public facilities and services which*

**The Land Development Regulations must be "consistent" with the Comprehensive Plan**

**The Land Development Regulations must be "compatible with", "further" and "implement" the Comprehensive Plan.**

*meet or exceed the adopted level of service standards are available concurrent with the impacts of the development.*

- **safe and convenient onsite traffic flow, .....**  
*The number and sizes of on-site parking spaces, and the design of and control mechanisms for on-site vehicular and pedestrian traffic to provide for public safety and convenience.*

*The Community Planning Act also encourages the use of innovative land development regulations. Examples cited in the statute include the transfer of development rights, incentive zoning, inclusionary zoning, planned unit development, impact fees and performance zoning.*

### **Criteria for Determining Consistency of Land Development Regulations with the Comprehensive Plan.**

**A determination of consistency** of a land development regulation with the comprehensive plan will be based upon the following:

- Characteristics of land use and development allowed by the regulation in comparison to the land use and development proposed in the comprehensive plan. Factors which will be considered include:
  - Type of land use;
  - Intensity and density of land use;
  - Location of land use;
  - Extent of land use; and
  - Other aspects of development
- Whether the land development regulations are compatible with the comprehensive plan, further the comprehensive plan, and implement the comprehensive plan. The term "compatible" means that the land development regulations are not in conflict with the comprehensive plan. The term "further" means that the land development regulations take action in the direction of realizing goals or policies of the comprehensive plan.
- Whether the land development regulations include provisions that implement those objectives and policies of the comprehensive plan that require imple-

menting regulations to be realized, including provisions implementing the requirement that public facilities and services needed to support development be available concurrent with the impacts of such development.

## **The Elements of the Land Development Regulation**

**The Land Development Regulation** will contain the following elements.

**The Land Development Regulations will contain some essential elements. The Planning Official should understand how the LDR is organized and the purpose of the components.**

**1. Title, Authority and Purpose.** This section identifies the specific state enabling provision which empowers the locality to adopt land development regulations. It also spells out, in a "statement of purposes," the community's reasons for adopting the ordinance. The statement of purposes links the rules and regulations listed in the ordinance to the community's values and goals.

**2. General Provisions.** General provisions include the overriding rules that apply to all land uses and all parcels throughout the community (rather than a single district) and would answer such questions as, "What if a conflict existed between the zoning ordinance and other regulations adopted by the village?"

**3. Zoning Districts and Allowed Uses.** Text and maps indicating permitted uses and area, height and bulk standards.

**4. Subdivision Regulations.** Standards and procedures governing the subdivision of land.

**5. Design Standards and Improvement Requirements.** Standards for the design and improvements to be satisfied by new development.

**6. Adequate Public Facilities Requirements (Concurrency).** Levels of service and procedures for determining the adequacy of public facilities available to support new development.

**7. Administration and Procedures.** The assignment of administrative responsibilities and the establishment of procedures and guidelines for the administration of the land development regulation.

**Zoning divides a Jurisdiction into districts within which permissible uses are prescribed along with standards for their development.**

**8. Interpretations, Exceptions, Equitable Relief and Enforcement.** Establishes procedures and criteria for variances, interpretations and enforcement.

**9. Definitions.** Definitions are especially important because the general public, as well as the courts, must be able to attach specific meaning to the words and concepts appearing in the ordinance.

## **Zoning**

Zoning may be defined as *the division of a jurisdiction into districts (zones) within which permissible uses are prescribed and restrictions on building height, bulk, layout and other requirements are defined.*

While zoning is plain in concept and easy to understand, it is often complex and difficult in application. Of the decisions that planning officials make, there are few that will equal zoning in terms of the day-to-day impact on the health, safety, and welfare of ordinary people.

In making zoning decisions, the first thing for members of planning commissions and zoning boards of appeal to recognize is that a good zoning decision is full of the possibility of long-lasting, great achievement. Poor zoning decisions, on the other hand, often establish protracted conflict and result in a diminished quality of health, safety, and welfare.

There are two pieces in the zoning puzzle:

- **A zoning text**
- **A zoning map**

### **Zoning Text**

The zoning text explains the rules that apply to each of the districts. These rules typically establish a list of land uses that govern lot size, height of building, required yards and setbacks from front property lines, and so forth. (If a use is not permitted in a district, it is generally prohibited unless allowed under special circumstances).

In the zoning text, each zoning district is typically organized around the following scheme. First, there is a

**The zoning ordinance consists of a zoning text and a zoning map**

**The Zoning text includes a statement of intent specific to each district, a list of uses permitted in each district and a list of "special" or "conditional" uses permitted in each district**

**statement of public purpose or intent** that relates specifically to the district.

The second segment includes **a list of land uses that are permitted in the district** and **a list of land uses that may be permitted under special conditions.**

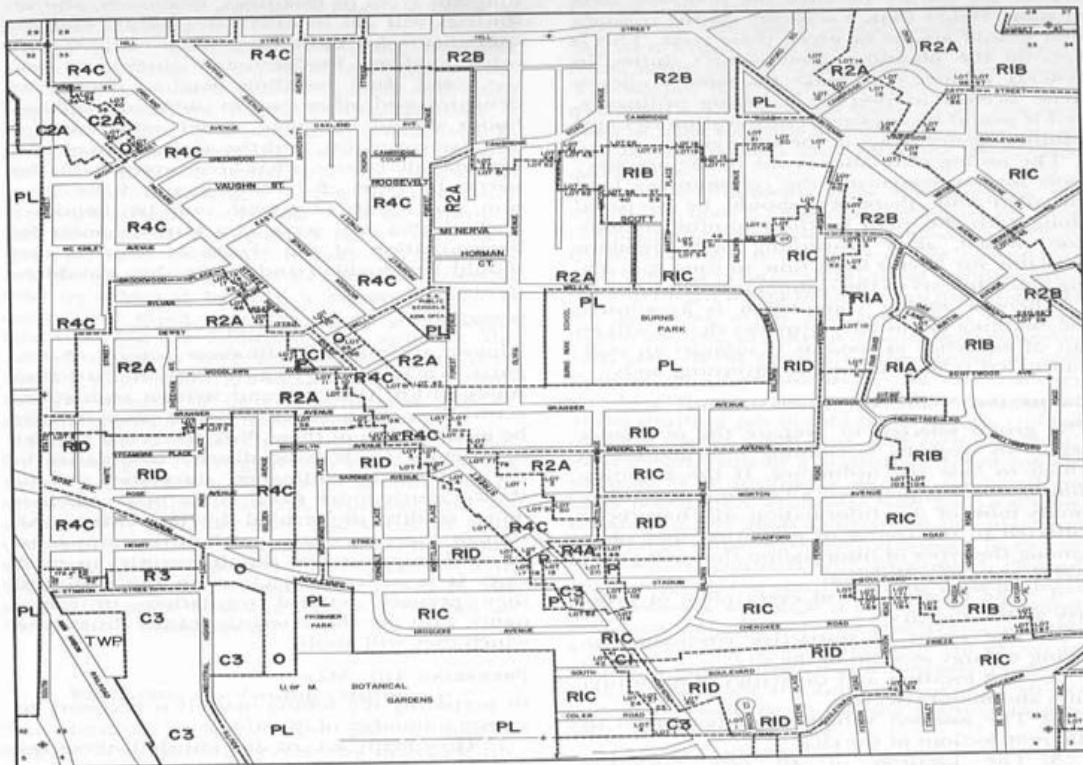
The third **segment sets forth the rules that apply to each of the permitted uses or conditional uses that are provided for in that district.** Each of these special uses must be treated as a unique case. To do so requires the careful evaluation of the proposed use itself as well as the particular site under consideration.

So what's an example of a special use? For example, a city has a zoning district that is called "residential suburban." It is designed for single-family detached homes on lots with a minimum size of 7,200 sq. ft. Single-family homes are, of course, a permitted use in this district. But there are special uses such as convalescent homes, day care facilities, commercial stables, and agricultural uses. These are special uses because they may or may not belong in a specific neighborhood. Consider, for example, the special use "convalescent home." In a typical subdivision, a large convalescent home on a small lot would likely lead to land-use conflicts due to increased traffic around the clock, late night/early morning emergency vehicle operation, and outdoor lighting. Such a use would not be appropriate. However, if the proposed convalescent home were located on a large estate carefully screened from its neighbors and with good access drives, the special use permit may be appropriate.

### **Zoning Map**

The zoning map simply illustrates how the entire area of a community is classified and divided up into distinct zoning districts. Every parcel of land within the community may be identified as being at least in one zoning district. The common zoning districts are residential, commercial, industrial, and agricultural.





**Typical Zoning Map**

**Subdivision regulations provide standards for dividing land into separate parcels. Subdivision regulations deal with converting vacant land into land uses**

**Subdivision regulation (1) legally defines land parcels to facilitate the transfer of title, (2) ensures that public infrastructure is provided and meets minimum standards, (3) ensures that new development properly relates to its surroundings, (4) ensures that land is developed consistent with the Comprehensive Plan**

## Subdivision Regulations

The municipal and county authorization for the regulation of subdivisions is based on state enabling legislation. While the enabling legislation is usually stated in general terms, local jurisdictions are authorized to provide detailed and extensive rules and procedures for regulating subdivisions.

*Subdivision" means 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.*

Subdivision regulations and zoning ordinances are the most important local land -use control mechanisms. One way of differentiating the two - think of zoning as an ordinance that controls what can be on a lot that was created through subdivision regulations.

Subdivision regulations provide standards and a set of procedures for dividing land into separate parcels. By regulating the subdivision of land, regulations provide a method for assuring minimum public safety and amenity standards. Subdivision regulations may be seen as those regulations that deal with converting vacant land into urban uses such as residential neighborhoods, shopping centers, and industrial parks.

The purpose of subdivision regulations is to protect future owners or occupants of newly developed land from unhealthy, unsafe, inadequate developments and to prevent current residents from footing the entire bill.

The original function of subdivision regulations was to accurately and legally define each parcel of land to permit transfer of the lots from one owner to another, and to allow each owner to be very clear about, and have legal claim to, exactly what is owned. This still remains a primary function of subdivision regulations.

From this original purpose, subdivision regulations have come to serve many other purposes. In addition to clearly defining parcels of land, subdivision regulations have an expanded purpose which includes:

- Ensuring that the land within the municipality or county is developed in a manner consistent with the Comprehensive Plan.
- Ensuring that the internal infrastructure of any new subdivision is built to minimum standards of health and safety. Also they ensure the provision of essential public services and functions with minimal long-term maintenance problems.
- Ensuring that developments are appropriately related to their surroundings, both by linking them to existing public facilities and by reducing their negative environmental impact. And, in some cases, to provide funds for off-site and on-site infrastructure and community facility development.

Subdivision regulations typically require an accurate drawing of new property lines on a document called a "plat," which was subsequently recorded at a county recorder of deeds office.

### **Design Standards and Improvement Requirements**

The Land Development Regulation also establishes design standards and improvement requirements for development.

The following components are typically included:

- **Density and Intensity of Land Development.** The density or intensity of land development permitted within the jurisdiction is specified generally by reference to zoning districts. Residential density may be expressed in dwelling units per acre or indirectly regulated through a "minimum lot size" standard. Non-residential intensities are typically expressed as a Floor Area Ratio (FAR).
- **Height and Bulk Regulation.** While the nature of zoning has evolved over time, one prominent fixture of zoning that has undergone little change is the regulation of height and bulk. Height simply deals with the heights of structures that are permitted on a parcel. Bulk is a clumsy term that deals with the relationship between buildings on a parcel and the size of the parcel itself and is normally expressed by setbacks, maximum lot coverage, and

so forth.

- **Infrastructure Design and Improvement Standards.** The general dimensions and design standards for public infrastructure notably streets, water and sewer systems, drainage systems and other facilities typically associated with the subdivision process are prescribed.
- **Transportation System Standards.** Off-street parking standards, driveway and access design, and internal circulation standards are prescribed. Typically, parking standards vary by the land use, so that when a use is permitted in more than one zoning district, the parking requirements remain the same.
- **Stormwater Management/ Floodplain Protection** In Florida, the management of storm-water receives high priority and generally involves review by the respective Water Management District in addition to local government. This section of the LDR establishes the standards for local review and are often identical or similar to the rules of the Water Management District.
- **Protection of Environmentally Sensitive Lands.** Wetlands, wildlife habitat, aquifer recharge areas and other natural resources.
- **Wellfield Protection.** Specific rules governing land development in the vicinity of wellfields that supply potable water
- **Signs.** Signs are highly varied by type and size of land use. In this section of the ordinance, sign regulations are established for each of the land-use districts and often include restrictions on size, location, height, projection, lighting, and so forth.
- **Landscaping.** Requirements for landscaping including rules pertaining to fences or walls.
- **Architectural and Design Guidelines.** Design standards typically applied to specifically identified areas such as historic districts or to development types such a large scale retail.

- **Supplemental Standards for Special Uses.** Standards applied to determine if Special or Conditional uses are permissible in various zoning districts.

### **Concurrency – Adequate Public Facilities**

Florida law requires that adequate public facilities must be in place or programmed at the time development occurs. This provision is referred to as “concurrency”.

The key provisions are:

*....development orders shall not be issued unless public facilities and services which meet or exceed the adopted level of service standards are available concurrent with the impacts of the development. Unless public facilities and services which meet or exceed such standards are available at the time the development permit is issued, development orders shall be specifically conditioned upon availability of the public facilities and services necessary to serve the proposed development.*

The following public facilities are subject to concurrency on a statewide basis i.e. mandatory:

- **sanitary sewer**
- **solid waste**
- **drainage,**
- **potable water,**

The local Comprehensive Plan must establish levels of service for purposes of managing concurrency.

The application of concurrency is optional for

- **transportation**
- **public schools**
- **parks and recreation**

If concurrency is to be applied by local governments for optional elements, levels of service must be established in the Comprehensive Plan and it must be demonstrated that levels of service can be reasonable met.

### **Planned Unit Development**

**Planned development provisions are included in most land development codes to encourage better design.**

**Under this procedure, project-specific plans – if approved by the jurisdiction – substitute for conventional land development regulations.**

Planned development provisions – typically referred to as “planned unit developments” or simply “planned developments” – are included in most land development codes. The provisions are intended to encourage more creative and imaginative design than generally is possible under conventional land development regulations. The procedures allow a specific plan to be submitted and, if approved, to serve as the basis for the land development regulations pertaining to that property i.e. the planned development restrictions substitute for the conventional standards.

The advantages of this approach are obvious. The developer has significantly greater flexibility especially for larger properties and projects that involve multiple uses and utilize clustering to preserve open space and environmental lands.

Planned developments can also more effectively accommodate special conditions such as the buffering of adjoining neighborhoods or the phasing of infrastructure improvements.

The designation of a property as a “PD” is an amendment to the zoning map i.e. a “rezoning”. PD’s also involve a “zoning text” amendment by the inclusion of regulations specific to the property and that implement the specific plan.

### **Traditional Neighborhood Development**

In recent years, Traditional Neighborhood Development or TND has emerged in response to the practices of land segregation and auto-dependent design inherent in the conventional aspects of land development regulation. This form of development encourages mixed-use, compact development, walkability, and interconnected street systems with residences, shopping, employment and recreational uses within close proximity to each other.

Many land development codes now contain regulations designed to implement these concepts. Unlike conventional zoning and subdivision regulation, these regulations require that (1) uses be mixed rather than segregated, (2) the street system be interconnected, (3) buildings especially within and near commercial area be placed close to the street and (4) that parks and open space be open and accessible to the public. Such

**Traditional Neighborhood Development (TND) encourages mixed use, compact development, walkability, and interconnected street systems with residences, shopping, employment and recreational uses in close proximity to each other.**

ordinances will rely less a zoning “by use” in favor of zoning “by building type”. An emphasis is also placed on design in particular the massing and scale of buildings and their relationship to the street and public spaces.

Traditional Neighborhood Development may be incorporated into land development codes in a variety of ways. In some cases, they may take the form of zoning districts (a downtown main street or historic district) and in other cases be offered as an option to conventional development through a planned development approach.

## Special Uses

Special uses – sometimes referred to as “special exceptions”, “conditional uses” or “provisional uses” – are permitted within specified zoning districts provided that prescribed conditions are met. The manner in which “special uses” are applied varies widely among jurisdictions and can represent a broad range of regulation within a single community. Consequently, there is no universal process for the approval of “special uses”, their review will fall into one of three categories:

- **administrative approval** typically involving staff review and approval in the form of a permit. This category normally involves very straightforward conditions leaving little room for interpretation. For example, a church may be permitted in a residential area but with the required minimum lot size is larger than the minimum lot size required for a single-family residence. Such actions do not require public notice nor public hearings.
- **approval by appointed body.** Special uses that involve a degree of discretion are often decided by a planning commission, board of adjustment, zoning board, historical review board, hearing officer or other body authorized by the land development code. Compatibility with the surrounding neighborhood and the potential impact of the special use and traffic and the environment are typical issues to be considered by the approving body. Notice to the public and adjoining property owners is generally required and decisions are made on the basis of staff recommendations and the findings obtained at

**Special uses are permitted within zoning districts provided certain prescribed conditions are met. Planning officials may be serve in a recommending capacity or be delegated the approval authority for special uses depending on the jurisdiction's land development code.**

a public hearing.

- **approval by governing body.** Special uses that are highly complex or have a potential for significant impact require approval by the city or county commission. Although these approvals are not technically considered "rezonings", they will normally follow the same procedure. For example, "borrow pits" may be permitted as a special use in an agricultural zone. Because such facilities have the potential for significant environmental harm and are potentially disruptive to surrounding uses, they may be afforded a higher level of public scrutiny.



**The Administration Section of the Land Development Code is especially important for Planning Officials. This section describes their role in the Development review process, outlines the steps to be followed and clarifies the criteria to be used for decision-making.**

## **Administration and Procedures**

The Administration portion of the Land Development Code describes the administrative procedures, to be applied and establishes the roles and responsibilities of planning officials—both elected and appointed – and the roles and responsibilities of administrative personnel such as the planning director, zoning administrator and others. This is an important section of the Land Development Code since it: (1) details the work or job of the key actors in the development review process, (2) outlines the exact steps that must be taken in carrying out the work, and (3) clarifies the criteria that planning commissioners, zoning board members, zoning administrators, and elected officials must use in making development decisions.

The administration of the Land Development Code involves two types of decisions: ministerial and quasi-judicial.

The vast majority of land development decisions are ministerial and are made by administrative personnel such as the zoning administrator or other administrative officials. These duties involve the direct application of the provisions of the LDR to specific development applications normally in the form of permits (building permits, sign permits, etc.) Typically these decisions allow very little discretion or involve professional discretion within the administrator's field of expertise (for example, the extent of a wetland, compliance with an engineering standard, etc).

The decisions made by Planning Officials will be predominately "quasi-judicial" (there is no reason for decisions that involve no discretion should be placed before a board or commission).

## **Rezoning**

The amendment of the zoning map – generally referred to as **rezoning** - is perhaps the most common decision before planning officials. Typically these decisions involve a change in the zoning designation for a particular property e.g. a rezoning from residential to commercial.

The administration section of the Land Development Code will prescribe the procedures to be followed in

**Rezoning is an amendment of the Zoning map and its approval requires an action of the governing body.**

**Planning officials often serve an important role as a recommending agency.**

processing a rezoning or special use approval. This process will normally include the following steps:

- a pre-application meeting with the staff (this meeting may be required or may be informal)
- a formal application for rezoning (or other action) notice to the public and to affected property owners
- a professional review and recommendation
- a public hearing and recommendation by the Planning Commission (or hearing officer)
- a public hearing by the governing body.

It is important to remember that rezoning decisions in Florida are "quasi-judicial". At the same time they are often very controversial and the tendency to respond through emotion or personal preference can be very strong. So what are the right questions to ask? Here are some suggestions.

- Is the proposed rezoning consistent with the comprehensive plan and its land-use plan map? If not, should the Comprehensive Plan be modified before the rezoning proceeds. If the rezoning is consistent, proceed.
- Any rezoning will affect other zoning districts. Identify all abutting zoning districts and ask yourself if the proposed rezoned area is generally compatible with surrounding districts. A useful technique here is to compare lists of the permitted and special uses in each district.
- Often an applicant will seek a specific map amendment for the purpose of operating one specific type of business. Be careful. When you approve a rezoning you are approving *any* of the permitted uses for that district, and you are opening the door for any of the special uses for that district. It is poor practice to approve a rezoning for the purpose of allowing a particular permitted use unless one is fully prepared to accept any of the permitted or special uses for that newly rezoned area.

While land use generally changes slowly over time, land uses do change, and rezoning is a fact of planning life. There are new technologies, shifting lifestyles, and long-term economic forces that lead to changes of the zoning. Remember that planning matters first, zoning second. In considering a rezoning, ask yourself wheth-

**A “variance” is a minor adjustment to the provisions of the land development code. To be granted, its must meet certain prescribed criteria enunciated in the code**

er this application represents a substantive shift in land-use planning. If there have been several such applications, it is likely that the matter needs to be considered first in the context of the comprehensive plan.

## **Variances**

A variance is a minor exception to the zoning rules that if granted by proper authority, allows an applicant to do what could not otherwise be legally done. The key phrase is *minor exception*.

Typical zoning rules are spelled out so that an applicant either meets the zoning rules or does not. A lot either meets the minimum lot size specified in the zoning ordinance or it does not. A building height is either at or below the maximum zoning height or it is not.

Variances, or minor exceptions to the zoning rules, are designed to deal with the myriad cases in which some proposal nearly or just about meets the zoning rules, but not quite. Obviously, it would be unreasonable, in most cases, to reject a zoning application featuring, say, a lot size of 8,499 sq. ft. In a zone requiring a minimum lot size of 8,500 sq. ft. The variance process allows you to grant minor relief from strict zoning standards under specific conditions.

## **Evaluating Variances**

Your Land Development Code should spell out both the process that must be used in treating variances and the standards that must be used in evaluating variances. The process used in treating variances is usually spelled out in great detail and must be followed to the letter.

The standards for evaluating variances are also spelled out but they often leave considerable room for interpretation. Since the substance of the normal variance application is usually close to meeting zoning standards, the question becomes, how close is it to meeting those standards?

What are some typical standards and things to consider? While there are differences between states, the overriding theme is this: variances may be granted only for minor changes to zoning standards.

The word "minor" means small, almost trivial, changes to the zoning standards. Thus, variances cannot be given to "uses" within districts—that is, if some use is not a permitted or special use in a zoning district, then the variance procedure cannot be used to allow a use that would otherwise be prohibited. In addition to this theme of minor changes, there are other common considerations.

- Unique: The hardship caused by zoning standards is unique to the property and is not shared by neighbors and other similar properties.
- Effect: The effect of the zoning standards is to deny a property owner reasonable use of the property.
- Self-imposed: The applicant did not bring the burden upon himself or herself through some action, but instead had the burden imposed upon them.
- Consequence: The variance should not be nonconforming, nor should it be used to allow a nonconforming land use or parcel to continue.

In addition to these common considerations, local officials should also consider whether the applicant has shown that:

- The variance would comply with the statement of public purpose or intent for the zoning ordinance generally and the zoning district under consideration specifically.
- The variance will not harm nearby properties.
- The variance will not harm people associated with nearby properties.
- The variance will not change the character of the nearby area.
- The variance is the minimum necessary to permit reasonable use of the property.

### **Nonconforming Uses and Lots**

Zoning ordinances are adopted to bring order, stability, and predictability to land uses within a community.

**Nonconformities (uses and dimensions) are often created when land development codes are adopted or amended. If the condition preexisted, it creates a "legal" nonconformity.**

**The land development code will contain provisions describing the treatment of nonconformities.**

This doesn't happen overnight because new zoning rarely, if ever, starts with a clean slate-some development preceded it. This means that as soon as the ordinance is adopted, the problem of nonconformance exists.

Nonconformance may also be created when a community rezones from one district to another. In either case, the new zoning creates nonconformities because something preexisting does not comply with new limitations on use (e.g. residential only) or dimensions (e.g. minimum lot size or width).

This nonconformity occurs in two primary ways- first, a **"use" nonconformity** may occur when someone is using the land for a purpose that is not permitted in the relevant zoning district. For example, in a newly zoned residential area, there may be a barber shop or diner, neither of which is permitted in a residential district. Thus the barber shop or diner would be a nonconforming use. Indeed, any use that is not permitted in the district by right or a special! conditional use is a nonconforming use. If the use is otherwise legal (i.e. not violating some other law), **it is a legal nonconforming use.**

In the same residential district, there are two homes on lots that have 30-foot front yards instead of the 40 feet required for the zoning district.

These two lots are nonconforming. Each parcel in our community must meet all of the zoning standards governing such things as lot size, lot width, lot depth, and setbacks, or the lot becomes legally nonconforming. So we have two basic types of nonconformance: nonconforming uses and nonconforming lots.

What's to be done about these legally nonconforming uses and lots? Generally, the following rules underpin the treatment of non-conformities.

Rule 1: Don't let them expand.

Rule 2: Help them contract.

Rule 3: Avoid deterioration by encouraging maintenance and repair.

Rule 4: No stops and starts.

Remember, for a legal nonconforming situation to occur, the use or lot must be nonconforming and legal at the time the zoning ordinance was first adopted or later amended. Anything else is a zoning violation.

### Subdivision Review

The subdivision process typically includes the following **three steps: (1) pre-application conference (often with sketch plan), (2) preliminary plat submission, and (3) final plat submission.** This process results in the recording of a final plat - defined as the map of the development identifying the location and boundaries of streets' rights-of-way, individual lots or parcels, and other site information.

Although most jurisdictions utilize these three steps, the review and approval process can vary widely. The only absolute requirement is that **the governing body accept the final plat and by so doing accept dedication of roadways, water and sewer systems and other public facilities. They may delegate other aspects of the review to their professional staff and/or to an appointed body.** Planning commissions have traditionally played an important role in subdivision review.

Frequently a distinction is made between "minor" and "major" subdivisions based on the number of parcels or some other criteria, in which case a streamlined process may be allowed. The following example illustrates the differences:

- **Minor Subdivision.** Any subdivision containing not more than three lots fronting on an existing street, not involving any new street or road, or the extension of municipal facilities or the creation of any public improvements, and not adversely affecting the remainder of the parcel or adjoining property, and not in conflict with any provision or portion of the master plan, official map, zoning ordinance, or these regulations.
- **Major Subdivision.** All subdivisions not classified as minor subdivisions, including but not limited to subdivisions of four or more lots (or some other threshold established by the LDR), or any size subdivision requiring any new street or extension of the local government facilities or the creation of

any public improvements.

**Each city and county must ensure that adequate facilities are in place to support development.**

**Fiscal management and the financing of infrastructure to support anticipated growth are important planning issues.**

## Fiscal Tools

The planning process must concern itself with fiscal matters in addition to its regulatory role. Every growing community must be concerned about how it will pay for the roads, water and sewer systems, drainage systems, recreation facilities, fire and police stations, schools and public buildings it will need to support its growth.

As previously discussed, each city and county must have a "concurrency management system" to assure that adequate facilities are in place to support development. This system is based on "levels of service" specified in the comprehensive plan and it is closely tied to fiscal management tools and techniques utilized by local government.

In the fiscal arena, the *planning official* needs to have a general knowledge of the primary fiscal tools and techniques related to planning and growth management.

- **Capital improvement programs** and the **capital improvement element**
- **Development impact fees**
- **Fiscal impact analysis**
- **Development agreements**
- **Community development districts**

## Capital Improvements Programming

The *capital improvements program (CIP)* is the multi-year scheduling of public infrastructure (physical improvements). The scheduling is based on assessments of need and community priorities for specific improvements to be constructed for a period of five or six years into the future. The CIP is typically accompanied by a *capital improvements budget* including facilities to be constructed in the next fiscal year. These documents are adopted for a local government as part of their budget process.

Major transportation improvements normally have their genesis at the Metropolitan Planning Organization (MPO) level in the form of a Transportation Improvement Program (TIP). MPO's offer a regional perspective



and exist to plan and coordinate a regional approach to mobility. Local government CIPs will generally reflect the TIP with regard to transportation.

The Capital Improvements Element (CIE) links the comprehensive plan to CIP. The CIE is a required element of the comprehensive plan. The Community Planning Act provides as follows:

- .....*The comprehensive plan shall contain a capital improvements element designed to consider the need for and the location of public facilities in order to encourage the efficient utilization of such facilities and set forth:*
- .....*[will include] a component which outlines principles for construction, extension, or increase in capacity of public facilities, as well as a component which outlines principles for correcting existing public facility deficiencies, which are necessary to implement the comprehensive plan. The components shall cover at least a 5- year period.*
- .....*[will include] estimated public facility costs, including a delineation of when facilities will be needed, the general location of the facilities, and projected revenue sources to fund the facilities.*
- .....*[will include] Standards to ensure the availability of public facilities and the adequacy of those facilities including acceptable levels of service.*
- .....*[will include] A schedule of capital improvements which includes publicly funded projects, and which may include privately funded projects ..... necessary to ensure that adopted level-of-service standards are achieved and maintained. For capital improvements that will be funded by the developer, financial feasibility shall be demonstrated by ... an enforceable development agreement ...*
- *The schedule must include transportation improvements included in the applicable metropolitan planning organization's transportation improvement program to the extent that such improvements relied upon to ensure concurrency and financial feasibility. The schedule must also be coordinated with applicable metropolitan planning organization's long -range transportation plan.*

**Development impact fees are scheduled charges applied to new development to generate revenue for the construction or expansion of capital facilities located outside the boundaries of the new development (off-site) that benefit the contributing development**

## **Development Impact Fees**

Development impact fees are scheduled charges applied to new development to generate revenue for the construction or expansion of capital facilities located outside the boundaries of the new development (off-site) that benefit the contributing development. Impact fees are generally imposed as a condition for development approval. As such, they fall within the general system of land development regulation as contrasted with revenue-raising (taxation) programs.

In Florida, development impact fees are widely used. They are closely linked with "concurrency" and are assessed for a variety of capital facilities including roads, water and sewer, parks and recreation, fire and EMS, law enforcement, public buildings and schools.

In Florida, there is no specific state statute directly authorizing their use or governing their application. Rather, the application of development impact fees has arisen as a legitimate exercise of government through case law. The Florida Supreme Court found that development impact fees are permissible provided that:

1. There must be a reasonable connection between the need for additional facilities and the growth resulting from new development.
2. The fees charged must not exceed a proportionate share of the cost incurred or to be incurred in accommodating the development paying the fee.
3. There must be a reasonable connection between the expenditure of the fees collected and the benefits received by the development paying the fees.

***Fiscal Impact Analysis Model (FIAM)* is available for application by local government for planning and land use decisions.**

**Local governments may enter into *development agreements* with land owners for public improvements and other conditions associated with land developments. These agreements may be in force for up to 30 years during which time the developer is vested against regulatory changes.**

## **Fiscal Impact Analysis**

In 2002, the Florida Department of Community Affairs commissioned the development of a *Fiscal Impact Analysis Model* (FIAM) designed to improve local government land use decision-making. The model provides a tool to quantify the fiscal impact (cost and revenue effects) of land use decisions. The model is available for application by local governments.

## **Development Agreements**

A local government may enter into *development agreements* with landowners or developers for the provision of infrastructure or other actions of public benefit related to a land development. These agreements are typically associated with large scale development and are created during the development review process.

The local government must establish procedures and requirements for development agreements before this technique may be applied. At a minimum the development agreement must include the following:

- the duration of the agreement ( a maximum of thirty years),
- the development uses permitted
- the public facilities to be provided
- the lands to be dedicated or reserved for public use
- a listing of permits approved and/or needed
- a finding of consistency with the comprehensive plan
- a description of terms and conditions

The development agreement has several advantages. For the community, the public improvements, land dedications and conditions associated with a large development can be contractually committed. This approach supplements the regulatory requirements and is generally easier to enforce and manage. The developer gets certainty but most importantly is vested against changes in regulations for the duration of the agreement.

## **Community Development Districts**

Florida has enabled the creation of community development districts (CDDs) that can provide number of

***Community Development Districts* are frequently used in Florida to provide a broad range of facilities and services to new development.**

**CDD's require local government consent and are typically created during the development review process for large scale projects.**

services usually associated with large new developments, including the construction and operation of systems for water supply, wastewater management, stormwater management, streets, and street lighting. With the consent of the local governing body, the district might also provide recreational facilities, fire protection, school buildings, security facilities and services, solid waste management, and mosquito control. CDDs have been able to respond to pressures of growth that have strained the economic and growth management capacities of Florida's local governments.

Because CDD's require the consent of the local government and are normally associated with new development, planning officials are likely to encounter this particular type of special district.

**The Florida Legislature has recognized that healthy urban centers are beneficial and has established mechanisms that promote infill and facilitate redevelopment.**

**The Community Redevelopment Act of 1969 grants unique Powers to local government to facilitate redevelopment of urban areas**

## Infill and Revitalization

The Florida Legislature has recognized that

- fiscally strong urban centers are beneficial to regional and state economies and resources and for the reduction of future urban sprawl.
- health and vibrancy of the urban cores benefit their respective regions. Conversely, the deterioration of those urban cores negatively impacts the surrounding area.
- respective governments need to work in partnership with communities and the private sector to revitalize urban centers.
- state urban policies should guide in preserving and redeveloping existing urban cores and promoting the adequate provision of infrastructure, human services, safe neighborhoods, educational facilities, and economic development to sustain these cores
- infill development and redevelopment are recognized to be important components and useful mechanisms for promoting and sustaining urban cores.

Florida statutes provide two important techniques for addressing infill and redevelopment: (1) Community Redevelopment Areas and (2) Urban Infill and Redevelopment Areas.

## Community Redevelopment Areas

The Community Redevelopment Act of 1969 authorizes the primary redevelopment powers for Florida cities and counties. These unique redevelopment powers include;

- The ability to buy property for resale to another private person or organization. When land use patterns or construction do not allow for modern use and development, the authority may acquire properties for consolidation or reconfiguration to enable private, market-based development to occur. No other local public agencies are so directly and actively involved in the private real estate market.

- The authority to use the power of eminent domain (condemnation) to acquire private property. Eminent domain is a powerful tool that redevelopment agencies use with great caution. Although every property is subject to governmental exercise of "eminent domain" for public purposes, redevelopment authority goes further by authorizing the use of this power to "take" private property, upon the paying of a fair market price. The agency may then resell the property to another private organization so long as the subsequent use carries out the redevelopment plan. This power is sparingly used in Florida because of its controversial nature and the high cost of condemnation.
- The power to collect property tax "increment" to finance redevelopment activities. A redevelopment agency has no power to levy a tax of any kind nor does it have any power to affect the distribution of property tax dollars. Rather, the property taxes within the defined "community redevelopment area" are frozen and the increase or "increment" of property taxes collected after that date may be diverted for redevelopment purposes.

Four steps are required to utilize the redevelopment powers authorized under the Community Redevelopment Act of 1969:

- **A community redevelopment area (CRA) must be established.** The powers granted under the act only apply within this prescribed area or district.
- There must be a **"finding of necessity"**. The exercise the extraordinary powers granted for redevelopment, the local government must show that the need for redevelopment exists. The statutes contains a list of conditions that may meet this test and a detailed study is typically conducted to document the presence of these conditions within the redevelopment area.
- A **Community Redevelopment Authority** must be created to oversee the redevelopment activities.
- A **Community Redevelopment Plan** must be adopted before the redevelopment powers may be exercised.

**The Urban Infill and Redevelopment Plan is a powerful and comprehensive mechanism for the revitalization of urban areas.**

## **Urban Infill and Redevelopment Areas**

A local government may designate a geographic area or areas within its jurisdiction as an *urban infill and redevelopment area* for the purpose of targeting economic development, job creation, housing, transportation, crime prevention, neighborhood revitalization and preservation, and land use incentives to encourage urban infill and redevelopment within the urban core.

This mechanism can include "community redevelopment areas" with the attendant redevelopment powers described previously but is intended as **a more comprehensive planning technique**. Its key elements include:

- **a collaborative and holistic community participation process** that encourages communities to participate in the design and implementation of the plan, including a "visioning" of the urban core. This process requires the ongoing involvement of stakeholder groups including community-based organizations, neighborhood associations, financial institutions, faith organizations, housing authorities, financial institutions, existing businesses, businesses interested in operating in the community, schools, and neighborhood residents. In addition, the neighborhood participation process must include a governance structure whereby the local government shares decisionmaking authority with communitywide representatives.
- **an urban infill and redevelopment plan** that demonstrates the local government and community's commitment to comprehensively address the urban problems. This plan must:
  - identify activities and programs to accomplish locally identified goals such as code enforcement; improved educational opportunities; reduction in crime; neighborhood revitalization and preservation; provision of infrastructure needs, including mass transit and multimodal linkages; and mixed-use planning to promote multifunctional redevelopment to improve both the residential and commercial quality of life in the area.

- identify enterprise zones, community redevelopment areas, community development corporations, brownfield areas, downtown redevelopment districts, safe neighborhood improvement districts, historic preservation districts, and empowerment zones or enterprise communities
- execute a memorandum of understanding with the district school board regarding public school facilities
- identify each neighborhood within the proposed area
- identify how the local government and community-based organizations intend to implement affordable housing programs and reduce crime.
- **provide guidelines for the adoption of land development regulations**
- **financial and regulatory incentives.** The urban infill and redevelopment plan must also identify financial and regulatory incentives such as the *waiver of license and permit fees, exemption of sales made in the urban infill and redevelopment area from local option sales surtaxes, waiver of delinquent local taxes or fees, expedited permitting, lower transportation impact fees, prioritization of infrastructure spending, and local government absorption of developers' concurrency costs.*





**Many Florida Communities designate *urban service areas* in their comprehensive plans. The urban service area boundaries represent the outer limits of urban development over the planning period and include enough land to accommodate anticipated growth**

## **Growth Management Techniques**

### **Urban Service Areas**

**Urban service areas** refers to those areas in and around existing communities which are deemed most suitable for urban development and capable of being provided with a full range of urban services. Urban service areas are typically designated by the comprehensive plan.

Urban services include the public services normally provided or needed in urban areas. Transportation facilities, public water supply and distribution systems, sanitary sewerage systems, higher levels of police and fire protection, solid waste collection, urban storm-water management systems, recreation facilities, schools and public buildings all require public investment to maintain levels of service as an urban area expands.

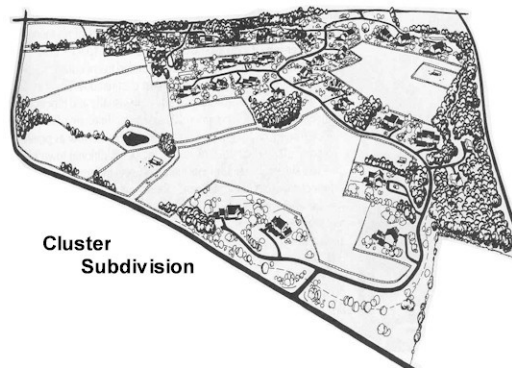
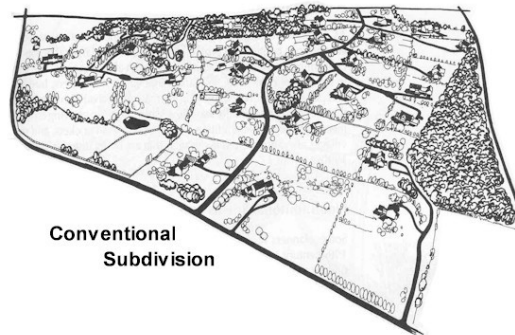
The urban service area boundaries represent the outer limits of planned urban growth over the long-term planning period and include enough to accommodate anticipated growth.

Local governments that adopt an urban service boundary in combination with a community vision may adopt comprehensive plan amendments (within the designated area) without state or regional review. Developments within the urban service boundary are also exempt from DRI review.

**Cluster development can preserve open space and natural resources while reducing development costs .**

### **Clustering – On-Site Density Transfer**

**Clustering** or “on-site density transfer” relocates development away from a particularly sensitive portion of the site to a location more capable of accommodating development impacts. The rationale for cluster development is grounded in environmental and economic concerns. When clustering is permitted, development is placed on that portion of the land parcel that can be developed with the least disturbance. At the same time, developers realize significant savings because shorter roads and utility extensions are required to serve the clustered homes. The advantages of clustering can be achieved at any scale.



**The "transfer of Development rights" (TDR) allows the transfer of development rights from "sending areas" to "receiving areas" through a real estate market transaction. This technique Allows the market to furnish "fair compensation" for rights relinquished through regulatory restrictions**

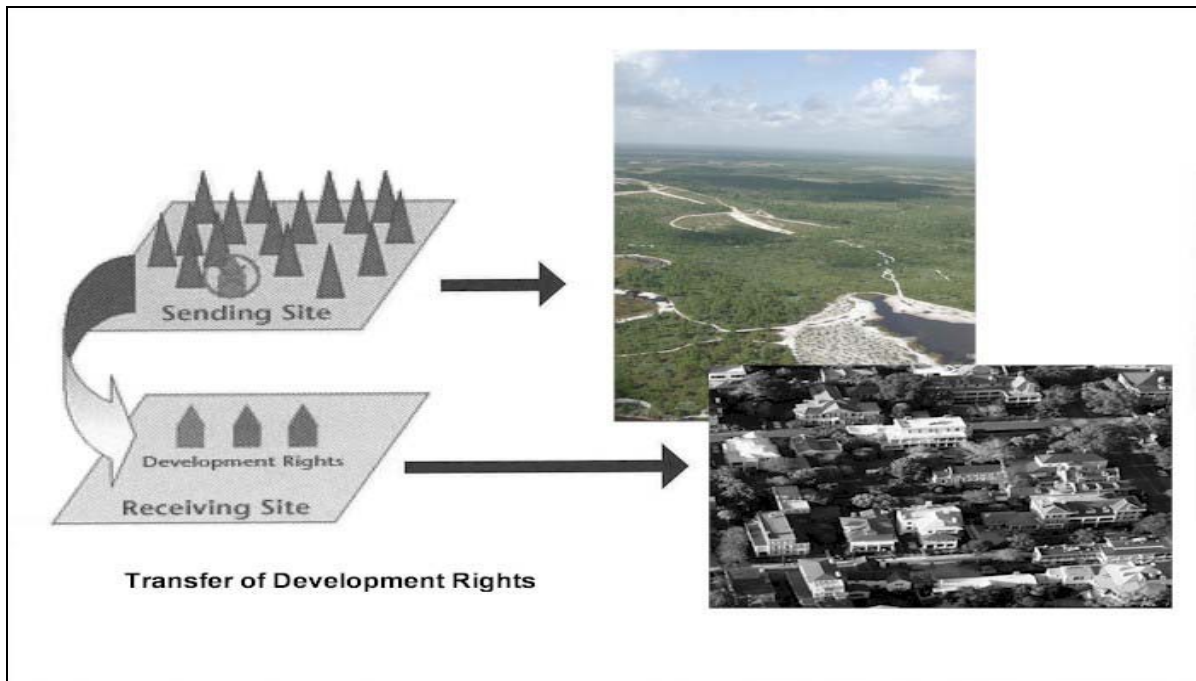
### Transfer of Development Rights

The Transfer of Development Rights (TDR) concept allows landowners in restricted areas (or "sending areas") to transfer densities and other development rights to landowners in areas appropriate for higher densities (or "receiving areas").

The usual purpose of TDRs is to ameliorate the harshness of regulatory restrictions. TDRs give planners an alternative to purchasing the land outright or abandoning any attempt to enforce carrying capacity by allowing the market to furnish "fair compensation" for rights relinquished through regulatory restrictions.

Once a landowner sells or transfers the rights for development to another landowner, the land becomes open space at no cost to the local government. The owner is permanently barred from ever building commercial or residential developments on that land, with the same restraint applying to the landowner's heirs or transferees.

There are two basic types of TDR programs. The most



**Rural Land Stewardship Areas provide a mechanism for the establishment of "transfer of development right (TDR) programs for the preservation of rural areas**

common allows the landowner to sell development rights on a piece of property in a sending zone to a developer who then increases the density on another piece of property in the receiving zone (for example, going from one unit per acre to four units per acre). The higher the density that developers are able to realize, the greater the incentive for them to buy development rights.

A second method allows a local government to establish a TDR bank. In this method, property owners who wish to develop at a higher density purchase development rights from the TDR bank, often administered by the local government. The local government can then use these funds to purchase development rights of properties in areas that it wants to protect from urban development.

### **Rural Land Stewardship**

Rural land stewardship areas are designed to establish a long-term incentive based strategy to guide the allocation of land to accommodate land uses in a manner that protects the natural environment, stimulates economic growth, and diversification, and encourages the retention of agriculture and other rural land uses.

Economic and regulatory incentives are provided to landowners outside of established urban areas to conserve and manage vast areas of land (no less than 10,000 acres) for the benefit of the state's citizens and natural environment while maintaining and enhancing the asset value of their landholdings.

The process is initiated by written request of landowners or a private sector initiated amendment to the local government.

The local government may propose a future land use overlay to designate a rural land use stewardship area. The plan amendment designating a rural land stewardship area is subject to the state coordinated plan review process and shall provide criteria for the designation of receiving areas, a process for the implementation of planning and development strategies that provide for a functional mix of land uses, and a mix of densities and intensities that would not be characterized as urban sprawl.

Upon the adoption of a plan amendment creating a ru-

**Sector Plans provide a conceptual overlay plan for an area. These plans when adopted under an agreement with the State may substitute for the DRI approval process.**

ral stewardship area, the local government must establish a rural land stewardship overlay zoning district which shall provide the methodology for the creation, conveyance, and use of stewardship credits.

### **Sector Plans**

The Sector Plan process was established as an alternative to the Development of Regional Impact (DRI) process. The Sector Plan is based on the long-range conceptual master plan for a designated area. Sector plans are intended for substantial geographic areas including at least 15,000 acres of one or more local governmental jurisdictions and are to emphasize urban form and protection of regionally significant resources and facilities.

Sector planning encompasses two levels: a conceptual long-term master plan within the comprehensive plan and detailed specific area plans that implement the conceptual long-term master plan and authorize issuance of development orders.

The long-term master plan and detailed specific area plans may be based on planning periods longer than the planning period in the local comprehensive plan and are not required to demonstrate land use need through the planning periods.

Local development orders approving detailed specific area plans must be submitted to DCA, based on the procedures for a DRI development order. The development order for a detailed specific area plan establishes a date by which the local government agrees not to downzone the property or to reduce the density or intensity of development.

Upon approval of the long-term master plan for the Sector:

- the Metropolitan Planning Organization long-range transportation plan must be consistent with the long-term master plan;
- the water supply projects shall be incorporated into the regional water supply plan;
- a landowner may request a consumptive use permit for the long-term planning period.

## Appendix A: Definitions

**Administration commission** means the Governor and the Cabinet.

**Amendment** means any action of a local government which has the effect of amending, adding to, deleting from or changing an adopted comprehensive plan element or map or map series.<sup>1</sup>

**Capital budget** means the portion of each local government's budget which reflects capital improvements scheduled for a fiscal year.<sup>2</sup>

**Capital improvement** means physical assets constructed or purchased to provide, improve or replace a public facility and which are large scale and high in cost.<sup>3</sup>

**Capital improvement program (CIP)** means the multiyear scheduling of public infrastructure

**Clustering** means the grouping together of structures and infrastructure on a portion of a development site.<sup>4</sup>

**Coastal area** means the 35 coastal counties and all coastal municipalities within their boundaries designated coastal by the state land planning agency.<sup>5</sup>

**Community development district** means a local unit of special-purpose government which is created pursuant to this act and limited to the performance of those specialized functions authorized by this act; the boundaries of which are contained wholly within a single county; the governing head of which is a body created, organized, and constituted and authorized to function specifically as prescribed in this act for the delivery of urban community development services; and the formation, powers, governing body, operation, duration, accountability, requirements for disclosure, and termination of which are as required by general law.<sup>6</sup>

**Compatibility** means a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition.<sup>7</sup>

**Concurrency** means that the necessary public facilities and services to maintain the adopted level of service standards are available when the impacts of development occur.<sup>8</sup>

**Concurrency Management System** means the procedures and/or process that the local government will utilize to assure that development orders and permits are not issued unless the necessary facilities and services are available concurrent with the impacts of development.<sup>9</sup>

**Density** means an objective measurement of the number of people or residential units allowed per unit of land, such as residents or employees per acre.<sup>10</sup>

**Developer** means any person, including a governmental agency, undertaking any development as defined Chapter 380.04 F.S.<sup>11</sup>

**Development** means the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels.<sup>12</sup>

**Development Impact fees** are scheduled charges applied to new development to generate revenue for the construction or expansion of capital facilities located outside the boundaries of the new development (off-site) that benefit the contributing development.

**"Development order"** means any order granting, denying, or granting with conditions an application for a development permit.<sup>13</sup>

**Development of Regional Impact** 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. Chapter 380.06 FS

**Development permit** includes any building permit, zoning permit, plat approval, or rezoning, certification, variance, or other action having the effect of permitting development as defined in this chapter.<sup>14</sup>

**Environmentally sensitive lands** means areas of land or water which are determined necessary by the local government, based on locally determined criteria, to conserve or protect natural habitats and ecological systems.<sup>15</sup>

**Evaluation and appraisal report** means an evaluation and appraisal report as adopted by the local governing body in accordance with the requirements of Section 163.3191, F.S.

**Fiscal impact analysis** means an assessment of the costs incurred and the revenues received by a local government (or other level or entity of government) as the result of a development approval or some other action.

**Floor Area Ratio (FAR)** means the gross floor area of all buildings or structures on a lot divided by the total lot area.

**Goal** means the long-term end toward which programs or activities are ultimately directed.<sup>16</sup>

**Governing body** means the board of county commissioners of a county, the commission or council of an incorporated municipality, or any other chief governing body of a unit of local government.<sup>17</sup>

**Governmental agency** means:<sup>18</sup>

- (a) The United States or any department, commission, agency, or other instrumentality thereof;
- (b) This state or any department, commission, agency, or other instrumentality thereof;
- (c) Any local government, as defined in this chapter, or any department, commission, agency, or other instrumentality thereof;
- (d) Any school board or other special district, authority, or other governmental entity.

**Incentive zoning** means the granting of additional development capacity in exchange for the developer's provision of a public benefit or amenity.

**Inclusionary zoning** means regulations that increase housing choice by the establishment of requirements and providing incentives for the construction of housing to meet the needs of low and moderate-income households.

**Improvements** may include, but are not limited to, street pavements, curbs and gutters, sidewalks, alley pavements, walkway pavements, water mains, sanitary sewers, storm sewers or drains, street names, signs, landscaping .....or any other improvement required by a governing body.<sup>19</sup>

**Intensity** means an objective measurement of the extent to which land may be developed or used, including the consumption or use of the space above, on or below ground; the measurement of the use of or demand on natural resources; and the measurement of the use of or demand on facilities and services.<sup>20</sup>



**Land** means the earth, water, and air above, below, or on the surface, and includes any improvements or structures customarily regarded as land.<sup>21</sup>

**Land development regulation commission** means a commission designated by a local government to develop and recommend, to the local governing body, land development regulations which implement the adopted comprehensive plan and to review land development regulations, or amendments thereto, for consistency with the adopted plan and report to the governing body regarding its findings. The responsibilities of the land development regulation commission may be performed by the local planning agency.<sup>22</sup>

**Land development regulations** include local zoning, subdivision, building, and other regulations controlling the development of land.<sup>23</sup>

**Land use** means the development that has occurred on the land, the development that is proposed by a developer on the land, or the use that is permitted or permissible on the land under an adopted comprehensive plan or land development code.<sup>24</sup>

**Level of service** means an indicator of the extent or degree of service provided by, or proposed to be provided by, a facility based on and related to the operational characteristics of the facility. Level of service shall indicate the capacity per unit of demand for each public facility.<sup>25</sup>

**Local comprehensive plan** means any or all local comprehensive plans or elements or portions thereof prepared, adopted, or amended pursuant to the Local Government Comprehensive Planning and Land Development Regulation Act, as amended.<sup>26</sup>

**New town** means a new urban activity center and community designated on the future land use map and located within a rural area or at the rural-urban fringe, clearly functionally distinct or geographically separated from existing urban areas and other new towns. A new town shall be of sufficient size, population and land use composition to support a variety of economic and social activities consistent with an urban area designation. New towns shall include basic economic activities; all major land use categories, with the possible exception of agricultural and industrial; and a centrally provided full range of public facilities and services.<sup>27</sup>

**Objective** means a specific, measurable, intermediate end that is achievable and marks progress toward a goal.<sup>28</sup>

**Parcel of land** means any quantity of land capable of being described with such definiteness that its location and boundaries may be established, which is designated by its owner or developer as land to be used or developed as a unit or which has been used or developed as a unit.<sup>29</sup>

**Policy** means the way in which programs and activities are conducted to achieve an identified goal.<sup>30</sup>

**Public facilities** means major capital improvements, including, but not limited to, transportation facilities, sanitary sewer facilities, solid waste facilities, water management and control facilities, potable water facilities, alternative water systems, educational facilities, parks and recreational facilities, health systems and facilities, and spoil disposal sites for maintenance dredging in waters of the state.<sup>31</sup>

**Public utility** includes any public or private utility, such as, but not limited to, storm drainage, sanitary sewers, electric power, water service, gas service, or telephone line, whether underground or overhead.<sup>32</sup>

**Purchase of development rights** means the acquisition of a governmentally recognized right to develop land which is severed from the realty and held or further conveyed by the purchaser.<sup>33</sup>

**Regional planning agency** means the agency designated by the state land planning agency to exercise responsibilities under this chapter in a particular region of the state.<sup>34</sup>

**Revenue bonds** means obligations which are payable from revenues derived from sources other than ad valorem taxes on real or tangible personal property and which do not pledge property, credit, or general tax revenue.<sup>35</sup>

**Right-of-way** means land dedicated, deeded, used, or to be used for a street, alley, walkway, boulevard, drainage facility, access for ingress and egress, or other purpose by the public, certain designated individuals, or governing bodies.<sup>36</sup>

**Special district** means a local unit of special purpose, as opposed to general-purpose, government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.<sup>37</sup>

**State land development plan** means a comprehensive statewide plan or any portion thereof setting forth state land development policies.<sup>38</sup>

**State land planning agency** means the Florida Department of Community Affairs.<sup>39</sup>

**Street** includes any access way such as a street, road, lane, highway, avenue, boulevard, alley, parkway, viaduct, circle, court, terrace, place, or cul-de-sac, and also includes all of the land lying between the right-of-way lines as delineated on a plat showing such streets, whether improved or unimproved, but shall not include those access ways such as easements and rights-of-way intended solely for limited utility purposes, such as for electric power lines, gas lines, telephone lines, water lines, drainage and sanitary sewers, and easements of ingress and egress.<sup>40</sup>

**Structure** means anything constructed, installed, or portable, the use of which requires a location on a parcel of land. It includes a movable structure while it is located on land which can be used for housing, business, commercial, agricultural, or office purposes either temporarily or permanently. "Structure" also includes fences, billboards, swimming pools, poles, pipelines, transmission lines, tracks, and advertising signs.<sup>41</sup>

**Subdivision** means 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.<sup>42</sup>

**Suitability** means the degree to which the existing characteristics and limitations of land and water are compatible with a proposed use or development.<sup>43</sup>

**Transfer of Development Rights** means a governmentally recognized right to use or develop land at a certain density, or intensity, or for a particular purpose, which is severed from the realty and placed on some other property.<sup>44</sup>

**Urban service area** means those areas in and around existing communities which are deemed most suitable for urban development and capable of being provided with a full range of urban services. Urban service areas are typically designated by the comprehensive plan.

**Water management district** means a special taxing district which is a regional water management district created and operated pursuant to chapter 373 or chapter 61-691, Laws of Florida, or a flood control district created and operated pursuant to chapter 25270, Laws of Florida, 1949, as modified by s. [373.149](#).<sup>45</sup>

## Endnotes for Definitions

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- <sup>1</sup> Rule 9J-5 FAC
- <sup>2</sup> Rule 9J-5 FAC
- <sup>3</sup> Rule 9J-5 FAC
- <sup>4</sup> Rule 9J-5 FAC
- <sup>5</sup> Chapter 163.3164 F.S.
- <sup>6</sup> Chapter 190.003 F.S.
- <sup>7</sup> Rule 9J-5 FAC
- <sup>8</sup> Rule 9J-5 FAC
- <sup>9</sup> Rule 9J-5 FAC
- <sup>10</sup> Rule 9J-5 FAC
- <sup>11</sup> Chapter 380.031 F.S.
- <sup>12</sup> Chapter 380.04 F.S.
- <sup>13</sup> Chapter 380.031 F.S.
- <sup>14</sup> Chapter 380.031 F.S.
- <sup>15</sup> Rule 9J-5 FAC
- <sup>16</sup> Rule 9J-5 FAC
- <sup>17</sup> Chapter 163.3164 F.S.
- <sup>18</sup> Chapter 380.031 F.S.
- <sup>19</sup> Chapter 177.031 F.S.
- <sup>20</sup> Rule 9J-5 FAC
- <sup>21</sup> Chapter 380.031 F.S.
- <sup>22</sup> Chapter 163.3164 F.S.
- <sup>23</sup> Chapter 380.031 F.S.
- <sup>24</sup> Chapter 163.3164 F.S.
- <sup>25</sup> Rule 9J-5 FAC
- <sup>26</sup> Chapter 380.031 F.S.
- <sup>27</sup> Rule 9J-5 FAC
- <sup>28</sup> Rule 9J-5 FAC
- <sup>29</sup> Chapter 380.031 F.S.
- <sup>30</sup> Rule 9J-5 FAC
- <sup>31</sup> Chapter 186.403 F.S.
- <sup>32</sup> Chapter 177.031 F.S.
- <sup>33</sup> Rule 9J-5 FAC
- <sup>34</sup> Chapter 380.031 F.S.
- <sup>35</sup> Chapter 190.003 F.S.
- <sup>36</sup> Chapter 177.031 F.S.
- <sup>37</sup> Chapter 186.403 F.S.
- <sup>38</sup> Chapter 380.031 F.S.
- <sup>39</sup> Chapter 380.031 F.S.
- <sup>40</sup> Chapter 177.031 F.S.
- <sup>41</sup> Chapter 380.031 F.S.
- <sup>42</sup> Chapter 177.031 F.S.
- <sup>43</sup> Rule 9J-5 FAC
- <sup>44</sup> Rule 9J-5 FAC
- <sup>45</sup> Chapter 186.403 F.S.

## Appendix B: Acronyms

**APA** – American Planning Association

**AICP** – American Institute of Certified Planners

**CIE** – Capital Improvements Element

**CIP** – Capital Improvements Program

**CNU** – Congress for the New Urbanism

**CRA** – Community Redevelopment Authority or Community Redevelopment Area

**DCA** – Florida Department of Community Development

**DEP** – Florida Department of Environmental Protection

**DRI** – Development of Regional Impact

**FAICP** – College of Fellows: American Institute of Certified Planners

**FAPA** – Florida Chapter of the American Planning Association

**FDOT** - Florida Department of Transportation

**FHBA** – Florida Homebuilders Association

**FIOG** – Florida Institute of Government

**FPZA** – Florida Planning and Zoning Association

**FQD** – Florida Quality Development

**LDR** – Land Development Regulation. Synonymous with **ULDR** or **ULDC** sometimes used to indicate a “Unified Land Development Regulation” or “Unified Land Development Code”

**MPO** – Metropolitan Planning Organization. Synonymous with **TPO** sometimes used to indicate a “Transportation Planning Organization”

**PUD** – Planned Unit Development. Synonymous with **PDD** or **PD** sometimes used to indicate a “Planned Development District”.

**RPC** - Regional Planning Council

**TIP** – Transportation Improvements Program

**TND** – Traditional Neighborhood Development

**WMD** – Water Management District

## **Appendix C: AICP Code of Ethics and Professional Conduct**

Adopted March 19, 2005

Effective June 1, 2005

*The Executive Director of APA/AICP is the Ethics Officer as referenced in the following.*

We, professional planners, who are members of the American Institute of Certified Planners, subscribe to our Institute's Code of Ethics and Professional Conduct. Our Code is divided into three sections:

Section A contains a statement of aspirational principles that constitute the ideals to which we are committed. We shall strive to act in accordance with our stated principles. However, an allegation that we failed to achieve our aspirational principles cannot be the subject of a misconduct charge or be a cause for disciplinary action.

Section B contains rules of conduct to which we are held accountable. If we violate any of these rules, we can be the object of a charge of misconduct and shall have the responsibility of responding to and cooperating with the investigation and enforcement procedures. If we are found to be blameworthy by the AICP Ethics Committee, we shall be subject to the imposition of sanctions that may include loss of our certification.

Section C contains the procedural provisions of the Code. It (1) describes the way that one may obtain either a formal or informal advisory ruling, and (2) details how a charge of misconduct can be filed, and how charges are investigated, prosecuted, and adjudicated.

The principles to which we subscribe in Sections A and B of the Code derive from the special responsibility of our profession to serve the public interest with compassion for the welfare of all people and, as professionals, to our obligation to act with high integrity.

As the basic values of society can come into competition with each other, so can the aspirational principles we espouse under this Code. An ethical judgment often requires a conscientious balancing, based on the facts and context of a particular situation and on the precepts of the entire Code.

As Certified Planners, all of us are also members of the American Planning Association and share in the goal of building better, more inclusive communities. We want the public to be aware of the principles by which we practice our profession in the quest of that goal. We sincerely hope that the public will respect the commitments we make to our employers and clients, our fellow professionals, and all other persons whose interests we affect.

### **A: Principles to Which We Aspire**

#### **1. Our Overall Responsibility to the Public**

Our primary obligation is to serve the public interest and we, therefore, owe our allegiance to a conscientiously attained concept of the public interest that is formulated through continuous and open debate. We shall achieve high standards of professional integrity, proficiency, and knowledge. To comply with our obligation to the public, we aspire to the following principles:

- a) We shall always be conscious of the rights of others.
- b) We shall have special concern for the long-range consequences of present actions.
- c) We shall pay special attention to the interrelatedness of decisions.

d) We shall provide timely, adequate, clear, and accurate information on planning issues to all affected persons and to governmental decision makers.

e) We shall give people the opportunity to have a meaningful impact on the development of plans and programs that may affect them. Participation should be broad enough to include those who lack formal organization or influence.

f) We shall seek social justice by working to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of the disadvantaged and to promote racial and economic integration. We shall urge the alteration of policies, institutions, and decisions that oppose such needs.

g) We shall promote excellence of design and endeavor to conserve and preserve the integrity and heritage of the natural and built environment.

h) We shall deal fairly with all participants in the planning process. Those of us who are public officials or employees shall also deal evenhandedly with all planning process participants.

## **2. Our Responsibility to Our Clients and Employers**

We owe diligent, creative, and competent performance of the work we do in pursuit of our client or employer's interest. Such performance, however, shall always be consistent with our faithful service to the public interest.

a) We shall exercise independent professional judgment on behalf of our clients and employers.

b) We shall accept the decisions of our client or employer concerning the objectives and nature of the professional services we perform unless the course of action is illegal or plainly inconsistent with our primary obligation to the public interest.

c) We shall avoid a conflict of interest or even the appearance of a conflict of interest in accepting assignments from clients or employers.

## **3. Our Responsibility to Our Profession and Colleagues**

We shall contribute to the development of, and respect for, our profession by improving knowledge and techniques, making work relevant to solutions of community problems, and increasing public understanding of planning activities.

a) We shall protect and enhance the integrity of our profession.

b) We shall educate the public about planning issues and their relevance to our everyday lives.

c) We shall describe and comment on the work and views of other professionals in a fair and professional manner.

d) We shall share the results of experience and research that contribute to the body of planning knowledge.

e) We shall examine the applicability of planning theories, methods, research and practice and standards to the facts and analysis of each particular situation and shall not accept the applicability of a customary solution without first establishing its appropriateness to the situation.

f) We shall contribute time and resources to the professional development of students, interns, beginning professionals, and other colleagues.

- g) We shall increase the opportunities for members of underrepresented groups to become professional planners and help them advance in the profession.
- h) We shall continue to enhance our professional education and training.
- i) We shall systematically and critically analyze ethical issues in the practice of planning.
- j) We shall contribute time and effort to groups lacking in adequate planning resources and to voluntary professional activities.

## **B: Our Rules of Conduct**

We adhere to the following Rules of Conduct, and we understand that our Institute will enforce compliance with them. If we fail to adhere to these Rules, we could receive sanctions, the ultimate being the loss of our certification:

1. We shall not deliberately or with reckless indifference fail to provide adequate, timely, clear and accurate information on planning issues.
2. We shall not accept an assignment from a client or employer when the services to be performed involve conduct that we know to be illegal or in violation of these rules.
3. We shall not accept an assignment from a client or employer to publicly advocate a position on a planning issue that is indistinguishably adverse to a position we publicly advocated for a previous client or employer within the past three years unless (1) we determine in good faith after consultation with other qualified professionals that our change of position will not cause present detriment to our previous client or employer, and (2) we make full written disclosure of the conflict to our current client or employer and receive written permission to proceed with the assignment.
4. We shall not, as salaried employees, undertake other employment in planning or a related profession, whether or not for pay, without having made full written disclosure to the employer who furnishes our salary and having received subsequent written permission to undertake additional employment, unless our employer has a written policy which expressly dispenses with a need to obtain such consent.
5. We shall not, as public officials or employees; accept from anyone other than our public employer any compensation, commission, rebate, or other advantage that may be perceived as related to our public office or employment.
6. We shall not perform work on a project for a client or employer if, in addition to the agreed upon compensation from our client or employer, there is a possibility for direct personal or financial gain to us, our family members, or persons living in our household, unless our client or employer, after full written disclosure from us, consents in writing to the arrangement.
7. We shall not use to our personal advantage, nor that of a subsequent client or employer, information gained in a professional relationship that the client or employer has requested be held inviolate or that we should recognize as confidential because its disclosure could result in embarrassment or other detriment to the client or employer. Nor shall we disclose such confidential information except when (1) required by process of law, or (2) required to prevent a clear violation of law, or (3) required to prevent a substantial injury to the public. Disclosure pursuant to (2) and (3) shall not be made until after we have verified the facts and issues involved and, when practicable, exhausted efforts to obtain reconsideration of the matter and have sought separate opinions on the issue from other qualified professionals employed by our client or employer.

8. We shall not, as public officials or employees, engage in private communications with planning process participants if the discussions relate to a matter over which we have authority to make a binding, final determination if such private communications are prohibited by law or by agency rules, procedures, or custom.
9. We shall not engage in private discussions with decision makers in the planning process in any manner prohibited by law or by agency rules, procedures, or custom.
10. We shall neither deliberately, nor with reckless indifference, misrepresent the qualifications, views and findings of other professionals.
11. We shall not solicit prospective clients or employment through use of false or misleading claims, harassment, or duress.
12. We shall not misstate our education, experience, training, or any other facts which are relevant to our professional qualifications.
13. We shall not sell, or offer to sell, services by stating or implying an ability to influence decisions by improper means.
14. We shall not use the power of any office to seek or obtain a special advantage that is not a matter of public knowledge or is not in the public interest.
15. We shall not accept work beyond our professional competence unless the client or employer understands and agrees that such work will be performed by another professional competent to perform the work and acceptable to the client or employer.
16. We shall not accept work for a fee, or pro bono, that we know cannot be performed with the promptness required by the prospective client, or that is required by the circumstances of the assignment.
17. We shall not use the product of others' efforts to seek professional recognition or acclaim intended for producers of original work.
18. We shall not direct or coerce other professionals to make analyses or reach findings not supported by available evidence.
19. We shall not fail to disclose the interests of our client or employer when participating in the planning process. Nor shall we participate in an effort to conceal the true interests of our client or employer.
20. We shall not unlawfully discriminate against another person.
21. We shall not withhold cooperation or information from the AICP Ethics Officer or the AICP Ethics Committee if a charge of ethical misconduct has been filed against us.
22. We shall not retaliate or threaten retaliation against a person who has filed a charge of ethical misconduct against us or another planner, or who is cooperating in the Ethics Officer's investigation of an ethics charge.
23. We shall not use the threat of filing an ethics charge in order to gain, or attempt to gain, an advantage in dealings with another planner.
24. We shall not file a frivolous charge of ethical misconduct against another planner.



25. We shall neither deliberately, nor with reckless indifference, commit any wrongful act, whether or not specified in the Rules of Conduct, that reflects adversely on our professional fitness.

### **C: Our Code Procedures**

The code procedures adopted by AICP are not included in this appendix. These procedures may be found at <http://www.planning.org>.

## **Appendix D: Principles of Smart Growth<sup>1</sup>**

### **Create Range of Housing Opportunities and Choices**

Providing quality housing for people of all income levels is an integral component in any smart growth strategy. Housing is a critical part of the way communities grow, as it constitutes a significant share of new construction and development. More importantly, however, is also a key factor in determining households' access to transportation, commuting patterns, access to services and education, and consumption of energy and other natural resources. By using smart growth approaches to create a wider range of housing choices, communities can mitigate the environmental costs of auto-dependent development, use their infrastructure resources more efficiently, ensure a better jobs-housing balance, and generate a strong foundation of support for neighborhood transit stops, commercial centers, and other services.

No single type of housing can serve the varied needs of today's diverse households. Smart growth represents an opportunity for local communities to increase housing choice not only by modifying their land use patterns on newly-developed land, but also by increasing housing supply in existing neighborhoods and on land served by existing infrastructure. Integrating single- and multi-family structures in new housing developments can support a more diverse population and allow more equitable distribution of households of all income levels across the region. The addition of units -- through attached housing, accessory units, or conversion to multi-family dwellings -- to existing neighborhoods creates opportunities for communities to slowly increase density without radically changing the landscape. New housing construction can be an economic stimulus for existing commercial centers that are currently vibrant during the work day, but suffer from a lack of foot traffic and consumers in evenings or weekends. Most importantly, providing a range of housing choices allow all households to find their niche in a smart growth community -- whether it is a garden apartment, a rowhouse, or a traditional suburban home -- and accommodate growth at the same time.

### **Create Walkable Neighborhoods**

Walkable communities are desirable places to live, work, learn, worship and play, and therefore a key component of smart growth. Their desirability comes from two factors. First, walkable communities locate within an easy and safe walk goods (such as housing, offices, and retail) and services (such as transportation, schools, libraries) that a community resident or employee needs on a regular basis. Second, by definition, walkable communities make pedestrian activity possible, thus expanding transportation options, and creating a streetscape that better serves a range of users -- pedestrians, bicyclists, transit riders, and automobiles. To foster walkability, communities must mix land uses and build compactly, and ensure safe and inviting pedestrian corridors.

Walkable communities are nothing new. Outside of the last half-century communities worldwide have created neighborhoods, communities, towns and cities premised on pedestrian access. Within the last fifty years public and private actions often present created obstacles to walkable communities. Conventional land use regulation often prohibits the mixing of land uses, thus lengthening trips and making walking a less viable alternative to other forms of travel. This regulatory bias against mixed-use development is reinforced by private financing policies that view mixed-use development as riskier than single-use development. Many communities -- particularly those that are dispersed and largely auto-dependent -- employ street and development design practices that reduce pedestrian activity.

As the personal and societal benefits of pedestrian friendly communities are realized -- benefits which include lower transportation costs, greater social interaction, improved personal and environmental health, and expanded consumer choice -- many are calling upon the public and

private sector to facilitate the development of walkable places. Land use and community design plays a pivotal role in encouraging pedestrian environments. By building places with multiple destinations within close proximity, where the streets and sidewalks balance all forms of transportation, communities have the basic framework for encouraging walkability.

### **Encourage Community and Stakeholder Collaboration**

Growth can create great places to live, work and play -- if it responds to a community's own sense of how and where it wants to grow. Communities have different needs and will emphasize some smart growth principles over others: those with robust economic growth may need to improve housing choices; others that have suffered from disinvestment may emphasize infill development; newer communities with separated uses may be looking for the sense of place provided by mixed-use town centers; and still others with poor air quality may seek relief by offering transportation choices. The common thread among all, however, is that the needs of every community and the programs to address them are best defined by the people who live and work there.

Citizen participation can be time-consuming, frustrating and expensive, but encouraging community and stakeholder collaboration can lead to creative, speedy resolution of development issues and greater community understanding of the importance of good planning and investment. Smart Growth plans and policies developed without strong citizen involvement will at best not have staying power; at worst, they will be used to create unhealthy, undesirable communities. When people feel left out of important decisions, they will be less likely to become engaged when tough decisions need to be made. Involving the community early and often in the planning process vastly improves public support for smart growth and often leads to innovative strategies that fit the unique needs of each community.

### **Foster Distinctive, Attractive Places with a Strong Sense of Place**

Smart growth encourages communities to craft a vision and set standards for development and construction which respond to community values of architectural beauty and distinctiveness, as well as expanded choices in housing and transportation. It seeks to create interesting, unique communities which reflect the values and cultures of the people who reside there, and foster the types of physical environments which support a more cohesive community fabric. Smart growth promotes development which uses natural and man-made boundaries and landmarks to create a sense of defined neighborhoods, towns, and regions. It encourages the construction and preservation of buildings which prove to be assets to a community over time, not only because of the services provided within, but because of the unique contribution they make on the outside to the look and feel of a city.

Guided by a vision of how and where to grow, communities are able to identify and utilize opportunities to make new development conform to their standards of distinctiveness and beauty. Contrary to the current mode of development, smart growth ensures that the value of infill and greenfield development is determined as much by their accessibility (by car or other means) as their physical orientation to and relationship with other buildings and open space. By creating high-quality communities with architectural and natural elements that reflect the interests of all residents, there is a greater likelihood that buildings (and therefore entire neighborhoods) will retain their economic vitality and value over time. In so doing, the infrastructure and natural resources used to create these areas will provide residents with a distinctive and beautiful place that they can call "home" for generations to come.

### **Make Development Decisions Predictable, Fair and Cost Effective**

For a community to be successful in implementing smart growth, it must be embraced by the private sector. Only private capital markets can supply the large amounts of money needed to meet the growing demand for smart growth developments. If investors, bankers, developers, builders and others do not earn a profit, few smart growth projects will be built. Fortunately, government can help make smart growth profitable to private investors and developers. Since the development industry is highly regulated, the value of property and the desirability of a place is largely affected by government investment in infrastructure and government regulation. Governments that make the right infrastructure and regulatory decisions will create fair, predictable and cost effective smart growth.

Despite regulatory and financial barriers, developers have been successful in creating examples of smart growth. The process to do so, however, requires them to get variances to the codes – often a time-consuming, and therefore costly, requirement. Expediting the approval process is of particular importance for developers, for whom the common mantra, “time is money” very aptly applies. The longer it takes to get approval for building, the longer the developer’s capital remains tied up in the land and not earning income. For smart growth to flourish, state and local governments must make an effort to make development decisions about smart growth more timely, cost-effective, and predictable for developers. By creating a fertile environment for innovative, pedestrian-oriented, mixed-use projects, government can provide leadership for smart growth that the private sector is sure to support.

### **Mix Land Uses**

Smart growth supports the integration of mixed land uses into communities as a critical component of achieving better places to live. By putting uses in close proximity to one another, alternatives to driving, such as walking or biking, once again become viable. Mixed land uses also provides a more diverse and sizable population and commercial base for supporting viable public transit. It can enhance the vitality and perceived security of an area by increasing the number and attitude of people on the street. It helps streets, public spaces and pedestrian-oriented retail again become places where people meet, attracting pedestrians back onto the street and helping to revitalize community life.

Mixed land uses can convey substantial fiscal and economic benefits. Commercial uses in close proximity to residential areas are often reflected in higher property values, and therefore help raise local tax receipts. Businesses recognize the benefits associated with areas able to attract more people, as there is increased economic activity when there are more people in an area to shop. In today's service economy, communities find that by mixing land uses, they make their neighborhoods attractive to workers who increasingly balance quality of life criteria with salary to determine where they will settle. Smart growth provides a means for communities to alter the planning context which currently renders mixed land uses illegal in most of the country.

### **Preserve Open Space, Farmland, Natural Beauty and Critical Environmental Areas**

Smart growth uses the term “open space” broadly to mean natural areas both in and surrounding localities that provide important community space, habitat for plants and animals, recreational opportunities, farm and ranch land (working lands), places of natural beauty and critical environmental areas (e.g. wetlands). Open space preservation supports smart growth goals by bolstering local economies, preserving critical environmental areas, improving our communities quality of life, and guiding new growth into existing communities.

There is growing political will to save the “open spaces” that Americans treasure. Voters in 2000 overwhelmingly approved ballot measures to fund open space protection efforts. The reasons for such support are varied and attributable to the benefits associated with open space protection.

Protection of open space provides many fiscal benefits, including increasing local property value (thereby increasing property tax bases), providing tourism dollars, and decreases local tax increases (due to the savings of reducing the construction of new infrastructure). Management of the quality and supply of open space also ensures that prime farm and ranch lands are available, prevents flood damage, and provides a less expensive and natural alternative for providing clean drinking water.

The availability of open space also provides significant environmental quality and health benefits. Open space protects animal and plant habitat, places of natural beauty, and working lands by removing the development pressure and redirecting new growth to existing communities. Additionally, preservation of open space benefits the environment by combating air pollution, attenuating noise, controlling wind, providing erosion control, and moderating temperatures. Open space also protects surface and ground water resources by filtering trash, debris, and chemical pollutants before they enter a water system.

### **Provide a Variety of Transportation Choices**

Providing people with more choices in housing, shopping, communities, and transportation is a key aim of smart growth. Communities are increasingly seeking these choices -- particularly a wider range of transportation options -- in an effort to improve beleaguered transportation systems. Traffic congestion is worsening across the country. Where in 1982 65 percent of travel occurred in uncongested conditions, by 1997 only 36 percent of peak travel occurred did so. In fact, according to the Texas Transportation Institute, congestion over the last several years has worsened in nearly every major metropolitan area in the United States.

In response, communities are beginning to implement new approaches to transportation planning, such as better coordinating land use and transportation; increasing the availability of high quality transit service; creating redundancy, resiliency and connectivity within their road networks; and ensuring connectivity between pedestrian, bike, transit, and road facilities. In short, they are coupling a multi-modal approach to transportation with supportive development patterns, to create a variety of transportation options.

### **Strengthen and Direct Development Towards Existing Communities**

Smart growth directs development towards existing communities already served by infrastructure, seeking to utilize the resources that existing neighborhoods offer, and conserve open space and irreplaceable natural resources on the urban fringe. Development in existing neighborhoods also represents an approach to growth that can be more cost-effective, and improves the quality of life for its residents. By encouraging development in existing communities, communities benefit from a stronger tax base, closer proximity of a range of jobs and services, increased efficiency of already developed land and infrastructure, reduced development pressure in edge areas thereby preserving more open space, and, in some cases, strengthening rural communities.

The ease of greenfield development remains an obstacle to encouraging more development in existing neighborhoods. Development on the fringe remains attractive to developers for its ease of access and construction, lower land costs, and potential for developers to assemble larger parcels. Typical zoning requirements in fringe areas are often easier to comply with, as there are often few existing building types that new construction must complement, and a relative absence of residents who may object to the inconvenience or disruption caused by new construction.

Nevertheless, developers and communities are recognizing the opportunities presented by infill development, as suggested not only by demographic shifts, but also in response to a growing awareness of the fiscal, environmental, and social costs of development focused disproportionately on the urban fringe. Journals that track real estate trends routinely cite the investment appeal of the "24-hour city" for empty nesters, young professionals, and others, and developers are beginning to respond. A 2001 report by Urban Land Institute on urban infill

housing states that, in 1999, the increase in housing permit activity in cities relative to average annual figures from the preceding decade exceeded that of the suburbs, indicating that infill development is possible and profitable.

### **Take Advantage of Compact Building Design**

Smart growth provides a means for communities to incorporate more compact building design as an alternative to conventional, land consumptive development. Compact building design suggests that communities be designed in a way which permits more open space to be preserved, and that buildings can be constructed which make more efficient use of land and resources. By encouraging buildings to grow vertically rather than horizontally, and by incorporating structured rather than surface parking, for example, communities can reduce the footprint of new construction, and preserve more greenspace. Not only is this approach more efficient by requiring less land for construction. It also provides and protects more open, undeveloped land that would exist otherwise to absorb and filter rain water, reduce flooding and stormwater drainage needs, and lower the amount of pollution washing into our streams, rivers and lakes.

Compact building design is necessary to support wider transportation choices, and provides cost savings for localities. Communities seeking to encourage transit use to reduce air pollution and congestion recognize that minimum levels of density are required to make public transit networks viable. Local governments find that on a per-unit basis, it is cheaper to provide and maintain services like water, sewer, electricity, phone service and other utilities in more compact neighborhoods than in dispersed communities.

Research based on these developments has shown, for example, that well-designed, compact New Urbanist communities that include a variety of house sizes and types command a higher market value on a per square foot basis than do those in adjacent conventional suburban developments. Perhaps this is why increasing numbers of the development industry have been able to successfully integrate compact design into community building efforts. This despite current zoning practices – such as those that require minimum lot sizes, or prohibit multi-family or attached housing – and other barriers - community perceptions of “higher density” development, often preclude compact design.

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<sup>1</sup> Source: Smart Growth Network; [www.smartgrowth.org](http://www.smartgrowth.org) . In 1996, the U.S. Environmental Protection Agency joined with several non-profit and government organizations to form the Smart Growth Network (SGN). The Network was formed in response to increasing community concerns about the need for new ways to grow that boost the economy, protect the environment, and enhance community vitality. The Network's partners include environmental groups, historic preservation organizations, professional organizations, developers, real estate interests; local and state government entities.

## Appendix E: Charter for the New Urbanism<sup>1</sup>

The Congress for the New Urbanism views disinvestment in central cities, the spread of placeless sprawl, increasing separation by race and income, environmental deterioration, loss of agricultural lands and wilderness, and the erosion of society's built heritage as one interrelated community-building challenge.

We stand for the restoration of existing urban centers and towns within coherent metropolitan regions, the reconfiguration of sprawling suburbs into communities of real neighborhoods and diverse districts, the conservation of natural environments, and the preservation of our built legacy.

We recognize that physical solutions by themselves will not solve social and economic problems, but neither can economic vitality, community stability, and environmental health be sustained without a coherent and supportive physical framework.

We advocate the restructuring of public policy and development practices to support the following principles: neighborhoods should be diverse in use and population; communities should be designed for the pedestrian and transit as well as the car; cities and towns should be shaped by physically defined and universally accessible public spaces and community institutions; urban places should be framed by architecture and landscape design that celebrate local history, climate, ecology, and building practice.

We represent a broad-based citizenry, composed of public and private sector leaders, community activists, and multidisciplinary professionals. We are committed to reestablishing the relationship between the art of building and the making of community, through citizen-based participatory planning and design.

We dedicate ourselves to reclaiming our homes, blocks, streets, parks, neighborhoods, districts, towns, cities, regions, and environment.

We assert the following principles to guide public policy, development practice, urban planning, and design:

### **THE REGION: METROPOLIS, CITY, AND TOWN**

1. Metropolitan regions are finite places with geographic boundaries derived from topography, watersheds, coastlines, farmlands, regional parks, and river basins. The metropolis is made of multiple centers that are cities, towns, and villages, each with its own identifiable center and edges.

2. The metropolitan region is a fundamental economic unit of the contemporary world. Governmental cooperation, public policy, physical planning, and economic strategies must reflect this new reality.

3. The metropolis has a necessary and fragile relationship to its agrarian hinterland and natural landscapes. The relationship is environmental, economic, and cultural. Farmland and nature are as important to the metropolis as the garden is to the house.

4. Development patterns should not blur or eradicate the edges of the metropolis. Infill development within existing urban areas conserves environmental resources, economic investment, and social fabric, while reclaiming marginal and abandoned areas. Metropolitan regions should develop strategies to encourage such infill development over peripheral expansion.

5. Where appropriate, new development contiguous to urban boundaries should be organized as neighborhoods and districts, and be integrated with the existing urban pattern. Noncontiguous development should be organized as towns and villages with their own urban edges, and planned for a jobs/housing balance, not as bedroom suburbs.
6. The development and redevelopment of towns and cities should respect historical patterns, precedents, and boundaries.
7. Cities and towns should bring into proximity a broad spectrum of public and private uses to support a regional economy that benefits people of all incomes. Affordable housing should be distributed throughout the region to match job opportunities and to avoid concentrations of poverty.
8. The physical organization of the region should be supported by a framework of transportation alternatives. Transit, pedestrian, and bicycle systems should maximize access and mobility throughout the region while reducing dependence upon the automobile.
9. Revenues and resources can be shared more cooperatively among the municipalities and centers within regions to avoid destructive competition for tax base and to promote rational coordination of transportation, recreation, public services, housing, and community institutions.

#### **THE NEIGHBORHOOD, THE DISTRICT, AND THE CORRIDOR**

1. The neighborhood, the district, and the corridor are the essential elements of development and redevelopment in the metropolis. They form identifiable areas that encourage citizens to take responsibility for their maintenance and evolution.
2. Neighborhoods should be compact, pedestrian-friendly, and mixed-use. Districts generally emphasize a special single use, and should follow the principles of neighborhood design when possible. Corridors are regional connectors of neighborhoods and districts; they range from boulevards and rail lines to rivers and parkways.
3. Many activities of daily living should occur within walking distance, allowing independence to those who do not drive, especially the elderly and the young. Interconnected networks of streets should be designed to encourage walking, reduce the number and length of automobile trips, and conserve energy.
4. Within neighborhoods, a broad range of housing types and price levels can bring people of diverse ages, races, and incomes into daily interaction, strengthening the personal and civic bonds essential to an authentic community.
5. Transit corridors, when properly planned and coordinated, can help organize metropolitan structure and revitalize urban centers. In contrast, highway corridors should not displace investment from existing centers.
6. Appropriate building densities and land uses should be within walking distance of transit stops, permitting public transit to become a viable alternative to the automobile.
7. Concentrations of civic, institutional, and commercial activity should be embedded in neighborhoods and districts, not isolated in remote, single-use complexes. Schools should be sized and located to enable children to walk or bicycle to them.
8. The economic health and harmonious evolution of neighborhoods, districts, and corridors can be improved through graphic urban design codes that serve as predictable guides for change.



9. A range of parks, from tot-lots and village greens to ballfields and community gardens, should be distributed within neighborhoods. Conservation areas and open lands should be used to define and connect different neighborhoods and districts.

#### **THE BLOCK, THE STREET, AND THE BUILDING**

1. A primary task of all urban architecture and landscape design is the physical definition of streets and public spaces as places of shared use.

2. Individual architectural projects should be seamlessly linked to their surroundings. This issue transcends style.

3. The revitalization of urban places depends on safety and security. The design of streets and buildings should reinforce safe environments, but not at the expense of accessibility and openness.

4. In the contemporary metropolis, development must adequately accommodate automobiles. It should do so in ways that respect the pedestrian and the form of public space.

5. Streets and squares should be safe, comfortable, and interesting to the pedestrian. Properly configured, they encourage walking and enable neighbors to know each other and protect their communities.

6. Architecture and landscape design should grow from local climate, topography, history, and building practice.

7. Civic buildings and public gathering places require important sites to reinforce community identity and the culture of democracy. They deserve distinctive form, because their role is different from that of other buildings and places that constitute the fabric of the city.

8. All buildings should provide their inhabitants with a clear sense of location, weather and time. Natural methods of heating and cooling can be more resource-efficient than mechanical systems.

9. Preservation and renewal of historic buildings, districts, and landscapes affirm the continuity and evolution of urban society.

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<sup>1</sup> Source: Congress for the New Urbanism; [www.cnu.org](http://www.cnu.org). For additional information see: Congress for the New Urbanism. **Charter of the New Urbanism: Region / Neighborhood, District, and Corridor / Block, Street, and Building**. New York: McGraw-Hill Books, 1999.

## Appendix F: Information Sources

The organizations listed below provide a broad array of information about planning and the role of the *planning official*.

**American Planning Association** – [www.planning.org](http://www.planning.org)

**Florida Chapter of the American Planning Association** – [www.floridaplanning.org](http://www.floridaplanning.org)

**Florida Planning and Zoning Association** – [www.fpza.org](http://www.fpza.org)

**University of Florida, Department of Urban & Regional Planning** – [www.dcp.ufl.edu/urp](http://www.dcp.ufl.edu/urp)

**Florida Atlantic University, Department of Urban & Regional Planning** – [www.fau.edu/divdept/caupa/durp](http://www.fau.edu/divdept/caupa/durp)

**Florida State University, Department of Urban & Regional Planning** – [www.fsu.edu/~durp](http://www.fsu.edu/~durp)

**MyFlorida.com – The Official Portal of the State of Florida** – [www.myflorida.com](http://www.myflorida.com)

**Florida Department of Community Affairs** – [www.dca.state.fl.us](http://www.dca.state.fl.us)

**Florida Department of Transportation** – [www.dot.state.fl.us](http://www.dot.state.fl.us)

**Florida Department of Environmental Protection** – [www.dep.state.fl.us](http://www.dep.state.fl.us)

**Florida Institute of Government** – [www.fsu.edu/~iog](http://www.fsu.edu/~iog)

**Regional Planning Councils** – [www.myflorida.com](http://www.myflorida.com) (click on Government / Regional Councils & Districts)

**Water Management Districts** – [www.myflorida.com](http://www.myflorida.com) (click on Government / Regional Councils & Districts)

**County Governments** - [www.myflorida.com](http://www.myflorida.com) (click on Government / Local Government)

**City Governments** - [www.myflorida.com](http://www.myflorida.com) (click on Government / Local Government)

**Planning Commissioner's Journal** – [www.plannersweb.com](http://www.plannersweb.com)

**The Smart Growth Network** – [www.smartgrowth.org](http://www.smartgrowth.org)

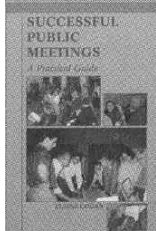
**The Urban Land Institute** – [www.uli.org](http://www.uli.org)

**The Congress For The New Urbanism** – [www.cnu.org](http://www.cnu.org)

**Florida Homebuilders Association** - [www.fhba.org](http://www.fhba.org)

## Appendix G: The Planning Officials Essential Library

The following references are offered as an essential library for *planning officials*. Ask your planning director if these publications are available. If not, take steps to procure them for your city or county.

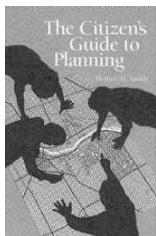


### Successful Public Meetings

2nd ed. Elaine Cogan. 2000. 134 pp.

(APA Planners Press.) [www.planning.org/publications](http://www.planning.org/publications)

Use this comprehensive guide to plan and conduct productive meetings that leave nothing to chance. Cogan identifies the components of a successful meeting, lists crucial tasks, explains how to avoid or overcome disasters, and reveals tactful, but effective, ways to manage difficult participants. True stories of public meetings enliven the narrative, and step-by-step checklists cover every aspect of meetings. This updated edition encompasses e-mail and the Internet.

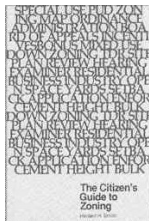


### Citizen's Guide to Planning

3rd ed. Herbert H. Smith. 1993. 267 pp.

(APA Planners Press.) [www.planning.org/publications](http://www.planning.org/publications)

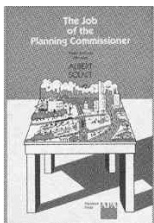
This perennial best seller will help both laymen and aspiring professionals understand the basics of planning. Smith explains the different roles of planning commissioners and professionals. He examines topics such as the master plan, capital improvements programs, zoning, and subdivision regulation. A highly personal, insider's account of the planning process.



### Citizen's Guide to Zoning

Herbert H. Smith. 1983. 242 pp. (APA Planners Press.) [www.planning.org/publications](http://www.planning.org/publications)

An easy-to-read book about zoning that cuts the jargon out but leaves the wisdom in. Smith explains the fundamental principles of zoning, how to develop zoning regulations, and the nuts and bolts of a zoning ordinance. He examines variances, zoning hearings, and frequent zoning problems.



### Job of the Planning Commissioner

3rd ed.; revised. Albert Sonnit. 1987. 198 pp.

(APA Planners Press.) [www.planning.org/publications](http://www.planning.org/publications)

A popular and practical guide on how to be an effective planning commissioner. Filled with checklists and outlines, it's both a good introduction and a handy reference. Includes criteria for keeping a master plan in working order, lists of tools to guide growth, advice on how to deal with professional staff, and do's and don'ts of successful public meetings.



### Planning Made Easy

William Toner et al. 1994. 168 pp.

(APA Planners Press.) [www.planning.org/publications](http://www.planning.org/publications)

**Training Made Easy** (15-minute video and training guide).

Developing a program to train planning commissioners and zoning board members takes a lot of time and effort. This manual can help. It covers the basics of planning, zoning, subdivision regulation, and ethics. Organized in discrete modules, it's ideal for both self-study and classroom use. Exercises focus on local planning issues and worksheets reinforce important concepts.



## Planning Commissioners Guide

David Allor. 1984. 186 pp.  
(APA Planners Press.) [www.planning.org/publications](http://www.planning.org/publications)

Allor shows commissioners how to make group decisions in a reasonable and effective way. He first interviewed commission members. Then he listened to staff presentations, questions and comments of commissioners, and testimony of applicants and witnesses. He uses this information to show how commissioners can work together to direct a community's development.



## Design With Nature

Ian L. McHarg. 1991; original 1969. 198 pp. (John Wiley & Sons.) [www.planning.org/publications](http://www.planning.org/publications)

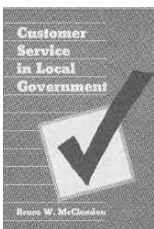
An elegant reissue of an important planning milestone. This book first brought the concept of environmental sensitivity to the planning profession. and it has served as the basis for much of our most important work. This reprint makes this visionary work available for a new generation of planners



## Best Development Practices

Reid Ewing. 1996. 180 pp. (Copublished by APA  
Planners Press and the Urban Land Institute.) [www.planning.org/publications](http://www.planning.org/publications)

This richly illustrated book argues that developers can create vibrant, livable communities- and still make money. Ewing searched Florida for the best contemporary developments. He studied these exceptional places to find out what lessons they held and distilled them into 43 "best practices" for four areas of development-land use, transportation, the environment, and housing. Case studies show how these practices make good business sense for developers, reduce automobile dependence, increase the supply of affordable housing, and serve other important public purposes.



## Customer Service in Local Government

Bruce W. McClendon. 1992. 226 pp. (APA Planners Press.) [www.planning.org/publications](http://www.planning.org/publications)

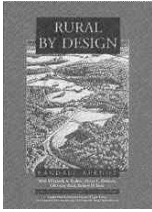
McClendon shows how local governments benefit when they make customers a priority and incorporate their needs in all government functions. He explains how to use interviews, surveys, and focus groups to assess what services address local problems and craft citizen participation programs that build ongoing communication. Case studies demonstrate how such programs improve customer satisfaction.



## Above and Beyond

Julie Campoli, Elizabeth Humstone, and Alex  
Maclean. 2002. 203 pp. (APA Planners Press.) [www.planning.org/publications](http://www.planning.org/publications)

*Above and Beyond* compares contemporary and traditional development patterns and demonstrates how suburban sprawl is forever changing the look of rural America. Aerial photographs- many altered through computer simulation to illustrate how landscapes are transformed over time-show how traditional development patterns produce more compact cities and towns. The authors introduce communities that have successfully fought sprawl and invigorated their town areas; nurtured community identity; rewritten land-use regulations to allow for more compact development; and overcome the "cars rule" mentality of sprawl development. These examples will inspire planners, planning officials, and concerned citizens in rural communities and small towns everywhere.



### **Rural by Design**

*Randall Arendt. 1994. 441 pp. (APA Planners Press.) [www.planning.org/publications](http://www.planning.org/publications)*

Conventional planning techniques just aren't working in many rural and suburbanizing areas. Arendt advocates creative land-use planning techniques for preserving open space and community character in a variety of residential, commercial, and mixed-use developments. Thirty-eight cases from 21 states demonstrate how rural and suburban communities have preserved open space, established land trusts, and designed affordable housing appropriate for their size and character.



### **Welcome to the Commission: A Guide for New Members**

*The Planning Commissioners Journal. 40 pp [www.plannersweb.com](http://www.plannersweb.com)*

The Guide for New Members is 40 pages long and incorporates carefully selected excerpts from past PCJ articles and columns. Illustrations by cartoonist Mark Hughes help highlight points made in the text. At the end of the Guide you'll also find an annotated reading list of books of particular interest to new commissioners. The Guide is also 3-hole punched for easy storage.



### **Planners on Planning : Leading Planners Offer Real-Life Lessons on What Works, What Doesn't, and Why**

*Bruce W. McClendon, Anthony James Catanese, 320 pp, (Jossey-Bass) [www.amazon.com](http://www.amazon.com)*

Offers pragmatic information on the realities of day-to-day practice from some of the most innovative, respected, and visionary leaders in the planning profession today. Bridging the gap between theory and practice, this guide provides straightforward lessons from today's most effective planners on the core values, skills, and techniques needed for success. Through personal, real-life examples from the trenches, these experts explain in their own words what works, what doesn't, and why.