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Overhaul of growth management law shifts control to local government

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The new Community Planning Act, approved by the Florida Legislature before the close of its annual legislative session last week, significantly alters Florida's growth management law by making a fundamental shift from state control of the land-use process to control by local government.

Gov. Rick Scott has 15 days, after transmittal, to sign or veto the bill or allow it to become law and it is expected he will sign it.

Since 1985, the Growth Management Act has attempted to provide a deliberative process for local governments to plan the future vision of their community. While there was ongoing debate about the effectiveness of the old law, the new act will have enormous financial and environmental impact for developers, businesses, and local governments by requiring greater local government participation in community planning and less reliance upon state agencies in growth management policy decisions. These changes will make the land-use, zoning and overall development process more straightforward and predictable.

The legislation will impact local developers in several ways. Amendments to comprehensive development plans will no longer be limited to two times a year. And the Community Planning Act, if it becomes law, will eliminate the "10 dwelling units per acre" density threshold for a small-scale amendment to the comprehensive plan. In response to the slowdown of the economy, the state provided for permits and other approvals for land development projects would remain valid for up to four years. An additional two-year extension is included in this legislation and provides an opportunity for those developers who did not file an original extension request to request one. The local government is prohibited from conditioning the granting of the permit extension. This extension is not automatic and extensions should be requested.

REVIEW TIMELINES REDUCED

The land-use plan amendment process has also been streamlined. For a parcel of land over 10 acres, the traditional transmittal process is maintained but timelines are shortened and state review is limited only to "significant state interests" and the current 136-day timeline for processing is streamlined to provide for a 30-day review period after adoption. For those developers and local government staff who have ever been frustrated by the ever changing balancing act of a finding of "need" for a plan amendment or have had their amendments challenged for promoting urban sprawl, both terms have been defined for greater clarity. A land-use amendment can now meet the "needs" requirement if it promotes economic growth and flexibility in the local real estate market (as defined by the local government), or because of population projections. The new definition of "urban sprawl" includes 13 factors to be used by the local government to determine if the proposed amendment can be defined as sprawl. These factors include the promotion of open space and recreational needs, preservation of agricultural lands, balancing land uses, promotes walkable communities and compact development.

The most controversial change reflected in the new Community Planning Act is the elimination of

mandatory concurrency for parks and recreation, schools, and transportation. Concurrency requirements are maintained for sanitary sewer, solid waste, drainage, and potable water. If local governments elect to apply concurrency to other non-required elements, the local plan must contain principles, guidelines, standards and strategies, including level of service, to guide application. Transportation deficiency or backlogs for roadway improvements are clearly defined and applicants are not responsible for funding transportation backlogs or deficiencies that exist prior to their filing of the application. A specific formula for calculating proportionate share contributions is provided and fees and construction costs must be credited dollar for dollar toward transportation impact fees applied.

There are other changes and clarifications to promote economic development: (1) Developments of Regional Impact (DRI) development orders, those very large-scale developments that can have regional impacts, are extended for four years from date of expiration. (2) These large-scale developments located within Dense Urban Land Areas (DULAs), designated counties and cities, including all of Broward and Miami-Dade counties that meet certain population thresholds, remain exempt from DRI review but remain a requirement in all other counties and cities. (3) Binding letters, the time consuming and expensive process by which a project is determined to be a DRI may no longer be required for large-scale developments as thresholds have been adjusted to lessen the burden on property owners in urban areas. (4) Flexibility in the identification of funding and timing of capital projects is retained at the local level by eliminating the need to amend the comprehensive plan every time a capital budgeting item is revised. (5) The seven-year Evaluation and Appraisal Report (EAR) process remains – although sent to the state as a letter, not an amendment thereby reducing monetary and staff costs to local governments.

LEGAL CHALLENGES

The legislation addresses legal challenges that can prolong the approval process. If a plan amendment is challenged and the state land planning agency has found the amendment in compliance, then the local government's determination is subject to the "fairly debatable" standard of review, a doctrine that bars a court from interfering in a zoning decision. If the plan is found not to be in compliance by the state land planning agency, the local government's determination that the plan is in compliance is presumed to be correct and the determination will be sustained unless it can be shown by a preponderance of the evidence that the decision is incorrect.

For those amendments currently pending administrative or judicial review, the state land planning agency must, within 60 days of the effective date of the law, review all administrative and judicial proceedings to determine if consistent with the new provisions.

For property owners and developers who wonder when to jump back into the land entitlement process, there could be no better time. Those whose projects require a land-use plan change or an extension of their development order should not hesitate to seek approval from their local government.

These changes may not last forever.

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