The Florida Senate

Interim Project Report 2005-117 *November 2004*

Committee on Community Affairs Senator Michael S. "Mike" Bennett, Chair

REVIEW OF FLORIDA'S GROWTH MANAGEMENT POLICY

SUMMARY

Since 1972, the Legislature has enacted a series of statutes to implement a coordinated system of state, regional, and local planning. However, stakeholder groups would like to see further revisions.

Committee staff held two workshops focusing on four key areas relative to growth management: public participation in the growth management process, certainty for development interests on where growth will be promoted and encouraged, infrastructure funding, and legislative changes to the development-of-regional-impact (DRI) program.

Based on staff research and input from the workshops, staff has outlined options for the committee to consider relating to infrastructure funding and the DRI program. In general, the infrastructure funding options reflect a consensus that additional funding should be made available through increased flexibility for implementing certain local option sales taxes, and this flexibility should be linked to enhanced planning practices. The options for revising the DRI process are aimed at encouraging better coordination and planning in the process and reducing duplicative information requests.

BACKGROUND

Florida's current growth management system includes: the Local Government Comprehensive Planning and Land Development Regulation Act of 1985, ss. 163.3161-163.3246, F.S.; chapter 380, F.S., the Florida Environmental Land and Water Management Act, that includes the DRI and Areas of Critical State Concern programs; chapter 186, F.S., establishing regional planning councils and requiring the development of state and regional plans; and chapter 187, F.S., the State Comprehensive Plan.

The first Environmental and Land Management Study Committee (ELMS) committee was convened in 1971, ELMS II in 1982, and ELMS III in 1991 to address growth management issues. In response to some of the recommendations of these committees, the Legislature has made major changes in growth management regulations over the years. The most recent Growth Management Study Commission, created by Governor Jeb Bush on July 3, 2000, made the following recommendations for consideration by the Legislature:

- Revise the State Comprehensive Plan to provide a primary vision statement for Florida with a healthy, sustainable economy as a priority;
- Develop a uniform method of evaluating the costs and benefits of local land use decisions;
- Empower citizens to better understand and participate in the growth management process;
- Focus the Department of Community Affairs' (DCA) review of comprehensive plan amendments on those that could affect identified, compelling state interests;
- Design and implement regional cooperative agreements for developments with extra-jurisdictional impacts to replace the DRI program;
- Require each local government to adopt a financially feasible public schools facilities element that integrates school board facilities work programs with the local government's future land use element and capital improvement programs;
- Authorize incentives for urban revitalization, including dedicated revenue sources for a "fix-it-first" backlog of infrastructure in targeted areas; and,
- Develop incentives to promote a state rural policy that protects rural land values and protects private property rights, including additional revenue for the public purchase of conservation and agricultural easements as

well as a special overlay of transferable density allocations for rural property to be used in cluster development where appropriate.

Since the 2000 Growth Management Study Commission made its recommendations, the Legislature has made a number of changes to the growth management process. Those changes included increasing coordination between school districts and local governments in the planning of educational facilities; allowing concurrency requirements, except for transportation, to be waived in urban infill and redevelopment areas; broadening standing to include property owners who abut a parcel with a proposed land use change, but do not reside in the same jurisdiction; revising the process for adopting plan amendments from a two-step to a one-step process with reduced timeframes for state review in some circumstances; providing for owners, developers, and applicants to use the methods available to third parties to appeal and challenge a development order's consistency with the comprehensive plan; creating an alternative special master process for quasi-judicial proceedings relating to development order challenges; and, establishing the Local Government Comprehensive Plan Certification Program as a successor to the Sustainable Communities Program.

Notwithstanding these recent changes, development interests and citizen groups have continued to push for further changes in the current growth management process. This report examines existing policies and offers recommendations for changes to the process based on stakeholder input.

METHODOLOGY

For this project, staff focused primarily on the following four issues:

- Enhancing public participation at all levels of decision making involving growth management;
- Providing development interests with necessary certainty regarding where, when, and how development will be encouraged and promoted;
- Identifying strategies to meet the applicable level-of-service standards for existing and new development; and,
- Revising the development-of-regional impact process to streamline and reduce duplication in the application for development approval and to make any necessary changes to the applicable thresholds.

Staff held workshops on August 24, 2004, and September 28, 2004, to discuss these four issues. The stakeholder groups that participated in the meeting represented planners, local governments, growth management interests, agricultural interests, and development interests. As part of the discussions, the participants suggested legislative changes and some of these are discussed in this report.

FINDINGS

Public Participation

The citizens' role in Florida's growth management process has been debated recently as the result of the proposed constitutional amendment that would subject comprehensive plan amendments to voter approval. In the recent election, voters in several Florida counties approved charter amendments related to growth management and public participation. For example, Seminole County voters approved a measure that establishes a "rural area" in the eastern part of the county and requires county approval for municipal annexations in this area. Volusia County voters approved the inclusion of an urban growth boundary in their charter. Also, Palm Beach County voters approved a measure requiring a super majority vote of the county commission to pass an annexation application.

Providing Certainty for Development Interests

As part of the research for this report, staff also looked at DCA's programs that identify targeted areas for growth and possible revisions to those programs:

Local Government Comprehensive Plan Certification Program

In 2002, the Legislature enacted s. 163.3246, F.S., the local government comprehensive plan certification program. The purpose of the program is the creation of a certification process for a local government to identify a geographic area in which it plans to direct growth and to require less state and regional oversight of the comprehensive plan amendment process if that local government has a demonstrated record of enforcing its comprehensive plan and has shown a commitment to exemplary planning practices. Local governments must meet additional statutory criteria under s. 163.3246(2), F.S., to be eligible for certification under the program. If the local government meets the eligibility criteria, the DCA will certify all or part of the local government by written agreement. The

DCA is authorized to enter up to eight new certification agreements each fiscal year.

Response to this program has been mixed. The first application period for this program ran from January 6 through February 4, 2003, with Lakeland, Miramar, Naples, Orlando, and Sarasota submitting applications. Lakeland and Orlando met the program's requirements and have entered into an agreement with DCA. The City of Miramar was recently notified that it will be certified but must complete a work plan. The City of Naples withdrew its application. Sarasota did not meet the certification requirements. There were no applicants in the 2004 cycle. According to some local governments, the problems with this program relate to measurable goals or criteria and the time involved in becoming certified.

Optional Sector Plans

The Legislature created the optional sector plan process in 1998 as an alternative to DRI review that reduces duplication in the provision of data and its analysis while ensuring adequate mitigation of any impacts to regional resources and facilities. Optional sector plans are intended for geographic areas that exceed 5,000 acres, but may consist of less acreage under certain circumstances. Under s. 163.3245, F.S., the DCA may enter into an agreement that authorizes a local government to prepare an optional sector plan upon the request of one or more local governments. The DCA is required to provide a status report annually on each sector plan authorized under s. 163.3245, F.S., to the Legislative Committee on Intergovernmental Relations.

Prior to the execution of an agreement between DCA and a local government that authorizes an optional sector plan, the applicable regional planning council and the local government must meet certain notice and hearing requirements. Following execution of the agreement and adoption of a detailed specific area plan, the local government is required to submit a monitoring report annually to the applicable regional planning council and DCA. This report must include information on development orders issued, development that has occurred, and public facility improvements that have been made and are anticipated in the next 5 years. The local government is primarily responsible for the enforcement of the detailed specific area plan. Currently, there are 3 participating local governments with designated Optional Sector Plans. These are Bay, Orange, and Palm Beach Counties.

Florida Quality Development Program

The Florida Quality Development Program provides an alternative and expedited review process for qualifying DRIs.[1] The purpose of this program is "to encourage development which has been thoughtfully planned to take into consideration protection of Florida's natural amenities, the cost to local government of providing services to a growing community, and the high quality of life Floridians desire."[2] The commitment from the developer to meet these standards provides financial security to the affected local governments, and regional and state agencies involved in reviewing the application. The benefits of being designated as a Florida Quality Development include use of the certification seal for marketing purposes, technical assistance from the DCA, and better coordination between interested parties in the planning and approval process. Currently, there are 18 designated Florida Quality Developments.

Infrastructure Funding

The term "infrastructure" may include fire protection, law enforcement, transportation, water, sewer, garbage, solid waste, economic development, libraries, parks and recreation, and hospitals.[3] Local infrastructure needs are financed through local revenue sources such as "user fees, ad valorem monies, local option taxes, special assessments, and impact fees, as well as through bond issues and debt."[4] Nearly all local governments in Florida report experiencing infrastructure deficits to some degree.[5] The extent of Florida's infrastructure deficit and future need is difficult to quantify. However, it has been estimated that portions of the state's local transportation needs alone are approximately $7 billion and water project infrastructure needs require another $14 billion.[6]

There are a number of local option taxes authorized by the Legislature, including several types of local discretionary sales surtaxes and a local option fuel tax. Flexibility in the levy of some of these taxes may encourage local governments to use these sources of additional revenue for infrastructure funding.

Local Discretionary Sales Surtaxes

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[1] Section 380.061, F.S.
[2] Section 380.061(1), F.S.
[3] *See Local Infrastructure Funding Options*, Legislative Committee on Intergovernmental Relations (June 2002), pg. 2.
[4] *See id.*
[5] *See id.*
[6] *See id.*

Section 212.054, F.S., authorizes local governments to levy several types of sales surtaxes. These taxes are applicable to all transactions that are subject to the state sales tax which includes sales, use, services, rentals, admissions, and other authorized transactions. However, the tax does not apply to any amount over $5000 on any item of tangible personal property or on long distance phone service. The Department of Revenue is responsible for administering, collecting, and enforcing local discretionary sales surtaxes. The proceeds are transferred to the Discretionary Sales Surtax Trust Fund. The department distributes these funds using a distribution factor for each county.

The Local Government Infrastructure Surtax[7] may be levied at a rate of 0.5 or 1 percent by ordinance if enacted by a majority of the county's governing body and approved in a countywide referendum. Alternatively, the municipalities representing a majority of the county's population may adopt uniform resolutions calling for a countywide referendum. A county may not combine the Local Government Infrastructure Surtax, Small County Surtax, Indigent Care Surtax, County Public Hospital Surtax, and Small County Indigent Care Surtax in excess of a combined rate of 1 percent. All counties are eligible to levy this surtax. Currently, 20 counties are levying the Local Government Infrastructure Sales Surtax at 1 percent, and 3 counties are levying it at the rate of 0.5 percent. Twenty counties are levying the Small County Surtax at the rate of 1 percent.[8] The proceeds of this surtax are distributed according to the terms of an interlocal agreement between the governing bodies of the county and the municipalities representing a majority of the county's municipal population or a school board with the consent of the county and the municipalities. If there is no interlocal agreement, the proceeds are distributed according to a statutory formula.

The school districts may levy a School Capital Outlay Surtax up to 0.5 percent pursuant to a resolution that requires the approval of a majority of voters in a countywide referendum. Proceeds from this surtax must be expended on school-related capital projects, technology implementation, or the bond financing of those projects. The resolution must provide a plan for the use of the surtax. A school board implementing the tax must freeze the non-capital local school property taxes, at the rate imposed in the year prior to implementation of the surtax, for at least 3 years. Any school district is eligible to impose this surtax by resolution subject to voter approval. To date, Bay, Escambia, Flagler, Gulf, Hernando, Jackson, Leon, Manatee, Monroe, Orange, Polk, St. Lucie, Santa Rosa, and Volusia counties have levied this surtax.[9]

County Local Option Fuel Tax

Section 336.025(1)(b), F.S., authorizes counties to impose a Local Option Fuel Tax, from 1 to 5 cents, by ordinance if approved by a majority plus one vote of the county commission or by referendum. This is also known as the ELMS nickel. Prior to levying this local option tax, the county may, through an interlocal agreement, establish a distribution formula for dividing the tax proceeds between the county and eligible municipalities. If a distribution formula is not established prior to the effective date of the tax, the proceeds will be distributed as provided by statute.

Counties and municipalities must spend any proceeds from the ELMS nickel on transportation expenditures necessary to meet the requirements of the capital improvements element in the applicable comprehensive plan; to remedy local transportation problems; and for critical expenditures needed to build comprehensive roadway networks. Such expenditures include the construction of new roads, the reconstruction or resurfacing of existing paved roads, or the paving of existing graded roads, but these funds cannot be expended on routine road maintenance. To date, 17 counties have levied the ELMS nickel. Of those counties, 14 counties are levying the maximum 5-cent tax.[10]

Local Option Rental Car Surcharge

Several local governments have supported legislation in recent years that would implement a local option rental car surcharge of up to $2 per day as a means of generating additional funding for unmet transportation needs. One of the benefits of this surcharge is that it provides a close nexus between those who pay the tax and the improvements necessary for the transportation network.

Documentary Stamp Tax

Taxes on documentation of the recording or transfer of certain intangibles are levied by 39 states and the District of Columbia. Although most of these states levy documents recording taxes only on real estate, many, including Florida, have a more general tax levied on the transfer of deeds. In Florida, the documentary stamp tax levied under ch. 201, F.S., is

[7] Section 212.055(2), F.S.
[8] *See* 2004 Florida Tax Handbook, pg. 156-8.
[9] *See id*. at 159.
[10] *See id*. at pg. 164-5.

actually two taxes imposed on different bases at different tax rates. Section 201.02, F.S., imposes the tax on deeds and other documents related to real property at the rate of 70 cents per $100.[11] Sections 201.07 and 201.08, F.S., impose the tax on certificates of indebtedness, promissory notes, wage assignments and retail charge account agreements at a tax of 35 cents per $100.[12]

Revenue from the documentary stamp tax is divided between the General Revenue Fund and various trust funds, primarily to acquire and manage public lands or support affordable housing. In FY 2003/04, the state will collect an estimated $2.1 billion in documentary stamp tax revenue, with $881 million going to the General Revenue Trust Fund.

Florida first enacted a documentary stamp tax in 1931, at the rate of 10 cents per $100 of consideration. In 1957, the tax on documents relating to realty (mainly deeds) was raised to 20 cents, and the tax has been assessed at two separate rates on deeds and notes ever since. Major rate increases occurred in 1957, 1963, 1979, 1981, 1985, 1987, 1990, 1991, and 1992. In 1983, the Legislature authorized Miami-Dade County to levy a discretionary surtax on deeds of up to 45 cents for each $100 except for deeds on single family residences.

State Levied Motor Fuel Taxes

Section 206.41(1)(a)-(c), F.S., provides for the levy and redistribution of state-levied motor fuel taxes for counties and municipalities, including: the "second" or "constitutional" fuel tax of two cents per gallon; the "county fuel tax" of one cent per gallon; and the "municipal fuel tax" of one cent per gallon. Unlike the state gas taxes, these local fuel taxes are not subject to annual indexing changes to the consumer price index. The distribution formulas are specified in s. 9(c), Art. XII of the State Constitution, s. 206.60, F.S., and s. 206.605, F.S., for the above taxes respectively.

Development-of-Regional-Impact Program

Section 380.06, F.S., governs the DRI program and establishes the basic process for DRI review. The DRI program is a vehicle that provides state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one county.[13] For those land uses that are subject to review, numerical thresholds are identified in s. 380.0651, F.S., and ch. 28-24, F.A.C. Examples of the land uses for which guidelines are established include: airports; attractions and recreational facilities; industrial plants and industrial parks; office parks; port facilities, including marinas; hotel or motel development; retail and service development; recreational vehicle development; multi-use development; residential development; and, schools.

The DRI review process involves the regional review of proposed developments meeting the defined thresholds by the regional planning councils to determine the extent to which:

- The development will have a favorable or unfavorable impact on state or regional resources or facilities;
- The development will significantly impact adjacent jurisdictions; and
- The development will favorably or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment.[14]

Guidelines and Standards

Statewide guidelines and standards are to be used in determining whether particular developments shall undergo development-of-regional-impact review, considering:

- The extent to which the development would create or alleviate environmental problems such as air or water pollution or noise;
- The amount of pedestrian or vehicular traffic likely to be generated;
- The number of persons likely to be residents, employees, or otherwise present.
- The size of the site to be occupied;
- The likelihood that additional or subsidiary development will be generated; and

[11] It is estimated that in FY 2004/05, the value of 1 cent levy for each $100 of consideration on deeds will generate $14.1 million. *See* 2004 FLORIDA TAX HANDBOOK, p. 50.

[12] It is estimated that in FY 2004/05, the value of 1cent levy for each $100 of consideration on corporate shares, bonds, certificates of indebtedness, promissory notes, wage assignments and retail charge account agreements will generate $21.1 million. *See* 2004 FLORIDA TAX HANDBOOK, p. 50.

[13] Section 380.06(1), F.S.

[14] Section 380.06(12)(a), F.S.

- The extent to which the development would create an additional demand for, or additional use of, energy, including the energy requirements of subsidiary developments; and
- The unique qualities of particular areas of the state.

Percentage thresholds, as defined in 380.06(2)(d), F.S., are applied to the guidelines and standards. These fixed thresholds provide that if a development is at or below 100% of all numerical thresholds in the guidelines, the project is not required to undergo DRI review.[15] If a development is at or above 120% of the guidelines, it is required to undergo DRI review.[16] A rebuttable presumption is established whereby a development at 100% of a numerical threshold or between 100-120% of a numerical threshold is presumed to require DRI review. Also, the applicable guidelines and standards are increased by 150 percent for development in any area designated by the Governor as a rural area of economic concern pursuant to s. 288.0656, F.S.

Under s. 380.06(19), F.S., any proposed change to a previously approved DRI which creates a reasonable likelihood of additional regional impact or any type of regional impact, resulting from a change not previously reviewed by the regional planning council, constitutes a "substantial deviation" that subjects the development to further DRI review and entry of a new or amended local development order. Section 380.06(19), F.S., provides that a proposed change to a previously approved DRI which, either individually or cumulatively with other changes, exceeds specified criteria, constitutes a substantial deviation and is subject to further DRI review.

The extension of the date of buildout of a development, or any phase thereof, of 5 years or more but less than 7 years is presumed not to create a substantial deviation. However, the extension of buildout by 7 or more years is presumed to create a substantial deviation and is subject to further DRI review. This presumption may be rebutted by clear and convincing evidence at the public hearing held by the local government.[17] When calculating whether a buildout date has been exceeded, time is tolled during the pendency of administrative or judicial proceedings relating to development permits.[18] It should be noted that in 2004, the Legislature created a presumption that the extension of the date of buildout of an areawide DRI by more than 5 years, but less than 10 years, does not create a substantial deviation which would subject the development to additional DRI review.[19]

The DRI process is time consuming and involves a preapplication conference, application for development approval, sufficiency determination by the appropriate regional planning council (RPC), notice of the public hearing, release of the RPC's report, public hearing, and issuance of the development order by the local government. In order to begin the DRI review process, the developer of a proposed DRI must file an application for development approval to the appropriate local government and regional planning council, as well as any agency with jurisdiction over potential impacts of the project.

The local government must advertise a public hearing within 30 days after filing the application for development approval or the proposed change and make a determination within 60 days. The local government is required to hear both the application for development approval or the proposed change and the comprehensive plan amendments at the same hearing. However, the local government must take action separately on the application or the proposed change.

Applications for Development Approval

Prior to undertaking any development, a developer that is required to undergo development-of-regional-impact review is required to file an application for development approval with the appropriate local government. If a developer seeks a comprehensive plan amendment related to a DRI, the developer must notify in writing the regional planning agency, the applicable local government, and DCA no later than the date of preapplication conference or the submission of the proposed change. When filing the application for development approval or the proposed change, the developer must include a written request for comprehensive plan amendments that would be necessitated by the development-of-regional-impact, including data and analysis. Because regional impacts may be similar to local impacts, some applicants contend that the information provided to the regional planning council, the regulatory agencies, and the local government may overlap and is duplicative.

Once a development order has been issued under the DRI program, the developer is responsible for filing a biennial report on the status of the project with the

[15] Section 380.06(2)(d)1.a., F.S.
[16] Section 380.06(2)(d)1.b., F.S.
[17] Section 380.06(19), F.S.
[18] Section 380.06(19)(c), F.S.
[19] Chapter 2004-10, L.O.F.

local government, regional planning council, and all affected permit agencies. In some instances, DRI developers do not provide the required report and the local government may have little oversight as to whether the developer is complying with the terms of the development order issued for the DRI. Also, some participants in the workshops questioned the accuracy of DCA information on the number of approved DRIs.

During our discussions on the DRI program, some stakeholders expressed concern that the program creates more regulation for well-planned developments while allowing those developments just under the threshold that triggers DRI review and which may be poorly planned to have less oversight. Another view of the DRI program is that it ensures adequate, cumulative review of projects with potential multi-jurisdictional impacts.

Waterports or Marinas

Section 380.06(24)(k), F.S., provides that a waterport or marina subject to DRI review is exempt from section 380.06, F.S., if the county or municipality has adopted a boating facility siting plan or policy which includes applicable criteria, considering factors such as natural resources, manatee protection needs, and recreation and economic needs as outlined in the Bureau of Protected Species Management Boat Facility Siting Guide dated August 2000. This plan or policy must be included in the coastal management or future land use element of the local government's comprehensive plan. An amendment for such purpose is exempt from the limitation on the frequency of plan amendments. Waterports and marina developments located in counties or municipalities, that adopted boating facility siting plans or policies as part of the local government's comprehensive plan prior to April 1, 2002, are exempt from s. 380.06(24), F.S. This provision also requires the DCA, in cooperation with the Department of Environmental Protection and the Florida Fish and Wildlife Conservation Commission, to provide technical assistance and guidelines, including model plans, policies, and criteria to a local government for the development of a siting plan.

In 2001, the Committee on Comprehensive Planning, Local and Military Affairs discussed several options relating to the DRI program as part of an interim project on growth management.[20] Those options included revising the thresholds and presumptions that do not provide any additional regulatory benefit. The report also discussed exempting certain categories of development from DRI review if master plans covering those categories have been integrated into the local government comprehensive plan. Staff also recommended that any changes to the DRI process should "integrate the consideration of extra jurisdictional impacts into the local government comprehensive planning process."[21]

Vesting for Developments of Regional Impact

Once a DRI is approved and the local government issues a development order, the development is vested. However, problems arise when the developer seeks to change the project from that which was approved under the original development order. The First District Court of Appeal, in *Edgewater Beach Owners Association, Inc. v. Walton County*, 833 So. 2d 215 (Fla. 1st DCA 2002), addressed whether any changes to a DRI development order must comply with the local government's comprehensive plan in effect at the time of the change.[22]

Specifically, the court reviewed the trial court's application of s. 163.3167(8), F.S., *de novo*. This subsection states: "Nothing in this [Local Government Comprehensive Planning and Land Development Regulation] act shall limit or modify the rights of any person to complete any development that has been authorized as a [DRI] pursuant to chapter 380 or who has been issued a final local development order and development has commenced and is continuing in good faith." The court interpreted the "continuing in good faith" requirement as applicable only to applicable development orders.[23] Under this interpretation, an approved DRI development does not need to commence or continue development to retain its vesting rights under this provision.[24] However, the court noted that any change to a DRI, that meets the substantial deviation threshold and requires further review, would divest a developer of any previous rights in the vested development and new vested rights would arise pursuant to s. 163.3167(8), F.S.[25]

The First District Court of Appeal receded from the *Edgewater* decision in *Bay Point Club, Inc., v. Bay County, et al.*, 29 Fla. L. Weekly D2375 (Fla. 1st DCA Oct. 25, 2004). The appellant in *Bay Point* appealed an order of the Florida Land and Water Adjudicatory

[20] *See Growth Management*, Florida Senate Interim Project Report No. 2002-126, pg. 8 (Oct. 2001).

[21] *See id.*

[22] *See Edgewater*, 833 So. 2d at 219.

[23] *See id.* at 221.

[24] *See id.* at 222.

[25] *See id.* at 222-23.

Commission (FLWAC), finding that proposed changes not requiring any additional DRI review do not fall under vested development rights and are not exempt from further local government review and approval.[26] The appellant, Bay Point Club, Inc., proposed changes on 16 acres of a previously-approved 946-acre DRI.[27] The parties stipulated that the proposed changes at issue are not substantial deviations subject to further DRI review.[28] The proposed changes included increased height and residential density, and the elimination of existing and originally-approved recreational facilities.[29]

The court rejected the argument that a developer holds vested rights to a proposed change in a previously-approved DRI if the change does not constitute a substantial deviation requiring further review.[30] Subsection 380.06(19), F.S. (2001), provides that any changes to a previously approved DRI, that creates a likelihood of additional regional impact resulting from the change and that has not been previously reviewed by the regional planning council, shall constitute a substantial deviation that is subject to further DRI review. Section 380.06(19)(f)6., F.S. (2001), states that if a local government determines a proposed change does not require further DRI review *and is otherwise approved*, the change is then exempt from certain public hearing provisions and a subsequent determination by the local government. The court found that the phrase "and is otherwise approved" requires that a proposed change is subject to, rather than exempt from, further review.[31]

The court interpreted the statutory language requiring local government approval of proposed changes as evidence that a DRI developer's vested rights do not include proposed changes.[32] Therefore, the court concluded that any development right not vested prior to the adoption of the comprehensive plan in place at the time of the proposed change must comply with the existing plan's requirements.[33] The court affirmed the FLWAC decision that the proposed changes to the DRI at issue were inconsistent with the comprehensive plan because the decision was supported by competent, substantial evidence and there was no error in FLWAC's interpretation of the applicable statutes.[34]

RECOMMENDATIONS

Revisions to the Local Government Comprehensive Plan Certification Program

- Eliminate the restriction on the number of local governments that may apply for certification each year.
- Consider linking the infrastructure funding options below to participation in the certification program.

Infrastructure Funding Options

The following are options to be considered by the committee to provide additional infrastructure funding:

- Allow the ELMS nickel to be implemented by a majority vote of the local governing body;
- Allow the imposition of the Infrastructure Sales Surtax by a majority vote of the county commission, with the consensus of a certain percentage of municipalities, if the county provides for greater public participation and accountability in the form of a citizens' advisory committee and the development of a specified list of priority projects;
- Provide for flexibility in the levy of the School Capital Outlay Surtax if the dollars spent per student station do not exceed specified limits;
- Provide for the indexing of state-levied motor fuel taxes for counties and municipalities;
- Provide for an increase in the documentary stamp tax as a local option if impact fees are capped or eliminated; and,
- Provide for a local option rental car surcharge.

Proposed Revisions to the DRI Process

- Streamline process to prevent duplicative requests for information from the developer;
- Further encourage coordinated permitting and planning;
- Exempt local governments that implement certain planning practices;
- Require all local governments to adopt boating facility siting plans with their next Evaluation and Appraisal Report; and
- Adjust thresholds that subject developments to further review under the DRI program as necessary.

[26] *See Bay Point*, 29 Fla. L. Weekly D2375 at 2.
[27] *See id.*
[28] *See id.* at 1.
[29] *See id*. at 2.
[30] *See id.* at 2-3.
[31] *See id.* at 3.
[32] *See id.*
[33] *See id.*
[34] *See id.*