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BOARDROOM REPORT

News from recent REIS board meetings

Luncheon Programs:

The August meeting will feature a program on the effects of the Green Building and sustainable development trend on real estate development and management. Michael McNatt, LEED AP, of Roetzel & Andress law firm is the featured speaker. Meeting is sponsored by David Douglas Associates.

Sponsorship of future meetings is available. Contact Steve Hurley, 337-3330, for details.

Legislative / Regulatory Action:

Lee County adopted amendments to the Land Development Code (LDC) to be effective July 1.

Lee County Local Planning Agency (LPA) to consider proposed Comp Plan amendments that would implement the Density Reduction / Groundwater Resource (DR/GR) Study and include commercial uses in Coastal Rural Future Land Use Category, 8:30 am July 27 in Commission Chambers of Courthouse.

The proposed Hometown Democracy amendment has enough petitions to be on the November 2010 ballot. If approved, it would require voter approval of nearly every local land use amendment or ordinance. It is opposed by the Florida Chamber of Commerce, Florida American Planning Association, Floridians for Smarter Growth, and over 130 other organizations.

Horizon Council:

The June 26 meeting featured the investor update and a presentation on solar energy and sustainability for the planned Babcock community by developer Syd Kitson, of Kitson & Partners.

REIS Web Site:

One banner ad remains available on the home page of the REIS web site, which is generating outstanding traffic. Contact Bill Burdette, 936-1404, for details.

WHAT YOU NEED TO KNOW TO SUCCEED IN TODAY'S MARKET

REIS will present a half-day workshop on resources and tactics for success in today's economy. The focus will be on property valuation issues, sources of business capital, financing, a capital markets update, and an overview of legal considerations relative to tenant defaults, foreclosures, and troubled assets.

The workshop is scheduled for Wednesday, September 2, in the Magnolia Room at Pelican Preserve Town Center in Fort Myers. The workshop will be from 8:30 'til noon and include continental breakfast and a mid-morning break with refreshments. Admission is \$50 for REIS members, \$70 for non-members, and \$25 for students. Details and registration will be posted on REIS web site.

There are 4 sponsorship opportunities available. Contact REIS Education Chairman Matt Rocco for details: mrocco@gbrecap.com or (239) 947-5077,

Annual Social Event:

The REIS annual social event returns to The Edison, at Fort Myers Country Club, on November 12. Contact Chairpersons Janie Hooker, 489-4066, and Vikki Luft, 542-7118, for sponsorship opportunities.

Scholarship Programs:

Two students have been approved for scholarships, however the REIS Scholarship Foundation lacks about \$1,000 to fund the awards. 100% of contributions to the Foundation are awarded as scholarships. Details at www.reis-swfl.org or from Shelton Weeks, 590-7373, or sweeks@fgcu.edu.

In Memorial: Sharon Heston

Sharon Heston, who was instrumental in assisting with REIS event registrations for many years, passed away in June. Memorial donations may be made to the Rotary Club of Cape Coral. A video tribute to Sharon is at www.metzfuneralhome.com.



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GROWTH MANAGEMENT REFORM

Growth Management Reform - Adopted:

Senate Bill 360 expedites comp plan review, extends permits 2 years, and removes the current transportation concurrency requirements and encourages development in urban areas. Also eliminates the current system of funding transportation impacts, and exempt the DRI review process for large projects. Applies to specific high-density urban areas. Summary on following pages.

Permit extensions:

Lee County Commissioners adopted a resolution June 23 to implement extensions under Florida Senate Bill 360. The County resolution includes: Development Orders; Building Permits; DRI build-out and termination dates; Concurrency Certificates; and Zoning Master Concept Plans. Extensions are available for up to two years from the date of expiration if: the present expiration is between Sept. 1, 2008 and Jan. 1, 2012; the holder notifies Lee County Community Development Dept. in writing no later than Dec. 31, 2009; the request identifies SB 360, the specific permit or case number; and anticipated time frame for acting on the authorization. Extension requests may be submitted in the Permit Lobby of Community Development Building or via email to OccsZoning@leegov.com.

Lee County seeks repeal of law:

Lee County has joined other local governments in a suit asking the courts to rescind the growth management law. Lee commissioners and environmental groups protest the law's transportation concurrency exemptions, although they do not appear to affect Lee County.

FGCU TUITION JUMPS 15%

Florida Gulf Coast University (FGCU) is raising tuition by 15% for in-state undergraduates. Rates for graduate and out-of-state students will also increase. The cost of a standard undergraduate course has risen 155% since the school opened in 1997, far exceeding the 33% inflation rate over the same period. According to Shelton Weeks, PhD, Academic Program Director of Lucas Institute for Real Estate Development & Finance at FGCU, scholarships are critical for many students pursuing degrees in business.

The REIS July Luncheon is sponsored by



www.compassconstruction.com

REVISED PLANNING DOCUMENTS

The Lee Plan codification as amended through May 2009 is now available at www3.leegov.com/dcd/Leeplan/Leeplan.pdf. Partial versions of the Plan (maps, appendix, etc.) along with the revised pages only, are at <http://www3.leegov.com/dcd/ComprehensivePlanning/planningmain.htm>. Printed copies are available at the cashier's counter in the permitting lobby of the Community Development Building in Fort Myers.

Lee County has updated the Land Development Code to refine language and bring it into compliance with latest state statutes. The revised Land Development Code is available at <http://www3.leegov.com/dcd3/pdfs/2009LDCAmendmentsOrd.pdf>

NEW ZONING APPLICATION FORMS

Zoning applications have been updated due to changes in the Lee Plan, including: Public Hearing Application; Public Hearing Supplements E and F; and DRI Public Hearing Application. The remaining Public Hearing supplements have been updated to include a "Brief Summary of Project" box on the first page. The updated forms are online at <http://www3.leegov.com/dcd/DocsAppsMaps/ZoningApplications.htm>

2007 BUILDING CODE REVISED

The 2007 Florida Building Code, which became effective March 1, 2009, was revised in June. Section 106.1, regarding submittal documents, now states that construction documents be submitted by a "registered design professional." Said professionals are no longer required to affix their seals to drawings, specifications, and accompanying data.

ICSC FLORIDA CONFERENCE

The International Council of Shopping Centers (ICSC) 2009 Florida Conference takes place at the Gaylord Resort & Convention Center in Orlando, August 16-18. The annual event includes seminars on retail market trends, trade show, and a major deal-making session. Details and online registration at www.icsc.org.

ADVERTISING SPACE AVAILABLE

INTERESTED?

CONTACT BILL BURDETTE,
(239) 936-1404 or bill@burdetteinc.com

LAW OFFICES
STEARNS WEAVER MILLER WEISSLER ALHADEFF & SITTERSON, P.A.

SUITE 2200
SUNTRUST FINANCIAL CENTRE
401 EAST JACKSON STREET
TAMPA, FLORIDA 33602

TELEPHONE (813) 223-4800
PINELLAS (727) 443-3772 • FAX (813) 222-5089
WWW.STEARNSWEAVER.COM

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**NEW GROWTH MANAGEMENT LEGISLATION THAT
THE GOVERNOR SIGNED JUNE 1, 2009,
EFFECTIVE UPON BECOMING LAW**

By Ronald L. Weaver
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.

In an attempt to revamp Florida's growth management law and stimulate the development industry, Governor Crist signed Senate Bill 360 into law on June 1, 2009. The purpose of this bill, referred to as the Community Renewal Act (the "Act"), is to spur real estate development in certain urban areas, streamline the state's concurrency processes, update affordable housing legislation and assist troubled projects through permitting extensions. This brief summary sets forth a few significant areas that will have impact on many developers and local governments.

Revised Definitions:

The Act revises and expands Section 163.3164's definition of (Existing) Urban Service Areas and adds a definition for Dense Urban Land Areas ("DULAs"), which includes qualifying cities with an average of at least 1,000 people per square mile and a minimum population of at least 5,000 and counties with an average of 1,000 people per square mile or a population of at least 1 million. To assist in the DULAs determination, the Office of Economic and Demographic Research will annually calculate population and density beginning July 1, 2009, and the state land planning agency will publish the list of jurisdictions that meet the DULAs qualifications on the Internet. These DULAs are exempt from the extensive Development of Regional Impact ("DRI") process as explained below. If a DULA is later found to be ineligible for such designation, developers with pending applications for development authorization are allowed to maintain their exemption status, provided they proceed in good faith and the development is approved.

Traffic Concurrency Updates

Traffic concurrency regulations exist to ensure that there are sufficient roadway facilities to accommodate new development. The cost of creating such infrastructure, which must meet certain level of service requirements, sometimes results in financial burdens that builders cannot meet, especially in tough economic times. Additionally, the Legislature has found that the present traffic concurrency procedures are too complex, lack uniformity, concentrate on infrastructure rather than desired land use and transportation alternatives, and often frustrate growth management goals. To provide relief to developers and encourage urban center development, the Act permits, and in many cases automatically creates new Transportation Concurrency Exception Areas ("TCEAs"). These TCEAs include certain qualifying DULAs and counties with a population of at least 900,000 that

qualify as a DULA but do not have an urban service area in its local comprehensive plan. Also, a county or municipality that does not qualify as a DULA still may designate certain areas, such as urban infill and downtown revitalization, as TCEAs in its comprehensive plan.

However, developers should note that these transportation concurrency exemptions do NOT preclude local governments from continuing to enact new ordinances and new fees instead, within that local government's home rule powers. Also, the Act does not affect existing contracts, agreements or development orders (unless such DRI Orders are abandoned as provided by this statute). The Act further states that the above referenced TCEAs do not apply in counties that have exempted more than 40% of the area inside of the urban service area for transportation concurrency for the purpose of urban infill.

To keep some rein on the level of urban growth, local governments are now required to submit to the state land planning agency development orders for any project intended to be larger than 120% of any applicable DRI threshold and that would be subject to the DRI process but for its exemption. The state agency is then permitted to appeal the development order if it finds that there is an inconsistency with the comprehensive plan.

Mobility Fees

As an additional solution to the transportation concurrency issues, the Legislature envisions the use of a mobility fee that will replace the transportation concurrency system altogether. This year, the State will be reviewing how a mobility fee system (i) might work to permit developments to mitigate impacts on the transportation system, (ii) distributes among governmental entities responsible for road maintenance and (iii) promotes compact, mixed-use and energy-efficient expansion. The state land planning agency and the Department of Transportation have until December 1, 2009 to submit to the Legislature a joint mobility fee methodology study along with proposed legislation and a mobility fee implementation plan. In line with this legislative view, local governments should note that, when a TCEA designation is made, the local government now has 2 years to incorporate strategies into its local comprehensive that will support and fund mobility, including alternative modes of transportation. However, there is no guarantee or mandate that the mobility fee system will be put into place.

Streamlined Development of Regional Impact Review Process:

Receiving a DRI exemption can save a developer millions of dollars and many months of work and waiting. Accordingly, further revisions to the DRI review process were made under the Act, including the deletion of the DRI requirement for developments/redevelopments in an area designated as an urban infill and redevelopment area that has entered into an agreement with jurisdictions that would be impacted and the DOT regarding the mitigation of transportation impacts; and uses a proportionate share methodology under Section 163.3180(16). Another time-saving amendment that is included is the determination that the level of service under the transportation methodology shall mirror the requirements used to evaluate transportation concurrency. This will allow for greater consistency on all levels.

Even if a use is statutorily exempt from the DRI review process, it will still have to be reviewed if it is a part of a larger project that is subject to review. However, the Act adds an exception to this provision for an exempt use that involves a DRI that includes a landowner, tenant or user that has a funding agreement of at least \$50 million with the Office of Tourism, Trade and Economic Development under the Innovation Incentive Program.

Under the Act, the pilot program called the Alternative State Review Process, is made permanent and open to any local government. Pinellas, Broward and Duval Counties were among the areas that took part in the pilot program, which expedites the process for plan amendments with limited state agency review. In some cases, zoning may now simultaneously track new plan amendments, which may now be eligible to take advantage of new alternative review techniques to speed up some of the above designated new exemptions from the DRI process and transportation concurrency in certain areas.

Permit Extensions

Due to the current state of the real estate market in Florida, the Act sets forth additional relief to developers by granting an extension to the life, for at least, certain building permits and development orders. Permits from the Department of Environmental Protection and water management districts are mentioned as are local government building permits and development orders set to expire between September 1, 2008 and January 1, 2012. There is some early controversy whether those first two sentences of Section 14 of SB 360 entitle developers to extend building permits and development orders with or without DEP and/or Water Management District extensions also being sought for the subject project. In order to obtain the extension of two years following their current expiration date, the permit holder must notify the authorizing agency in writing by December 31, 2009, and be in compliance with the conditions of the permit. Clients may still be required to maintain and secure the properties during the extensions, and extended permits will be governed by the rules in effect at the time the permits were issued. Not included in this provision are permits and authorizations under any programmatic or regional general permit from the Army Corps of Engineers, and certain extraordinary permits like mining and consumptive use permits.

Impact Fees

A county or municipality is not required to wait 90 days to decrease, suspend, or eliminate an impact fee. Waived is the usual 90 days to suspend, decrease or eliminate impact fees. Rather a county or municipality must only provide 90 days notice if an ordinance or resolution creates new or increased impact fees.

Financial Feasibility

Local governments now have until December 1, 2011, to submit financially feasible capital improvement elements to their comprehensive plans.

While many developers praise this Act as a catalyst for urban real estate growth, there is concern from local governments and environmental groups that fear the lack of guidance and timing for transition to the new procedures and an unbridled and unchecked oversight in development. While these concerns do exist, the Act is a step towards recovery for the real estate industry that has been greatly plagued by the present economic state of Florida.

**THE INFORMATION CONTAINED IN THIS DOCUMENT IS NOT
INTENDED AND SHOULD NOT BE CONSTRUED AS LEGAL ADVICE.**