GROWTH MANAGEMENT AND THE 2011 SESSION

By Charles Pattison

The dust of the 2011 session has settled, and we are left with a Community Planning Act that replaces the 1985 Growth Management Act. Through HB 7207, DCA is no more, and its successor will be referred to as the state land planning agency. Its duties and functions are assigned to a new division, the Division of Community Development, within a new agency meant to coordinate all economic development programs, the Department of Economic Opportunity.

What Do We Have Now?

In fact, it is easier to say what we don't have. That list includes transportation, school and parks concurrency, although it can be retained at the option of local government. How the different and adjacent local governments decide and hopefully coordinate this will have great consequences for development patterns statewide. The concept of financial feasibility is gone at a time when every taxpayer and local government is struggling financially. Also gone is the idea that new development should not be approved when need cannot be demonstrated. With this standard removed, practically any place in Florida can now be considered appropriate for development. These changes are likely to prove challenging in making sure that the impacts of new development are borne by the developer and not the taxpayer. Gone as well is Administrative Rule 9J-5 as well as any authority to adopt a similar administrative rule which will eliminate much of our growth management case history.

The Housing Element remains in the Community Planning Act, but the requirement to address energy efficient housing in the local comprehensive plan housing element has been deleted, as has the use of renewable energy resources.

Local governments will now be prohibited from any voter referendums on land use matters. This is linked back to the failed Amendment 4 constitutional ballot issue in the last election that would have required public votes on comprehensive plan amendments within all jurisdictions.

Instead of the current twice/year limitation on plan amendment proposals, comprehensive plan changes can now be heard at any meeting of local governments. How any citizen or state agency can understand the cumulative effects of a random series of plan amendments remains to be seen. It will be especially important to link these considerations to the local capital improvements schedules which will need to be continuously updated to protect against unfunded infrastructure needs. Citizens will continue to face the difficult "fairly debatable" burden of proof on plan amendment challenges instead of the fairer "preponderance of the evidence" test that was part of the pilot alternative state review process. That standard was an important consideration given the quicker review and processing without state oversight, and was meant to offset what has been a complete deference to local government. That process, and the current plan amendment review process, are both gone, and we now have a two-tiered process.

The first, expedited review eliminates DCA (now the state planning agency) review entirely, leaving the majority of plan amendment decisions to local government. The second, state coordinated review, allows, but does not require, a state land planning agency review and comment for amendments involving sector plans, rural land stewardship areas, Evaluation and Appraisal Report amendments, and new community plans. Any comments made are limited to adverse impacts on state or regional resources and/or facilities. These terms are not defined. All large scale projects are given incentives, including automatic four (4) year extensions of all DRI development order conditions. Mining, industrial, hotel/motel and large movie theaters no longer require DRI review.

The dilemma presented is that with a reduced staff, and undefined standards for what constitutes adverse impacts to state or regional resources and facilities, the state land planning agency will be hard pressed to deliver consistent and effective reviews, if any, statewide.

Instead of placing the greatest scrutiny on new proposals outside of already developed areas, the very areas needing the most attention could either get a cursory or no review at all. This is compounded with the very real need for state agency assistance that our smaller cities and counties need in dealing with development proposals. While such assistance can be requested, it is by no means certain that the new state land planning agency will have the capacity to respond effectively.

What has been lost in these new processes is the very useful objections, recommendations and comments (ORC) reports that DCA currently provides on all plan amendments. While it is true that DCA historically has approved most of the amendments it receives, many of the proposals are made significantly better due to issues raised, and ultimately resolved, about infrastructure costs, environmental protection, affordable housing and site design. The ORC reports were also of great importance to citizens in helping to inform and educate the public, as well as elected and appointed officials, in getting the best result for their community.

Implications for Affordable Housing

The Housing Element remains, as do the other comprehensive plan elements in the Community Planning Act. But it has been shortened, and although 9J-5 has been eliminated, several of the particulars from that administrative rule have been inserted into Chapter 163, Florida Statutes. The requirement remains that all types of housing are to be assessed and provided for, although the specific need to adopt a plan to address workforce housing has been deleted. Also included in that deletion was the prohibition on receiving state housing funds until that plan was done – this is no longer required.

The requirement to address energy efficient housing in the local comprehensive plan housing element has been deleted, as has the use of renewable energy resources. The annual affordable housing needs assessment conducted by the state land planning agency is gone and with it the possibility of consistent and uniform information statewide. Of note is that the existing Division of Housing and Community Development has been abolished, and several of its functions will now be housed within the same division where the remains of growth management will be housed. Those include the CDBG, LIHEAP, Weatherization, NSP and programs as well as Front Porch Florida. No changes have been made to the requirement that affordable housing needs are to be addressed and mitigated for in all developments of regional impact (DRIs). To find the context for the relocation of these programs, please consult the state agency reorganization bill, SB 2156.

Going Forward

On July 1 of this year, Florida's 40-year effort to address growth and development issues will fundamentally change. Local governments will have a freer hand to adopt and revise their comprehensive plans at any time. State agencies will see their authority and ability to improve projects that can affect state or regional resources and facilities diminished. Development interests and local governments will have more, and longer term, options for dealing with infrastructure costs, especially who pays. Citizens can expect more challenges in a process that has limited their ability to effectively participate. The role DCA previously had to ensure compliance with state growth management requirements is significantly reduced as much by budget cuts and staff reductions as anything else. Its functions will now rest within a division instead of an independent department.

The justification for these changes continues to be that eliminating red tape and duplicative controls will help stimulate the economic recovery we all seek. If that is the result, and the quality of life that attracts us all to Florida remains, these changes will have been a success. On the other hand, if less oversight returns us to the time many years ago when growth and development interests dominated, and the landscape was treated as a commodity for making profit, we will all know that this choice was not the right one.

The reduction in meaningful state oversight and the elimination of statutory goals for such things as energy efficient housing and adequate infrastructure makes it that much more important for smart growth advocates to get civically engaged at the local level to ensure that local land use decisions are made wisely. HNN

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