

## **A Legal Opinion on Residential Capacity**

August 30, 2003

*The following opinion concerns choices available to a local government when growth trends forecast more additional residents than can be accommodated under an existing Growth Management Plan.*

### Summary:

A local government is not required to allow residences from border to border. The assumption that a local government has a legal obligation under Chapter 163 to accommodate population projections no matter what the impact on other issues is erroneous. A simple majority of elected commissioners have the power to make a legislative decision, which is accorded great judicial deference, to limit the size of the local government's ultimate population as long as the decision is based in adequate data and analysis of the full range of prescribed considerations.

Although they are important considerations, population trends do not dictate a local government's growth management decisions. The local government may decide that open space, light and air, reduced density, low school class size, reduced traffic, preservation of agricultural lands and natural resources provide the basis for limiting the area that will be covered with urban development.

Residential capacity within an existing Urban Services District must be an estimate of the maximum number of persons that can be housed under current land use designations.

Although there is no requirement that the urban boundary be moved to accommodate everyone who might want to live within the locality, the local government, by a decision of three commissioners, may chose to move the urban district boundary -- but only if there is adequate data and analysis to support such a decision and if the change is consistent with the policies of the Plan, Florida Statutes Chapter 163, Part II, and Rule 9J-5 of the Florida Administrative Code.

This action would also receive judicial deference, but the decision can be challenged by persons living or owning property, or owning or operating a business within the locality. Such legal challenges are both costly and problematic. A commission decision to move the urban boundary -- even based on a flawed study under stating capacity and a mere finding that the other Plan criteria are met -- is likely to be upheld, at least at the initial judicial level, because of the great judicial deference accorded to legislative decisions.

## **Accommodating Population Growth In Martin County**

### *The Growth Management Act Does Not Require Accommodation Of All Projected Growth Regardless of Other Factors*

Local comprehensive plans are not required to be based blindly on population or growth projections. Chapter 163 of Florida Statutes does not absolutely require that a community accommodate all of its projected population. Section 163.3177(6)(a), Fla. Stat. states that a Plans Future Land use Element must be based upon a list of factors related to natural character, community issues, infrastructure availability, population and growth projections, and other factors. Plans are to allocate land uses based on the weighing and balancing of all of these factors and the other requirements in the statute and Rule 9J-5 of the Florida Administrative Code concerning the identification of natural resources and other areas with development constraints, the suitability of land for various uses, and the availability of facilities, services, and infrastructure. See, for example, Rule 9J-5.006(2)(a) and (b) and Rule 9J-5.013(1), F.A.C. In addition, Chapter 163 and Rule 9J-5 include provisions discouraging sprawl, encouraging redevelopment, and requiring internal consistency with the comprehensive plan as a whole.

The clearest example of this is Monroe County, where recognition of severe growth constraints has resulted in a state - approved comprehensive plan that imposes annual growth caps that are well below population projections. Originally, those growth caps were the result of hurricane evacuation constraints, but in recent years, the growth rate was reduced in response to ecosystem protection concerns. Dept. of Community Affairs, et al. v. Monroe County, ER: 95:148 (Admin. Comm., Dec. 12, 1996) (Final Order and Order of Partial Remand). That case rejected the argument that a comprehensive plan must accommodate all of the projected population regardless of the impact on the other factors established in the act such as the natural character of the land and the availability of infrastructure.

### *Urbanization Of Agricultural and Sensitive Natural Resource Lands Is Not Required.*

Thus, a local government is not required to urbanize its farm, rural, and sensitive lands just because population projections show lots of people might want to live there in the future. Other factors, like the need to protect ecosystems or agricultural lands, can outweigh population projections as a decision factor. Protecting such resources will support not urbanizing lands that population projections might otherwise support incorporating into the urban services district.

In addition to the Monroe County precedent, this ability to choose was made clear in a recent letter from the Department of Community Affairs letter concerning Palm Beach County's population forecasts. Interpreting Ch. 163, Part II, the Department stated that

"Local governments are not required to convert agricultural lands based solely on population trends without consideration for other planning objectives and needs ... [L]ocal governments are not compelled to authorize unlimited or unchecked urbanization simply to accommodate past growth trends resulting from rapid urbanization." (DCA Letter to Lorenzo Aghemo, Palm Beach County Planning Director, July 28, 2003.)

Thus, where a local government declines to adopt a requested plan amendment to move the urban boundary, it is viewed as a broadly applicable legislative decision that will only be overturned if not "fairly debatable" and the local government's decision not to change its plan will be upheld if there is any valid planning rationale to support that decision. *Snyder v. Brevard County*, 627 So.2d 469 (Fla. 1993); *Martin County v. Yusem*, 690 So. 2d 1288, 1295 (Fla. 1997); *Martin County v. Section 28 Partnership*, 668 So. 2d 672, 675 (Fla. 4th DCA 1996).

*Martin County's Comprehensive Plan Does Not Require Expansion Of The Urban Services District.*

Martin County utilizes the Urban Services District to limit urban development to the area bordering the Atlantic Ocean and in Indiantown. According to the County's 2003 rural and agricultural lands study, most of Martin's lands are outside the USD, and the bulk of those lands outside the USD are utilized for cattle grazing and include extensive wetlands.

Moving the urban boundary requires a legislative decision by the Board of County

Commissioners. The Martin County Comprehensive Plan provides numerous conditions all of which must be met before the Board considers any expansion of the urban boundary. Finding that A reasonable capacity does not exist on suitable land within the Primary Urban Service District for the 15-year planning period is only one of the conditions See Plan section 4-4.G.1.f.6. Other requirements of Policy 4-4.G.1.f include findings of compatibility with adjacent land uses; avoidance of adverse impacts on environmental, natural, historical or archaeological resources, features or systems; and, not unsuited for urban uses by being environmentally sensitive areas, prime agricultural areas, prime groundwater recharge areas, or critical habitat for endangered or threatened species. Also, any plan amendments must be internally consistent with existing Plan provisions such as those to avoid urban sprawl and protect agricultural and rural use and character. Because Rule 9J-5.005(5)(b), F.A.C., requires all Future Land Use Map amendments to Areflect the plan's existing goals, objectives and policies, a decision declining to move the urban services boundary into agricultural, rural, or sensitive natural resource areas would be entirely consistent with the law.

*The Important Calculation of Residential Capacity Within The Urban Services District Must Be Based On Maximum Allowed Density.*

Rule 9J-5.005(2)(a) requires that plan amendments be "based upon relevant and appropriate data and analyses ... collected and applied in a professionally acceptable manner." Making sure the County complies with this standard before changes in the Plan are made is important to county residents and business persons because faulty data not only lead to poor planning decisions, but also are, as some Martin County residents are finding out, both costly and problematical to challenge after an amendment has been approved. In O'Connell et al. v. Martin County et al. (DCA Final Order, DCA02-GM-340 (Jan. 3, 2003) appeal pending) local residents are challenging grossly inaccurate data used to justify a dramatically wrong County finding that there will be a 112-acre deficit of commercial land in 2015.

In estimating capacity for additional residential development within the existing Urban Services District, the County is required to analyze the Aworst case scenario, or maximum residential development capacity that is authorized. A[T]he whole range of development possibilities must be evaluated. 1000 Friends of Florida v. City of Daytona Beach, 16 FALR 2428, 2456 (DCA 1994). Plans must be evaluated solely based on what they allow and disallow. Pope v. City of Cocoa Beach et.al, 12 FALR 4758 (1990). A[T]here is no justification for failing to disclose information necessary to calculate the maximum population that can be accommodated, and there is no justification for reducing the maximum population that can be accommodated ... to reflect historic buildout densities. Sheridan v. Lee County, 16 FALR 654, 689 (Comm. 1994)(1992 WL 880138); Sierra Club v. St. Johns County, et al., (DCA Final Order No. DCA02-GM-189)(2002) (1994 WL 1027899).

Thus, the County's current study of the capacity of vacant residential lands within the USD must comply with these requirements that the full development potential authorized by the existing plan within the district be the measure of capacity. Speculation that lands will not develop to their full potential under the Plan is not appropriate data and analysis.