# Florida Hometown Democracy:
## Should a Comprehensive Plan Amendment for Affordable Housing be Subject to Referendum?

BY CHARLES PATTISON AND MATTHEW DAVIS

Florida Hometown Democracy wants to make it more difficult for developers to obtain comprehensive plan amendments. Hometown Democracy is currently circulating a petition to have a proposed constitutional amendment added to the ballot for the 2008 election. If passed the constitutional amendment would alter the way comprehensive plan amendments are adopted. Proposed comprehensive plan amendments would still be heard by county or city officials, however, if they are approved by those officials, they are then subject to a vote of the electors of the local government by referendum.

### Hometown Democracy Background

As the population in Florida continues to grow, many of the State's citizens are concerned about the manner in which local governments are handling the growth. Each county and municipality in Florida uses a comprehensive plan as a way to plan for and manage future growth. The comprehensive plan's Future Land Use Map designates the allowable land uses and intensities for future growth. When a developer wants to build a project that is not allowed by the comprehensive plan he or she must ask the local officials for a comprehensive plan amendment which would then put the proposed project in compliance with the comprehensive plan.

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The Florida Hometown Democracy movement comes from a concern that these comprehensive plan amendments are granted too frequently, are not scrutinized enough to ensure the area can handle the growth, and are resulting in irresponsible growth across the state, which leads to a shortage in public facilities, increased traffic, and is an overall aesthetic eyesore. All of which leads to a lower quality of life for Florida's citizens.

Proponents of Hometown Democracy claim the local government officials that approve comprehensive plan amendments are in the pockets of large developers. They rightly state that the government officials are not supposed to grant a land use change unless the public interest is improved; however they claim that the public interest has been redefined to mean keeping the development machine humming at full throttle. Lesley Blackner, the founder of Hometown Democracy, states that commissioners are "handing [comprehensive] plan amendments out like candy[1]." Essentially, proponents of Hometown Democracy believe that the amendment will put citizens back in charge of the places where they live.

### Criticism of Florida Hometown Democracy

Hometown Democracy has drawn fierce criticism from local governments, chambers of commerce from around the state, and, of course, developers. The Florida Chamber of Commerce, the group heading the anti-Hometown Democracy campaign, labels Hometown Democracy's approach "irresponsible and reckless." The Florida

Homebuilders Association claims the costs of the Hometown Democracy amendment, if passed, would be "astronomical" and that it "could kill growth in the state of Florida.[2]" Lee Wetherington, a southwest Florida developer, offered a less radical suggestion that Hometown Democracy's amendment would "add to the cost of construction tremendously because in order to get a [comprehensive] plan amendment, we'll have to hold an election and run a campaign that costs money.[3]" Wetherington went on to add that many of those costs will be added to new homes and developments, and thus passed on to buyers. Secretary Tom Pelham, head of the Department of Community Affairs (the state agency charged with overseeing the implementation of the Growth Management Act) labeled Hometown Democracy's amendment as an "extreme, draconian approach that would create very real problems. But we cannot ignore what's driving this. Plan amendments should be rare, not willy-nilly.[4]"

FLORIDA'S POPULATION AND DEVELOPED LAND ARE PROJECTED TO DOUBLE OVER THE NEXT 50 YEARS, AND THE STATE FACES MANY UNCERTAINTIES DUE TO THE IMPACTS OF RAMPANT SPRAWL, THE LOSS OF URBAN LANDS, AND CLIMATE CHANGE. NOW, MORE THAN EVER, FLORIDA NEEDS A VISIONARY AND WORKABLE PLANNING PROCESS. THE KEY TO BETTER GROWTH MANAGEMENT IS MORE ACTIVE AND EFFECTIVE CITIZEN INVOLVEMENT IN THE PROCESS. WHILE WE APPRECIATE THE SINCERITY AND DEDICATION OF THOSE INVOLVED WITH THE FLORIDA HOMETOWN DEMOCRACY AMENDMENT, IT WILL PRODUCE RESULTS WITH MANY UNINTENDED CONSEQUENCES TO THE DETRIMENT OF A SUSTAINABLE QUALITY OF LIFE WE ALL SEEK.

## Legal Uncertainties Surrounding the Implementation of the Hometown Democracy Amendment

A problem frequently raised by opponents of Hometown Democracy is the uncertainty surrounding the legal implementation of the amendment. By law, local comprehensive plans are required to include a capital improvements element designed to consider the need for and the location of public facilities. The capital improvements element outlines the needs for construction, extension, or increase in capacity of public facilities as well as any construction necessary to correct existing public facility deficiencies. These components must cover at least a five year period. The capital improvements element must be reviewed on an annual basis, and an amendment is required to update the comprehensive plan. These amendments must be implemented by December 1, 2008 and every year thereafter. If a local government has not implemented the capital improvements amendment by that time, they can not amend its future land use map until they do so.

The obvious problem: what happens if the voters reject a capital improvements element? This could easily happen in the following manner. The capital improvements element could call for a highway to be widened through an area of town that does not want the increased traffic; or it could call for new roads to be built in an undeveloped area of the county. The opponents to these projects could mount a campaign against the amendment. Another way it could happen is if some anti-growth advocates catch on to this rule, and realize if the capital improvements amendment is shot down, then no other amendments can legally be passed, thereby eliminating the need for them to mount a campaign to every comprehensive plan amendment.

How to carry out the referendum process is another legal problem that would arise from the Hometown Democracy amendment. The actual amendment is vague; stating in essence that before a local government may amend a comprehensive plan, the proposed amendment shall be subject to vote by referendum, following preparation by the local planning agency and consideration by the governing body. Currently, local governments submit packages of multiple amendments to the Department of Community Affairs as part of twice yearly amendment cycles. This raises the question of whether each amendment would be subject to a separate vote, or whether the entire package could be voted on as one. Proponents of the amendment claim that each government could choose how to package the amendments for referendum; however the amendment text literally reads that each comprehensive plan amendment shall be subject to a vote.

Packaging the comprehensive plan amendments together raises even more concerns. Section 101.161, is the Florida Statutes that governs the content of a ballot. According to the law, each public measure shall be summarized on the ballot by an explanatory statement, not more than 75 words in length. This would enough a problem trying to explain one complex land use issue in 75 words or less and even more complicated if many comprehensive plan amendments are packaged together and voted on as a single referendum. Furthermore, it is almost a sure thing that developers will try to 'slip' highly controversial comprehensive plan amendments by packaging them together with more benign comprehensive plan amendments. The issue of whether the plan amendments can be packaged together will likely be resolved through costly litigation.

Another issue that will arise should the constitutional amendment pass, regardless of whether or not the plan amendments are packaged together, is when in the comprehensive plan amendment process the referendum will take place. Under current laws, the local government submits a proposed comprehensive plan amendment to the Department of Community Affairs (DCA), which issues objections, recommendations and comments. The local government may or may not alter the proposed amendment in light of the DCA's suggestions, and it then adopts the plan amendment. The DCA then reviews the adopted amendment, and determines whether it is "in compliance." If the DCA finds the amendment to be "in compliance" it may be challenged by an affected person before the Division of Administrative Hearings (DOAH). Alternatively, if the DCA finds the amendment to not be "in compliance" then the matter will automatically be heard before an Administrative Law Judge at DOAH. Regardless of whether the DCA finds the plan amendment to be "in compliance" or not, citizens may intervene in the proceedings at DOAH.

If the Administrative Law Judge finds the amendment to be "in compliance" then DCA will issue a Final Order approving the project, which may be appealed by opponents to the District Court of Appeal. On the other hand, if the administrative Law Judge finds that the amendment is not "in compliance" then the DCA forwards the case to the Governor and Cabinet for a final order. The issue that arises out of this process is where does the referendum fit in? If the referendum takes place before the DCA reviews the plan amendment and is passed; then opponents will have another shot at defeating the amendment during the administrative process. Furthermore, if the DCA determines that the plan amendment needed to be tweaked, it would have to be voted on again. However, if the referendum takes place after the DCA review, then proponents of the amendment will be facing a long and extremely uncertain approval process. If the public votes against a plan amendment that has already been approved by the administrative process, then all of that time and money would have been wasted.

## 1000 Friends of Florida's Conclusion

After careful deliberation, 1000 Friends of Florida can not support the proposed Hometown Democracy constitutional ballot amendment. As this state's growth management watchdog, 1000 Friends of Florida has spent considerable time evaluating the merits of the proposed amendment. We applaud the leaders of this sincere effort to bring about change, and recognize the need to improve growth management and development decisions in Florida. But for the following reasons, we can not support Florida Hometown Democracy:

**High-Priced Media Campaigns—** Debates on controversial comprehensive plan amendments would likely turn into high-priced media campaigns, favoring deep pocket large developers over homeowner associations and grassroots groups.

**NIMBYism or "Not In My Back Yard"—** Local governments would find it much more difficult to adopt amendments related to often controversial but much needed community projects such as affordable housing, schools, transit systems, landfills, and other public facilities, leading local governments to pursue either more costly or less desirable alternatives.

**Piecemeal Planning—** Hometown Democracy would remove the "comprehensive" from the comprehensive planning approach, resulting in a series of uncoordinated, piecemeal decisions driven by popularity rather than necessity.

**Sprawl—** Hometown Democracy could limit responsible new development in more populated, urbanized areas, forcing development out into rural areas which have fewer people to oppose the proposed plan amendment. It could also limit efforts to pass plan amendments intended to lessen sprawling patterns of development.

**Legal Gridlock—** A series of legal challenges will likely be necessary because of the vague wording of the proposed amendment. Questions include: Will plan amendments be voted on individually or in a bundled package of many amendments? Will the amendments be considered at regular elections or will special elections be required? Who will pay for the new and increased costs associated with these elections? What happens if voters approve an amendment found "not in compliance" by the Florida Department of Community Affairs? What happens if changes required during the mandated 7-year update of the comprehensive plan are not approved by the voters?

**Legislative Backlash—** To avoid such legal challenges, the Florida Legislature could change the plan amendment process for the worse, reduce the ability of citizens to challenge plan amendments, or undertake other similarly drastic and counter-productive alternatives that would render Florida Hometown Democracy—and Florida's growth management process--moot.

## WE THINK A BETTER APPROACH IS:

**Mandated Citizen Participation Plan—** Developers must prepare a citizen participation plan, including a process to notify impacted property owners and neighborhood associations, and conduct developer workshops with citizens to identify all issues of concern prior to any public hearing. The developer must present to the commission a list of all issues raised, and indicate if and how they were resolved. Unresolved issues then become the focus of discussion, rather than an afterthought discussed in two or three minutes of public testimony.

**Neighborhood Participation—** Each local government must compile a list of all neighborhood associations (with contact person) operating within the jurisdiction, and within 10 days of the filing of any applications or proposals filed for plan amendments or land development regulations the local government shall notify potentially impacted neighborhood associations.

**Seven Day "Cooling Off" Period—** Plan amendments cannot be changed in the seven days prior to the advertised public hearing. This will allow the citizens, commissioners, and others to fairly evaluate the document and not be subject to an endless "shell game" of last minute changes. If the plan amendment is revised within that period, the hearing will be postponed unless all affected parties agree otherwise.

**"Super Majority" Vote—** It shall be easier to require a "super majority" vote for many types of plan amendments that directly impact growth and development decisions.

**Protection from SLAPP Suits—** In order to promote more active involvement, private citizens and organizations shall be shielded from any developer-initiated SLAPP suits.

**Improved Ability for Citizens to Challenge Local Government Decisions—** Current citizen standing and legal review standards shall be improved to make the process more equitable, quicker and less costly.

**"No Free Density"—** The judicious conversion of rural land to urban density--in the form of compact, walkable, mixed use communities in appropriate locations--shall only be undertaken in fair trade for significant public benefit. This shall include the permanent preservation of natural and agricultural lands and open spaces.

Florida's population and developed land are projected to double over the next 50 years, and the state faces many uncertainties due to the impacts of rampant sprawl, the loss of urban lands, and climate change. Now, more than ever, Florida needs a visionary and workable planning process. The key to better growth management is more active and effective citizen involvement in the process. While we appreciate the sincerity and dedication of those involved with the Florida Hometown Democracy amendment, we do not see it providing this better role we all desire for the public at large. In our judgment, it will produce results with many unintended consequences to the detriment of a sustainable quality of life we all seek.

1. Amendments pit builders against anti-growth activitists. Sara Kam 27 July 2007 Palm Beach Post- Captial Bureau
2.Growth showdown bound for ballot? Nicholas Azzara 29 July 2007 Bradenton Herald
3. Bradenton Herald
4. Developing a middle ground. St. Pete Times Editorial, August 1, 2007

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