

**PINELLAS PLANNING COUNCIL
AGENDA MEMORANDUM**

**PRELIMINARY FOR
PAC REVIEW ONLY**

AGENDA ITEM:

MEETING DATE: February 20, 2008

SUBJECT:

Proposed Department of Community Affairs Legislation

RECOMMENDATION:

Council Receive and Discuss as Determined Appropriate
(Information Only – No Action Required)

BACKGROUND

The Florida Department of Community Affairs (DCA) has put on its web site drafts of five proposals to amend current state growth management law, specifically Chapter 163, Florida Statutes. The purpose of this memo is to summarize for Council relevant amendment proposals. The proposed amendments can be found in their entirety on the DCA web site at this address: <http://www.dca.state.fl.us/LegislativeProposals/index.cfm>

Topics covered by the proposed legislation include:

- Alternative State Review - amending section 163.32465, *Florida Statutes*
- Citizen's Planning Bill of Rights - amending sections 163.3174, 163.3181, 163.3184 and 163.3187, *Florida Statutes*
- Coastal Management - amending section 163.3178, *Florida Statutes*
- Everglades Protection - amending section 163.3177, *Florida Statutes*
- Optional Sector Plans - amending section 163.3245, *Florida Statutes*

Alternative State Review

House Bill 7203 took effect on July 1, 2007, and was codified as Section 163.32465, Florida Statutes (F.S.). It created new growth management provisions among which was an "Alternative State Review Process Pilot Program" for comprehensive plan amendments in urbanized areas. Subsection (2) identifies Pinellas County as one of the jurisdictions to which the alternative review process applies. The original language of the legislation addressed merely "plan amendments." The proposed legislation expands the items subject

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to the alternative process to include: "...future land use map amendments and associated special area policies within areas designated in a comprehensive plan for urban infill development,...urban redevelopment,...downtown revitalization,...urban infill and redevelopment,...or an urban service area...."

In addition to the above, certain process-related changes are proposed for notice requirements, amendment timing, and agency comments regarding an amendment.

Also addressed is the subject of effective date. The original legislation said that the effective date of an amendment would be "31 days after adoption." The proposal amends that language to say that an amendment would not become effective until "completion of the time period available to the state land planning agency for administrative challenge...."

The original legislation said that DCA "shall not promulgate rules to implement this pilot program." However, the proposed legislation says just the opposite: "The state land planning agency shall promulgate procedural rules to implement this pilot program." Hopefully, representatives from Pinellas County will be invited to review and comment on the new rules.

Finally, in order to determine the impact of the alternative review process on jurisdictions in Pinellas County, PPC staff sent out a survey to PAC members to ascertain their experiences. The results of the survey will be presented to the PPC at the Council meeting.

Citizen's Planning Bill of Rights

Without explicitly saying so, the Citizen's Planning Bill of Rights is an attempt to blunt the Hometown Democracy movement by tightening the comprehensive plan amendment process and increasing public participation requirements. While the title says that the proposed legislation is "prepared for discussion purposes" and "does not represent an agency position or recommendation" it is unlikely that DCA would go through the effort of producing legislative language which was only meant to be talked about. Without knowing what is more or less important for the DCA, at this time, all proposed language must be presumed to be equally important to the agency.

The proposed amendment of Subsection 163.3174(1), F.S., prohibits elected bodies (commissions or councils) from also serving as the local planning agency. Subsection (4) addresses certification of comprehensive plan amendment supportive data and analysis and requires consistency of a proposed amendment with the plan itself, as well as with the strategic regional policy plan, the state comprehensive plan, and Chapter 163, Part II, F.S.

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Amendments to Subsection 163.3181(1), the adoption of a local ordinance requiring a neighborhood meeting prior to the filing of a future land use map amendment. Subsection (5) requires adoption of “a process for citizens to obtain a written certification of the allowable uses on a vacant parcel of land.”

While Subsection 163.3181(1) requires a neighborhood meeting, Subsection 163.3184(3) reiterates that requirement and additionally requires adoption of notice, timing, and other standards for those meetings. Subsection (3) also reduces the number of annual comprehensive plan amendment cycles from two to one. The only exceptions are for amendments related to those within “adopted urban service, urban infill, urban redevelopment, and downtown revitalization areas.” Proposed amendment language for Subsections 163.3184(7) and (15) addresses a number of process and procedural issues having to do with amendment adoption timing and their public review.

Section 163.3187 is proposed for amendment with regard to comprehensive plan text amendments. Those that “revise the text of goals, objectives, and policies require a supermajority vote...” Exceptions include text amendments that implement evaluation and appraisal reports, amend a schedule of capital improvements, or implement new statutory requirements.” A supermajority vote by the elected body is also required for a future land use map amendment if the local planning agency has recommended denial of the amendment.

Subsection 163.3187(2) lists exceptions to the former twice-per-year amendment cycles. The proposed legislation reduces the number of exceptions including, among others, those related to state correctional facilities, brownfield redevelopment, or local housing incentive strategies. And, the proposed language prohibits small-scale amendments from taking effect if a copy of them has not been sent to the DCA as required by Subsection 163.3187(1)(c)2.b, F.S.

Clearly, the effect of these changes will be to add time and cost to the amendment process.

Coastal Management

During the 2006 regular Florida legislative session, House Bill 1359 that deals with coastal issues was passed. The bill included a new definition of coastal high-hazard area (CHHA) as well as other provisions. The proposed DCA legislation attempts to clarify the definition of CHHA contained in Subsection 163.3178(2)(h) as follows:

The coastal high-hazard area is the area seaward of ~~below~~ the elevation of the category 1 storm surge line as established by a Sea, Lake and Overland Surges from Hurricanes (SLOSH) computerized storm surge model.

With regard to future land use plan amendment compliance with state requirements, the proposed DCA legislation trades certainty for uncertainty when Subsection (9)(a) is

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amended to say that “A proposed comprehensive plan amendment may be determined to be ~~shall be found~~ in compliance with state coastal high-hazard provisions” if certain provisions are met including two new ones. The first is that the land proposed for amendment

is not within a designated area of critical state concern, and does not include FEMA velocity zones, areas subject to coastal erosion, lands seaward of the coastal construction control line, areas above the elevation of the category 1 storm surge that are isolated by surrounding areas that are below the elevation, or areas subject to repetitive damage from coastal storms and floods.

The second new provision is that a future land use plan amendment may be determined to be in compliance if

The local government has adopted as part of its comprehensive plan hazard mitigation strategies that reduces, replaces or eliminates unsafe structures and properties subject to repetitive damage from coastal storms and floods, measures to reduce exposure to hazards including relocation, structural modification of threatened coastal infrastructure, provides for operational or capacity improvements to maintain hurricane evacuation clearance times within established limits, includes a post disaster redevelopment plan, and prohibits public expenditures that subsidize development within the coastal high-hazard area.

Finally, new, more restrictive text is added to an existing compliance provision. The amended provision states that

The adopted level of service for out-of-county hurricane evacuation is maintained for a category 5 storm event as measured on the Saffir-Simpson scale provided that the adopted out-of-county hurricane evacuation clearance time does not exceed 16 hours and is based upon the time necessary to reach shelter space.

The effect of these proposed amendments is to further restrict the potential for a future land use plan amendment in or in proximity to the CHHA to be found in compliance during DCA review.

Everglades Protection

New text is added to Subsection 163.3177(6), F.S., that addresses comprehensive plan amendment in the Everglades ecosystem which does not affect Pinellas County.

Optional Sector Plans

Section 163.3245, F.S., covers optional sector plans which are intended to address issues in large tracts (at least 10,000 acres) and multijurisdictional areas. The proposed legislation is not currently applicable to Pinellas County.