Akerman Practice Update

FLORIDA LAND USE & ENTITLEMENTS

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Sweeping Changes to Florida Growth Management Laws Anticipated

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The 2010 elections set the stage for sweeping changes to Florida's growth management framework. The elections resulted in the crushing defeat of Constitutional Amendment 4 (Hometown Democracy), the strengthening of the Republican presence in the Legislature to the extent of a veto-proof majority, and the election of Governor Rick Scott, who has labeled the Department of Community Affairs (DCA) a "jobs killer." Given the deterioration of relations between DCA and several of its constituent groups (the Legislature, development interests, and local governments) over the past four years, significant changes have been anticipated under the new administration.

Major Changes at DCA

At this point, it is unclear whether the Department of Community Affairs will continue to exist as a separate entity or be merged into another agency, but top level personnel have already been replaced. Former Secretary Tom Pelham, Division Director Charlie Gauthier, and General Counsel Shaw Stiller are gone. New Secretary Billy Buzzett is an attorney, previously with St. Joe Company, who has extensive experience in securing development entitlements. Under his leadership, DCA is re-evaluating cases that have been in non-compliance status and meeting with applicants to discuss settlement agreements. One

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notable change in policy focus has been reduced emphasis on the issue of "demonstrated need," a major hallmark of compliance decisions under the last administration. Application of the "need" criterion may be further altered by legislation proposed in the current session.

The legislative session, which began March 8, has produced numerous growth management bills, including some sweeping changes to Florida's regulatory environment.

Major Growth Management Rewrite – "The Community Planning Act"

In pre-session committee meetings, proposals were floated by various interest groups to revamp Florida's growth management laws. Many of these proposals have been incorporated into a very ambitious bill proposed by the Community and Military Affairs Subcommittee (HB 7129). Key features include:

- Elimination of Rule 9J-5, Florida Administrative Code (Minimum Criteria Rule), with incorporation of limited portions of the rule into Chapter 163, Part II, Florida Statutes
- Use of the expedited alternative state review process (currently used as a pilot process in designated communities) for most comprehensive plan amendments throughout the state
- Limitation of state agency comments on plan amendments to important state resources and facilities that are within the purview of the commenting agency
- Removal of state-mandated concurrency for transportation, public school facilities, and parks and recreation
- Refocus of "demonstrated need" criterion from limiting growth to accommodating growth by requiring that the amount of land designated for future land uses in plans "allow for the operation of real estate markets to provide adequate choices" and specifically requiring that the future land use element of local plans "accommodate at least the minimum amount of land required to accommodate the medium projections of the Bureau of Economic and Business Research"
- Removal of the financial feasibility requirement for local plans, while requiring that needed improvements be listed, along with their funding status
- Numerous changes in requirements for the Rural Land Stewardship Area (RLSA) and Optional Sector Plan programs, including:
  - Removal of pilot status for the sector plan program and of the two-stage plan amendment process - a plan amendment would be required only at the initial stage of adoption of the "long-term master plan"

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  - Removal of requirement for preliminary agreement with DCA prior to adopting an RLSA
- Change in standard of review for challenges - for third party challenges, the plan amendment would be determined to be in compliance if "fairly debatable;" for state land planning agency challenges, the local government determination would be presumed to be correct, unless shown not in compliance by a "preponderance of the evidence"
- Removal of limitation on number of plan amendment cycles per year
- Prohibition on adoption of a local referendum process for development orders or local plan amendments
- Review of current not in compliance cases by DCA and dismissal or amendment of the petition consistent with the new requirements

Less comprehensive growth management bills have been filed in the Senate, but a more sweeping Senate reform bill is anticipated, based on the House proposal. The Legislature faces a great deal of work and negotiation to bring a significant growth management bill to fruition and the final product is unknown, but significant changes to Florida's growth management system are expected.

Senate Bill 360 Reenactment

Senate Bill 360, passed in 2009, gave certain "dense urban land areas" regulatory relief in the form of DRI exemptions and transportation concurrency exception areas (TCEAs), and provided a 2-year extension to many development approvals. The bill also contained provisions relative to security cameras and affordable housing. The law was challenged by a group of local governments for allegedly violating the single subject and unfunded mandate provisions of the Florida Constitution. The court ruled in favor of the local governments, but due to a pending appeal, the law is still in effect. Nevertheless, the suit has had a chilling effect on implementation.

Companion bills have been filed in the Senate and House (SB 174/HB 7001) that reenact the growth management provisions of SB 360. In order to address the single subject issue, the new bills split off the growth management subject matter from the other provisions. Passage by a two-thirds vote of the legislature would address the unfunded mandate issue. On March 16, the House passed HB 7001 by the required two-thirds majority. Senate Bill 174 has made it through the committee process and stands ready for action by the Senate. If passed, this legislation could open the doors for wider implementation of transportation concurrency exception areas and DRI exemption areas throughout the state.

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Possible Changes to DRI Laws

There has also been discussion of substantial changes to DRI requirements that include exempting many uses from the process, increasing the thresholds for others and providing extensions for time frames. No bills have yet been filed to accomplish these changes, but one may be introduced.

Changes Are on the Horizon

Given the priorities of the Legislature and the new Governor, Florida should anticipate changes that will increase local government's role in guiding growth, diminish that of state agencies, and substantially streamline the state approval process for local comprehensive plans. Development interests should closely monitor these changes in order to take advantage of opportunities that may be created for existing, pending, and new projects.

Akerman will be monitoring proposed legislation throughout the legislative session and can assist clients in understanding and taking advantage of these new opportunities, and offers a full array of lobbying services to represent clients' interests with regulatory agencies and in the legislative arena.

For more information, please contact a member of our Florida Land Use & Entitlements team.

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