

Planning, Zoning, & the Consistency Doctrine: The Florida Experience

**Center for Urban
Transportation Research
University of South Florida**

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Preface

Recent legislation and fiscal trends in Florida and nationwide have created a unique combination of constraints and opportunities, providing an impetus for examining the way Florida conducts transportation planning. In response to these challenges, the Florida Legislature and the Governor's Office directed the Center for Urban Transportation Research (CUTR) to undertake the State Transportation Policy Initiative (STPI). The purpose of this multi-phase study is to examine current transportation planning, growth management, and transportation funding practices in Florida and to develop recommendations that can be the bases of future legislative initiatives, agency rules, and better planning practice.

Efforts undertaken as part of STPI include:

- a comprehensive review of local and regional planning in Florida in the context of State growth management requirements and federal legislation
- an evaluation of the impact of community design on transportation needs
- a review of the literature on the transportation costs of urban sprawl
- an evaluation of comprehensive transportation planning for state purposes
- an examination of the relationship between air quality and transportation planning, as practiced in Florida
- an evaluation of trends and forecasts of Florida's population and transportation characteristics
- a study of transit, transportation demand management, level of service, and concurrency issues and of congestion management and urban mobility planning
- preparation of a state land use map by Florida's Regional Planning Councils
- a study of statewide transportation needs and funding
- recommendations for a new strategic planning process for Florida that recognizes uncertainty
- a review of consistency between planning policy and regulatory practice
- a study of sustainable community design and transportation.

This report is one of a series of reports produced as part of the State Transportation Policy Initiative.

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Contents

Foreword	vii
Chapter 1: The Consistency Doctrine	1
The Historic Context	1
Chapter 2: Statutory Mandates for Consistency	5
The State Role	5
Regional Coordination and Consistency	5
Consistency of Local Plans and Regulations	8
Chapter 3: Consistency and Transportation	15
Regional Transportation Planning	15
Strategic Directions	16
The Consistency Challenge	17
Chapter 4: Judicial Interpretations of Consistency	21
Consistency and the Florida Courts	21
Consistency and the Takings Clause	25
Conclusions	28
Chapter 5: Consistency in Practice	31
Local Experiences	31
Countywide Consistency Models	32
Chapter 6: Consistency and Contemporary Planning	39
Contradictions Between Planning and Zoning	39
Consistency through Public Involvement	45
Chapter 7: Conclusions and Recommendations	47
Increase Clarity and Predictability	47
Simplify and Streamline	48
Match Practice with Policy Intent	49
Integrate Transportation into Land Use Planning	50
Invest in Better Data	51
Build a Constituency for Planning	52
Endnotes	53
References	55

Foreword

The difficulty of coordinating land use and transportation is compounded by discrepancies that occur between comprehensive plans and land use decisions. This element of the State Transportation Policy Initiative examines the relationship between planning policy and regulatory practice in Florida. The review addresses technical considerations, as well as political and legal issues that affect the relationship between comprehensive plans and land development regulations.

The report begins with an overview of the historic context for consistency in planning and land development regulation, and the statutory mandates in Florida for achieving consistent, coordinated planning across the many agencies and jurisdictions involved in land use and transportation decisions. It then examines how the Florida courts have construed consistency between future land use plans and regulatory decisions, and the latest guidance from the U.S. Supreme Court on the appropriate balance between planning, regulation, and property rights. The report concludes with a look at consistency in practice, and guidelines to assist local governments in promoting conformity between land development regulations and the local comprehensive plan.

Chapter 1

The Consistency Doctrine

The consistency doctrine requires that regulatory programs must be consistent with, and further, a comprehensive plan. It is based on the premise that *planning* is a logical predicate to development decisions, and that *regulation* is meaningful only as it furthers a planned course of action or vision of the community's future.

Kent's landmark work, *The Urban General Plan*,¹ sets forth the key purposes of the comprehensive or general plan, as follows:

- 1) To improve the physical environment of the community.
- 2) To promote the interest of the community at large, rather than the interests of individuals or special groups within the community.
- 3) To facilitate the democratic determination and implementation of community policies on physical development.
- 4) To effect political and technical coordination in community development.
- 5) To inject long-range considerations into the determination of short-range actions.
- 6) To bring professional and technical knowledge to bear on the making of political decisions concerning the physical development of the community.

Thus, planning accomplishes what regulation alone cannot. It allows communities to anticipate rather than react, to coordinate rather than compete, and to rely on shared goals and values in land use decisions. Consistency in development planning relates both to physical issues, such as consistency of proposed rezoning with the

future land use map, and policy issues, such as the consistency of a development action with policies aimed at discouraging urban sprawl.

Despite the benefits of planning, achieving consistency in practice has been difficult at best. The basis for this tension lies in the historic context for planning and zoning in the United States.

The Historic Context

Consistency mandates have been integral to urban planning since the 1920s. The Standard State Zoning Enabling Act of 1922 provided that zoning decisions "shall be made in accordance with a comprehensive plan." The Standard City Planning Enabling Act of 1928, drafted by the U.S. Department of Commerce, set forth the statutory groundwork for the comprehensive plan.

Modern problems of consistency in land use planning relate to the historic separation of zoning from planning. Just as zoning preceded planning in our legislative history, zoning has long overshadowed planning in the context of local development decisions. Inadequate guidance on the appropriate relationship of zoning to planning, lack of clarity regarding the nature and content of a comprehensive plan, and allowances for piecemeal adoption of plan elements were among the other factors that reinforced consistency problems.

For decades, the courts did little to discourage this trend. In the desire to uphold local land use regulation, courts went to great lengths to avoid the concept of planning or a comprehensive plan as a logical precondition to zoning. Statutory

directives that zoning shall be based on a comprehensive plan, were creatively construed to ward off consistency challenges.

The rationale was that zoning, as a comprehensive scheme for regulating and organizing land use, was a type of comprehensive plan and therefore a justification for itself. The semantic game of the “comprehensive zoning plan” was repeated by court after court through decades of zoning jurisprudence.²

The Tragedy of the Commons

In this essay on population pressures, Garrett Hardin describes the fundamental basis for public control of private property. The scenario is as follows: Picture a pasture open to all. It is expected that each herdsman will try to keep as many cattle as possible on the commons. Such an arrangement may work as long as wars, poaching, and disease keep the number of people and animals in check. However, eventually the people begin to strive for stability and gradually war is replaced with social order.

As rational beings, each herdsman then begins to look for ways to maximize his gain. He considers: “What is the utility to me of adding one more animal to my herd?” This utility, says Hardin, has one negative and one positive component.

- 1) The positive component is the benefit to the herdsman of having an additional animal to sell. This benefit is equal to nearly +1.**
- 2) The negative component is the additional overgrazing by one more animal. Because these costs are shared by all the herdsmen, the negative utility for an individual herdsman is only a fraction of -1.**

Weighing the costs and benefits, the herdsman concludes that the only sensible course is to add another animal to his herd. And another; and another...But this conclusion is reached by each and every rational herdsman sharing the commons. Therein lies the tragedy. Concludes Hardin: “Each man is locked into a system that compels him to increase his herd without limit-in a world that is limited. Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons. Freedom in a commons brings ruin to all.”

Source: Garrett Hardin, “The Tragedy of the Commons,” Science, Vol 162, December 1968: 1243-1248.

Zoning Overshadows Planning

While zoning was gaining enthusiastic support, comprehensive planning was in crisis. Planning proposals were too often considered impractical or overly idealistic by local officials seeking to resolve community problems. Despite its scientific appeal, early rational planning theory had largely neglected the political and participatory nature of land use and transportation decisions. Public concerns and community politics were perceived as a nuisance or impediment to rational decisionmaking.

With few mechanisms for responding to the dynamic nature of community development, the traditional end-state master plan was rapidly out of date. Planning became viewed as a bad investment. Why invest in a comprehensive plan only to have it end up on the shelf?

Zoning, however, was a tool that could be used for any number of purposes and was readily amenable to change. Text could be amended or land could be rezoned in response to community politics. Given the option, many local governments chose either not to plan or to ignore their plan and undertake zoning on its own merits.

This is not to imply that zoning has been uniformly popular. On the contrary, zoning has been unique in that it follows no clear political or ideological lines. All of this has led to rather disorderly tendencies for a system founded on principles of order and harmony. In his research during the 1960s, attorney Richard Babcock had this to say about America’s relationship with land use control:

... the chaos in land use planning is not the result of uncontrolled individual enterprise. It is a result of a combination of controls and lack of controls, of over-planning and anti-planning, enterprise and anti-enterprise, all in absolute disarray. I doubt that even the most intransigent disciple of anarchy ever wished for or intended the litter that

*prevails in the area of local land use regulation.*³

The Rise of Discretion

These disorderly tendencies have been exacerbated by the growing discretion in land development decisions. The zoning ordinances of the early twenties consisted of about six pages of text and a zoning map, and allowed the uses specified in each district as-of-right.⁴ In other words, permitting was largely administrative, with little discretionary review. Flexibility was provided in administration through the use of variances where strict adherence to the code would place undue hardship on a particular property.

As urbanization became more complex, local governments sought ways of incorporating more discretion into land use decisions. The variance process gradually became an avenue for granting or denying favors—a continuing problem in land development regulation.

A category called “special land uses” was devised for uses that might be appropriate in a zoning district, but warranted greater scrutiny due to their special characteristics. The special use permit process granted local officials discretion to decide whether the use should be permitted and the authority to impose special conditions to reduce harmful impacts on surrounding properties. A public hearing was also frequently required.

Later emerged the “floating” zone, which appears as a zoning district in text, but not on the zoning map. It is assigned to a property through negotiations between a local government and a prospective developer, who initiates the process for a specific

project and parcel of land. Floating zones have been the mechanism of choice for Planned Unit Developments and more recently Traditional Neighborhood Developments.

A variation of this theme was the overlay zone, which adds special regulations onto those of an underlying zoning district. Overlay zones have often been used for protecting areas with environmental or historic qualities, where conventional zoning requirements are not sufficient. More recently, they are being used for managing access and reserving right-of-way on highway corridors or encouraging mixed use by laying one existing zoning district onto another.

As local decisionmaking became increasingly discretionary, the courts began to require some policy basis beyond the zoning ordinance and map to prove a decision was not arbitrary or capricious. Courts looked for this basis in the local comprehensive plan.

The consistency doctrine summoned planners through the comprehensive plan to bring order and harmony to an otherwise chaotic process. It aimed to reunite regulatory controls with urban planning and thereby temper the “trial by neighborhoodism” so common to zoning decisions. In theory, an integrated planning and regulatory program would discourage arbitrary land use decisions, afford more predictability to property owners and developers, and ultimately strengthen the legal basis for regulatory action. With these ends in mind, consistency mandates were carefully fused into Florida’s landmark growth management legislation.

Chapter 2

Statutory Mandates for Consistency

In 1985, Florida elevated the consistency doctrine in state planning law by establishing the most stringent consistency mandates in the nation, including state oversight of local compliance. The consistency mandates integrated state, regional, and local planning and regulatory programs. A primary intent was to increase the consistency of land use and transportation decisions with growth management goals. This chapter reviews the integrated planning framework established in Florida under the Growth Management Act.

The State Role

Florida's 1985 growth management legislation established a strong state role in defining the policy direction for local planning and enforcing state, regional, and local compliance with state policy. Local comprehensive planning had been mandatory since 1975, but enforcement problems and the marginal quality of many local plans led to a requirement in 1985 that local governments must submit their plan to the Department of Community Affairs (DCA) for compliance review. The Department was charged with reviewing each plan for compliance with statutory requirements, administrative rules, and state growth management policy.

A State Comprehensive Plan was also adopted in 1985 under Chapter 187, F.S. to provide "long-range guidance for the orderly, social, economic, and physical growth of the state ... [and] ... give specific policy direction to the state and regional agencies." (See §186.007(1), F.S.) The statute provided that plans of regional and state planning agencies are "not to be in conflict" with each other and are "to further" the goals of the state plan.

For consistency reviews of local plans, state and regional policy plans were to be construed as a whole, with no specific goal and policy applied in isolation from the others. Compliance challenges were to be carried out through the Division of Administrative Hearings and the hearing officer was directed to find the local comprehensive plan or plan amendment in compliance if "determination of compliance is fairly debatable." (See §163.3184[9][a].)

In 1993, the ELMS-III Act called for a new State Comprehensive Plan to provide more strategic direction to growth management. The growth management portion of the State Comprehensive Plan is to integrate policies related to land development, air quality, transportation, and water and provide direction and sufficient detail to guide growth management programs at all levels of government.

Regional Coordination and Consistency

A framework for regional planning and intergovernmental coordination was also established to increase regional consistency of local comprehensive plans. Each Regional Planning Council (RPC) was required to prepare a comprehensive regional policy plan that translated state goals into a regional policy framework.

The regional plan was to guide local comprehensive planning and growth management and RPCs were to review local plans for consistency with regional policy. RPCs were also to assist in resolution of conflicts that arose between member governments on issues of regional concern. Local governments were required to include intergovernmental coordination elements in their comprehensive plan to provide a

framework for coordination with adjacent communities.

The Regional Planning Councils had only limited success in enforcing the consistency mandate. Local governments objected to what was perceived as back door tinkering with their local planning and regulatory program and inadequate political accountability of RPCs in appealing local actions. These tensions were exacerbated by the authority of RPCs to appeal local development orders for Developments of Regional Impact (DRIs).

RPCs and the Department of Community Affairs were accused of using the DRI process to address shortcomings in local comprehensive plans. The private sector, frustrated by spiraling development costs and occasionally held hostage in the

planning debates, called for dissolving the DRI process altogether.

In 1993, the ELMS-III Act offered a new approach. The regional policy plans are now to be strategic, rather than comprehensive, and consistent with the new growth management portion of the state comprehensive plan. The regional plan is to contain regional goals and policies related to affordable housing, economic development, emergency preparedness, resources of regional significance (including natural resources and transportation systems), and other subjects relating to the particular needs of a region. RPCs must also identify the geographic location of any regionally significant transportation facilities and natural resources.

The Act redirected the role of RPCs away from Developments of Regional Impact and plan review to eliminate their quasi-regulatory functions. Instead, the Act emphasized their role in promoting intergovernmental coordination, ensuring regional consistency of land use and transportation planning, providing technical assistance, and mediating planning and development disputes that arise between local governments in relation to regional growth management issues. Planning standards must now be adopted by a two-thirds vote of member governments and may be used for planning purposes only—not for permitting or regulatory purposes.

RPCs retained authority to propose objections and recommendations or to comment on local plans or plan amendments, but could no longer directly appeal plan amendments or DRI development orders. The new interim review criteria provide that RPCs may only address state and regional resources and impacts on adjacent jurisdictions in review of DRIs. In an effort to streamline development review, an expedited review process was provided for DRIs deemed consistent with the local comprehensive plan.

The growth management portion of the state plan is to:

- **Identify urban and metropolitan growth centers.**
- **Identify areas of state and regional environmental significance and establish strategies to protect them.**
- **Provide guidelines for where urban growth is appropriate and should be encouraged.**
- **Provide guidelines for state transportation corridors, public transportation corridors, new interchanges on limited access facilities, and new airports.**
- **Provide coordinated state planning of road, rail, and waterborne transportation facilities designed to take the needs of agriculture into consideration and to provide for the transportation of agricultural products and suppliers.**
- **Recommend how to integrate the state water plan, the state land development plans, and transportation plans required by Chapter 339, F.S., Transportation Finance and Planning.**
- **Set recommendations concerning what degree of consistency is appropriate for the strategic regional policy plans.**
- **Recommend when and to what degree local plans must be consistent with the growth management portion of the State Comprehensive Plan.**

Borrowing from the New Jersey model, RPCs are now responsible for conducting a cross-acceptance negotiation process to resolve inconsistencies between regional and local plans. They are also responsible for coordinating land development and transportation to foster regional transportation systems and identifying inconsistencies between local plans and those of transportation agencies and Metropolitan Planning Organizations.

Intergovernmental Coordination

Florida's planning legislation requires local governments to include an intergovernmental coordination element (ICE) in their comprehensive plan. The ICE is intended to lay out how the community will coordinate its plan with the comprehensive plans of adjacent municipalities, the county, adjacent counties, or the region. (*See* §163.3177[4][a].) Rules of the Department of Community Affairs require the ICE to identify and resolve any incompatible goals, objectives, and policies of a local comprehensive plan with those of an adjacent local government. (*See* 9J-5.015 F.A.C.)

The element is required to contain one or more goals that establish the desired outcome of intergovernmental coordination activities. Each of the goal statements must address one or more of the following objectives:

- Coordinate the comprehensive plan with the plans of school boards and other units of government that provide services, but have no regulatory authority over land use.
- Ensure that local governments address the impacts of proposed developments upon adjacent municipalities.
- Ensure coordination with the level of service standards for public facilities with any state, regional, or local entity having the operational and maintenance responsibility for such facilities.

Yet prospects for intergovernmental coordination have been hampered by a host of barriers to regional collaboration. These include a strong history of home rule, competition for tax base, departmentalization of information and objectives, conflicts over annexation, inadequate conflict resolution mechanisms, changing political philosophies, and lack of political will.

To offset these barriers, the ELMS-III Act strengthened requirements for Intergovernmental Coordination Elements (ICE) of the local plans. The ICE must now include a process for determining if development proposals would have a significant impact on other local government resources and facilities. This would address all regional and state resources and facilities identified in the State Comprehensive Plan and the regional policy plan. Local governments may also extend this protection to unique community characteristics noted in the comprehensive plan. (*See* 9J-5.015[4][a] F.A.C.)

To promote increased cooperation among governmental agencies the new ICE must include:

- a dispute resolution process;
- procedures to identify joint planning areas; and
- guidelines for recognition of campus master plans.

New requirements also provided for the formation of interlocal agreements between a county, municipalities within that county, the district school board, and service providers to promote collaborative planning and decisionmaking. Among other things, activities involving cooperation may include location and extension of public facilities subject to concurrency, and siting facilities with countywide significance.

An improved intergovernmental element, consistent with the ELMS changes, is a prerequisite to terminating the DRI pro-

gram—which historically has been the avenue for addressing major local development initiatives that impact other communities. Local governments must adopt the amendments necessary to strengthen the

element by December 31, 1999. Local governments that exercise their option to retain the DRI program need not expand their intergovernmental coordination element, but must address the new

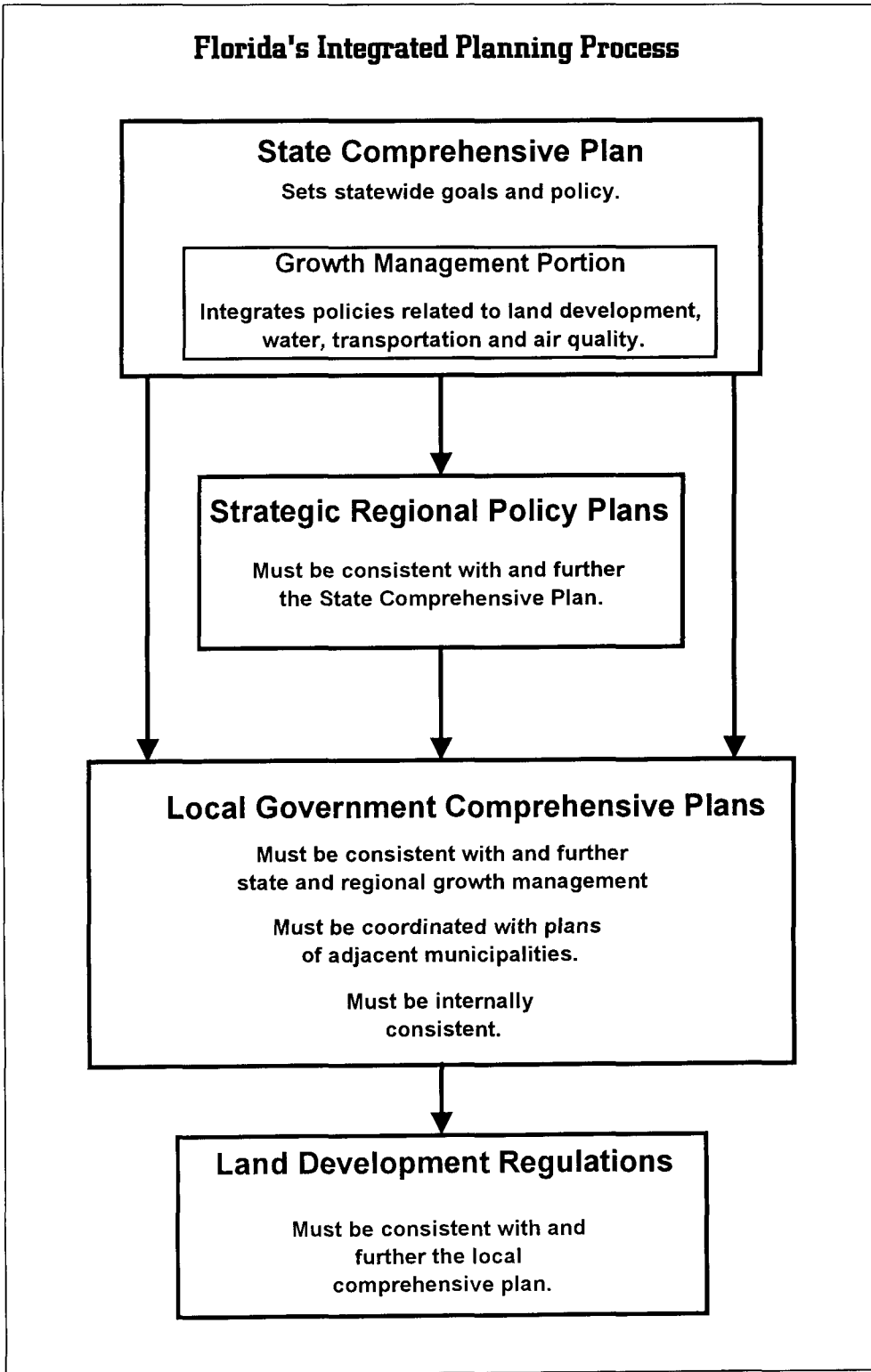
intergovernmental coordination requirements in their Evaluation and Appraisal Report.

The new approach is a comprehensive effort to improve regional coordination and address the regional impacts of smaller developments. However, many continue to question whether the barriers to regional coordination and consistency can be overcome through voluntary coordination. These and other concerns have led the Intergovernmental Coordination Element Advisory Committee to recommend that the DRI program be retained and the ICE requirements be modified accordingly.

Consistency of Local Plans and Regulations

The statement of legislative intent in Chapter 163, County and Municipal Planning and Land Development Regulation, provided a clear message to local governments regarding the consistency of plans and development actions:

It is the intent of this act, that comprehensive plans shall have the legal status set out in this act and that no public or private development shall be permitted except in



conformity with comprehensive plans, or elements or portions thereof, prepared and adopted in conformity with this act. (See §163.3161[5].)

Upon adoption of the plan, all development and all development orders “shall be consistent with such plan as adopted” and “all land development regulations enacted or amended shall be consistent with the adopted comprehensive plan.” (See §163.3194[1][a-b].) A second part of the definition provided that “development approved or undertaken by a local government” shall be consistent with the comprehensive plan based on the same criteria, with the addition of capacity or size and timing. This provision had the effect of also requiring infrastructure and other capital improvements to be consistent with the comprehensive plan.

The term “development order” was defined to encompass approval or denial and was broadly defined in statute to include rezonings, subdivision decisions, special exceptions, variances, and “any other official action of local government having the effect of permitting the development of land.” (See §163.3164[7-8].) Designation of rezonings as quasi-judicial actions represented a departure from conventional zoning law, where rezonings were typically treated as legislative acts.

Rezonings were also included in the definition of land development regulations, to encompass the rezoning of large areas or several properties in accordance with changes in the local land use plan—a legislative action. This is significant in that quasi-judicial actions are subject to strict scrutiny by the courts and governments carry a greater burden of proof, whereas legislative acts are given greater deference and governments need only provide some basis in fact or logic for their action. Confusion over the appropriate threshold for designating a rezoning as legislative or quasi-judicial arose in the Florida Supreme

Court’s interpretation of *Snyder v. Brevard County* (see Chapter 3).

Within one year after submitting its comprehensive plan for review, each local government was to adopt or amend, and enforce, land development regulations consistent with its adopted comprehensive plan. At a minimum, local governments were required to adopt subdivision regulations, land use regulations, sign regulations, wellfield protection regulations, concurrency regulations, and stormwater management regulations.

These land development regulations were to ensure compatibility of adjacent uses, provide for open space, consider needed parking, ensure safe and convenient on-site traffic flow, regulate areas subject to flooding, and protect environmentally sensitive lands. A general zoning code was not required if all of these requirements were met.

In the interim, while regulations were revised for consistency with plan and statute, the comprehensive plan was to govern any action taken on an application for a development order. (See §163.3194[1][b].) These consistency mandates elevated the legal status of the plan to a regulatory, rather than merely advisory document. They also had the effect, at least in statutory terms, of voiding any local development action deemed inconsistent with the plan.

Consistency Challenges of Land Development Regulations

The statute limited the role of the Department of Community Affairs in enforcing compliance with requirements related to land development regulations. DCA may require a local government to submit its land development regulations only if it receives information demonstrating that the local government has completely failed to adopt one or more of the regulations required by statute. (See 9J-24.004, F.A.C.)

DCA review is limited to determining whether the required regulations have been adopted and “shall not address the consistency of the regulations with the plan.” (See 9J-24.005 F.A.C.) If a local government fails to adopt the required regulations, then DCA may institute action in circuit court.

Although DCA’s role is limited, land development regulations may be challenged for inconsistency with the plan by a “substantially affected person,” which is broadly defined in the Administrative Procedures Act (Chapter 120, F.S.). Such a challenge must be filed within 12 months of ordinance adoption.

A petition stating the basis for the challenge must first be filed with the local government and, if the response is not accepted, then the petition may be filed with DCA. If DCA finds the ordinance consistent, then the petitioner may request an administrative hearing. Otherwise DCA may request an administrative hearing.

If the administrative hearing officer finds the regulations inconsistent with the plan, then the case is sent to the Administration Commission, which determines the appropriate sanctions. The statute specified, however, that adoption of land development regulations by a local government is legislative in nature and shall not be deemed inconsistent with the plan if it is fairly debatable that it is consistent with the plan. (See §163.3213[5][a], F.S.)

Only ordinances required by statute may be challenged under this administrative review process. The Act specifically excludes from consideration the zoning map, a zoning or rezoning action, or a building construction standard from consideration in a challenge under this section. (See §163.3213[b].) Consistency challenges related to rezoning actions are subject to the guidelines for challenging a development order described below.

Consistency Challenges of Development Orders

The general rule for evaluating consistency is whether the characteristics of development further and are compatible with the goals and policies of the plan. This includes evaluation of the proposed land uses, density or intensity, capacity or size, timing and other characteristics. *Compatible* is defined as not in conflict with the plan and *further* is defined as taking action in the direction of realizing goals, objectives, or policies of the plan. (See §163.3194[3][a], F.S.)

In consistency reviews, courts are directed by statute to consider whether the plan is reasonable or is not so vague in relation to the issue at question that it lacks legal import. A “takings” clause was added to clarify that courts should not allow an interpretation of a plan that would constitute a taking. Beyond that, the court was directed to construe the plan broadly, as is customary for legislative actions. Some attorneys have recommended that courts construe the plan as they would a statute, to avoid arbitrary or unreasonable results.⁵ Only an “aggrieved or adversely affected party” may bring suit against a local government for consistency challenges of a development order. An aggrieved or adversely affected party is defined as any person or local government that will suffer an adverse effect to an interest protected or furthered by the local comprehensive plan. Among other things, this includes interests related to health and safety issues, density or intensity of development, transportation facilities, and environmental or natural resources.

For standing under this section, the adverse effect must “exceed in degree” that which is shared in common by others in the community. This issue was clarified in *Citizens Growth Management Coalition of West Palm Beach, Inc. v. City of West Palm Beach*, 450 So.2d 204 (Fla.SC March 8, 1984). Here, the

Florida Supreme Court held that an association of city residents lacked standing to challenge the validity of two city ordinances enacted to allow construction of a large mixed-use complex in downtown West Palm Beach. According to the Court, the residents did not have standing because their interest in the project was not beyond that shared in common with the community as a whole.

Parties wishing to bring suit under this section are first required by statute to file a verified complaint that clarifies the facts at issue and the relief sought by the party. The verified complaint must be filed within 30 days of the alleged inconsistency and the local government has 30 days to respond. The party then has 30 days to file suit.

The statute specifically provides that this “shall be the sole action available to challenge the consistency of a development order with a comprehensive plan.” (See §163.3215[4].) Despite this directive, several Florida courts have ignored this procedural requirement. (See Chapter 3 for further discussion of this issue.)

These statutory limitations have constrained the ability of citizens to enforce consistency of development decisions with the comprehensive plan. Another threat to citizen enforcement of consistency provisions has been the practice of countersuing the opposition. These lawsuits have been coined SLAPP, or Strategic Lawsuits Against Public Participation. A study commissioned by Florida Attorney General Robert Butterworth describes the technique:

a well-financed business interest files a civil tort action against a vocal citizen or group of citizens who have opposed the interest's application for some favorable government action. The SLAPP serves to “slap” back at citizen activists by dragging them into costly, time consuming litigation and threatening them with harsh penalties.⁶

One case described in the study involved a citizen challenge of the consistency of a development order with the local comprehensive plan. In 1990, property owners of Sunset Islands and 15 area residents filed a complaint against the City of Miami Beach and the respective developers opposing the issuance of a building permit for an 800-unit triple tower development, pursuant to Chapter 163. The City of Miami Beach and two development companies then filed a counterclaim in Circuit Court alleging conspiracy and antitrust violations and seeking treble damages. The case was in litigation for 35 months and, as of 1993, the cost of defense exceeded \$50,000.⁷

Such lawsuits have the effect of preventing citizens from petitioning government for better enforcement of existing laws. They have been filed even for writing letters to government officials or the editor of a local newspaper, complaints about regulatory violations, and speaking out at public meetings. These litigation tactics represent a significant and continuing threat to the democratic process and to citizen participation in planning. New legislation is needed to prohibit such tactics in the future.

Concurrency as a Consistency Tool

Concurrency requirements were adopted in Florida to promote greater consistency of local development planning with capital improvements plans and programs. Concurrency is tied to provisions in the Chapter 163 requiring adoption of level-of-service standards, elimination of existing service deficiencies, and provision of infrastructure to accommodate new growth reflected in the comprehensive plan. Plans and development regulations must maintain or achieve the desired level of service, and comprehensive plans are reviewed by the state for consistency between the capital improvements element and the future land use element.

One year after submitting its comprehensive plan to the Department of Community Affairs, a local government is prohibited from permitting a development that reduces the level of service below the level stated in their plan. Rule 9J-5.0055(2) sets forth the parameters of the concurrency management system. The concurrency rule is satisfied if:

- the necessary facilities and services are in place, under construction, or will be in place when the development permit is issued;
- the necessary facilities and services are in place or will be in place when the impacts of development occur;
- the necessary facilities and services are guaranteed in an enforceable development agreement.

Administrative rules allow local governments to evaluate concurrency against a five-year capital improvements program. If this approach is taken, then the community must demonstrate that the necessary facilities and services will be available within three years of issuing the development permit.

From the perspective of consistency in planning and regulation, the concurrency program has faltered. During initial review of plan compliance, former Secretary of DCA Tom Pelham noted that the major shortcomings of the local comprehensive plans were the capital improvements elements and related concurrency requirements.⁸ After years of “pay later” growth plans, many local governments failed to strike an appropriate balance between what they were willing to fund and what they had provided in their comprehensive plan. Others were simply overwhelmed by the extensive planning and data collection requirements of concurrency.

The emphasis on supply strategies, without equal emphasis on managing demand, has

also led to inconsistencies between transportation concurrency and other growth management goals. Constraints on urban infill, incentives for leapfrog development, the threat of widespread moratoria on backlogged state highways, and destruction of community character are among the major issues associated with the transportation concurrency framework. The ELMS-III legislation added a range of flexible options for transportation to address these concerns.⁹

Another problem related to transportation has been the diversity of methods for monitoring level of service across local governments in metropolitan areas. Given the regional interdependence of transportation systems and the multiplicity of jurisdictions in metropolitan areas, a consistent approach to monitoring level of service will be crucial to the effectiveness of the concurrency policy.

Despite a growing number of constrained and backlogged thoroughfares across the state, fears of widespread development moratoria have proven groundless. A recent evaluation of the effect of concurrency on the private sector in Florida found that local governments rarely deny concurrency applications and seldom impose moratoria.¹⁰ In fact, growing deficiencies on many metropolitan corridors raise real questions regarding the extent of local compliance with the concurrency mandate.

Local governments continue to set aside large land areas for future development without the planning, financial, and regulatory mechanisms needed to assure a transportation network that will accommodate that growth. Without a connected network of side-streets and internal roads to provide alternative routes, a growing number of trips are funneled onto a few arterials—exacerbating existing backlogs and increasing the need for more costly improvements.

What is needed is a better balance between planned future development and an adequate network of collectors and arterials to serve that development. This was the intent of Florida's concurrency mandate and the "truth in planning" requirements for financially feasible development plans. Such a network should be planned, mapped, and carried out through a right-of-way reservation program that is coordinated with development planning. It should also be managed through timing strategies that coincide with the local capital improvements program and the state or MPO transportation improvement program.

Evaluation and Appraisal Reports (EARs)

The Evaluation and Appraisal Report or EAR process is mandated by the Florida growth management act to assure that local plans are monitored and periodically updated. Local governments must prepare an EAR within seven years of adopting their plan, and every five years thereafter, to assess the progress of their planning program. (This deadline is 12 years for municipalities of 2500 persons or less.)

The stated purpose of the EAR is to:

evaluate the success or failure of the local government's comprehensive plan, including the validity of projections, the realization of the goals and objectives, and the implementation of the plan's policies.
(9J-5.005 F.A.C.)

EARs are also the principal process for updating plans to reflect changes in state policy on planning and growth management.

The report must contain the following information:

- problems of development, physical deterioration and location of land uses and their social and economic effects in the area;

- condition of each element at adoption and at time of report;
- plan objectives as compared with actual results;
- unanticipated and unforeseen problems and opportunities;
- the effect changes in selected state policy have had on the plan;
- identification of actions to be taken to address issues in report;
- plan amendments needed to implement changes; and
- description of public participation process in preparing report.

The EAR reports must be submitted to the Department of Community Affairs within the required deadline. However, DCA's authority is limited to assuring timely submission and that the report includes the required information. EARs may not be reviewed for compliance, as with plans or plan amendments. Local governments must amend their plan based on the recommendations in the EAR, within one year after the EAR is adopted.

In this way, local governments are being pushed to fine-tune their planning program and the quality of their comprehensive plan. This is also a recognition in state policy that the comprehensive plan is not static, but part of an ongoing growth management program that must be responsive to changes in public policy and emerging problems or opportunities.

However, the inability of DCA to review EARs for compliance is problematic. Local governments were required to include certain policies and related objectives in their comprehensive plan for compliance with State growth management policy. How will the State enforce compliance if a local government fails to carry out these policies and objectives of its comprehensive plan?

Chapter 3

Consistency and Transportation

New statewide transportation planning requirements emphasize the role of the Florida Department of Transportation (FDOT) in promoting coordination and consistency of transportation planning and programming across the various transportation, land use planning, and environmental permitting entities—including those of bordering states that share a metropolitan area.

In addition, the 2020 Florida Transportation Plan and state transportation improvement program must be consistent with each other and with metropolitan transportation plans and transportation improvement programs (TIPs). Consistency between transportation plans and improvement programs is strengthened through federal and state requirements that state and metropolitan TIPs include only those projects where full funding can “reasonably be anticipated to be available” within the time considered for completion.

Florida planning law requires local governments to submit their comprehensive plans and plan amendments to FDOT for response or comment. (§163.3184[4]). In 1991, FDOT adopted guidelines for review of local plans that direct each District to consider the following:

- whether the plan provides strategies for achieving consistency with state access management standards;
- whether local level of service standards are compatible to the maximum extent feasible with those established by the FDOT on the state highway system (under ELMS-III this was limited to the Florida Intrastate Highway System);
- whether the plan includes strategies to protect future rights-of way, including land development regulations on setbacks, right-of-way reservation, and right-of-way purchase;
- whether the plan indicates coordination with the Florida Intrastate Highway System plan; and
- whether the plan identifies and commits to transportation system management and transportation demand management strategies.¹¹

Regional Transportation Planning

Primary responsibility for metropolitan transportation planning rests with Florida’s 25 Metropolitan Planning Organizations (MPOs). In developing the long range transportation plan and transportation improvement program (TIP), MPOs must consider the

likely effect of transportation policy decisions on land use and development and the consistency of transportation plans and programs, with all applicable short-term and long-term land use and development plans. (See §339.175, F.S.)

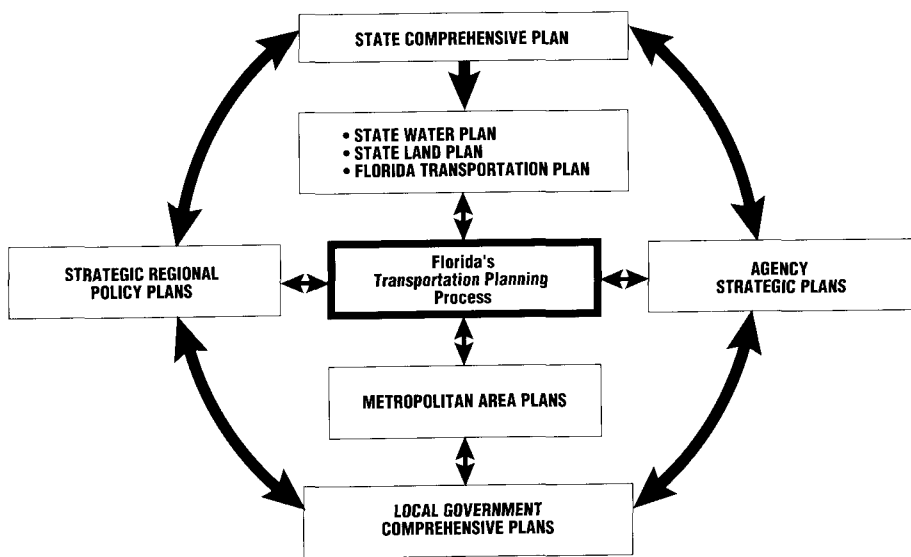
A priority list of projects and project phases must be designated for the time period of the TIP, and this list must be consistent “to the maximum extent feasible” with the approved local government comprehensive plans within the MPO planning area. If inconsistent, then the MPO must justify including the project in the TIP. MPOs must also indicate whether the projects are consistent, to the maximum extent feasible, with affected port and airport plans and transit development plans.

The Department of Community Affairs is directed to review projects of each MPO for consistency with the approved local government comprehensive plans. DCA must identify any inconsistent projects and notify the MPO of any such inconsistency.

Regional Planning Councils also have a role in transportation planning. Each RPC is required to develop transportation goals and objectives for the strategic regional policy plan. The goals and objectives, advisory in nature, are to be consistent with the goals and policies of the MPO and Florida Transportation Plan.

RPCs are to submit their transportation element to FDOT and the respective MPOs for consideration and comments. In turn, MPO plans and other local transportation plans are to be consistent, to the maximum extent feasible, with the regional transportation goals and objectives. In addition, RPCs are to review urbanized area transportation plans and submit their review comments to FDOT and the MPOs. For those municipalities outside MPO boundaries, RPCs may also assist in developing the transportation element of local comprehensive plans.

Relationship of Florida's Transportation Planning Process to Florida's Integrated Planning Framework



Federal Requirements

In response to what has been called a "disinvestment in transportation data" for many years, ISTEA mandated major new efforts in transportation management and monitoring systems. The seven systems are:

- Highway Safety Management
- Pavement Management
- Bridge Management
- Traffic Congestion Management
- Public Transportation Facilities and Equipment Management

- Intermodal Facilities and Systems Management
- Traffic Monitoring System

These systems are being developed for use by state and local agencies. Each system will be a process designed to provide information and strategies to assist decision makers as they determine future transportation programs and projects and to measure the performance of the transportation system.

Source: 2020 Florida Transportation Plan, FDOT, 1995, p. A-9.

Among the questions regarding the increased responsibilities of RPCs and MPOs in coordinating land use and transportation is the lack of a clear linkage between these two regional agencies. Consistency requirements for RPCs and MPOs are weak, as indicated by the use of flexible language such as "maximum extent feasible" throughout the statutory language.

Although RPCs have been charged with identifying transportation resources of regional significance, the role of MPOs in this process has not been defined. Efforts to increase regional consistency of transportation and land use objectives would benefit greatly from a collaborative effort between these two regional planning entities.

Strategic Directions

The balance between regional mobility and local control is becoming increasingly difficult as Florida becomes more urbanized.

Regional collaboration on transportation and development decisions appears to be the exception rather than the rule. To focus planning efforts, contemporary transportation planners are calling for a more strategic, policy-based approach to highway capacity and corridor preservation decisions.

This changing philosophy is reflected in two initiatives of the Florida Department of Transportation—the Florida Intrastate Highway System (FIHS) program and FDOT Secretary Ben Watts new Interstate Policy. The FIHS was designated in 1991 by the FDOT and the legislature as Florida’s strategic highway system. It comprises those corridors deemed most essential to intrastate travel and commerce and is intended to receive higher priority in state regulatory and investment decisions.

The Secretary’s new Interstate Policy establishes a policy limit on the size of the interstate system. It restricts growth of the interstate system to a maximum of 10 lanes and provides that other parts of the system may only be expanded to six lanes where they fail to meet state level of service standards.

Interchange Justification Reports are now required in an effort to curb the proliferation of new interchanges. In urbanized areas of more than 200,000 persons, the highway master plans will also include four exclusive lanes (two in each direction) for through traffic, public transit, and other high occupancy vehicles. Another FDOT policy calls for installing raised medians on all new or reconstructed multilane highways with speeds above 40 mph.

These programs have established a strategic role for the state in maintaining and improving the intrastate system, advancing access management objectives, and for building multimodal corridors to offset growth in single occupant vehicle travel. They also represent a state policy decision

that there should be limits to future growth; that Florida does not want sprawling highways. The success of this new policy direction depends in large part on whether it is embraced by the legislature.

The Consistency Challenge

The challenge of achieving a consistent transportation and land use strategy is compounded by limitations in the transportation planning process. The greatest limitation of the long range transportation planning process has been its failure to account for the influence of transportation facilities on land use. Long range models are based on a fixed land use scenario that inevitably changes as new highways stimulate real estate speculation, rezoning, and growth.

The potential to inflate roadway needs is another shortcoming of the long range design forecast. In moderate to high growth areas, the 20-year design forecast will almost certainly show that a major road must be widened—often to six or eight lanes. System management alternatives, such as access management, will inevitably be found deficient when evaluated against 20 years of traffic growth.

Too often decisions to expand capacity are made as if the models were deterministic—as if public policy had no place in the long range planning process. Long range transportation models were intended to inform, not override, public policy decisions. It is essential to address the trade-offs and to honestly consider alternatives. A new exurban corridor may initially “relieve” congestion, but what effect will it have on growth in the metropolitan fringe? A model may show the need to six lane an arterial, but what if this would destroy a canopy road or historic district?

Policy debates like this are integral to the planning process. They provide citizens and elected officials with an opportunity to address the uncertainties of long range planning through the political process.

Conflicts between land use and transportation policy also arise in the land use planning process. For example, the practice of strip zoning major corridors for retail and office use is widespread. The primary reasons are accessibility and the expedience of rezoning highway frontage as additional land is needed. At the same time, many jurisdictions have inadequate minimum lot frontage requirements and few access controls to limit new connections to the highway system.

As development intensifies, the growing number of curb cuts and turning movements conflict with the intended function of arterials—to move people and goods safely, quickly, and efficiently. Poorly coordinated access systems force more trips onto the arterial, traffic conflicts multiply, and congestion increases. As the level of service declines, and expensive improvements are needed to maintain corridor safety and capacity for regional traffic.

Eventually the corridor is transformed into an unsightly jumble of signs, curb cuts, utility lines, and asphalt. If access problems become acute, customers begin to travel elsewhere to shop, vacancies increase, and property values decline. Ultimately, economic development, mobility, and community character are sacrificed. It is a counterproductive cycle that magnifies transportation demand and improvement needs, and damages the fragile qualities of community character.

It is no surprise, therefore, that public reaction to growth has been increasingly negative. Although cluttered and congested commercial strips top the list of the public's least desired development patterns, the local planning and regulatory framework continues to prescribe them. Americans are moving farther away from the city only to have it follow them in the form of commercial strips and traffic jams.

These are not inevitable results of development and growth. Rather, they relate to

problems in current planning and regulatory practice. What is needed is a better balance between planned future development and the network of arterials and collectors necessary to serve that development. Also needed are more effective programs for managing access to major thoroughfares and reserving rights-of-way for future roadways. Cluster zoning and activity centers, rather than commercial strips, are land use strategies to complement this approach. This will also require a neighborhood or district approach to land use planning that emphasizes a more balanced mix of land uses.

Recognizing this relationship, administrative rules of DCA require traffic circulation elements of local comprehensive plans to include policies for implementing access controls. DCA also includes access management and development clustering requirements as techniques that will be considered in determining compliance with new administrative rules for discouraging urban sprawl. These requirements are reinforced through policies in the new "Florida Land Development Plan" that call for identifying and controlling access points onto major transportation corridors and minimizing curb cuts and median openings through land use planning, regulation, and access permitting.¹²

Local governments are also being pushed by the Florida Department of Transportation to coordinate on reserving right-of-way for transportation corridors. Legislative changes in 1995 enabled local governments to adopt corridor management ordinances to preserve right-of-way for corridors designated in their comprehensive plan. Local governments that pursue this option must notify FDOT of any substantial zoning change or subdivision plat changes or granting of a building permit within the corridor which would "substantially impair the viability of the corridor for future transportation uses." (See §337.243[1], F.S.)

Clearly, transportation policy is converging with growth management policy. This should promote better integration of transportation and land planning functions. Continuing challenges include the need for coordination between state DOTs, MPOs, and local governments in reserving

right-of-way and managing access to major thoroughfares. Transportation agencies at every level of government must also coordinate with land use planners to carry out land use strategies that reduce transportation demand and promote alternative modes of transportation.

Chapter 4

Judicial Interpretations of Consistency

To ensure that private property rights are adequately protected, governments are bound by the takings clause, equal protection, and due process provisions of the U.S. Constitution when exercising their police power. For example, individuals have certain procedural rights as prescribed by statute. Governments must also show some reasonable basis, some legitimate public purpose, for the regulation.

In general, the regulatory action should not be more restrictive than necessary to accomplish the desired public purpose. Governments should not require individuals to bear burdens that are better borne by the public as a whole. And regulations, or any exceptions to those regulations, must be administered fairly and equally. These constitutional tenets set the legal groundrules for government regulation of private property rights.

Zoning decisions have historically been subject to the “fairly debatable” test, which was designed to give legal deference to actions that are legislative in nature. The test requires that the regulation or regulatory action is related to a legitimate public purpose, and that the community is able to provide some basis in fact or logic for its actions. The burden of proof is typically on the landowner to demonstrate that the regulation is unreasonable or that the property owner has suffered substantial economic loss.

The need to establish a reasonable link between the regulatory action and the desired public purpose has increasingly shifted the burden of proof onto state or local governments. In evaluating the reasonableness of a regulatory action, more and more courts are asking whether the

action is consistent with and supported by the local comprehensive plan.

Courts are also applying stricter scrutiny in evaluating whether a regulation is arbitrary and unreasonable as applied. Most recently, the U.S. Supreme Court has stated that regulatory exactions should also be roughly proportional, both in nature and degree, to the impact of that particular development. Thus, development decisions must not only be solidly grounded in the comprehensive plan, but also supported by specific planning studies or data.

Unfortunately, legal interpretations of complex land policy issues frequently prove inadequate, and Florida has been no exception. As the Florida courts grapple with the implications of the consistency mandates, the opinions have been decidedly *inconsistent*.¹³ This chapter reviews some of the landmark decisions related to consistency and the current trend toward treating rezoning decisions with the strict scrutiny reserved for quasi-judicial actions.

Consistency and the Florida Courts

Consistency mandates tend to engender confusion over the appropriate relationship between a comprehensive plan and development decisions. The plan has been viewed as everything from purely advisory to a form of constitution, adopted by the local legislative body, that prohibits any actions construed as inconsistent. Florida’s planning legislation has adhered to the latter view, establishing the plan as a legally binding statement of the legislative will.

Prior to 1985, Florida case law had treated zoning and rezoning as legislative acts, subject to the fairly debatable standard of review. This occurred despite the consis-

tency requirements of the 1975 planning legislation. After 1985, with passage of the Growth Management Act, the courts began to more closely consider statutory directives related to consistency.

The result was a trend toward stricter scrutiny of development decisions as they relate to the comprehensive plan. The transition, however, was characterized by wide variation in judicial views regarding the relationship of plans to zoning and the proper standard of review for consistency challenges.¹⁴ Following are summaries of some of the landmark cases that established the parameters for consistency review.

Zoning as Quasi-Judicial

Machado v. Musgrove, 519 So.2d 629 (Fla. 3d. DCA 1987), is among the most influential of the consistency cases. The case involved a citizen's challenge to a proposed commercial rezoning in an area designated Estate Residential on the future land use map. The applicant had proposed construction of a 140,000 square foot office complex in an area designated by the plan for ranches, nurseries, and croplands.

The Planning Director opposed the rezoning as an undesirable precedent for higher intensity growth in that area and as inconsistent with the comprehensive plan. The Zoning Director recommended approval because adjacent properties had been approved for development of a temple and private school. Area residents and farmers opposed the rezoning as inconsistent with the character of the area. In a closed session, the County Commissioners voted to approve the rezoning request.

The Third District Court of Appeals reversed the rezoning as invalid under the consistency requirements of the growth management act. In reviewing the case, the Appeals Court stated that applying the "fairly debatable" standard to land use planning and zoning questions "tends to obscure the difference between their distinct functions." The Court held that the

purpose of zoning actions under Florida's growth management act is to carry out the comprehensive plan, and thus no longer involves policymaking. It called for a standard of strict judicial scrutiny in reviewing the validity of rezoning decisions.

The decision represented judicial recognition of the legal standing of local comprehensive plans under the 1985 Growth Management Act. It also began to change the way Florida courts would construe rezoning decisions. Local governments were thereafter advised to create a reviewable record of rezoning decisions, as required for quasi-judicial actions. Courts also began to require "competent and substantial" evidence of the consistency of a zoning action with the local comprehensive plan.

The landmark case establishing the Florida approach to legislative versus quasi-judicial actions is *Board of County Commissioners of Brevard County, Florida v. Jack R. Snyder*, 18 FLW S521 (Supreme Court of Florida, October 7, 1993). The facts of the case were typical of the issues that frequently surround local zoning decisions.

The case involved a proposal by the Snyders to build a small apartment complex on their half acre parcel in unincorporated Brevard County. They requested the property be rezoned from "General Use" which permitted one dwelling unit per acre, to "RU-2-15", which would allow 15 units per acre. The county comprehensive plan designated the area for residential use. In all, 29 zoning classifications were considered potentially consistent with this designation, including the proposed classification.

County staff found the proposed use consistent with the comprehensive plan, except that it was located in the 100-year floodplain, which limited density to a maximum of two units per acre. For this reason, the staff recommended denial of the request. At the Planning and Zoning Board meeting, the County planning

director testified that development of the property would raise the elevation of the land above the flood plain and therefore the density restrictions would no longer apply. The Board then voted to approve the rezoning request.

The matter was presented to the County Commission for final determination. At the Commission meeting, several citizens voiced opposition to the rezoning based on traffic and parking problems and the prospect of a multifamily use in their single family neighborhood. The Snyders stated that their land was south of the single family neighborhood and closer to businesses abutting SR 520 and therefore would serve as a transitional zoning classification to separate the homes from these businesses. They also noted that access to their property did not require traffic to pass the single family homes to the north.

The Commission overruled the recommendation of the Planning and Zoning Board and denied the rezoning. On appeal, the Fifth District Court of Appeals reversed the County's denial of the rezoning. The Court ruled that the Snyders were entitled to have their rezoning application granted for two reasons: 1) the zoning was consistent with the comprehensive plan and 2) the County had presented no evidence that more restrictive zoning was necessary to protect the public welfare. Because the County had entered a decision without reasons supported by fact, the decision was deemed arbitrary.

The Court of Appeals also distinguished between the appropriate standard of review for a large scale, comprehensive rezoning and small, site specific rezoning decisions. The Court characterized enactment of a zoning ordinance or a comprehensive rezoning as legislative in nature, and the application of the general rule or policy to specific persons or property as quasi-judicial and subject to stricter scrutiny.

The Florida Supreme Court concurred, stating that small scale, site specific rezoning actions affecting a limited number of persons or property owners are quasi-judicial actions. In quasi-judicial actions, the property owner carries the burden of proving that their proposed use is consistent with the comprehensive plan, but thereafter, the burden shifts to the local government to "demonstrate that maintaining the existing zoning classification with respect to the property accomplishes a legitimate public purpose." If the local government successfully demonstrates this, "then the landowner's only recourse is to demonstrate that existing zoning is confiscatory and thereby constitutes a taking."

The Supreme Court diverged from the lower court, however, on the issue of timing as it relates to consistency with the comprehensive plan. It argued that the appellate opinion:

overlooked the premise that the comprehensive plan contemplates a gradual and ordered growth and is intended to provide for the future use of land.... The local government should have the discretion to decide that the maximum development density should not be allowed provided the governmental body approves some development that is supported by substantial, competent evidence. (Emphasis added)

The Court added that a property owner is not necessarily entitled to relief by proving consistency, when the Board action is *also* consistent with the plan. Thus, a use could be consistent with growth planned for the long term but local government could disallow it if the timing is inappropriate. As long as the local zoning authority demonstrates a legitimate public purpose based on "competent substantial evidence" then the zoning authority may permit less than the maximum development provided in the comprehensive plan.

ABG Real Estate Development Company v. St. Johns County, 608 So.2d 59; (Fla. 5th DCA 1992), was among the first cases to rely on *Snyder*. ABG had applied to modify its final development plan for a commercial village within a Planned Unit Development (PUD). The modification involved developing a McDonald's restaurant in an area designated for future parking. In exchange, ABG offered to relinquish 7,325 square feet of its remaining unused commercial development rights under the PUD.

At the public hearing, residents voiced general complaints about increased traffic, declining property values, noise, litter and aesthetic concerns. The Board of County Commissioners unanimously denied the application "on the basis of incompatibility with the neighborhood and that it seriously interferes with the health, safety, and welfare of the people in the community."

The Fifth District Court of Appeals stated that ABG had presented sufficient evidence to demonstrate consistency and that the burden shifted to the zoning authority to prove, by clear and convincing evidence, that a specifically stated public necessity required a more restrictive use. The Board, however, had made no findings of fact other than a vague statement that the change would be incompatible with the neighborhood or "interferes with the health, safety, and welfare of the people in the community." Said the Court:

The parties appear to agree on the "health, safety and welfare" standard for granting or denying the requested exception, but the mere parroting of this standard without sufficient specific reasons supported by findings of fact is "as a matter of law," arbitrary and unreasonable and judicially reviewable and reversible.

Subdivision Regulation and the Verified Complaint

Board of County Commissioners of Leon County v. Parker, 566 So.2d 1315 (Fla. App.

1 Dist. 1990), involved denial of a preliminary subdivision plat by the Tallahassee-Leon County Planning Commission. The Planning Commission ruled that the proposed subdivision was too dense compared with other area subdivisions and therefore violated compatibility provisions in the comprehensive plan. The proposed plat was also deemed inconsistent with plan policies aimed at promoting compact urban growth and discouraging urban sprawl.

The applicant appealed to the Leon County Board of County Commissioners, which denied the application. Upon review, the First District Court of Appeals dismissed the challenge because the developer failed to file a verified complaint with the local government. This represented the first time a landowner was held to the procedural requirements set out in statute as a precondition to filing a consistency lawsuit.

The Court held that the verified complaint was designated in statute as the sole action available for consistency challenges on development orders. The verified complaint procedure was provided in Chapter 163, F.S. to push local governments to more systematically weigh the factual evidence for or against a development decision, where a consistency challenge was raised. Stated the Court:

A local government body, such as a county commission, often proceeds in an informal, free-form manner.... The requirements that a verified complaint be filed with the local government prior to instituting suit has the salutary effect of putting such governmental body on notice that it should be prepared to defend its action and will need to create a record to support that action. Indeed, if such procedure had been followed in the instant cases, the disputed matters might well have been resolved without the necessity of court proceedings. (Emphasis added.)

Despite the wisdom of this approach, and the explicit requirement to this effect in statute, other courts have disregarded the verified complaint requirement. This is true even of the Florida Supreme Court, as evidenced in *Brevard v. Snyder*.

Consistency and the Takings Clause

Private property rights are closely guarded under the U.S. constitution. The Fifth Amendment of the U.S. Constitution provides that a person shall not be deprived of property "without due process of law, nor shall private property be taken for public use, without just compensation." This "takings" clause is applied to the states under the Fourteenth Amendment and has been construed by the judiciary through a complex series of takings decisions. Below is a summary of some of the landmark cases related to consistency and takings issues.

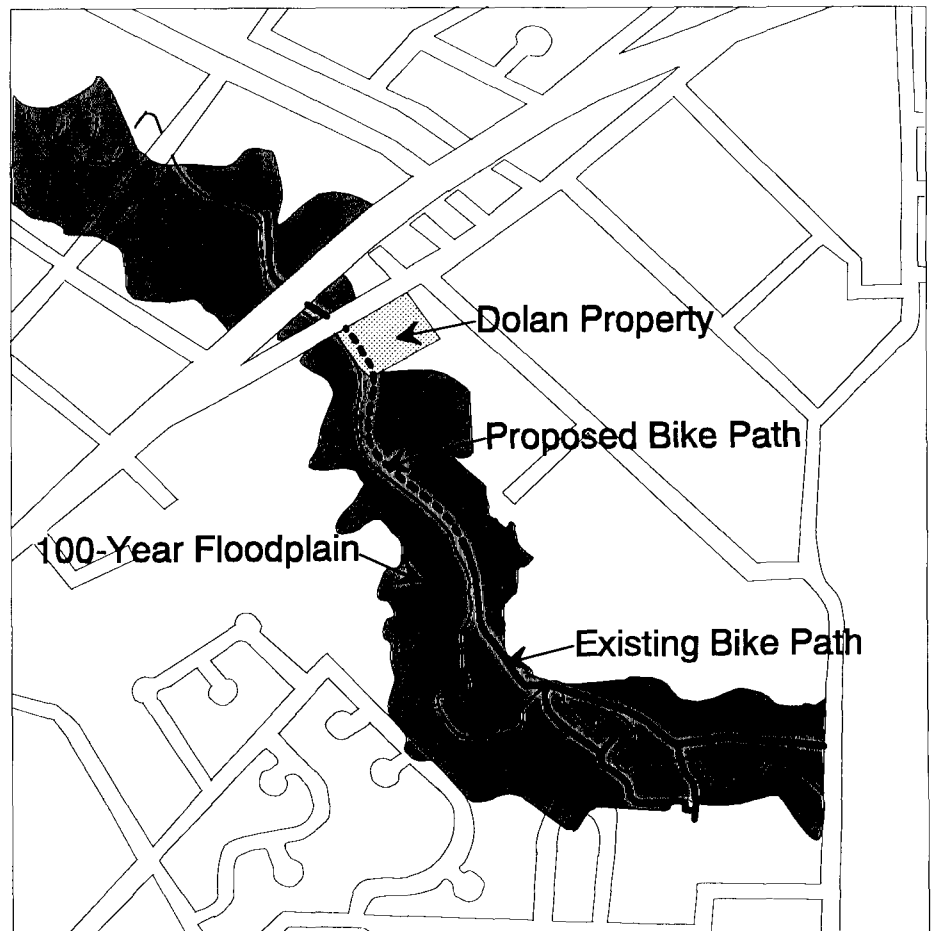
Regulatory Conditions and Exactions

Dolan v. City of Tigard, 62 U.S.L.W. 4576, June 24, 1994, is the most recent U.S. Supreme Court decision related to regulatory takings and consistency issues. The City of Tigard, Oregon, had adopted a comprehensive plan and Community Development Code in accordance with state requirements and consistent with statewide planning goals. The City had also adopted a bicycle/pedestrian path plan and a drainage plan, each in accordance with the local comprehensive plan.

The drainage plan addressed flooding along the Fanno Creek Basin—a problem exacerbated by stormwater runoff from urbanized areas. For this reason, the comprehensive plan included the Fanno Creek Basin as part of a local greenway system. The

drainage plan recommended excavating and improving the channel and preventing structures within the floodplain to minimize flood damage. It called for the City to share the cost of drainage improvements, but for property owners along the waterways to assume a greater burden of the costs due to the direct benefit they would receive.

The intent of the bicycle/pedestrian path plan was to encourage alternative modes of transportation for short trips, as well as provide recreational opportunities. It was adopted pursuant to a transportation study that identified traffic congestion problems in the central business district (CBD). The City designated the Fanno Creek greenway within the CBD for a bicycle and pedestrian pathway.



The Community Development Code required new development to dedicate land for pedestrian pathways in accordance with the pedestrian and bicycle plan. These provisions were implemented under an “Action Area” overlay zone adopted in 1987 to help the City address transportation and public facility needs in the central business district. The overlay gave the City authority to condition development approval upon provision of transit access to buildings, as well as bicycle and pedestrian paths.

In 1991, the Dolans applied for a permit to replace their store with another nearly twice its size (17,600 square foot) and establish a paved parking lot with 39 spaces. The property was zoned as central business district (“CBD”) and falls within the “Action Area” overlay zone. The City approved the request, but attached two conditions to the permit: (1) dedication of the portion of property within the 100 year Fanno Creek floodplain to the City for improvement of a storm drainage system; and (2) dedication of a 15-foot-wide strip of land adjacent to the floodplain for a pedestrian/bicycle pathway. The bicycle path would connect to the existing network of paths in accordance with the City’s bicycle path plan.

The Dolans appealed to the Land Use Board of Appeals (LUBA), alleging that the dedication requirements were not related to the proposed development and therefore constituted a regulatory taking of property without compensation. They maintained that the relationship between the impacts of the proposed development and the exactions imposed was insufficient to justify dedication of their property without compensation.

LUBA upheld the City’s decision on the basis that a reasonable relationship exists between (1) the increase runoff of the expanded development and dedication of land for a greenway to manage runoff; and (2) facilitating the pathway as an alternative

means of transportation to offset the increased traffic impacts of the larger store. The Oregon Court of Appeals and the Oregon Supreme Court affirmed this finding.

In evaluating the case, the U.S. Supreme Court first examined whether a legitimate state interest was being served and whether an “essential nexus” existed between the impacts of the project and the permit conditions, *Nollan v. California Coastal Commission*, 483 U.S. 825, 837 (1987). The Court affirmed that prevention of flooding and reduction of traffic congestion were legitimate state interests and that a nexus existed between these impacts and the permit conditions.

The Court went further, however, to establish a more stringent interpretation of “essential nexus” than had been the practice in many state courts. Questioning whether the degree of exaction bears the required relationship to the impact of the development, the Court transferred the burden of proof to the city to demonstrate a “rough proportionality” between the impacts and exactions. Said the Court:

No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development.

In reviewing the floodplain requirement, the Court questioned the need for a public, rather than private, greenway. Said the Court: “The City has never said why a public greenway, as opposed to a private one, was required in the interest of flood control.” The Community Development Code required the Dolans to leave 15 percent of their property as open space—a condition, said the Court, that would have been satisfied by the undeveloped floodplain without interfering with the Dolan’s bundle of property rights.

The Court also questioned the bikeway requirement, finding the City unable to meet its burden of proof in relation to the bicycle and pedestrian pathway. Although it maintained that “no precise mathematical calculations” were required, the Court called for the City to “make some effort to quantify its finding beyond a conclusory statement that the dedication ‘could offset some of the traffic demand’ generated by the development.”

Temporary Moratoria to Preclude Inconsistency

The constitutionality of interim moratoria in relation to transportation improvements was addressed in *Woodbury Place Partners v. City of Woodbury, Minnesota*, 492 N.W.2d 258 (Minn. App. 1992). Although not a Florida case, this case is one of the few to address local authority to impose temporary moratoria for planning purposes in light of recent takings jurisprudence. Woodbury Place Partners had purchased a tract of unimproved, commercially zoned land near the I-494 interchange to construct a retail and office center. In 1988, they applied to the City of Woodbury for the necessary development permits.

The City had retained a consultant in 1987 to conduct an access improvement study for the interchange area due to concerns about traffic congestion. In 1988, the City Council imposed a moratorium on consideration of proposed development plans, plan amendments, or rezoning applications adjacent to I-494 for a period of two years. The purpose of the moratorium was to protect the planning process and prohibit construction that could adversely affect road design and public health and safety.

Citing the categorical rule established in *Lucas*, Woodbury Place Partners argued that the regulation denied all economically beneficial or productive use of their land. The City argued that “economic viability was delayed, rather than destroyed.” The court agreed, stating that “when measured

against the value of the property as a whole, rather than against the two-year time frame, the moratorium did not deny the partnership all economically viable use of its property.”

Turning to the analysis established in *Penn Central*, the Court remanded the case to the district court for further analysis of potential investment backed expectations and the relative economic impact on the partnership.

Gardens Country Club Inc. v. Palm Beach County 590 So.2d 488 (Fla. 4th DCA, Nov. 27, 1991) involved a challenge to downzoning an area where owners hoped to construct a planned unit development. The District Court of Appeals held that the County should have amended its current comprehensive plan or zoning ordinance, pending its revision of the comprehensive plan. The Court referred to *Franklin v. Leisure Properties, Ltd.*, 430 So.2d 475, 481 (Fla. 1st DCA), *rev. denied*, 440 So.2d 352 (Fla. 1983) which stated:

A local government may be confronted with the need to amend its current plan prior to the adoption of a new plan in order to prevent the establishment of undesirable construction of which would be inconsistent with the goals of the new plan.

The ordinance implementing the temporary moratorium was found invalid as the County had enacted it without following statutory procedural requirements for adopting such an ordinance. Therefore, the Court stated that the property was subject to the provisions of the 1980 Comprehensive Plan until the new plan was officially adopted, as provided by Chapter 163.3197.

Right-of-Way Reservation

The validity of protecting future right-of-way through the planning and regulatory process was recently addressed in *Palm Beach County v. Wright*, 641 So.2d 50 (Fla. 1994). The Florida Supreme Court upheld

the thoroughfare map, calling it “an invaluable tool for planning purposes” and a proper subject of the local police power.

In its analysis, the Court stated that the thoroughfare map outlines generalized corridors, and therefore a takings claim cannot be determined until the property owner submits an actual development application. When the thoroughfare map is implemented, an aggrieved owner could then bring an inverse condemnation proceeding to determine if a taking had occurred. This represented a departure from previous opinions related to state efforts to reserve future right-of-way. In *Joint Ventures, Inc. v. Florida Department of Transportation*, 563 So.2d 622 (Fla. 1990), the Florida Supreme Court weighed a state statute prohibiting issuance of development permits within mapped right of way for five years after recording an official map for the state highway system. The Court concluded that the statute was:

a thinly veiled attempt to “acquire” land by avoiding the legislatively mandated procedural and substantive protection,” and a deliberate attempt to “depress land values in anticipation of eminent domain proceedings.”

Thus, courts are more likely to uphold a right-of-way reservation program, where it is conducted in the context of an overall development planning program. To minimize takings liability related to right-of-way reservation programs, Daniel Mandelker also suggests the following:

- 1) include provisions that compensate landowners for existing improvements within a mapped street;
- 2) provide for short time periods for reservation of the right-of-way based on a public commitment to acquire the right-of-way (generally the shorter the better);
- 3) provide remedial measures, including variances and an option for public acquisition of the property when a building permit is requested.¹⁵

Conclusions

In theory, a consistent planning and regulatory program would strengthen the legal basis for regulatory decisions and afford greater predictability to developers and the public in terms of the legally permitted use of land. The results in Florida have been mixed. Clearly, the Growth Management Act has changed the way Florida courts evaluate local land use decisions. The courts are placing greater weight on the comprehensive plan in considering the validity of regulatory actions. They are also requiring local governments to make findings of fact that the development decision is consistent with the comprehensive plan and advances a legitimate public purpose.

The trend toward characterizing rezonings as quasi-judicial is significant because it limits the flexibility of local governments in exercising their discretion. Small site-specific rezonings, affecting only a few property owners will be handled as quasi-judicial actions. For such actions, landowners must first demonstrate that the rezoning request complies with procedural requirements of the zoning code and that the land use sought is consistent with the plan. Alternatively, denial of the rezoning must be backed by evidence that the existing zoning is consistent with the plan and serves a legitimate public purpose.

The Florida Supreme Court has also recognized that *timing* is an essential component of planning. Therefore, local governments need not approve the maximum development density indicated on the future land use map—provided they approve some development of lesser density or intensity. Communities must still provide “clear and convincing” evidence that a legitimate public purpose would be served by requiring a less intensive use.

On the upside, this will encourage decision-making that is more consistent with the long range planning program and provide a

buffer against NIMBY ("not in my backyard") activism or domination of land use decisions by single-purpose interests. It should also compel local elected officials to take the planning program more seriously and to know the contents of their comprehensive plan. This should encourage a reevaluation of the adequacy of the plan and result in a higher quality planning program.

On the downside, the courts have caused considerable confusion regarding appropriate local public hearing procedures. The alternative being considered by many local governments is a hearing officer system to hold hearings, establish the facts, and draw the necessary conclusions. This would allay procedural concerns and be a more desirable outcome than a full blown mini-trial.

Ultimately, the verified complaint would have provided the most appropriate administrative avenue for addressing consistency disputes in the context of local government. It would have provided for fact finding and increased the potential for resolving disputes without the need for litigation. It is unclear why the Florida Supreme Court did not elevate this obvious statutory solution.

The courts have also raised questions regarding the appropriate threshold for classifying a rezoning action as legislative versus quasi-judicial. The Court has defined quasi-judicial actions as those impacting a limited number of persons or property or identifiable parties and interests, as opposed to the broader public. Other indicators include whether other zoning alternatives were weighed prior to the decision and whether the decision involves policy application rather than policy setting.

Regardless of the nature of the action, however, good practice dictates that all proceedings and documents related to a rezoning or development decision be carefully framed and entered into record. Despite ongoing questions, the *Snyder*

decision clarified what local governments should have been doing all along—base their development decisions on fact, the standards in their code, and their long range planning policies and objectives. It also requires much greater attention to the right of substantive and procedural due process as it relates to development decisions.

Providing for variances and other remedial measures is crucial to avoiding a takings claim by providing due process to the property owner and avoiding unreasonable hardship posed by the regulatory framework. Courts typically require property owners to first exhaust available administrative remedies, including appeals to the local board of adjustment, before the case may be heard in a court of law. If appeal procedures exist and the property owner sues before first pursuing a variance or other remedial action, the case may be invalidated on this basis.

Current case law also suggests that imposing temporary moratoria to preclude inconsistent development is within the legal authority of local governments, provided certain conditions are met. The moratorium should be reasonably short, tied to a specific planning purpose, and imposed in accordance with any statutory procedures and requirements related to moratoria.

Finally, fear of takings lawsuits and misconceptions about the limits of local regulatory authority have caused local governments to be overly conservative. This is reinforced by the tendency of municipal attorneys to "just say no" to complex or controversial land use initiatives. Although takings decisions have changed the rules of planning and regulatory practice, local governments may still impose regulatory exactions and rezone lands for less intensive uses without paying damages, within the context of a consistent growth management program.¹⁶

Chapter 5

Consistency in Practice

Despite the apparent logic of the consistency doctrine, few local governments have completely integrated local planning policy with their regulatory program. This is due in part to an underlying tension between planning principles, land development regulation, and property rights. Because this tension must be resolved through the political process, inconsistencies may also arise due to changes in local political leadership and shifting attitudes toward growth.

Local Experiences

Communities in Florida vary widely in terms of their experience with planning and zoning. Florida's first zoning enabling act was adopted in 1939 and some local governments have a long history of zoning. In contrast, many of Florida's small towns and rural communities had never embraced zoning and had little more than a building inspector and building code for managing land development. Moreover, some agricultural and rural areas in Florida continue to be characterized by opposition to public control of private property.

Florida's consistency mandates raised something of a paradox in communities where zoning preceded planning. If land development regulations must be consistent with the plan, to what extent should future land use be a reflection of existing zoning? Clearly, the intent of the consistency mandates was to reinstate the precedence of planning over zoning. Therefore one would expect the plan to be more than a mirror image of the zoning map. Nonetheless, the answer to this question varied in relation to the zoning history of the community and the amount of undeveloped land.

In more built-out communities with a long track record of Euclidean zoning, the future land use plan map was allowed to be largely identical to the zoning map for the purposes of compliance. This was true, for example, of many smaller communities in Pinellas County and in the Miami metropolitan area. Expectations were decidedly different in communities with a substantial amount of undeveloped land. Some counties were found not in compliance because their proposed future land use map for the unincorporated area was largely a mirror of their zoning map.

The compliance review process also suffered from a variety of constraints. The Department of Community Affairs had difficulty enforcing state policy due to differences in interpretation as well as political limits to state control over local land use decisions. Administering the compliance program was a tremendous challenge, given the discretionary nature of development programs. Despite enthusiastic beginnings, local momentum and creative vision were sometimes crushed under the weight of a bureaucratic compliance review process.

Another issue that arose in the planning process was the challenge of balancing public desires against long range planning objectives. In developing comprehensive plans under the Growth Management Act, some local planning departments were transformed into land use brokers. The public involvement process became less focused on developing future growth policy, than a forum for individual property owners to lobby the planning department for their desired land use classification. The push and pull of competing interests made it difficult for staff to

maintain a consistent policy direction in the land use planning program.

In Hillsborough County, for example, planning staff were deluged with hundreds of requests for changes in future land use designations. Reflects Ray Chiaramonte of the Hillsborough City/County Planning Commission: "The majority of time at public meetings was spent reviewing individual proposals, not planning policies. What should have been done was to develop a land use general plan and put the burden on the applicant to demonstrate why it should be changed."¹⁷

In many respects, however, it is too soon to judge the effectiveness of local growth management programs. Many local comprehensive plans were found to be not in compliance until the early 1990s and some are still bringing their land development code into conformance with their plan. In addition, some counties that chose the highest population projections for political or economic reasons, are now finding they must scale back the residential allocations in their future land use plans. Hillsborough County, for example, has scaled back its planned residential densities twice since adoption of its growth management plan.

Many local governments have or are now investing in geographic information systems (GIS). The use of GIS increases data analysis capability and allows maps to be readily updated and overlaid for planning purposes. This would greatly advance the quality of information for planning and development decisions and the resulting maps could be used to facilitate public understanding of development issues. A broad range of regulatory and land management techniques is also available to local governments in Florida, allowing for a variety of creative applications. Thus, the quality of local growth management programs should continue to improve as planning practice matures in Florida under the Growth Management Act.

Countywide Consistency Models

Following adoption of the growth management legislation in 1985, few models were available to effectively advance the new intergovernmental coordination and consistency requirements. RPCs were charged with managing disputes that arose between governments, but no mechanisms were available for advancing intergovernmental coordination and consistency on a countywide basis.

In response to this need, some Florida counties developed countywide approaches to increase regional consistency of local planning. Such commissions or councils are one alternative for achieving compliance with the Intergovernmental Coordination Element requirements of EIMS-III. This section describes three experiments in countywide consistency—the Volusia County Growth Management Commission, the Pinellas Planning Council, and the Broward Planning Council.

Volusia County Growth Management Commission

The Volusia County Growth Management Commission was initiated to address the growing number of costly disputes in the county over annexation and private property rights. Citizen dissatisfaction with these disputes culminated in adoption by referendum of an amendment to the County Charter in 1986 establishing a Commission to manage consistency and coordination of planning within the county.

The Commission comprises 22 members, 19 of whom have voting powers. One voting member is designated from each municipality within the county, and five voting members are designated from the unincorporated county. The Volusia County School Board, the St. Johns River Water Management District, and the Volusia County Business Development Corporation each have non-voting positions. Each voting member has a weighted vote equal to the percentage of the popula-

tion within the overall county population. The weight of each vote is evaluated each year.

The Commission has the authority to oversee plan amendments and adoption of a local comprehensive plan or plan element for adherence to consistency requirements. Unlike the planning councils of Pinellas and Broward counties, the Commission was not given authority to adopt a countywide plan for use in consistency determinations. Rather, these determinations are guided by criteria similar to those of Chapter 163, F.S.

A plan or plan amendment is considered consistent if it is not in conflict with the comprehensive plan of adjacent local governments or furthers the affected community's plan. This determination is based on whether the submitted proposal results in incompatible land uses or negatively affects coordination of infrastructure between municipalities.

In determining whether a plan element, or plan amendment adversely affects intergovernmental cooperation and coordination, the Commission may consider several factors including whether the application causes significant impacts on infrastructure or natural resources extending beyond the boundaries of one jurisdiction.¹⁸

Upon submission of an application, Commission staff issue a public notice describing the proposed change, location of the affected area, and the right of substantially affected parties to petition for a public hearing. If there are no objections to the application, and staff review indicates no problems, then it is approved without a public hearing. Small scale amendments are fast tracked. A public hearing is held if 1) a petition is filed within 21 days of the public notice; 2) the application is deemed inconsistent; or 3) the application does not meet conditions of certification. An applicant must obtain a majority vote, plus

a population majority on the Commission to be certified for consistency.

The Commission has done much to advance intergovernmental coordination in Volusia County. All local government comprehensive plans have been reviewed and certified for consistency, and no annexation lawsuits have been filed since its inception. Thousands of dollars have been saved in litigation expenses and the Commission has fostered an atmosphere of cooperation, rather than antagonism, in planning and growth management.¹⁹

“A forum may be easier than executing an intergovernmental agreement with your neighbor,” notes County Attorney Thomas Cloud.²⁰ By managing disputes locally, the Commission also reduces the need for state and regional oversight of plan amendments and development orders—allowing RPCs and the Department of Community Affairs to focus on more strategic issues of state and regional concern.

Growth management commissions, however, are only available to charter counties. Flexibility and authority to address major policy issues on a countywide basis is one of the major advantages of charter over noncharter counties. Noncharter counties may pursue broad based mandates related to planning and growth management policy through special act of the legislature.²¹

Broward County Planning Council

The Broward County Planning Council was created to “provide an effective and objective countywide agency to conduct comprehensive, coordinated long range planning of the development and improvement of the region through joint cooperation and participation of local governmental units, public officials, and citizens.”²² The Council encompasses 29 local governments and was developed as a mechanism for addressing problems such as drainage, air and water pollution, solid waste disposal, and

traffic congestion that cannot be managed effectively by a single jurisdiction.

The Council consists of 15 members, each appointed for a three-year term. One member is a County Commissioner, selected by majority vote of the Commission to represent it for a specified time period. The County Commission appoints two members for each of the seven Commission districts, with one member in each district being an elected municipal official and another not holding public office.

The Council prepares a countywide land use plan for adoption by the County Commission and updates and revises the plan as needed. Each local land use plan within the county must be consistent with the countywide plan. The local governments must submit their adopted land use elements to the Planning Council for certification review after the plan has been submitted to DCA for compliance review. The Council then schedules a public hearing to consider that plan for inclusion in the County Land Use Plan.

If a plan is not in substantial conformance with the County Land Use Plan, then the Council will modify, alter, or reject the land use element. The Council has 30 days to notify the local government in writing the reasons for this decision. It may also certify the land use element on a provisional basis if the affected government agrees in writing to address identified deficiencies within one year of certification. If the deficiencies are not addressed, the Planning Council may decertify all or a portion of the local land use plan.

Prior to decertification, the chief elected official of the municipality or the County Commission must be notified in writing of the intent to decertify, reasons for the action, and a public hearing must be held. Decertification will occur upon finding that:

- All or a portion of a certified plan is no longer in substantial conformity with the Broward County Land Use Plan.
- The local government has failed to take action to comply with the Broward County Planning Council's provisional certification requirements.
- The local government has not complied with reporting requirements.
- The local government has issued development permits inconsistent with its local certified land use element.

If a local government plan is decertified, thereafter all local development orders must be approved by the County. This has been a major incentive for compliance with the certification process.

The Council also administers a Trafficways Plan for reserving future transportation right-of-way. Although first adopted in 1962, the trafficways plan was later incorporated into the countywide planning program. The plan is implemented through County and municipal development review.

Each local plan is reviewed for consistency with the trafficways plan during the plan certification process. Local governments must also adopt regulations to implement the right-of-way dedication requirements. Parcels required to plat, and in some cases those exempt from platting, must dedicate, by deed or easement, right-of-way consistent with the Trafficways Plan. Staff review plats and other development proposals to ensure proposed uses are consistent with the effective land use designation and the trafficways plan. Staff also provide technical assistance to local governments and citizens in interpreting the countywide platting requirements.

A local government may amend the Trafficways Plan. All requests for amendments are reviewed by the Council staff for the availability of right-of-way, current and future traffic capacities, adjacent land use

impacts, and other pertinent information. The amendments are then reviewed by the Broward County Trafficways Review Group, comprised of County public works staff, planning staff, and representatives from the Florida Department of Transportation and the South Florida Regional Planning Council.

After presentations from the affected local governments and reviewing all preliminary materials, the Trafficways Review Group submits written comments to Council staff, which in turn submits a recommendation to the Council Land Use/Trafficways Committee. The Committee subsequently makes a recommendation to the full Council which takes final action.

The Broward County Planning Council has been effective in achieving a unified growth plan across its many municipalities. It has resulted in stronger intergovernmental coordination and has produced a cooperative environment and full compliance with the countywide plan. In addition, the Trafficways Program has been successful in reserving future rights-of-way.

One key to the Council's success has been equal representation on the Council. Executive Director Henry Sniezek called the growth management requirements "a positive force in bringing planning issues forward for discussion," but expressed reservations about the state plan amendment requirements. He suggested that state compliance review be targeted to amendments having truly regional impacts.

Pinellas Planning Council

The Pinellas Planning Council was established to promote better integration of planning efforts across Pinellas County's twenty-five local governments. The Council was established in 1965 and adopted a countywide land use plan in the mid-1970s to serve as the framework for an intergovernmental consistency. The first countywide land use plan was a map, with little relationship to local comprehensive plans.

In the 1980s, a dispute over a land use plan amendment led to a court decision that the composition of the Council failed to afford adequate political representation. The Council which was comprised of appointees, rather than elected officials, was deemed unconstitutional under the delegation of powers doctrine. (*City of Safety Harbor v. Pinellas County Planning Council*, Case No. 1 86-9550-15, 1986.)

The Council was reorganized by special act of the legislature and reinstated, with elected officials, following a countywide referendum in 1988. A Planners Advisory Committee, comprised of planning directors from various local governments in Pinellas County, was established to serve in an advisory role to the Council. Ultimately, however, all Planning Council decisions may still be appealed to the Pinellas County Board of Commissioners thereby limiting its authority.

The Special Act required consistency of local plans and land development regulations with the countywide comprehensive plan, which was readopted in 1989. It also authorized the Council to develop rules and parameters for carrying out the consistency requirement (Section 5[7][b]). The Council was charged with:

- defining the uses and density or intensity of use consistent with each land use category;
- establishing a land use continuum to identify which land uses are more intense than others;
- defining appropriate intensity, such as maximum floor area ratios, impervious surface ratios, and traffic generation rates.

The Act established that future land use plans shall be considered consistent with the countywide plan where the local land use designations are less intense or at a lower density than the countywide plan.

Any discovered inconsistencies must be reconciled through a formal plan amendment process.

Based on these directives, the PPC established consistency criteria related to land use classification systems, land use density or intensity, location of use, and impact on natural resources. A standard land use classification system was devised for all local plans in the county, to provide a common language for determining consistency of land use categories.

Land uses were divided into primary and secondary uses. Locational characteristics were defined to guide placement of a particular land use category. These included appropriate adjacent land uses, environmental features, proximity to arterial roadways or urban centers, and availability of mass transit. Each local future land use plan must describe the appropriate uses and locations of land use categories for comparison with the countywide plan. Incomplete, unclear, or disparate use or location information is considered inconsistent.

After establishing a common language for evaluating consistency, a three-step program was developed to carry out the consistency evaluations. This involved a local inventory of plans and regulations, recommendation for changes, and implementation of the required amendments. A grant program was established out of the Council budget to assist local governments with the process. Each local government was to inventory their future land use plan and land development regulations and compare these to the countywide plan and rules.

Local governments were then to propose amendments to their plans, land development regulations, or the countywide plan or rules to achieve consistency. Thus, it was a two-way process that involved some changes to the countywide plan. Summary reports were then produced by each com-

munity that contained a consolidated list of proposed amendments. The process that took approximately three years to complete. Executive Director David Healey recalls:

At the time the local governments were in the final throes of adopting their own local plan under the growth management act.... What we found was they had not made that transition yet (to compare it to the countywide plan). They had not even taken the step to reconcile the old previous land development regulations with the new plan, for the most part. Obviously there were exceptions. The first time through we found about 1300 map differences between local plans and the countywide plan. Now we're over 3500 and we're still making changes.

The Council is presently in the third and final stage of the consistency program which involves carrying out the recommended changes. Local governments without a planning director are receiving technical assistance from Council staff. The implementation stage of involves the following steps:

- consideration and adoption of the revisions to the Rules by the Pinellas County Planning Council and the Board of County Commissioners acting in their capacity as the Countywide Planning Authority;
- adoption of the corresponding future land use plan and land development regulation amendments by each local government;
- submission and processing of corresponding amendments to the countywide plan; and
- a determination of consistency for each local future land use plan and land development code by the Council and the County Commission.

Mismatches between plans and regulations ranged from differences in zoned versus planned density, land use categories and zoning districts, definitions of permitted uses, and how density is calculated—such as gross versus net densities. “Do you include right of way or not? Do you include water ways or not? What appear to be nuances or details, obviously made a big difference in the end result if applied differently between plan and regulation,” said Council staff Dave Shinneman.

By all accounts, the consistency program has been a resounding success. Aside from providing a common language for development planning, it has also stimulated greater local interest in planning. In addition, it has helped the smaller cities with no professional planning staff to better understand their plan and how it can work for them.

Another benefit is the ongoing technical assistance provided by Council staff to assure that local governments, especially those without planning staff, have all of the basic planning and regulatory tools in place. However, this is only the beginning. Executive Director David Healey offers this reminder:

It isn't consistency for consistency's sake—it's a step in the larger process. We developed our own home grown expression, "Don't confuse consistency with good planning." Some of it had nothing to do with good planing, it was just getting everybody on the same page so we could determine whether it was any good or not. We see that as a tool that will allow us to make judgments.

Chapter 6

Consistency and Contemporary Planning

A trend that complicates consistency is the increasingly flexible and dynamic nature of contemporary planning. Contemporary planning theory calls for a combination of rational, policy based, and strategic planning. Strategic planning concepts were incorporated into the process as a way of managing change in a rapidly changing world. The plan is long range, with a short term action orientation. And it is increasingly participatory, building broad based support for public policies and a vision of the community's future.

Contradictions Between Planning and Zoning

The 1990s represent different challenges and dramatically different thinking in terms of urban land use and transportation policy over earlier decades. But many of the assumptions that were incorporated into planning and zoning practice by previous generations, continue to go unquestioned.

At the same time, there is a growing mismatch between contemporary planning principles and land use conventions. Planning calls for higher densities in and around urbanized areas. Zoning has been used largely as a tool to keep density low. Planning calls for mixed-use neighborhoods. Land use planning and zoning continues to provide for large single use land areas. Planning calls for a functional hierarchy of roads, with arterials designated for high speed, regional travel. But land use and zoning practice continue to transform major arterials into stop and go commercial streets.

Real estate consultants Brian Kintish and John Shapiro also offer compelling evidence on the city of tomorrow and the growing mismatch between zoning restric-

tions and land use needs.²³ Large single family homes are being converted into apartments, yet zoning continues to prohibit such conversion. More people work at home, yet most zoning codes restrict home occupations. There is a growing tendency to consolidate different types of land uses under one roof. And planned communities that combine diverse land uses and activities are growing in popularity. These findings run counter to the separation of industrial, commercial, and residential land uses under zoning.

These contradictions have been addressed through a variety of regulatory alternatives—such as, planned unit development (PUD) options, mixed use districts, flexible zoning, performance zoning, and corridor overlay zones. Florida's landmark planning legislation authorized communities to pursue innovative approaches to managing growth. Transfer of development rights (TDR), incentive and inclusionary zoning, PUDs, impact fees, and performance zoning were suggested in statute as innovations to consider in the local regulatory program.

The alternatives have had varying degrees of success. Some, like transfer of development rights programs, have proven beyond the administrative capacity of many local planning departments. PUD options, although sound in theory, have been plagued by abuses on both sides of the development table. Other techniques, like flexible or performance zoning, are gradually gaining acceptance and successful examples are growing.

The Density Debacle

Disputes over density have also plagued planning policy. Many communities respond to traffic by reducing density or by

keeping densities low. Yet the traffic problem in Florida is not high density growth. It is low density, single-use development patterns that have reinforced the growth in single occupant vehicle travel. Alternatively, infill and higher densities accommodating a mix of uses are necessary to sustain alternative modes of transportation and achieve compact urban form.

Unfortunately, density has become a primary public indicator of good and bad in local zoning decisions. "For too long we've allowed planning officials to use density as a means of avoiding the issue of quality development," said attorney Charles Siemon.²⁴ Although citizens tend to be

most concerned about community or neighborhood character, they may oppose a quality project that adds to that character simply because it is a higher density or intensity of use. "We work very hard, particularly in Florida, to reduce densities at every turn. Most local governments drive density out," said attorney Wade Hopping.²⁵

Another problem is a myth, perpetuated by conventional zoning, that low density development is less harmful to the environment. Although densities should be substantially reduced in environmentally sensitive areas or for natural resource management, such as wellfield protection,

Tenets of Zoning Practice

The following tenets of zoning practice are useful in achieving consistency with a comprehensive plan:

- 1. Zoning runs with the land and not with the owner.**
- 2. On a rezoning, the most important question to answer is, "Is that an appropriate location for that zone?" Many officials focus solely on the proposed use and forget that any use permitted in that zone may be erected after the rezoning has been granted.**
 - a) is the zone consistent with other zones and uses in the area?**
 - b) if a specific use is proposed, should that use be permitted under the existing zoning by amending the text (special land use)?**
 - c) are uses in the proposed zone equally or better suited to the area than the current uses?**
 - d) is the proposed zone consistent with the comprehensive plan.**
- 3. On a special land use request, the most important question to answer is, "Is that an appropriate location for that use?"**
- 4. Other general questions to consider in relation to a major development request:**
 - a) If not this project here, where? Do alternative site analysis and propose alternatives that are consistent with the comprehensive plan. Developers look to the lowest cost option.**
 - b) If not now, when? Look at market absorption rates, land capacity, or trends in consumption. If the timing is not right, then the community could lose public (taxpayer) dollars on bonds and infrastructure improvements.**
 - c) If not this project here, what? For example, should it be a shopping center instead of a residential subdivision?**
- 5. A variance should not be granted unless facts are presented that demonstrate:**
 - a) the property cannot be used in conformance with the ordinance;**
 - b) the problem is unique to the property and not shared by surrounding parcels;**
 - c) the problem at hand was not self-created.**

Source: Mark A. Wyckoff, Basic Training for Michigan Planning Commissioners, prepared for the Michigan Society of Planning Officials, Planning & Zoning Center, Inc., 1990.

this must be distinguished from the practice of mandating low density urban development. Low density development consumes more land and natural habitat, increases vehicle miles travelled, contributes to the reduction in air quality, and increases energy consumption.

The development of low density communities for retirees poses another problem. The majority of retirees, upon choosing a retirement location, desire to age in place. They also desire relatively low maintenance living—that is smaller homes and low (or no) maintenance yards. And above all, Americans want to remain independent as they age and to meet their daily needs with minimum assistance. Therefore, proximity to shopping, passive as well as active recreation, and services—including health care and emergency services—are crucial. Many retirees also want to engage in community activity, and therefore benefit from access to urban areas.

But what will happen when advancing age makes it difficult or unsafe to drive? Safe and convenient public transportation is essential if older Americans are to remain independent as they age. Florida's low density communities are seldom designed with public transportation in mind and often it becomes cost-prohibitive to serve them. This reinforces dependence on the automobile, forcing those who can to drive and holding all others captive.

Discretionary Devices and Development Delays

The desire for control and certainty in the face of rapid and often unpredictable change has led local governments to embrace discretionary review over as-of-right zoning. But discretionary devices have a downside, as well. Too much discretion in zoning standards and development review leads to diseconomies of scale—both for the community in administering and enforcing the provisions, and the real estate developer by penalizing all but those (in the words of

Peter Salins) “rich enough, well-connected enough, or clever enough to play the discretionary game.”²⁶

Although as-of-right zoning is often characterized as the ideal, it can also compromise a city's diversity. Alternatively, a proliferation of special districts aimed at capturing and preserving neighborhood diversity, could easily become overly complicated and cumbersome to enforce. Tension between the desire to simplify and streamline zoning and the urge to capture and preserve the diversity of specific places is not readily resolved. What is clear, however, is that much can be done to streamline the review process and generally make regulatory language easier to understand and administer.

Local governments must also acknowledge the limitations of conventional zoning in advancing planning policy. In particular, communities must more carefully consider what they are asking zoning to achieve and whether zoning is the appropriate tool for advancing that goal.

Zoning is characterized by the following limitations in relation to broad planning goals:

- zoning places reliance on private market development to advance public policy;
- zoning cannot be so complicated it cannot be readily administered or enforced;
- zoning deals in generalities and is not responsive to specific situations.²⁷

Zoning has been more effective as a tool to formalize established trends and existing development patterns; it has been less effective in reshaping growth or adapting to change. Zoning decisions become so highly politicized it is often difficult to substantially revise the zoning text or map. Instead, the tendency has been to fragment local codes through frequent amendments and to add even more layers of review.

Florida has achieved another agricultural record. A recent study by the American Farmland Trust ranked Florida highest in the nation in the rate of farmland conversion—an average of one acre of farmland is lost in Florida every three and a half minutes.³⁰ Residential and agricultural uses are historically bad neighbors. As rural residential development increases, so do the number of nuisance complaints from homeowners related to agricultural activity. Odor, dust, pesticides, and noise are among the most common complaints.

Many Florida counties perceive agricultural land as a holding zone for future development, rather than a land use that should be continued. In addition, most counties allow a minimum lot size of five acres and some permit as little as one or two acres in rural and agricultural areas. Many local land development codes allow new lots to be split from larger parcels with minimal local review, and many fail to prevent property owners from creating a subdivision by staggering lot splits over time.

The result has been widespread fragmentation of rural lands into smaller and smaller parcels and the creation of extensive and often highly irregular “plats” wholly outside of local control. Property owners are able to avoid platting and providing a road by providing access through private easements and stacked flag lots—flag shaped lots with long poles that provide access to the nearest public street. Even more common is the creation of residential strips along existing highways that landlock interior parcels and transform highways into a high speed version of a local residential access road.

These land division patterns can counteract a growth management program by allowing for the gradual conversion of rural lands to low density residential use. Inadequate forethought in relation to street layout and connectivity of the transportation network

results in inefficient development patterns that consume land, undermine community character, and increase public service costs.

At a minimum, local governments should reevaluate the exemptions for lot splits in their land development code and close loopholes that allow property owners to circumvent the platting process.³¹ Flag lots should be strictly controlled and allowed only in unique circumstances. A preferred alternative is to implement a combination of flexible zoning, conservation easements, and site plan review procedures.³² Another alternative is shadow platting, which involves bringing property owners together to prepare an overall conceptual site plan for a large undeveloped area.

Local governments wishing to protect large parcels for agricultural or silvicultural use may consider a sliding scale or quarter/quarter approach to land division.³³ Sliding scale zoning limits the number of lots permitted per original parcel in designated areas, depending upon the size of the parcel. Quarter/quarter zoning establishes a fixed number of nonfarm residential lots of one per 40 acres. Both techniques typically establish a minimum lot size of one acre for residential lots.

The Quest for Tax Ratables

Fiscal motives may also conflict with long term planning objectives in zoning or rezoning decisions. A community faced with a proposed mall on the urban fringe, may be motivated more by the desire to create jobs and enhance the local tax base, than whether the proposal is consistent with the comprehensive plan or the capacity of available transportation systems. One regional mall can provide as much as \$2 million annually to a school district without the corresponding increase in students. Tax ratables like malls have taken on even greater significance to local governments in this time of fiscal constraints.

Although frequently justified as economic development, seldom are the costs and benefits adequately weighed. Too often these decisions have little to do with diversifying the economic base or providing better than minimum-wage jobs for the local labor force. What proportion of jobs will go to local citizens? How many of these jobs are low paying service jobs? What effect will the project have on other area businesses? What public subsidies will be needed to support the project? Frequently, scarce local resources are redirected away from infrastructure in already urbanized areas to finance roadway improvements and service extensions on the urban fringe.

Communities should view their economic base comprehensively when evaluating zoning changes and not rely too heavily on enhancement of property value. Industrial property, for example, has been substantially devalued in relation to commercial property. Because more profitable enterprises will outbid less profitable enterprises for space, this trend could accelerate loss of higher paying industrial jobs without a strategy for retaining local industries. "One function of zoning is to intervene in this free market competition for space, not only to protect public health and safety, but also to promote economic diversity and to protect economic and community resources," conclude real estate consultants Kintish and Shapiro.³⁴

Communities should also evaluate development requests to determine whether they are flooding a particular market segment. This will help avoid problems with vacancies and serve as a check and balance on the tendency of developers to overbuild in pursuit of the latest market trend.

In addition, development review *must go beyond site specific impacts* and consider the consistency of the proposed site with the long range plan. The project may be desirable, but is that the appropriate location? If not, is there a more appropriate

site in relation to long range community development goals? These are the overriding questions in any major development decision, but are often put aside in the pursuit of tax ratables.

Improving Consistency Through Specific Plans

An alternative to total reliance on the private sector is to prepare specific neighborhood or district plans that translate community policies into more specific design concepts. This approach would reintroduce community design considerations into the development planning process. It calls for redirection of zoning axioms and recognition of the need for diversity of function, integration of uses, and connectivity of the street layout that are all physical components of "community."

These concepts underlie the neotraditional town planning movement, which calls for a return to early design traditions and strives to recreate the diversity and visual charm of traditional towns. Traditional neighborhood development (TND) is compact, conserves resources and advances alternative modes of transportation. It strives for housing variety and calls for affordable housing above stores and accessory units. From a variety of perspectives it is more consistent with state planning policy, as translated into local comprehensive plans, than conventional development.

An issue that arises in relation to finely grained neotraditional plans relates to modern strategies for accumulating wealth that combine products or services into super centers, like discount outlets and shopping malls. Indeed, debates are raging across the United States over the appropriate balance between consumer demand for the superstore and the desire to preserve small businesses—the building blocks of diversity. New York City, for example, has been under pressure to revamp its zoning code to permit large supermarkets in

Manhattan and other Boroughs—a prospect that many residents support, but that would threaten the livelihood of the City’s diverse specialty delis and produce markets.

Critics also contend that neotraditional communities cannot support the industrial, office, and commercial base necessary to be self-sustaining. This issue relates to the lag time between development of the town center and residential build-out. “Perhaps the key question is whether the up-front costs of creating truly mixed-use villages will break developers before they can sell enough land or houses to make their projects profitable,” said Clifford Pearson, former design editor of *Builder* magazine.³⁵

Conventional regulations and suburban attitudes toward growth have also been barriers. Neotraditional projects represent a dramatic departure over single use, low density zoning, and conventional right-of-way requirements. Therefore, such projects typically engender a major re-evaluation of the existing plan and land development code. Staff planners and engineers may oppose them due to ideological conflicts over conventional regulatory concepts. Citizens may perceive the project as a back door approach to hiking densities. And elected officials may have no real reason to say yes.

Says Randall Arendt, landscape planner and author of *Rural by Design*, “It is sadly true that large-scale proposals offer on the one hand, the best possibility for good site design (featuring compact neighborhoods, traditional mixed-use centers, and significant open space setbacks) and on the other hand, the greatest potential for organized opposition.”³⁶ Strong public leadership and partnerships with the private sector are essential to achieving changes in the development process. In addition, advises Arendt, local governments should anticipate and provide authority to develop innovative, mixed-use projects in their land development code.

Despite such barriers, the neotraditional concept is among those specific design concepts now gaining widespread support among community planners, the public, and some developers. The neotraditionalists have provided a lively, and arguably more sustainable alternative to sprawling tracts of uniform housing and commercial strips. But rather than replacing conventional development, TND floating zones are joining PUDs as another alternative to conventional zoning in the local land development program.

Consistency through Public Involvement

Without early and continuing public involvement, the prospects for quality and consistency in development planning are greatly reduced. An effective public involvement program ultimately safeguards the development planning process against arbitrary or undesirable decisions and builds relationships that are fundamental to long term success. Such efforts can eventually create a more informed public that is better able to respond to complex development issues.

A continuing problem in achieving consistency between planning and development decisions is the inadequacy of citizen enforcement mechanisms. The ability of citizens to contest local government development decisions is constrained for several reasons:

- Consistency challenges may penalize developers, but fail to penalize local governments for the consistency violation.
- Only citizens may enforce the consistency of development decisions with the local comprehensive plan.
- Only those citizens that will suffer greater adverse effect than the community at large may initiate a consistency lawsuit.
- Challenges to development orders must be filed within 30 days of issuance and

citizens may be unaware of the project in time to file a challenge.

- Citizens that challenge local government development decisions have been intimidated by lawsuits filed by the opposition.
- There are no real sanctions to prevent local governments from repeatedly violating consistency requirements.³⁷

The ability of citizens to participate in development decisions and enforce consistency with the local comprehensive plan is an essential component of an effective planning program. Citizens should be provided a more effective avenue for contesting development decisions that are not consistent with the local comprehensive plan and would negatively affect the quality of life in their neighborhood or community.

What is needed, says community developer R. Susan Motley, is to reconnect people with planning through a more equitable development decision process. She advocates the following: a comprehensive and integrated planning approach; collaboration among stakeholders rather than the imposition of values and decisions; acceptance of interdependence (not dependence or independence) as the basis for long term

relationships; and encouraging leadership development at all levels.³⁸

Building alliances has become an essential component of land use and transportation planning. Engaging a broader base of stakeholders in the public decision process helps to clarify the components of existing problems and leads to more balanced and effective solutions. Town meetings, community attitude surveys, charrettes, private sector summits, and visioning workshops that target a broad base of interest groups are among the techniques that state and local governments can use to involve the public in their planning program.

In this context, community planners are being pushed to discard the traditional role of planner as objective advisor. Rather, they are applying their expertise to assist communities in advancing planning principles through information, mediation, and advocacy. Says planning director and professor Allan Jacobs,

I believe city planners ought to have points of view and that they should go to bat for them.... Within a democratic process they should advocate and search for ways to carry out their plans.... Overall, the best 'politics' is top professional work, forcefully presented and defended.³⁹

Chapter 7

Conclusions and Recommendations

Consistency in planning and regulation depends upon the ability of governments to create a viable plan. It is advanced by broad public support for development planning policies, and therefore benefits from public outreach and involvement in transportation and development decisions. Inter-agency and intergovernmental collaboration on issues of mutual concern or jurisdiction promotes consistency of public decisionmaking.

Clarity is another component of consistency. It is difficult to stay consistent with policies, plans, maps and regulations that are unclear to citizens, developers, and elected officials. Plans and regulations must also be frequently monitored and updated, to assure they remain consistent with each other and changing circumstances or policies. In terms of administering a development program, standards must allow for both flexibility and predictability.

With the majority of plans in compliance, local governments can now focus on bringing the planning effort to the next level. Florida's landmark planning legislation provided broad authority and flexibility to local governments in formulating a planning and regulatory program. Many are only beginning to realize their potential. This should change as planning practice matures in Florida under the growth management act and communities reevaluate their progress through the state mandated Evaluation and Appraisal Report process. Toward this end, this study recommends the following.

Increase Clarity and Predictability

Clarify what you want to achieve through the development planning process. Future

land use plans are often so general that they fail to reveal the actual development potential of a region. This greatly complicates the ability to plan a balanced local and regional transportation system. To address this problem, Chapter 163 was amended by the ELMS-III legislation to encourage local and regional visioning initiatives. One way to begin a meaningful dialogue is by mapping buildout, as currently prescribed in zoning and state or regional transportation improvement programs. This, along with an analysis of land division trends, will reveal where the region is heading based on the current development program and will help uncover potential problems. Local governments should also use visual preference surveys to identify what type of development and transportation system that citizens prefer. This should be done in the context of a broad-based public involvement program, to harness public opinion and build political support for desired land use and transportation alternatives.

Comprehensive plans should clearly indicate where development is desired, and establish strategies to facilitate private investment in those areas. Such strategies might include transportation and utility improvements, regulatory incentives, and expedited review or pre-approval. Charlotte, North Carolina, for example, established Development Enterprise Areas in selected planning districts. The concept is to use public actions to leverage or stimulate additional private investment into largely undeveloped areas characterized by soft or mixed markets. Strategies for Development Enterprise Areas include:

- Place higher priority on public funding for water, sewer, and transportation capital projects that support and redirect growth into enterprise areas.
- Pre-zone enterprise areas in conformance with an adopted area plan.
- Coordinate public and private organizational and marketing efforts to support redevelopment, reinvestment, and redirection of growth.

Chapter 163 should be amended to require a standardized land use classification system for local land use planning.

Local land use classification systems vary widely, making it difficult to interpret future land use plans or to predict future transportation needs. Geographic information systems are opening up new possibilities in land use and transportation planning, but require greater consistency in information and classification systems. Among other benefits, a standardized classification system would simplify communication on development planning issues and offer opportunities for comparative planning studies or systematic research into regional urbanization trends. Local governments could still retain classifications in their current future land use plan by simply aggregating various classifications from the standardized system. Although some minor plan amendments may be required to standardize existing classifications, these would relate more to nomenclature than the substance of the plan.

Simplify and Streamline

Local governments should initiate a special project to simplify and codify the land development code. Rewrite the code so the language is brief, simple, and straightforward. Codify all procedures into a unified review process. Make sure the code includes a table of contents and a clear statement of intent and purpose. Eliminate superfluous requirements or passages and overly legalistic language. Reformat the text

into columns that are easy to read. Put standards into tables wherever possible. Provide graphics or illustrations of techniques or desired results. Accompanying forms should be clear and supplemented with checklists, such as permit checklists. Publish a handbook that includes flow charts describing steps in the review process for various levels of review, lists of contacts, information required, and other information to guide potential developers. In short, make the code as user friendly as possible and then make it available at a reasonable price.

Coordinate development review through preapplication conferences, combined review committees, and computerized project tracking systems.

A preapplication conference can be used to foster general understanding of a project, review procedures, and special regulatory concerns. Combined review committees are useful where it is necessary to coordinate reviews by several agencies or departments. This allows participants to address conflicting views, provides a broader perspective, and avoids delays caused by haggling between agencies. In addition, projects that require permits or approvals from different agencies should undergo concurrent review. Routine projects should be fast tracked by eliminating public hearing requirements or allowing administrative approval. Computerized project tracking systems can also improve record keeping and make information available about applications in the pipeline.

Break complicated problems into a series of simple decisions. Decisionmakers can rapidly become overwhelmed by the magnitude and complexity of transportation and land use problems. The solution is to break these problems down into a series of simple solutions that support the long term goal. The rational, comprehensive method is unwieldy even for planners, when it comes to coordinating transportation and land use policy.

Match Practice with Policy Intent

Government should lead by example. Too often the actions of government agencies are inconsistent with the same public policies and regulations imposed on private development. This sends out a mixed message to citizens and developers about the level of government commitment to public policy. For example, public buildings should be located in urban centers and not in environmentally sensitive or urban fringe areas. Highways and bridges should not be expanded on sensitive barrier islands. As a primary employer in many areas, government should lead the way in establishing transportation demand management programs for commuters, such as flextime, ridesharing, telecommuting, or transit subsidies.

Local governments and MPOs should place higher priority on improving infrastructure and public services within already urbanized areas. The location of public infrastructure and services is a powerful determinant of growth patterns and is among the most effective economic development and growth management tools available to local governments. Local governments should focus scarce public dollars on improving infrastructure and services within already urbanized areas. They should avoid premature extension of services into undeveloped areas and the corresponding burden on taxpayers caused by subsidizing such development. In this way, local governments can encourage infill, redevelopment, and higher quality growth in urbanized areas while preserving the character of areas intended for rural or semi-rural living.

Use zoning not only to limit maximum density but also to establish minimum density. Conventional zoning relies on a system of maximum densities to achieve growth management objectives. Although this keeps development at or below a certain density, it does not assure that

density will be reached. On the contrary, many urbanized areas in Florida are built at a much lower density than allowed under zoning. Zoning should be used to establish minimum densities in areas where higher densities are desired to support transit service or facilitate redevelopment and infill.

Increase the proximity and variety of land uses on a neighborhood or district level. A consistent land use and transportation strategy requires a complementary mix of uses, planned in reasonable proximity. Plans and zoning should provide for a mix of land uses that are functionally related to each other, rather than segregating land uses into large single-use areas. Commercial and other uses should be focused into activity centers, rather than strips, at strategic points along arterials and collectors. This allows for more compact growth patterns and supports alternative modes of transportation to and within activity centers.

Manage land division activity to discourage unplanned residential conversion of rural lands. Many Florida counties allow a minimum lot size of five acres and some permit as little as one or two acres in rural and agricultural areas. Subdivision exemptions allow property owners to avoid platting and providing a road by providing access through private easements, stacked flag lots, or residential strips along existing roads. The result has been fragmentation of rural lands into smaller and smaller parcels and inefficient development patterns that consume land, increase public service costs, and result in poor street layout. Local governments should prepare maps indicating land division trends in exurban areas over time to provide a foundation for public dialogue. Some alternatives include flexible (open space) zoning, agricultural zoning, restrictions on the number of small lots that may be created from a large rural parcel, and shared access requirements.

Provide regulatory incentives to facilitate desired transportation and development outcomes. Many of the transportation solutions described in this report require changes in conventional regulation and development practices. Development proposals that diverge from conventional practice to advance transportation and growth management policy should be rewarded. Unfortunately, because they diverge from conventional practice, they are frequently penalized by an even more cumbersome review process. A streamlined review process that fast tracks quality proposals is among the more meaningful incentives for promoting desired changes. Because development planning and review functions are departmentalized within local bureaucracies, streamlining development review may also require some changes in staff responsibilities and organizational structure.

Eliminate regulations that are inconsistent with planning policy. Review your code and ask, what is the purpose of this regulation and what is the outcome? Is the result really positive? Is it consistent with planning policy? If no one can answer these questions, or the answer is no, then the regulation should be revised or dropped.

Use performance-based permitting systems in fringe areas, and flexible zoning rather than conventional zoning, for more effective growth management. Despite broad regulatory authority, many Florida communities continue to rely primarily on conventional zoning. Conventional zoning works well for some purposes and poorly for others. Conventional zoning is best for preserving established neighborhoods and helping protect evolving ones. Communities should consider performance based permitting systems in fringe areas and flexible zoning, to allow greater flexibility in accommodating a changing market, while maintaining consistency with planning policy.

Regulatory conditions and exactions should be solidly grounded in the comprehensive plan, and also supported by specific planning studies or data. The courts are placing greater weight on the comprehensive plan and planning studies in considering the validity of regulatory actions. They are also shifting the burden of proof onto local governments to demonstrate that development conditions advance a legitimate public purpose. A consistent planning and regulatory program strengthens the legal basis for regulatory decisions and affords greater predictability to developers and the public in terms of legally permitted use of land.

Integrate Transportation into Land Use Planning

Local governments should engage in corridor preservation and coordinate with the state on managing access to high priority corridors. Effective corridor preservation requires involvement at the local level where land development decisions are made. Communities should establish a policy framework that supports corridor preservation and access management in the local comprehensive plan, prepare corridor plans that address access management and right-of-way reservation, and encourage good subdivision and site planning techniques. Special emphasis should be placed on high priority corridors, such as the Florida Intrastate Highway System. Plans could be carried out through a range of techniques, including regulatory controls and incentives, financing mechanisms, public/private partnerships, and intergovernmental coordination agreements.

Metropolitan planning organizations should take the lead in coordinating corridor preservation efforts. Corridor preservation initiatives require consistency and coordination. MPOs should include corridor plans in their work program and coordinate such efforts across local govern-

ments that share a corridor. This should address access management, right-of-way reservation, and related development planning strategies. The Florida Department of Transportation should support such initiatives and participate at the District level. Regional planning councils should collaborate with MPOs on these efforts.

Local governments should prepare and adopt official street maps and supporting regulations to accommodate the traffic circulation needs of future development.

Consistency of land use and transportation requires a balanced, connected network of side streets, sidewalks, and internal subdivision roads to serve desired future land use. Such a network should be planned, mapped, and carried out through a right-of-way reservation program that is coordinated with development planning. It should also be managed in accordance with concurrency through timing of planned improvements. Providing multiple, alternative access routes to shops and services will help distribute local trips more evenly and reduce demand on major arterials for local trips. Street layout is also an essential component of community design.

Highway frontage should not be strip zoned for commercial use. Commercial uses should be focused into activity centers, rather than strips. Activity centers provide opportunities for improved accessibility and alternative modes of transportation, while reducing access management problems along arterials. When evaluating future land use needs, communities should also account for vacancies, underdeveloped sites, and surplus land already available for commercial use. Managing the supply of commercial land encourages reuse of existing commercial sites, increases property values in those areas, and is a long term economic development strategy.

Collaborate with other agencies and use multidisciplinary teams to solve transpor-

tation and land use problems. Effective management of land use and transportation challenges requires a multidisciplinary approach to problem solving. Government agencies should strive for a collaborative team approach to problem-solving that brings people with complementary skills and knowledge to work together on a problem. Transportation planners, engineers, urban designers, ecologists, economists, land use planners, regulatory specialists, landscape architects, and water managers are among the diverse professions that participate in development planning. Although it is rare for a single agency to accommodate all of these skills, agencies should strive to diversify in hiring decisions and when designating work teams. Agencies should also collaborate with other agencies on issues of mutual concern. Bureaucracies tend to compartmentalize functions, making them resistant to change. The best solution is to break traditional functional divisions through team building.

Invest in Better Data

Regional planning councils should be designated as regional GIS clearinghouses.

Funding for this purpose should be provided from DCA, through its legislative budget request. Geographic information systems have greatly facilitated development planning. Data on roads, utilities, land use, land divisions, soils, wetlands, wellfields, land cover, zoning, and a range of other information can be kept in computer files and readily updated and overlaid for planning analyses. However, this can be costly to develop and maintain at the local level. Many RPCs already have a GIS program and therefore would be the logical agency to serve as a regional GIS clearinghouse. RPCs should be required to aggregate data from other sources, such as water management districts and the Florida Department of Transportation, and maintain complete data bases on land use, land cover, property ownership, transportation

facilities and the full range of data needed for use in local planning.

Build a Consistency for Planning

Integrate planning into politics. Consistency of development decisions with planning policy requires attention to the political parameters of decisionmaking. Frequently the planning process is viewed as a futile (if well-meaning) exercise, in a system driven largely by reactive politics. Rather than stand by as neutral advisors, planners and engineers must become effective political strategists and more responsive to the needs of political leaders. In *Mastering Change: Winning Strategies for Effective City Planning*, Alan Altshuler argues that “planning in the service of discrete political clients is the only kind of planning that can be effective in our system of government.”

Reconnect people with planning and establish public positions on strategic development issues. Whether the subject is corridor preservation or desired future land use, planning initiatives should be combined with a concerted public outreach effort. Planners should be educators as well as advocates and engage in a program of sharing information on trends and conditions with community leaders.

Public involvement implies a role for the public in agency decisionmaking. It goes beyond informing the public or allowing an opportunity to comment—although these are important components of public involvement programs. It also requires a mechanism for responding to public concerns and ideas. The public will get involved in transportation and development issues. The challenge, therefore, is to involve people in a way that is productive and meaningful for them and for your agency.

This is achieved through techniques that help minimize conflict and foster public trust. The public involvement process

should begin early and parallel the decision process so public concerns can be addressed in proposed solutions. Public opinion surveys, open house meetings, focus groups, newsletters, visioning workshops, and a range of other techniques may be used to identify public concerns and build political support for needed changes in the development planning program.

This is essential, given the current political push for limiting the ability of government to manage development. Opponents of development controls have in some ways been empowered by the inadequacy of state and local public involvement practices. Effective public involvement can ultimately safeguard a development planning program against arbitrary or undesirable changes by capturing and highlighting the shared interests of a diverse public. It also strengthens the credibility of an agency as one that makes responsible decisions and has a commitment to preserving the public trust.

The legislature should enact legislation to prohibit lawsuits that are aimed at preventing citizen enforcement of planning policy. A growing threat to citizen enforcement of consistency provisions has been the practice of countersuing the opposition, known as Strategic Lawsuits Against Public Participation (SLAPP). Such lawsuits have the effect of preventing citizens from petitioning government for better enforcement of existing laws. They have been filed for writing letters to government officials or the editor of a local newspaper, complaints about regulatory violations, and speaking out at public meetings. These litigation tactics represent a significant and continuing threat to the democratic process and to citizen participation in planning. A study commissioned by Florida Attorney General Robert Butterworth offers new legislation to prohibit such tactics in the future and should be strongly considered by the legislature.

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The Florida Experience"**

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