

# Entitlements and Concurrency

By Cecelia Bonifay, Esq.  
cecelia.bonifay@akerman.com and  
Jennifer Williams, Esq.,  
jennifer.williams@akerman.com

Securing entitlements is a difficult game and one that contains many traps for the unwary. Despite the defeat of Hometown Democracy, which would have subjected comprehensive plan amendments to a public referendum at the next general election or special election if paid for by the applicant, the threat is still alive. Proponents of Hometown Democracy were only 65,182 petitions shy of making it on the ballot and the petitions that they gathered are valid for up to four years. If not stopped in some manner, look for it on the ballot in 2010.

Any property owner, developer, business entity or end user that will need a comprehensive plan amendment in order to move forward with development should be working now with a land use attorney to file an application and begin the process. Remember that most amendments are "large scale" which can only be done twice a year by the local government and are now taking 6 to 9 months to get approved.

Look for the Florida Department of Community Affairs to propose and/or support legislation this coming session to curtail the comprehensive plan amendment process. Possible changes include limiting local governments to only one cycle per year instead of two and requiring that comp plan amendments be approved by a "super-majority" vote instead of the current

requirement of a simple majority. The Department is already evidencing a change in policy from the prior administration in that it is consistently finding large scale comprehensive plan amendments from smaller municipalities "Not in Compliance" on the basis of Urban Sprawl. Therefore, for those of you seeking greater densities and intensities by annexing into a city, as opposed to being limited by the County's comprehensive plan, look for an uphill battle.

On the concurrency front, transportation and schools continue to be the show stoppers. Early attempts through DCA's pilot program for school concurrency have met with differing results. Lake County's efforts have largely been a failure in that the DCA has rejected the County's interlocal agreement and refused to review its School Facilities Element as the County still has not

done its EAR based amendments and its comprehensive plan has been a "work in progress" for the last two and a half years.

Again, look for legislation this session dealing with various aspects of transportation concurrency. Key at this point in time is to hire good legal counsel and transportation consultants to determine your impacts and then to negotiate a proportionate share agreement. Although proportionate share has been dealt with over the years for those projects which have been Developments of Regional Impact, it is a whole new ballgame now that non-DRI projects will also have to quantify their impacts and translate those impacts into a proportionate share payment.

*For questions or additional information, please contact any of the attorneys in Akerman's Real Estate Group.*

#### FT. LAUDERDALE

Las Olas Centre II  
350 East Las Olas Boulevard  
Suite 1600  
Ft. Lauderdale, FL 33301-2229  
Main: 954.463.2700  
Fax: 954.463.2224

#### JACKSONVILLE

50 North Laura Street  
Suite 2500  
Jacksonville, FL 32202-3646  
Main: 904.798.3700  
Fax: 904.798.3730

#### LOS ANGELES

725 South Figueroa Street  
38th Floor  
Los Angeles, CA 90017-5438  
Main: 213.688.9500  
Fax: 213.627.6342

#### MIAMI

One Southeast Third Avenue  
28th Floor  
Miami, FL 33131-1714  
Main: 305.374.5600  
Fax: 305.374.5095

#### NEW YORK

335 Madison Avenue  
Suite 2600  
New York, NY 10017  
Main: 212.880.3800  
Fax: 212.880.8965

#### ORLANDO

CNL Center II at City Commons  
420 South Orange Avenue  
Suite 1200  
Orlando, FL 32801-4904  
Main: 407.423.4000  
Fax: 407.843.6610

#### TALLAHASSEE

Highpoint Center  
106 East College Avenue  
12th Floor  
Tallahassee, FL 32301  
Main: 850.224.9634  
Fax: 850.222.0103

#### TAMPA

SunTrust Financial Centre  
401 East Jackson Street  
Suite 1700  
Tampa, FL 33602-5803  
Main: 813.223.7333  
Fax: 813.223.2837

#### TYSONS CORNER

8100 Boone Boulevard  
Suite 700  
Vienna, VA 22182-2683  
Main: 703.790.8750  
Fax: 703.448.1801/1767

#### WASHINGTON, D.C.

801 Pennsylvania Avenue N.W.  
Suite 600  
Washington, DC 20004  
Main: 202.393.6222  
Fax: 202.393.5959

#### WEST PALM BEACH

Esperante Building  
222 Lakeview Avenue  
Suite 400  
West Palm Beach, FL 33401-6183  
Main: 561.653.5000  
Fax: 561.659.6313

This client alert, published by the Real Estate Group of Akerman Senterfitt, with offices in Florida, California, New York, Virginia, Wisconsin and the District of Columbia, is intended to inform firm clients and friends about legal developments in the areas of real estate law, including recent decisions of various courts and administrative bodies. Nothing in this publication should be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this publication without seeking the advice of legal counsel.