

A Layperson's Summary of Florida Land Use and Zoning Law

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What are the legal requirements ?

It depends on what kind of Approval is sought:

Two Types of Local Govt Action

Legislative: adoption of Comp Plan/Code
including ALL plan amendments

Quasi-Judicial:

applying the code to a site specific project
development application



LEGISLATIVE

- Free to meet without disclosures,
- Comply with local requirements, if any, lobbyist registration.
- Reporting Requirements F.S. Chapter 112.
- Sunshine Law
- Public Records Law

Plan Amendment?

Always Legislative,
but must meet the Minimum State Requirements

Public participation in the comprehensive planning process;

163.3182 Florida Statutes

Process for adoption of comprehensive plan or plan amendment.

163.3187

Legal status of comprehensive plan.

163.3197, 163.3215

Quasi-Judicial

- Similar to, but not exactly the same as a Judge
- Based on Evidence Presented in Hearing
- Constitutional Due Process: Notice, Present Evidence; Extended time; Cross Examination by affected parties.
- Disclose Ex Parte Communications:
 - Written or Oral Meetings

Rezoning? Planned Development Project?
Conditional Use? Special Exception? Variance?

Quasi-judicial

Two Main Requirements to Focus on:

Comp Plan Consistency Required
Compliance with Land Development Code Required



Competent Substantial Evidence

- Expert Planners, Biologists, Geologists, etc...
 - Specialized knowledge;
 - Reports and expert opinion testimony
- Citizen Testimony: Fact Based Observations, Maps, Aerials, Photos
- Evidence common person would reasonably relied upon as relevant to the issue

Judicial Review

- Legislative: Any Rational Basis, Complies with State Law; Not Preempted by State Law
- Quasi-Judicial: Competent Substantial Evidence, Meet Essential Requirements of Law; Procedural Due Process

Snyder v. Brevard County:

Rezoning are different

- Local Governments:
- Must Deny if inconsistent with Comp Plan
- Can Deny if consistent with Comp Plan, can still deny if “legitimate public purpose”

Pinecrest Lakes v Shidel

- All Development Orders must be consistent with Comp Plan per Florida Statutes 163.3215
 - (de novo trial)
- Remedy: DEMOLITION



Courts: Writ of Certiorari

- Judicial review of Quasi-Judicial Actions
- Based on record and transcript
- 3 prong test
 - Procedural Due Process
 - Competent Substantial Evidence
 - Essential Requirements of Code (LDC)

Constitutional Takings

- **Regulatory Takings:**
 - Physical Takings
 - Exactions, Dedications of Land Requirements
 - All reasonable economic use of property
 - Parcel as a whole
 - Ripeness
 - Exhaustion of Admin Remedies

B. Harris Act (July 1995)

- Bert J. Harris, Jr. Private Property Rights Act
 - Mere diminution of value
 - “inordinate burden” Non-Speculative Use
 - Finally applied to a property
 - No Temporary Actions (Moratorium/Red Flag Doctrine)
 - No transportation related claims

Vested Rights

Three findings of fact required for vested rights:

- 1) Actions by developer must be based in Reasonable Reliance Upon a Local Government Approval
- 2) Developer must have made Substantial Expenditures (Use it or Lose It)
- 3) Would be unfair after substantial progress and expenditures to pull the welcome mat out from under project

Contract Zoning and Spot Zoning Prohibitions

- Contract Zoning prohibited by case law
- Legislative Response
 - Development Agreements
 - Planned Unit Development Projects
 - Conditional Uses

PREPARING YOUR CASE

- Important to Prepare your Case at Local Govt Hearing
- Find a court reporter in yellow pages to attend local govgt hearing to input the hearing (cheaper and more accurate than transcribing from video or audio tape later)
- Bring experts (and their reports) to the local govgt hearing
- Bring a lawyer to the local govgt hearing
- Take photos, google aerials,
- enter Evidence

STAFF REPORTS

- Read them, not just the summaries
- Background history of property
- Facts
- Expert Opinions
- Data and Analysis
- Standards and Criteria

Identify Issues

- Read Staff Report, look up cited sections of Code
- Standards and Criteria
- Read all chapters of Comp Plan very closely
- Request Data and Analysis in Vol II of Comp Plan
- Seek Expert Opinions

Land Development Code / Regulations

- Online at Local Govt Website, or try:
- Municode www.MuniCode.com
- American Legal <http://www.amlegal.com/library/>
- Identify Criteria for Approval
- Outline your arguments for/against each Criteria

Comprehensive Plan

- Find it online at local govt website
- Buy a hard copy if available with color maps from Clerk
- Read the Narratives
- Focus on Policies
- Look for specific requirements
- General policies are harder to enforce

QUESTIONS ?
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THANKYOU!

