



Growth Management

A Primer on Growth Management in Florida

Florida Association of Counties

A BRIEF HISTORY OF GROWTH MANAGEMENT IN FLORIDA

Despite the popular perception, Florida's system of growth management dates back to before the mid-1980's. Beginning in the early 1970's, the Florida Legislature passed measures that started to build the foundation for our present system of growth management. Also, during the same time, Florida began a tradition that continues today of creating appointed commissions of diverse interest groups to study growth management and present recommendations to the state legislature.

In fact, the Growth Management Study Commission, created by Governor Bush, maintained the tradition that started with the first Environmental and Land Management Study Committee created by the 1972 Legislature. Better known as the ELMS I Committee, this diverse group, appointed by Governor Askew, made a number of recommendations to the 1973 Legislature. Taking up these recommendations, the Legislature created parts of Florida's growth management system still recognizable today. They established the Regional Planning Councils (RPCs), the Area of Critical State Concern program, and the Development of Regional Impact program (DRIs).

These early growth management measures were merely the beginning as the Legislature responded again to Florida's rapid growth. In 1975, the Legislature enacted the "Local Government Comprehensive Planning Act," which became Ch. 163, Part II, F.S. This legislation marked the first effort by the state legislature to impose requirements on local governments to address growth-related issues. As a result of this legislation, local governments were mandated to produce a local comprehensive plan with required elements. However, unlike today's comprehensive planning process, this legislation did not grant the local plans any legal status and the state's review was strictly advisory.

During the early 1980's, the Legislature passed the "Florida Regional Planning Council Act of 1980," which required each of Florida's eleven regional planning agencies to adopt a comprehensive regional policy plan. Also, in 1982, Governor Graham appointed the ELMS II Committee, charging it with building a blueprint to guide future growth and development. Their recommendations formed the basis for the "Local Government Comprehensive Planning and Land Development Regulation Act of 1985" (the '85 Act).

This act marked a pivotal point in the history of Florida growth management. It created the basic outlines of today's system. But more important, growth management had been up to this point more of a planning exercise without serious implementation. Unlike earlier legislation, the '85 Act mandated that local governments adopt

comprehensive plans consistent with state and regional plans, and that such plans undergo mandatory state review. The act also granted local plans legal status and provided citizens and adjacent local governments with standing to sue to ensure compliance with local plans. In addition, the '85 Act required that local comprehensive plans contain a future land-use map (FLUM) to direct development into the most appropriate areas. Finally, the adopted provisions of the local plan would – for the first time – be implemented through required land development regulations.

In another critical difference, the “85 Act introduced the concept of concurrency into growth management. Under this principle, development approval could only be granted where the requisite public infrastructure such as roads, sewers, and water lines were in place to handle the development project. To determine whether sufficient infrastructure existed, local governments had to develop levels of service and were prohibited from permitting development with impacts exceeding those levels. As originally proposed, concurrency was woven into growth management on the assumption that state funding would assist local governments, along with the private sector, in addressing public infrastructure needs. However, state level resources have never materialized.

In 1991, Governor Chiles appointed the members of the ELMSIII Committee to once again study growth management and report back to the legislature. The '93 legislature significantly revised growth management based on the ELMS III recommendations. The legislature sought to streamline the review of comprehensive plan amendments and develop more meaningful intergovernmental coordination (i.e., require local governments to adopt processes and procedures for dealing with extra-jurisdictional impacts and other governmental entities). The legislature also changed concurrency to make it applicable to state agencies and add more flexibility by making it more “pay-as-you-go.” Finally, the legislature enacted a variety of changes to the DRI program, including the raising of the threshold limits, increasing expedited review, making RPC review of DRI strictly advisory, and terminating DRI review in certain local governments.

GROWTH MANAGEMENT TODAY

A. The Structure and Process of Growth Management

Generally, Florida’s growth management system places decision-making about planning and land-use in the hands of local elected officials but imposes a complicated layer of state and regional review over those decisions. The system’s major components include Chap. 186, F.S. (establishing the Regional Planning Councils and requiring state / regional plans); Chap. 187, F.S. (setting out the State Comprehensive Plan); Chap. 163, Part II, F.S. (requiring local comprehensive plans with mandatory state review); and

Chap. 380, F.S. (establishing the DRI and Area of Critical State Concern programs). The following segment of this document provides a summary view of these components.

Local Comprehensive Plan and State Oversight

The '85 Act requires each local government to adopt a comprehensive plan to guide growth and development over a minimum of ten years. The plans must be consistent with the State Comprehensive Plan, the applicable regional policy plan, and Chap. 9J-5, F.A.C. These plans must incorporate certain elements, ranging from transportation to natural resource conservation. Among those elements, the future land use map (FLUM), the capital improvements element and the intergovernmental coordination element feature prominently. Each element consists of goals and objectives along with specific implementation policies and, where applicable, land development regulations. The goals, objectives and policies must be supported by relevant and appropriate data. Chap. 163, Part II, provides numerous opportunities for citizen participation in the development of local comprehensive plans.

Upon adoption by the local government and approval by DCA, the policies of the local plan carry legally enforceable status. Local governments may make subsequent changes to their plan through the adoption of amendments, although such changes are limited to twice per year.¹ Generally, amendments fall into two categories: a) changes to the FLUM that reclassify a property's land use designation and b) changes to the goals, objectives or policies of a certain plan element (particularly transportation). In addition, every seven years a local government must adopt and Evaluation and Appraisal Report (EAR) assessing the progress of the local government in implementing its comprehensive plan. State law mandates that the local plan be amended to reflect this report.

As required by Chap. 163, F.S., DCA adopted minimum rule criteria (Chap. 9J-5, F.A.C.) for review and compliance determinations of local plans with state law. The minimum criteria for plans include internal consistency, consistency with state and regional plans, policies to guide decisions and programs to ensure implementation, procedures for intergovernmental coordination, and procedures to evaluate plan implementation.

Comprehensive Plan/Amendment Process

For purposes of simplification, the following section will focus on the review and adoption of comprehensive plan amendments, although the process is essentially the same for the comprehensive plan. The integral steps in both cases center on the "transmittal" and "adoption" hearings. The governing body of the local government

¹ The exceptions to the twice-year limitation include amendments directly related to DRIs, small scale amendments, the designation of urban infill and redevelopment areas, and changes to the schedule of the capital improvements element.

takes some action in each in each of these hearing that in turn triggers a different review process at DCA.

A local government or property owner starts the process by proposing an amendment to the designated local planning agency (LPA). After holding at least one public hearing, the LPA makes a recommendation to the local governing body. The governing body then conducts a public “transmittal” hearing wherein a vote is taken on the proposed amendment. Assuming a favorable vote, the governing body must transmit the amendment to DCA, the applicable RPC and water management district, and various state agencies (including the Departments of Environmental Protection and Transportation).

DCA does not automatically review each proposed amendment, but has the discretion to decide, within 30 days of transmittal, whether or not to conduct a review. In the event that the local government, an RPC or an “affected” person requests review, DCA must review the amendment if such request is received within 45 days of transmittal. Where DCA reviews an amendment, agency comments must be submitted in 30 days and DCA issues its Objections, Recommendations and Comments report (known as the “ORC” report) to the governing body within 30 days of the receipt of the comments. In the ORC report, DCA considers whether the amendment is consistent with Chap. 163, F.S., Chap. 9J-5, F.A.C, the State Comprehensive Plan and the appropriate regional policy plan.

After receiving the ORC report, the local government has 60 days to review the report and adopt the plan amendment (or 120 days for amendments based on EAR reports). The governing body holds an “adoption” hearing for this purpose. Upon adoption, the amendment returns to DCA for review within 45 days. At that point, the department issues a Notice of Intent finding the amendment in compliance or not in compliance with Chap. 163, F.S. DCA mails this notice to the local government and publishes it in a newspaper designated by the local government.

Administrative Proceedings

After DCA makes its determination about the proposed amendment’s compliance, certain parties may seek an administrative hearing. Who enjoys such a right and what legal standard prevails depend upon whether or not DCA determines that the proposed amendment is in compliance.

In those cases where DCA deems the amendment in compliance, any affected person may file for a hearing within 21 days after the publication of the notice of intent. An administrative law judge conducts a hearing to determine whether or not the

amendment is in compliance based on the “fairly debatable” standard.² After DCA receives the administrative law judge’s recommended order, it can either issue a final order of compliance or submit a recommended order to the Administration Commission (the Governor and Cabinet) for final agency action.

In those cases where DCA deems the amendment not in compliance, the notice of intent goes directly to an administrative proceeding. The only parties to this proceeding are DCA, the affected local government, and any affected person who **intervenes**. At these proceedings, the local government’s decision is presumed correct and must be sustained unless it is shown by a preponderance of the evidence that the amendment is not in compliance. The administrative law judge’s recommended order goes directly to the Administration Commission for final agency action.

Small Scale Amendments

As compared to other plan amendments, a proposed amendment involving 10 acres or less is a “small scale” amendment with two significant advantages. These amendments, first, do not undergo a compliance review by DCA and, second, are not bound by the twice-year limitation on other plan amendments. However, Chap. 163, F.S., limits the cumulative acreage of small scale amendments to 80 acres, except for 120 acres in consolidated Jacksonville/Duval County and in certain infill/redevelopment areas. Moreover, where the small scale amendment involves a residential use, it is restricted to a density of 10 units per acre or less (unless located in infill or redevelopment areas). Finally, the same entity is prohibited from requesting two or more small scale amendments in the same year.

Areas of Critical State Concern

Chapter 380, F.S., establishes the Areas of Critical State Concern program, providing increased protection for areas with natural resources of statewide or regional importance. In this program, the Administration Commission adopts a rule designating an area and principles for guiding development. To further these guiding principles, DCA identifies specific steps such as comprehensive plan revisions, density requirements, and special permit conditions that local, state, and regional governments must implement. The rule designating an area remains subject to legislative rejection, modification or non-action.

Once an area receives this designation, local plans and land development regulations must be consistent with the guiding principles. Furthermore, any local government

² The “fairly debatable” standard has been described as “a deferential one that requires affirmance of a local government’s action if reasonable persons could differ as to its propriety.” B & H Travel Corp. v. Department of Community Affairs, 602 So. 2d 1362, 1365 (Fla. 1st DCA 1992).

comprehensive plans, amendments and land development regulations must be approved by a DCA final order. At this time, five areas of the state carry the area of critical state concern designation: the Florida Keys, the City of Key West, the City of Apalachicola, Big Cypress Swamp and the Green Swamp.

Developments of Regional Impact

Chapter 380, F.S. also establishes the Development of Regional Impact (DRI) program. This program provides state and regional review of local land use decisions on large developments that because of their character, magnitude or location will have a substantial effect on the public welfare of more than one county. A number of land uses ranging from airports to marinas, depending on their size, will trigger DRI review if they meet or exceed certain numerical thresholds outlined in statute and rules. For previously approved DRIs, any proposed change creating a substantial likelihood of additional regional impact or any type of regional impact constitutes a “substantial deviation,” necessitating further DRI review.

State and Regional Planning

Chapter 187, F.S., which contains the state comprehensive plan, was enacted in 1985 to provide long-range guidance for the state’s orderly social, economic and physical growth. It includes twenty-six goals ranging from subjects such as land use and public facilities to water resources and natural systems. In each odd-numbered year, the Governor’s Office is required to prepare proposed revisions to the state plan for review by the Administration Commission, which then forwards any approved revisions to the Legislature.

Chapter 186, F.S., provides for the creation of eleven RPCs and requires the RPCs to adopt strategic regional policy plans. These plans serve as long-range guides to the physical, economic and social development of a planning district by identifying regional goals and policies. These plans must develop a coordinated program of regional actions directed at resolving identified problems, at a minimum, in the following areas: Affordable Housing, Economic Development, Emergency Preparedness, Natural Resources of Regional Significance, and Regional Transportation. The regional policy plans must be consistent with the state comprehensive plan.

Judicial Review of Development orders

Chapter 163, F.S., provides standing to any aggrieved or adversely affected parties to maintain an action for injunctive or other relief against a local government to prevent any action on a development order inconsistent with the local plan. Interestingly, Chapter 163, F.S., has been interpreted to provide different appellate standards for different parties when challenging a development order. In the case of developers,

their appeal right is *certiorari* review in circuit court, meaning the court's review is limited to the record of the local government hearing and whether the proper procedures were followed and that the decision was supported by competent substantial evidence. Third parties (which are typically citizens), however, are entitled to a different method of review by the circuit court. In their case, they receive a "de novo" hearing in which the court conducts a new proceeding, including potentially new evidence and issues not raised in the local government hearing.

B. Opinions and Perceptions of Growth Management

Because growth management deals with difficult quality-of-life decisions, it is not surprising that the various players view the system in different ways. While these interest groups regard the system differently, consensus exists that the present system suffers from needless bureaucracy. Even growth management advocates agree that the present system often promotes paperwork over problem solving. Moreover, most interests agree that the present system tends toward a "top-down, one-size fits all" approach not necessarily appropriate for a diverse state like Florida.