

Comprehensive Planning – Legal Issues

- Defending a Comprehensive Plan Amendment
 - Must meet statutory requirements of the Florida Community Planning Act
 - Specifically, the PZB must hold a public hearing and make a recommendation to the Village Council prior to transmittal of the Plan to the state.
 - Substantively, the Act sets out the components of the Plan and the procedural requirements for adoption
 - The Plan acts as the “Constitution” for local land use decisions; land development regulations and development orders must be consistent with the Plan
 - Must meet other legal requirements of the state and federal Constitutions and statutes

Comprehensive Planning, cont.

- Defending a Comprehensive Plan Amendment: Constitutional
 - The Plan amendment will be upheld if:
 - If the regulation is “fairly debatable”
 - Not arbitrary and capricious
 - Has some conceivable rational basis
 - The local government is given the presumption of correctness
 - Low standard for defensibility
 - Exceptions: certain types of uses are given special protection and the standard is higher for defensibility (adult uses, religious uses)
 - The Plan amendment is a legislative action – no special due process requirements except notice and hearing

Comprehensive Plan, cont.

- Defending a Comprehensive Plan Amendment: Constitutional
 - The Plan amendment will be upheld if it is **not confiscatory**
 - A “regulatory taking” occurs when government action leaves property with **no economically viable use**
 - The plan amendment does not have to allow the most economically beneficial use

Rezoning and Site Specific Amendments to the LDC

- Defending these site specific actions:
 - Decision making body must follow quasi-judicial procedures
 - 1. An impartial decision-maker (ex parte disclosures)
 - 2. All fact witnesses to be sworn and testimony under oath
 - 3. Proponents (applicants), staff and interested parties have full opportunity to present evidence and argument, including expert witnesses
 - 4. Witnesses may be cross-examined by the parties
 - 5. Public testimony may be allowed
 - 6. Formal rules of evidence do not apply, but fundamental due process is required
 - 6. A written decision supported by competent, substantial evidence in the record of the proceedings

Rezoning and Site Specific Amendments to the LDC

1. The constitutionality of the decision will be based on the same standards as the comprehensive plan amendment, i.e. Is the decision **fairly debatable**? Is it **confiscatory**?
2. The decision may not interfere with **vested rights**
 - The landowner has no automatic vested rights in a particular zoning classification
 - But the landowner may have a vested right in the use of a prior issued approval if the landowner **relied in good faith** on the approval and made **substantial expenditures in reliance** to his detriment, and it would be **unfair** to take away the approval

Rezoning and Site Specific Amendments to the LDC

- 3. Otherwise, on the basis of state law, the court will decide
 - Was there any **substantial competent evidence** to support the decision? The court will not re-weigh the evidence but only look at whether there was any evidence to support the local decision
 - Did the decision-making body follow the **correct** law?
 - Was procedural due process accorded (**quasi-judicial** procedures followed)
- If yes to all of the above, the local decision will be upheld even if the court would come to a different conclusion than the local government

Bert J. Harris Act

- Intended by the Florida Legislature to provide a damages remedy to a property owner where a regulatory takings could not otherwise be found.
- The property owner must prove that the regulation **inordinately burdens** its private property rights such that the owner is **permanently** unable to attain the reasonable **investment-backed expectations** for the 1) existing use or 2) vested right to a specific use of the property as a whole.
- The Act's procedures require notice to the government before filing in court and the opportunity to negotiate a resolution. Resolution can include damages, a change to the regulation, and other resolutions. Court may approve a resolution that is inconsistent with the existing LDC.