



Planning and Growth Management in Florida

Building Your Community

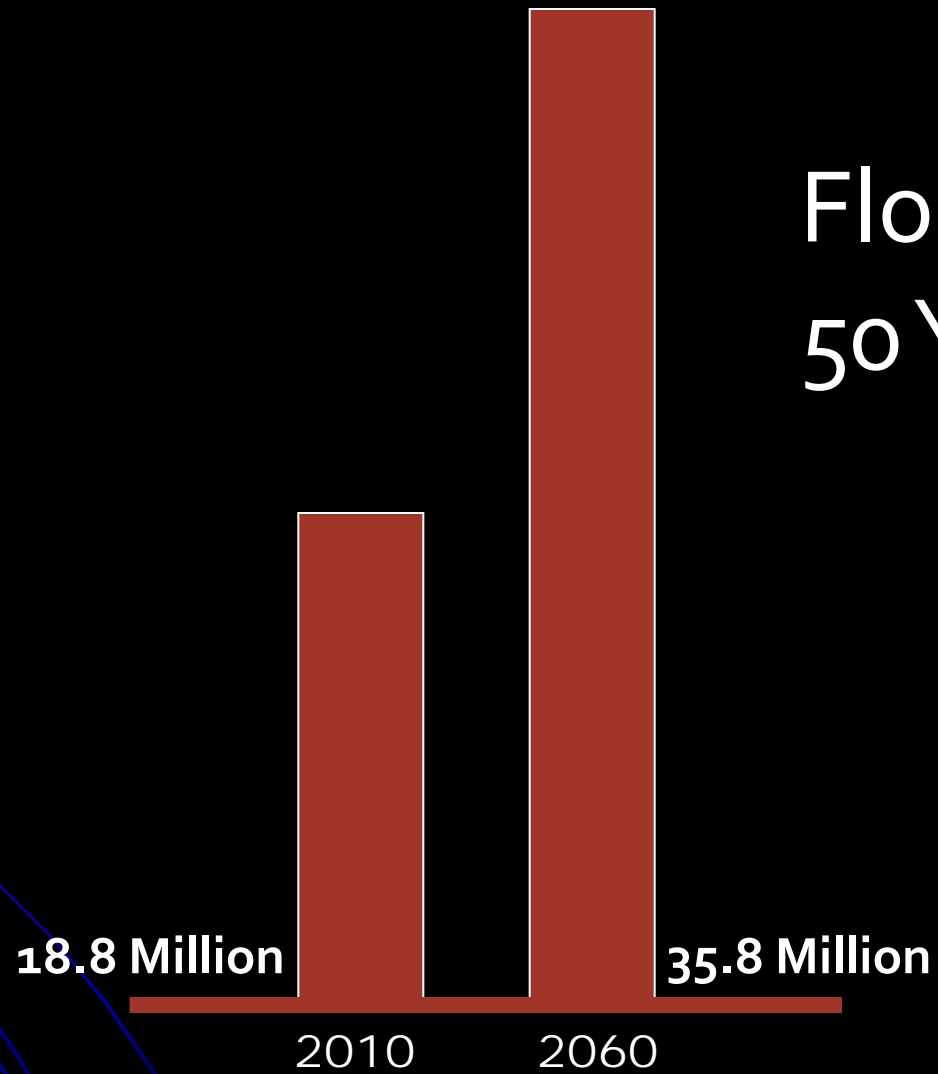
Session 1 - Powers and Responsibilities

Session 2 - The Community Building Process

Session 3 - Decision-Making

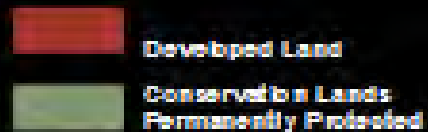


Florida in 50 Years



Existing Developed Lands and Permanent Conservation Lands

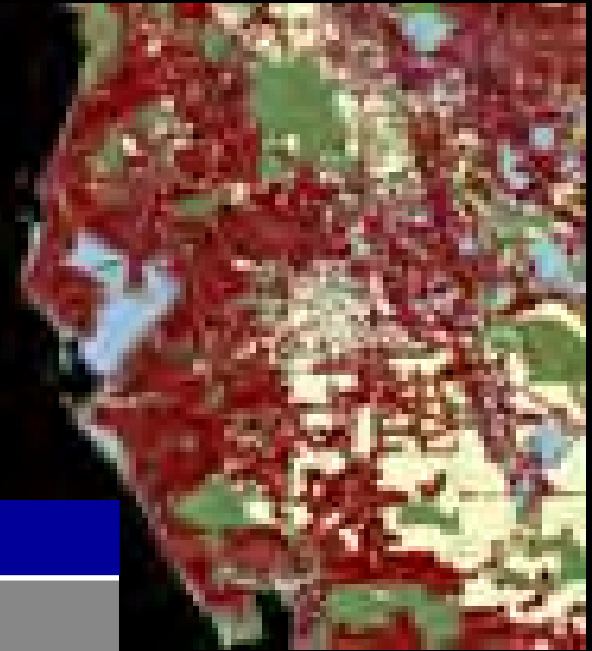
20 million



2060 Developed Lands and Permanent Conservation Lands

36 million





Our Region	2015	2040
Pasco	493,000	723,000
Hillsborough	1,320,000	1,845,000
MANATEE	345,000	471,000
Sarasota	394,000	492,000
Total	2,552,000	3,531,000

Our Challenge

How do we
build the
community we
can live in ?



Elements of Success

- *Begin with the public*



Listening to the Community



Ingredients of Successful Community Building

Listening



- Alley cleanups
- Sidewalks
- Traffic - driver calming
- Alcohol odors
- Drugs - /ss
- Quality + quantity of stores (grocery, shopping)
- After-school care/supervision activities
- Storm H2O management
- Planned + sustainable growth
- Police presence
- Sense of the larger community + care about its concerns
- Single-family dwellings on vacant lots - no longer multi-family dwellings
- Well-maintained streets + alleys
- Better chigger service



**“Tell me, I forget. Show me, I remember.
Involve me, I understand.”**
Chinese Proverb

Elements of Success

- *Begin with the public*
- *Establish a Vision*





A vision is a community based strategic planning effort in which citizens and leaders work together to identify shared goals encompassing all aspects of community life

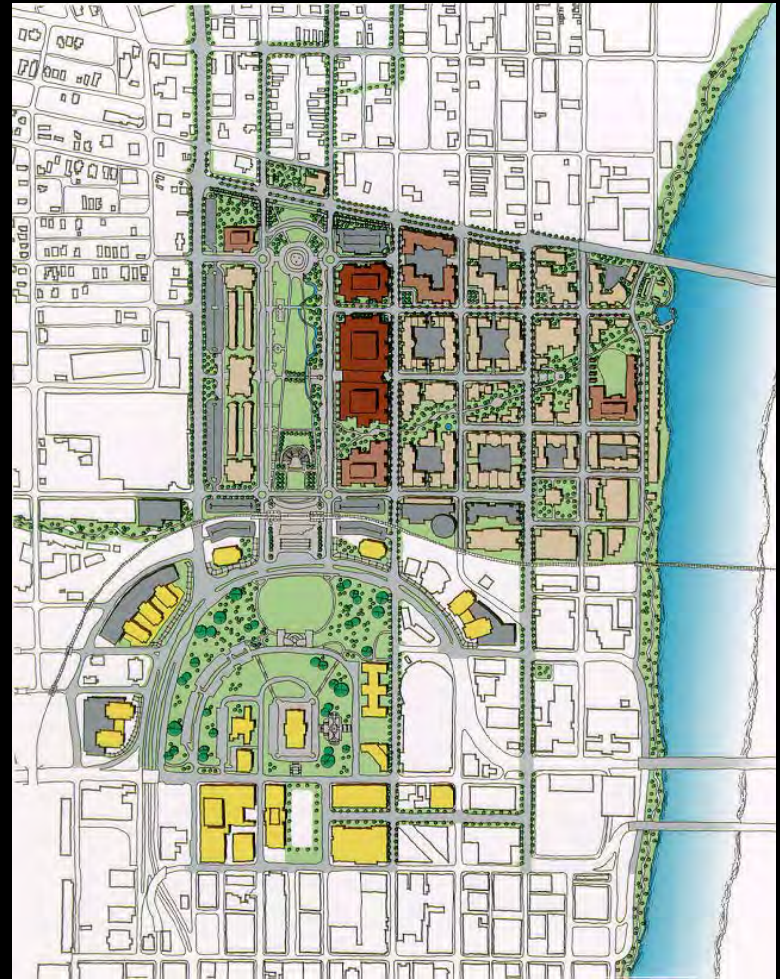
Elements of Success

- *Begin with the public*
- *Establish a vision*
- *Be Proactive*



Ingredients of Successful Community Building

Proactive
planning-the
process must
seek
sustainable
outcomes.



“The art of progress is to preserve order amid
change, change amid order.”

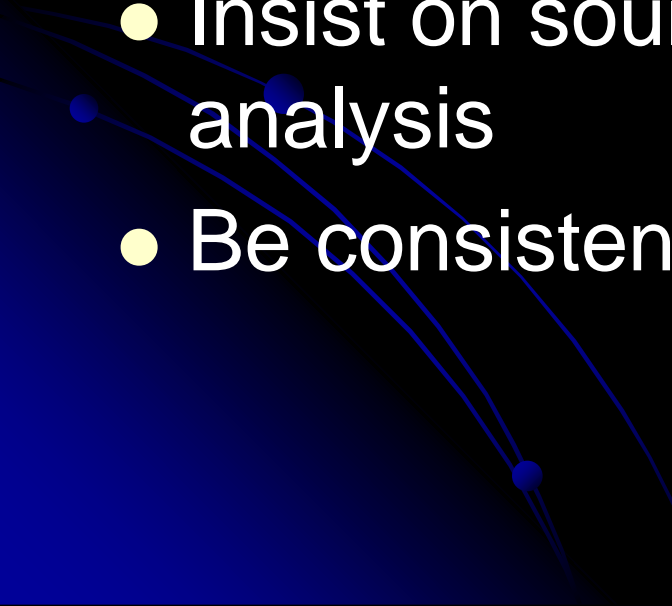
Alfred North Whitehead

Elements of Success

- *Begin with the public*
- *Establish a vision*
- *Be Proactive*
- *Be Thorough & Consistent*



Be Thorough & Consistent

- Every decision is important and will affect the community
 - Each planning decision should be weighed against the vision
 - Insist on sound information and thorough analysis
 - Be consistent & predictable
- 

Elements of Success

- *Begin with the public*
- *Establish a vision*
- *Be Proactive*
- *Be Thorough & Consistent*
- *Make it Easy to Do the Right Thing*

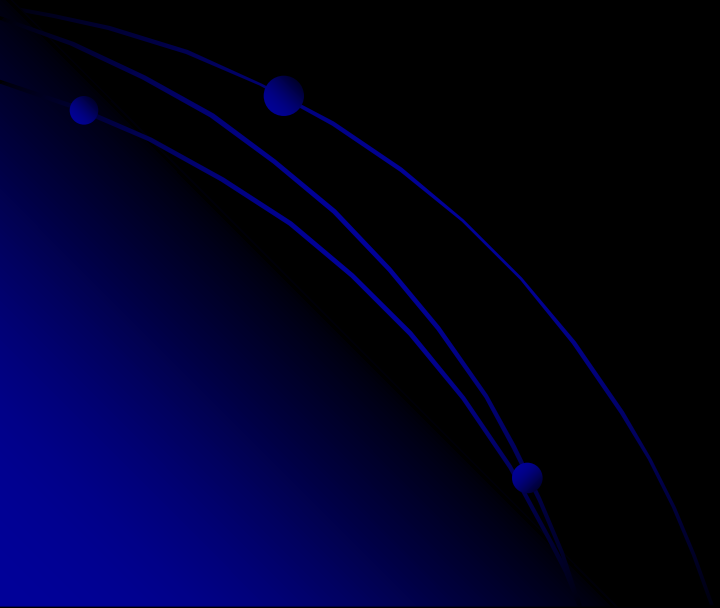


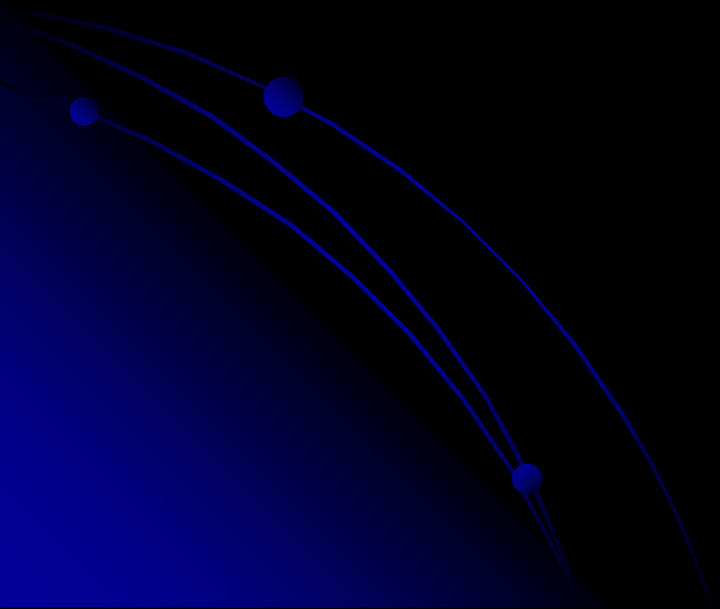
Ingredients of Successful Community Building

Make it easy
to do the
right thing!



The Community Building Process





COMPREHENSIVE PLAN

DEPARTMENTS

FDOT / MPO

WATER MGMT
DISTRICT

SCHOOL DISTRICT

ADJOINING
JURISDICTIONS

OTHER

LAND DEVELOPMENT CODE

ZONING
LAND USE / INTENSITY

DEVELOPMENT REVIEW

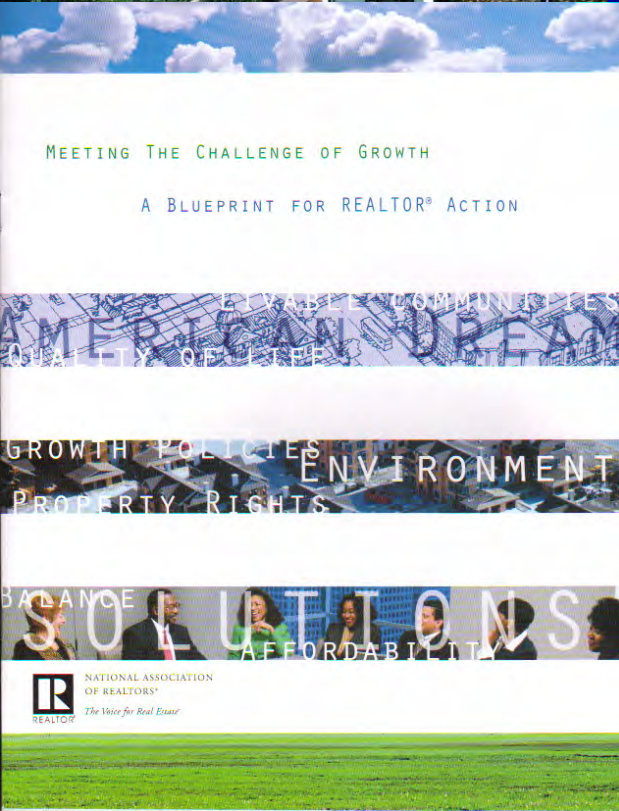
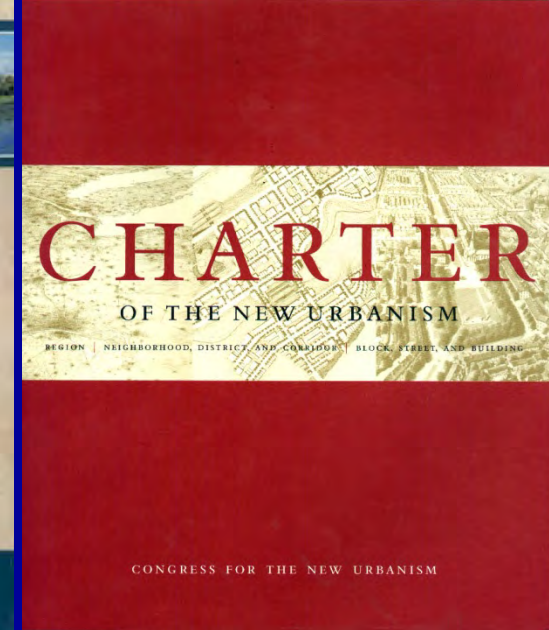
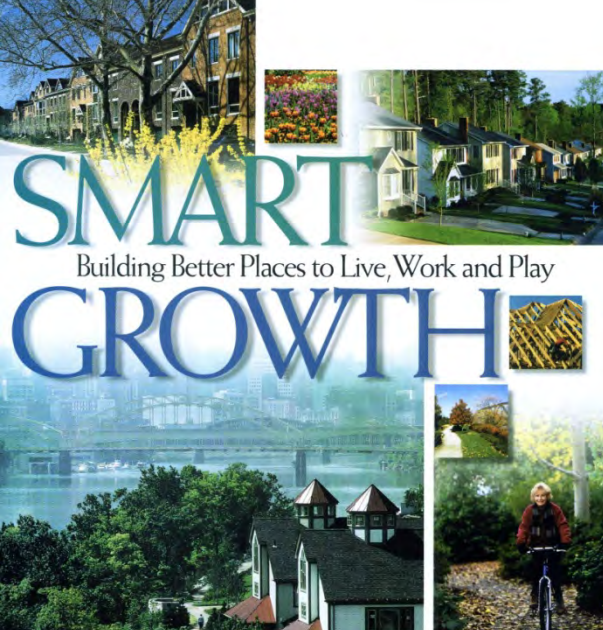
PRELIMINARY SITE PLAN

PRELIMINARY SUBDIVISION

CONCURRENCY / DEVELOPMENT AGREEMENTS

HORIZONTAL CONSTRUCTION

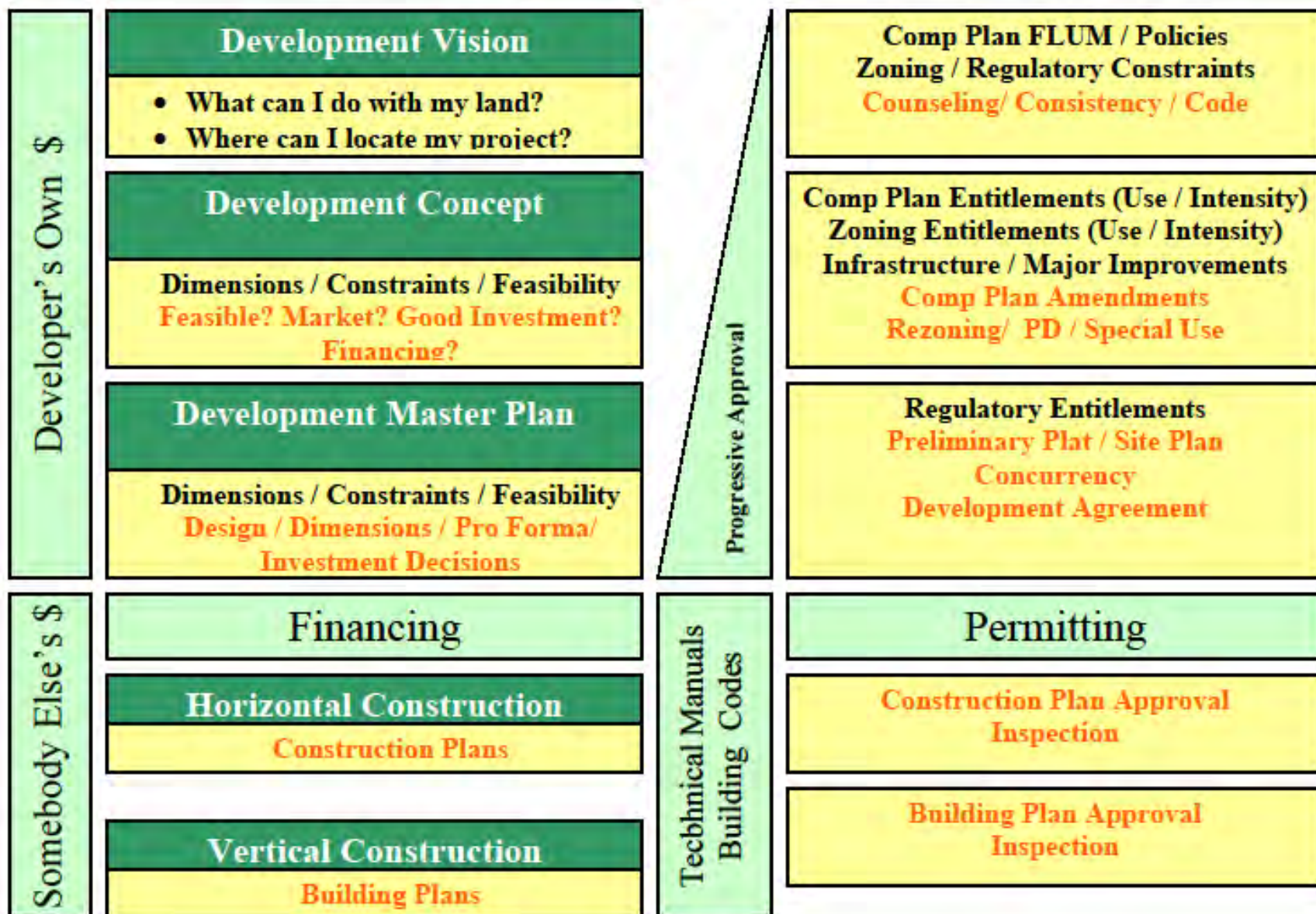
VERTICAL CONSTRUCTION



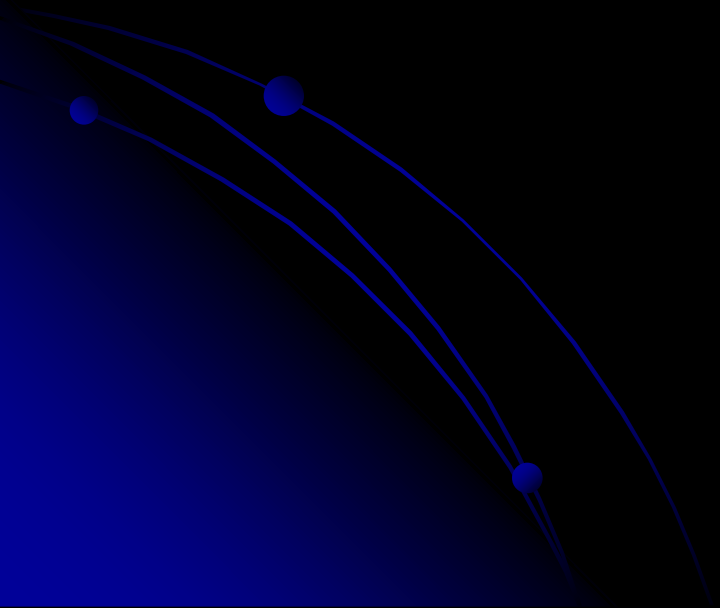
**Make Development
Decisions Predictable,
Fair & Cost Effective**

Development Decision Making Process

Progressive Regulatory Approval



Powers and Responsibilities



Local governments have broad authority to
plan and manage growth

Powers of Local Government

Local Governments in Florida have broad **home rule** powers

Florida Constitution – Article VIII

- Non-Charter Government – ...*shall have such power of self-government as is provided by general or special law*
- Charter Government - ...*shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors.*
- Municipalities - ... *shall have governmental, corporate and proprietary powers ...and may exercise any power for municipal purposes except as otherwise provided by law.*

Powers of Local Government

Local Governments in Florida have broad **home rule** powers

Florida Statutes Chapter 166 – **Municipal Home Rule Powers Act**

- Chapter 166.021(4) – *[The Act]... shall be so construed as to secure for municipalities the broad exercise of home rule powers granted by the constitution.*
- *...to extend ...the exercise of powers for municipal governmental, corporate or proprietary purposes not expressly prohibited by the constitution, general or special law or county charter*
- *...to remove any limitations ...on the exercise of home rule powers other than those expressly prohibited...*

Decision-Making

Legislative: Making Law

or

Quasi-Judicial: Applying Law

The Community Planning Act

§163.3161(9)

Intent - ... not interpreted to limit or restrict
[local government].... but ... interpreted as a
recognition of ... **broad statutory and
constitutional powers to plan and regulate the
use of land**

The Community Planning Act

§163.3161(2)

Purpose – ...utilize and strengthen existing role, processes, and powers of local governments ... to guide and manage future development consistent with the proper role of local government

The Community Planning Act

§163.3167(1)

Scope of the Act - ... municipalities & counties shall have ... power and responsibility to

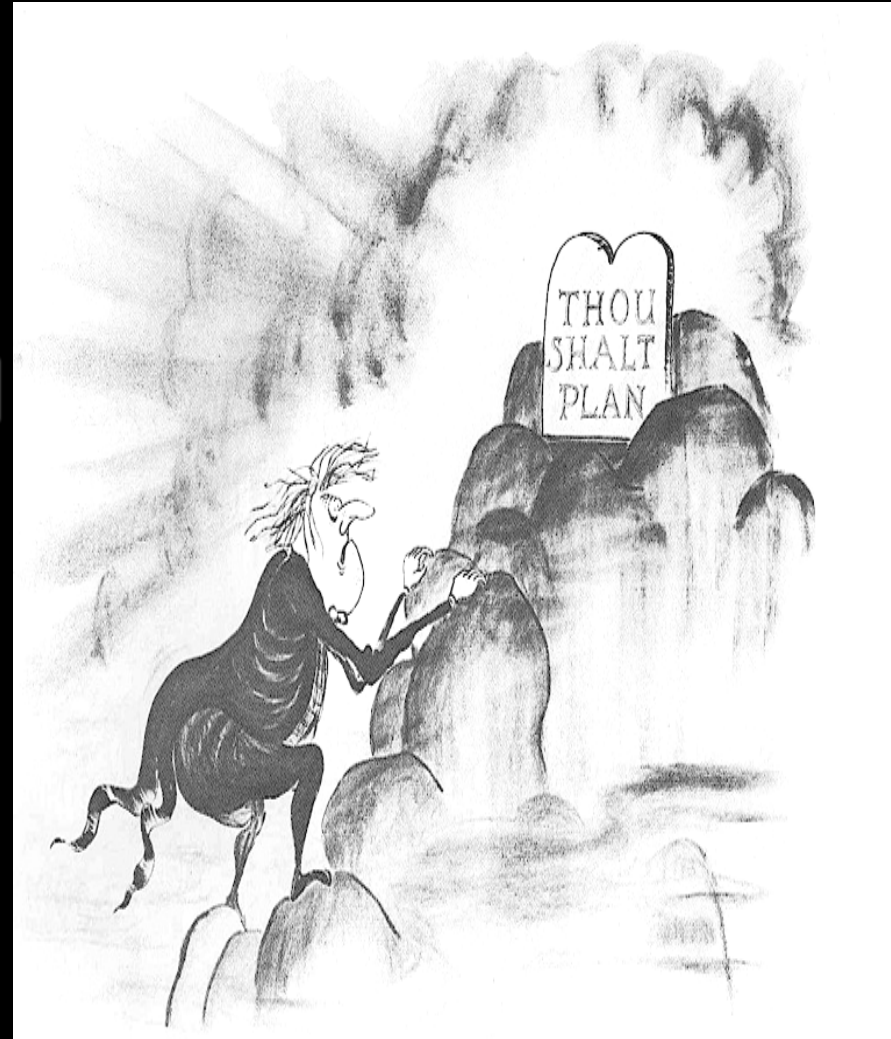
- Plan for future growth & development
- Adopt / amend comprehensive plans
- Adopt land development regulations
- Establish administrative instruments

The Community Planning Act

§163.3167(2)

Scope of the Act – Each
local government **shall**
maintain a
comprehensive plan

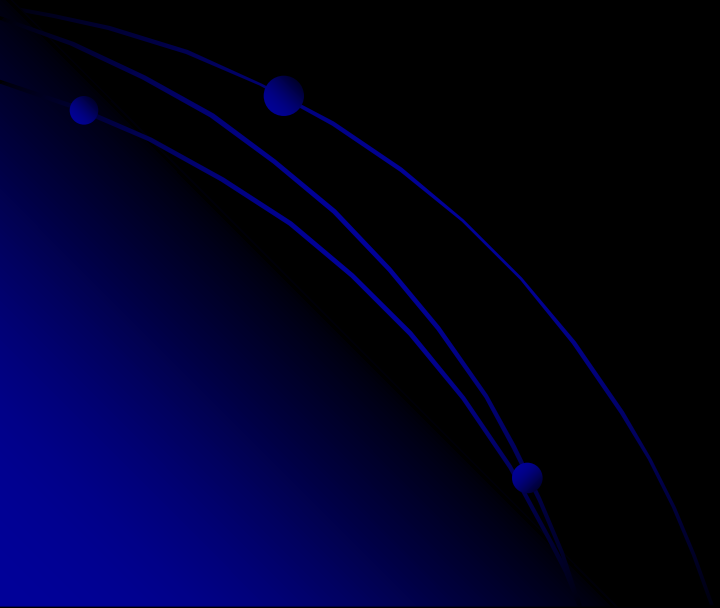
.....



Primacy of the Comprehensive Plan

- ❖ Comp Plan is *Legislative*
- ❖ All development ... and all actions taken by government in regard to development orders ... shall be consistent with such Plan
- ❖ All land development regulations ... shall be consistent with the Plan
- ❖ Local Planning Agency must review land development regulations for consistency with the Plan

Constitutional & Legal Foundations



The Constitutional Framework

US Constitution

First Amendment – Congress shall make no law respecting an **establishment of religion**, or prohibiting the free exercise thereof; or abridging the **freedom of speech**

The Development Review Process

“You have no [entitlement] rights and you won’t have any rights until and unless we give them to you,”



The Constitutional Framework

US Constitution

Fifth Amendment - No person shall ... be deprived of ... property, without due process of law; nor shall private property be taken for public use without just compensation

Fourteenth Amendment - ... nor shall any State deprive any person of ... property, without due process of law.

The Constitutional Framework

Florida Constitution

Article I, Section 9: Due Process – No person shall be deprived of ... property without due process of law.

Article X, Section 6: Eminent Domain – No private property shall be taken except for a public purpose and with full compensation therefor.

Property Rights

§163.3161(10)

Intent - ... *recognize and respect ... constitutionally protected private property rights ... all rules, ordinances, regulations, ... plans ... programs ... must be ... applied with sensitivity to private property rights and not be unduly restrictive.*

Property Rights

Bert J. Harris, Jr., Private Property Rights Protection Act

- ... regulations or other government actions may “inordinately burden,” restrict, or limit private property rights, without amounting to a taking, and create a claim for damages in such cases
- ... “*inordinately burdened*” means ... an action of ... government has ... restricted ... the use of ... property such that the property owner is permanently unable to attain the *reasonable, investment-backed expectation* for the existing use or a vested right to a specific use or
- ... the property owner bears permanently a *disproportionate share of a burden imposed for the good of the public*, which in fairness should be borne by the public at large.

Substantive Due Process

Proper Exercise of Police Power

...does the regulation seek to achieve a “legitimate public purpose”?

...is there a rational basis to think that the means used to accomplish the lawful purpose are “reasonably related” to achieving that purpose?

Substantive Due Process

Rational Nexus

Nollan v California
Coastal Commission
(US Supreme Court – 1987)

Rough Proportionality

Dolan v City of Tigard
(US Supreme Court – 1994)

...there must exist some logical connection between the problem identified, the government interest, and the solution proposed.

Procedural Due Process

The Vagueness Inquiry

...any law is facially invalid if persons of common intelligence must necessarily guess as to its meaning and differ as to its application

- *...to avoid a claim of vagueness, government must create a standard (in words and pictures) that permits those involved to understand what is expected or required*

Procedural Due Process

Legislative: Making Law

or

Quasi-Judicial: Applying Law

Procedural Due Process

Procedural due process is intended to ensure that government acts in a fundamentally fair and reasonable manner when making decisions that affect private individuals

Quasi-Judicial Decisions

Most land use decisions implement previously determined policy decisions made in the comprehensive plan and are considered quasi-judicial.

Brevard Co. v. Snyder (1993)

- Zoning – quasi-judicial if it affects a limited number of properties
 - Petitioner must demonstrate consistency with Comprehensive Plan
 - Local government must show denial serves a legitimate public purpose, and is not arbitrary, unreasonable or discriminatory
 - Decisions must be based on substantial competent evidence
 - Tie goes to the government

The Quasi-Judicial Process

Ex parte communication:

- Communication outside the hearing
- May prevent parties from knowing the basis of a decision
- Disclosure

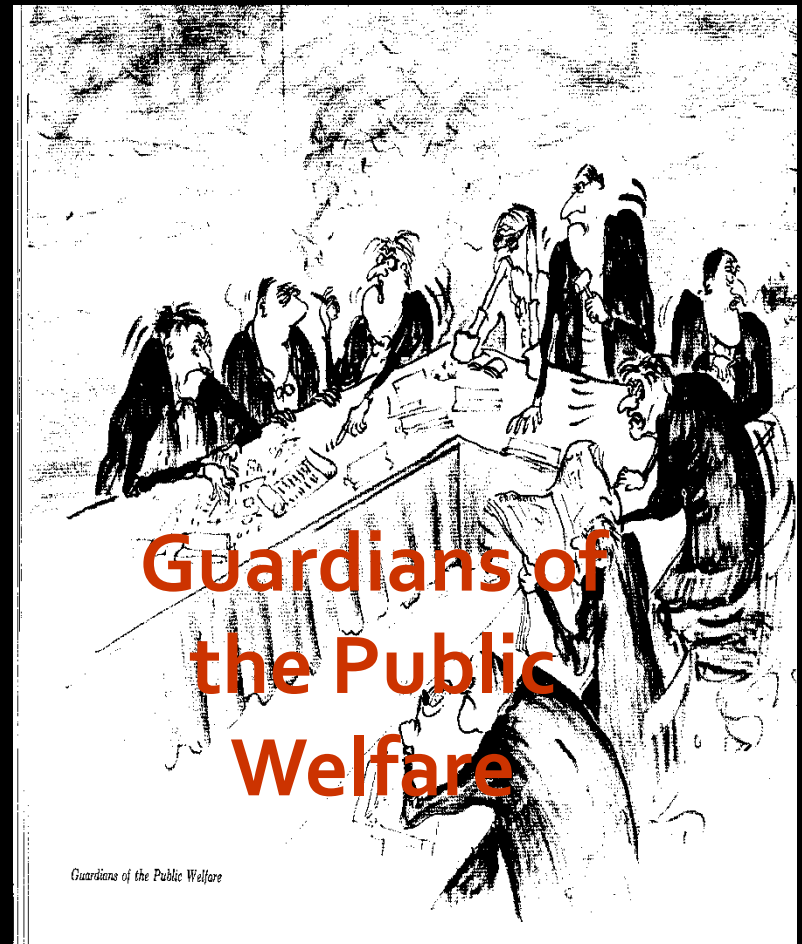
The Quasi-Judicial Process

Substantial Competent Evidence

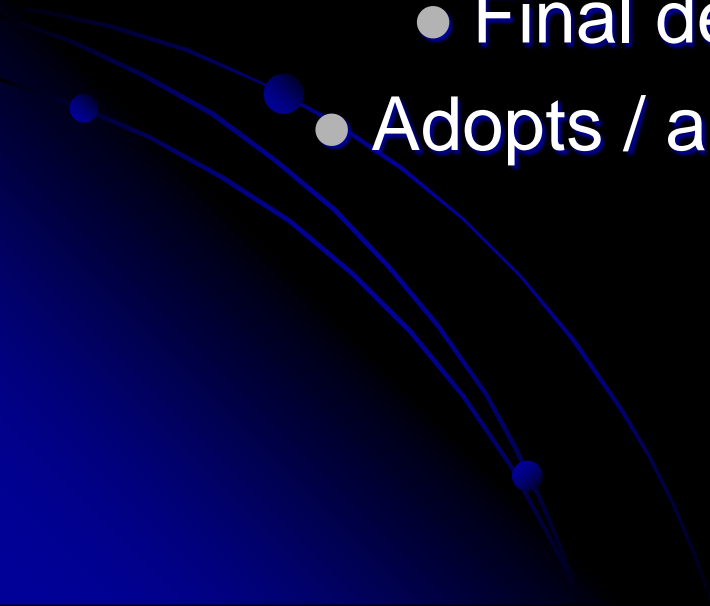
- Expert opinion
 - Based on education and experience
 - Application of education and experience to the case at hand
 - Must have a factual basis
- Factual or expert testimony by laypersons

Who are Decision Makers?


- **Governing Body** of a city or county,
- planning commission (**Local Planning Agency**)
- zoning board
- development review board
- board of adjustment
- any other commission or board that oversees planning related issues
- professional staff
- city / county attorney



Decision - Makers

- **Elected Body (City / County commission)**
 - **Ultimate legislative authority**
 - Appoints the Local Planning Agency
 - Adopts / amends the Comprehensive Plan
 - Final determination of consistency
 - Adopts / amends the Land Development Code (text)
- 


Decision - Makers

- **Elected Body (City / County commission)**
 - **Ultimate quasi-judicial authority**
 - Adopts / amends the zoning map
 - Delegates administration and enforcement authority to the Administrator, hearing officers & appointed boards or commissions
- 

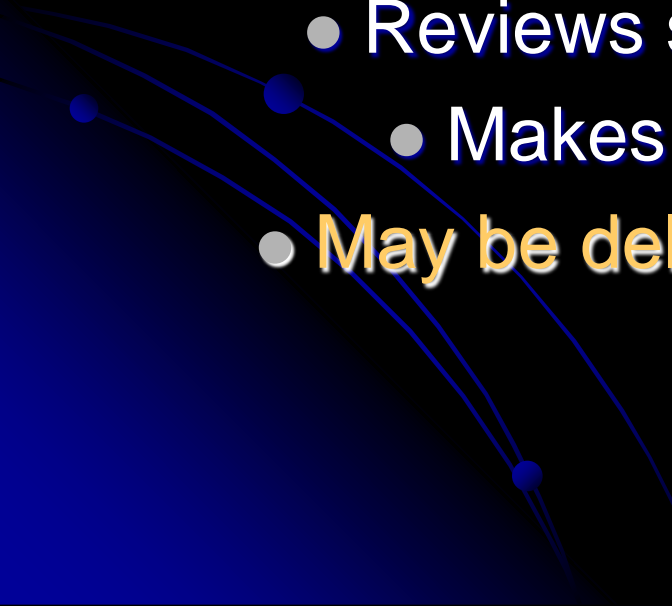
Decision - Makers

- **Elected Body (City / County Commission)**
 - **Ultimate fiscal authority**
 - Approves development agreements
 - Adopts / amends the Capital Improvements Program
 - Adopts / amends fees, assessments & security instruments
 - Accepts dedication of lands & infrastructure
 - Initiates litigation


Decision - Makers

- **Local Planning Agency (Planning Commission?)**
 - **Keeper of the comprehensive plan**
 - **Actions are Legislative**
 - Initiates text & map amendments to the comprehensive plan
 - Holds public hearings and workshops
 - Makes recommendations
 - Reviews implementing actions for consistency
- 

Decision - Makers

- **Zoning Board**
 - **Reviews petitions under the Land Development Code**
 - **Actions are Quasi-judicial**
 - **Conducts hearings / receives public comment**
 - **Reviews substantial competent evidence**
 - **Makes findings & recommendations**
 - **May be delegated limited approval authority**
- 

Decision - Makers

- **Development Review Board**
 - **Reviews actions under the Land Development Code**
 - **Actions are Quasi-judicial**
 - **Conducts hearings / receives public comment**
 - **Reviews substantial competent evidence**
 - **Makes findings & recommendations**
 - **May be delegated limited approval authority**
- 

Decision - Makers

- Board of Adjustment
 - Actions are Quasi-judicial
 - Variances
 - Interpretations
- Appeals of Administrative Decisions
 - Special Exceptions

Decision - Makers

- City / County Attorney
- Legal advice, counsel and legal representation
- Consultation regarding legal sufficiency of actions and interpretations related to the comprehensive plan, land development code and other programs and ordinances
- Consultation regarding legal sufficiency of procedures related to the comprehensive plan, land development code and other programs and ordinances

Decision - Makers

- City / County Administrator
 - Planning Director
- Primary responsibility for implementing the comprehensive plan
- Primary responsibility for administering & enforcing the Land Development Code
- Supports actions / decisions of boards / commissions
 - Manages procedures
 - Prepares / reviews substantial competent evidence
 - Makes recommendations
- Ministerial approval authority delegated by the Land Development Code

Brevard Co. v. Snyder (1993)

- Zoning – quasi-judicial if it affects a limited number of properties
 - Petitioner must demonstrate consistency with Comprehensive Plan
 - Local government must show denial serves a legitimate public purpose, and is not arbitrary, unreasonable or discriminatory
 - Decisions must be based on substantial competent evidence
 - Tie goes to the government