

Entitlements and Concurrency

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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.

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