

Akerman Practice Update

REAL ESTATE: LAND USE AND ENTITLEMENTS

May 2009

Major Florida Growth Management Legislation Passes, Awaiting Governor's Approval

Valerie Hubbard*

AICP, LEED AP, Director of Planning Services
valerie.hubbard@akerman.com

On May 1st, the Legislature approved major changes to Florida's growth management laws in a sweeping effort to streamline and reform the system, to stimulate the state's economy and to jump-start the real estate development industry. A major focus of the bill is to better facilitate and more strongly encourage development in Florida's cities and urban areas. The legislation now moves to the Governor for approval. Governor Crist will have a deadline to either sign or veto the bill. The bill will become effective immediately if the Governor's signs the bill or takes no action.

The bill is expected to have an immediate, positive impact in facilitating proposed development projects in Florida, particularly those planned in Florida's cities and urban counties. Akerman Senterfitt has been closely involved with this legislation and participated in development of key provisions. We can assist clients in maximizing the benefit of the bill's many important changes for both new and existing development projects.

The legislation – the “Community Renewal Act” – is intended to substantially streamline Florida's real estate development and concurrency processes in fundamental ways, providing relief for stalled projects and encouraging development in targeted areas that have been determined to be best suited for growth. The bill was the result of a high-level effort to forge a consensus among the Florida Senate and House, the Governor's Office, the Florida Department of Community Affairs, business groups and key stakeholders. If implemented, the legislation will have important implications for many real estate and development project proposals moving through the review process and may provide significant relief to existing development projects.

akerman.com



*Not an attorney

“The legislation – the ‘Community Renewal Act’ – is intended to substantially streamline Florida’s real estate development and concurrency processes in fundamental ways, providing relief for stalled projects and encouraging development in targeted areas...”

This legislation includes the following key changes to Florida’s growth management laws:

Development Approval and Permit Extensions. Extends by 2 years, with conditions, certain permits and approvals by the Department of Environmental Protection or the water management districts that have expiration dates of September 1, 2008 through January 1, 2012. The extension also applies to local government-issued development orders or building permits. This will allow many projects to retain their approvals through the economic downturn. Conditions apply, including written notification by the permit holder to the authorizing agency by December 31, 2009.

Dense Urban Land Areas. Defines “dense urban land areas” as municipalities of over 5,000 population with an average density of at least 1,000 persons per square mile and counties (including their municipalities) with at least 1,000 persons per square mile or 1 million population. Dense urban areas will be identified by the state annually. The bill provides certain streamlining incentives to development in these areas.

Urban Service Areas. Provides a revised definition of “urban service area” and allows local governments to use the quicker, more efficient alternative state review process to designate urban service areas within comprehensive plans. These changes should enable more communities to take advantage of the transportation concurrency exceptions and DRI exemptions explained below.

Transportation Concurrency Exception Areas (TCEAs). Creates by statute new TCEAs in certain dense urban land areas and substantially changes the process for establishing TCEAs in other targeted areas, including urban infill and redevelopment areas, downtown revitalization areas and urban service areas. Broward County and Miami-Dade are excluded from these provisions. TCEAs remove requirements for strict compliance with roadway level of service standards in favor of mobility strategies and thereby eliminate a major obstacle to growth in urban areas.

The bill further provides that plans and amendments within TCEAs that are designated and maintained in compliance with statute are deemed to meet the requirement to achieve and maintain level of service standards for transportation. This provision will facilitate plan amendments that increase intensity of land uses within TCEAs.

The bill specifically states that designation of these TCEAs does not limit local government’s ability to adopt ordinances or impose fees, nor does it affect any contract or agreement entered into, or development order rendered prior to the creation of the TCEA, except as provided under the DRI exemption language.

Development of Regional Impact (DRI) Exemptions. Creates by statute exemptions to the complex, costly, time-consuming and in some respects redundant DRI process in certain dense urban land areas or areas designated for infill and

“Key implementation issues will include ensuring that local government requirements and processes recognize and fully incorporate the new TCEA provisions, DRI exemptions and other regulatory changes.”

redevelopment. The bill also contains provisions to govern the treatment of existing and pending DRIs in areas made exempt from the process by the legislation.

The bill requires submittal to the state land planning agency of development orders for projects exceeding 120 percent of any applicable DRI threshold and allows for appeal by the state land planning agency based on comprehensive plan consistency.

With respect to transportation, methodologies for DRIs must use the same level of service standards (LOS) applied by the local government for concurrency, to provide more consistency in modeling and mitigation.

State Road Levels of Service. Local governments will be required to use FDOT LOS standards only on the Strategic Intermodal System (not the Florida Intrastate Highway System) and TCEAs are exempted from the requirement. This provision gives local government the ability to accept more congestion on certain state roads where this is consistent with community objectives and thereby strengthens local government’s control of land use decisions.

Public School Mitigation Options. Provides flexibility on the use of portable structures and charter schools in mitigating for impacts on public schools, thereby expanding options for addressing development impacts. In communities that have failed to comply with requirements for public school facilities planning, the bill removes the prohibition against processing certain plan amendments and provides for potential sanctions by the Administration Commission.

Other Land Development Regulations. Requires local governments to consider necessary zoning changes at same time as the related comprehensive plan amendments at the request of the applicant. This is currently done by many local governments and provides increased certainty and a more efficient process for the applicant.

The legislation also requires that local government land development regulations maintain the density of residential properties or recreational vehicle parks if the properties are intended for residential use, are located in the unincorporated area, have sufficient infrastructure as determined by the local government and are not located in the coastal high hazard area as defined by statute.

Akerman Senterfitt can help clients take maximum advantage of these significant changes as applied to new and existing development projects. It will be important to monitor the status of this legislation as it moves through the Governor’s office and toward implementation. Key implementation issues will include ensuring that local government requirements and processes recognize and fully incorporate the new TCEA provisions, DRI exemptions and other regulatory changes. There will also be opportunities to work with local governments to establish additional areas eligible for these streamlined processes.

Akerman is ranked among the top 100 law firms in the U.S. by *The National Law Journal* NLJ 250 (2008) in number of lawyers and is one of the largest law firms in Florida. Our team serves clients worldwide from the major commercial centers in Florida and international business centers in the United States, including Los Angeles, Miami, New York, and Washington, D.C. Akerman is a member of Lex Mundi, the world's leading association of independent law firms with a presence in more than 100 countries.

For more information about our Land Use and Entitlements practice, please contact:

Neisen Kasdin , Chair Land Use and Entitlements Practice Group	305.982.5629
Cecelia Bonifay , Chair Green and Sustainable Development Practice Group	407.423.4000
Valerie Hubbard , Director of Planning Services	850.521.8003
Spencer Crowley , Shareholder	305.982.5549
Jason Lichtstein , Shareholder	850.521.8018
Edwin Stacker , Shareholder	954.759.8956

Ft. Lauderdale

Edwin J. Stacker

Las Olas Centre II
350 East Las Olas Boulevard
Suite 1600
Ft. Lauderdale, FL 33301-2229
954.463.2700

Jacksonville

Robert A. Leapley, Jr.

50 North Laura Street, Suite 2500
Jacksonville, FL 32202-3646
904.798.3700

Los Angeles

Allan N. Lowy

725 South Figueroa Street, 38th Floor
Los Angeles, CA 90017-5438
213.688.9500

Miami

Neisen O. Kasdin

One Southeast Third Avenue
25th Floor
Miami, FL 33131-1714
305.374.5600

New York

Howard A. Zipser

335 Madison Avenue, Suite 2600
New York, NY 10017-4636
212.880.3800

Orlando

Cecelia Bonifay

CNL Center II at City Commons
420 South Orange Avenue, Suite 1200
Orlando, FL 32801-3336
407.423.4000

Tallahassee

Silvia M. Alderman

Highpoint Center, 12th Floor
106 East College Avenue
Tallahassee, FL 32301
850.224.9634

DENVER
FT. LAUDERDALE
JACKSONVILLE
LOS ANGELES
MADISON
MIAMI
NEW YORK
ORLANDO
TALLAHASSEE
TAMPA
TYSONS CORNER
WASHINGTON, D.C.
WEST PALM BEACH

akerman.com

