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An Introduction to Local Comprehensive Planning

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Q. *What is local comprehensive planning under Florida law?*

A. The local comprehensive plan is the basic blueprint that each local government must adopt to guide community development and show where it wants various land uses to be located. It is intended to control the physical growth and development of the local jurisdiction. Each municipality and each county must adopt a local comprehensive plan to govern the area for which it has regulatory authority over the use of land.

The local plan is significant because it governs all local land development decisions. It limits the discretion of local decision-makers in subsequent actions reviewing proposed development because all development permits issued by the local government must be consistent with the local plan.

Q. *How does a local government know what to include in its plan?*

A. The Legislature by law has specified nine topics to be addressed in the local comprehensive plan of each local government, and the State planning law sets forth certain specific issues in each of those topic areas that must be addressed in the plan.

Here are the topics that each local government must address in its plan, in the form of a plan "element" for each:

Future Land Use	Recreation and Open Space
Capital Improvements	Housing
Sanitary Sewer, Solid Waste, Drainage	Transportation
Potable Water and Natural	Intergovernmental Coordination
Groundwater Recharge	Coastal Management (in coastal areas)
Conservation	Public Schools (in most counties)

Q. *Are those elements the only required portions of the plan?*

A. No. Each plan is required to have a Future Land Use Map for the local government's jurisdiction which identifies the authorized future use for all land within the jurisdiction. This is the heart of the local plan for most landowners and developers.

The way it typically works is that the Future Land Use Element will create a series of land use categories, like Commercial, Agricultural and Residential, and then the Future Land Use Map will use those categories to identify the authorized future use of the land. It may also designate an Urban Services Area line or other type of urban growth boundary to limit the expansion of developed areas. In addition, a local government may address other topics on an optional basis. For example, some local governments have adopted economic development or historic properties elements.

In addition, the Legislature has enacted a State Comprehensive Plan which contains policies on a variety of issues, and each regional planning council has adopted a regional policy plan with regional policies on five key topics. All these State and regional policies must be reflected in each local comprehensive plan.

Finally, the Department of Community Affairs (“DCA”) has adopted rules that specify "minimum criteria" for each local plan. All of these requirements must be reflected in a local comprehensive plan for it to be found "in compliance" with State law.

Q. What are DCA's minimum criteria against which local plans are judged?

A. Most deal with very specific issues, and they depend upon the particular topic or element at issue. The most important ones are the general requirements regarding data and analysis. Both the State planning law and DCA's minimum criteria rule require each plan to be based upon the best available data and analysis, and to utilize professionally accepted planning methodologies. That means local governments are supposed to make policy decisions about physical growth and development based on hard facts developed by professionals. They can use existing information in preparing their plans, but they have to show that it is the best available data.

Q. What kind of data and analysis are needed to support a land use change?

A. It varies with the parcel of land and the larger circumstances. For many changes to the Future Land Use Map that are intended to increase allowed densities or intensities of use related to proposed new development, one key issue is “need.”

Florida’s planning law requires each local government plan to allocate enough future development potential on undeveloped lands to accommodate the growth expected based on official population projections. DCA’s approach to evaluating land use changes for “need” has evolved over the years. In recent years, DCA has been extremely aggressive in enforcing the “need” requirement and seeks to prevent increases in densities and intensities if it believes there is an “over-supply” of vacant urban land. It has become more aggressive in enforcing other planning standards.

Q. What are those other planning standards?

A. They are found in DCA’s urban sprawl rule, which was adopted by the agency in 1992 to discourage the proliferation of urban sprawl. These minimum criteria are intended to prevent the type of leapfrog, linear or single-use, low-density development which is commonly known as “urban sprawl.”

DCA's urban sprawl rule includes 13 primary indicators of urban sprawl. The agency typically examines those indicators and makes a judgment, on a case-by-case basis, whether a particular land use change would fail to discourage the proliferation of urban sprawl. There is no formula for application of the indicators, and no magic number of indicators which determines whether a particular land use change will be deemed a failure to discourage the proliferation of urban sprawl. However, if the agency believes there a land use change is not needed to accommodate projected population growth, it will be more rigorous in its application of the urban sprawl rule.

DCA's urban sprawl rule also identifies development controls which, if included in a local plan, can result in the agency determining that urban sprawl concerns have been overcome. These generally address urban form. They are intended to foster development of liveable communities that do not consume disproportionately large areas of land; include a rich, well-balanced mixture of land uses; protect natural resources; and efficiently utilize public facilities.

Q. Does it matter whether the local plan is "in compliance" with State law?

A. Yes. The 1985 Legislature concluded that local governments were not taking the old planning law seriously enough. So the 1985 Growth Management Act greatly strengthened the State role in land use decision-making. One way that new policy was carried out was by directing DCA to review and approve all local comprehensive plans, based on its minimum criteria rule. The Governor and Cabinet were authorized to impose financial sanctions against any local government whose plan was determined to be not "in compliance." There are additional reasons, which we'll discuss below.

Q. What does the local government do with the adopted plan?

A. It is required to implement the plan through "land development regulations" or LDRs that are consistent with the plan. LDRs are grouped together in a land development code and encompass all of the local government's regulatory requirements for developing land. For example, the code will include subdivision platting requirements and maybe zoning. It may include a tree ordinance or other regulations to protect natural resources. In short, every policy regarding land development addressed in a local plan must be implemented through an LDR.

When a developer applies to develop land, the local government then uses its comprehensive plan and LDRs to determine whether the project is permissible and, if so, what requirements it must meet in order to gain approval. These decisions are embodied in a development order issued by the local government. Significantly, the LDRs and each development order are required by law to be consistent with the comprehensive plan. In this way, the policy decisions made in the comprehensive plan are supposed to control ultimate land development decisions.

Q. Can the local plan be changed after it is adopted?

A. Yes, it is supposed to be updated periodically. Periodically, most local governments are supposed to make a complete review of their comprehensive plan and

determine what changes, if any, are necessary to bring it up to date through an Evaluation and Appraisal Report, or EAR. They will update the data and analysis upon which the plan was based, and incorporate any changes in State or regional policy that have been enacted since adoption of the original comprehensive plan. Once DCA determines that a local government's EAR is sufficient, the local government must implement its EAR by amending its plan.

Q. *Is that the only way in which a local plan is changed?*

A. No. By State law, generally a local government may make amendments to its comprehensive plan twice a year. That restriction is supposed to force local elected officials to consider the full impact of all proposed land use changes, something that critics say they won't do if local officials can change their plan every time they meet.

There are exceptions to the twice-a-year rule. For example, amendments for certain "small-scale" projects are exempt from the twice-a-year rule. So are amendments addressing a development-of-regional impact ("DRI"). But the vast majority of plan amendments are handled by each local government in one of two plan amendment "cycles" each year.

Q. *How does DCA review plan amendments?*

A. DCA has two opportunities to review each plan amendment. The first opportunity is when the local government decides that it wants to amend its plan and sends DCA a "transmittal draft" of the amendment. DCA decides whether it wants to give the draft amendment an in-depth review. If it decides the draft amendment does not warrant such a review, it notifies the local government that it can proceed to formal adoption. Most amendments are in this category.

If DCA decides that it wants to give the draft amendment an in-depth review, or if the local government or regional planning council request one, then the draft amendment is distributed to a variety of State and regional agencies which comment on issues implicated by the draft amendment, usually only those issues within their expertise and jurisdiction. DCA then compiles all this information and issues a report of its "objections, recommendations and comments." In this ORC Report, DCA says whether it believes the draft amendment, if adopted, would be in compliance. DCA also may recommend changes to bring the draft amendment into compliance.

The draft amendment then returns to the local government. If DCA has issued an ORC Report, the local government and applicant consider whether to make any changes. They may also negotiate with any opponents in order to eliminate opposition. Ultimately, the local government must decide whether to adopt the amendment. Once it does so, the adopted amendment is sent to DCA for a compliance review.

Q. *What happens in a compliance review?*

A. DCA formally decides whether it believes the adopted amendment is in compliance with State law. All amendments undergo this review, whether or not they were the subject of an ORC Report as a transmittal draft. DCA has the interested

agencies review the adopted amendment and considers comments by them and other interested persons. It then issues a "notice of intent" in which it says whether the amendment would be in compliance.

If DCA believes the adopted amendment would be in compliance, no further action is necessary. After 21 days, the notice will become a final order and the plan amendment will then be legally effective.

Q. *You mean the local government's plan amendment isn't legally effective until the State determines that it is in compliance with State law?*

A. That's right. That is the main reason it is critical to get a final determination that the amendment is in compliance. The amendment won't be legally effective until then. Consequently, the developer or landowner cannot get the benefit of the land use change for his or her land until that final order is entered by the State. This is another way in which Florida's planning law gives the State strong control over land use decisions that used to be exclusively local in nature.

Q. *What if DCA says the adopted amendment is not in compliance?*

A. The case is referred automatically to the Division of Administrative Hearings and it is scheduled for a formal hearing, which is like a trial with sworn witnesses, cross-examination and the introduction of documentary evidence. This part of the process can be quite time-consuming and expensive, especially for the landowner or developer. This is one reason most plan amendment cases set for hearing ultimately settle, just like most cases in civil litigation.

If the case does not settle, after hearing the administrative law judge issues a recommended order on whether he or she believes the adopted amendment is in compliance. The recommended order is then sent to the appropriate officials -- in some cases the DCA Secretary and in others, the Governor and Cabinet -- who enter the final order based on the facts found by the administrative law judge and their own interpretation of the law. If the final order determines the adopted amendment in compliance, it becomes legally effective; if the final order determines that the adopted amendment not in compliance, then the amendment has no legal effect.

Ordinarily, the administrative hearing and decision-making process can take six to nine months or more.

Q. *What if somebody is unhappy with the local government's decision?*

A. If the local government adopts the amendment and a third party does not like it, then the third party has two avenues. First, the third party can try to persuade DCA to find the adopted amendment not in compliance. For that reason, sometimes an applicant and local government will negotiate with a third party prior to adoption or while the amendment is pending at DCA.

Second, if DCA enters a notice of intent to find the amendment in compliance, the third party can ask for a hearing. Alternatively, if DCA enters a notice of intent to

find the amendment not in compliance, the third party can intervene and support DCA's position. In either situation, State law is very liberal on the showing that a third party must make in order to qualify for such a hearing, but sometimes it is possible to get the third party dismissed because he or she does not satisfy the "standing" requirements of the planning law.

Q. *What if the case goes to hearing after the DCA compliance review?*

A. DCA's notice of intent will be significant because the burden of proof varies, depending upon DCA's position on the ultimate issue of compliance. If DCA entered a notice of intent to find the adopted amendment in compliance, the standard at hearing is the "fairly debatable" standard. That means the applicant and local government will prevail if they show the compliance issue is the subject of fair debate. This standard is one of the most lenient in the law, and it is difficult for a third-party challenger to prevail in a case governed by this standard.

If DCA entered a notice of intent to find the adopted amendment not in compliance, then the applicable standard at hearing is preponderance of the evidence. That means the case will be won by the party who musters 51 percent of the evidence for its position. This is the standard applied in most civil litigation and administrative proceedings. It is much easier for a third-party challenger to prevail under this standard. It is significant also that the challenger here will be aligned with the DCA staff, whose testimony can be influential in these hearings.

Q. *So it looks like it pays to be on the government's side.*

A. That's right. The planning process contains important incentives for the landowner, developer or third parties to work out differences with both the local government and DCA as the plan amendment goes through the process. These incentives relate not only to the cost -- in time and money -- of ultimately gaining approval, but also the likelihood of gaining approval.

Your chances of ultimately succeeding in the land planning process are much better with the local government and DCA on your side. Of course, it is possible to prevail over the objections of DCA and third parties, even though there are formidable obstacles to doing so. It is indispensable to have the local government on your side.

Q. *Must this two-step process be followed for all plan amendments?*

A. Yes. Except for the small-scale projects discussed above, all local government plan amendments must go through this two-step process at the local and State levels. That includes text changes to policies, land use changes to the Future Land Use Map, and complex amendments for special planning issues like Rural Land Stewardship Areas and sector plans.

Q. Can we develop while we are going through the plan amendment process?

A. No, unless part of what you want to do is already authorized by the comprehensive plan. Remember, the plan amendment is not legally effective until it has been formally determined by the State to be in compliance with State law.

Q. Once the local plan has been amended to authorize my project, do I need any further government approvals?

A. Yes. Land use approval under the local plan does not mean no other permits or approvals are required. In fact, after gaining land use approval, the developer must get all the other permits required by law, down to and including building permits.

Think of the development review process as having several layers, particularly for a major project. The most general layer is the comprehensive plan. If the plan does not allow the type of project the developer wants, the plan must be amended and the amendment must be approved by the State. For specified large projects, next comes the DRI development order, which is more specific and must be consistent with the plan. Then come other permits, like dredge-and-fill permits from the water management district and building permits from the local government.

Q. Is a change to the Future Land Use Map the same as DRI approval?

A. No. Approval under the DRI program is required by State law only for certain land developments. In concept, the DRI program is intended to regulate a development which will have effects on more than one local government because of the project's character, location or magnitude.

Generally, a project which exceeds any DRI "threshold" requires DRI review and approval. Typically, these are large projects. For example, an office park in excess of 300,000 square feet or 30 acres will be considered a DRI.

DRI approval is granted by the local government. It may act on a DRI application only after review by the regional planning council and a variety of State and regional agencies. The project is reviewed to identify multi-jurisdictional "impacts" -- also called regional impacts -- to natural resources and public facilities. The agencies recommend how the impacts should be ameliorated through "mitigation" by the developer.

The local comprehensive plan is both more comprehensive and more general than a DRI development order. In some situations, it is possible to obtain local plan and DRI approval in tandem, but generally the local plan establishes the framework within which a developer must fit his or her DRI project, so usually the planning issues are addressed first. It's a matter of working from the general to the specific.

Please contact us at (850) 425-2222 if you have further questions.

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