

A Discussion: NIMBYism (Not-in-My-Back-Yard)

NIMBYism: A Mandate for Citizen Participation?

by Patrick Slevin

Citizen participation is an important factor in fixing Florida's fractured growth management program and passing smart growth solutions. "Growth management" in Florida has become an oxymoron defining a system unable to establish harmony between economic progress, government planning, and environmental stability. The system's inability to control Florida's rapid growth has ignited a grassroots conflagration, fueling a political wildfire swept up by the winds of NIMBYism (Not-in-My-Back-Yard).

Florida Hometown Democracy, a grassroots group petitioning a constitutional amendment for voter approval on proposed amendments to comprehensive plans, has started a firestorm of debate. Their ballot initiative, if passed, would essentially bypass representative government and replace it with an electoral process that claims to improve citizen participation and decisionmaking.

Is this ballot initiative a banner for citizen participation or is it a campaign for elevating the NIMBY battle onto a greater stage? We'll explore the semantics and the need for better citizen participation, as well as discuss what we can do to better advocate for our clients and our community.

Growth Management Background

The 1985 Florida Growth Management Act was passed to control "runaway sprawl" at the local level. The law put the Florida Department of Community Affairs in charge of comprehensive land use plans developed by nearly every Florida city and county. The spirit of the comprehensive plan set out to capture the vision of the community, protect its quality of life, and foster citizen participation to effectively manage future growth and land use changes.

Florida has seen a population boom over the last 20

Continued on page 39

Florida's Hometown Democracy Amendment

by Ross Stafford Burnaman

Recognizing the importance of the growth management issue, the Environmental and Land Use Law Section presents opposing views of comprehensive land use plans.

On June 18, 2003, the Florida Division of Elections approved a constitutional amended petition form for Florida's Hometown Democracy Amendment (Serial Number 03-23). The amendment seeks to amend Article II, §7 of the Florida Constitution (General Provisions—Natural Resources and Scenic Beauty).

The ballot title is "Referenda Required for Adoption and Amendment of Local Government Comprehensive Land Use Plans."

The ballot summary is:

Public participation in local government comprehensive land use planning benefits Florida's natural resources, scenic beauty and citizens. Establishes that before a local government may adopt a new comprehensive land use plan, or amend a comprehensive land use plan, the proposed plan or plan amendment shall be subject to a vote of the electors of the local government by referendum, following preparation by the

local planning agency, consideration by the governing body and notice. Provides definitions.

Some critics of Florida's Hometown Democracy Amendment complain that it reflects a "not in my backyard" ("NIMBY") perspective. However, the "NIMBY" vernacular is repugnant to well-established Florida law. Moreover, the Florida Hometown Democracy Amendment concerns jurisdiction-wide planning and is not particular to any individual's backyard.

There has long been a "special injury" standing requirement for environmental and land use matters in Florida. In recent decades, there has been some relaxation of that general requirement. Notably, the special injury requirement remains in place for the fundamental standing to challenge a development order as being inconsistent with a local government comprehensive plan. Standing is limited to one who is an "affected person" and one must allege and prove "an adverse interest" that "shall exceed in degree the general interest in community good shared by all persons."¹

Critics have misunderstood, or misrepresented, the

Continued on page 41

years, experiencing between 700 and 900 people a day moving to Florida. This rapid growth in population has rocked the growth management program and its capacity to deal with new construction, traffic congestion, overcrowded schools, water wars, conservation, and endangered wildlife.

On July 3, 2000, Governor Jeb Bush created the Growth Management Study Commission calling for "bold change" to address well intended, but inadequate growth management laws. The commission's final report to the governor was published in February 2001. The report confirmed citizen participation as a vital part to enacting any "bold changes" to growth management. The commission's citizen involvement subcommittee recommended that "local governments require applicants for a development order to prepare a citizen participation plan and require them to make a good faith effort to involve citizens in development review."¹

The commission's report also recommended local governments engage in a visioning process, which should "articulate for citizens how and why amendments to the community's plan/vision will be undertaken."²

However, the lack of government funding and political consensus prohibited any implementation on citizen-centered planning and development.

NIMBYism

NIMBYism is not a true civic participation in a democratic sense. It indicates that the institutional mechanisms currently used in many jurisdictions are broken and preclude meaningful citizen participation in the land use decision-making process.

The Advisory Commission on Barriers to Affordable Housing, established under President George H. Bush, described NIMBY this way:

The NIMBY Syndrome is often widespread, deeply ingrained, easily translatable into political actions, intentionally exclusionary and growth inhibiting. NIMBY sentiment can variously reflect legitimate concerns about property val-

ues, service levels, community ambience, the environment, or public health and safety. It can also reflect racial or ethnic prejudice masquerading under the guise of these legitimate concerns. It can manifest itself as opposition to specific types of housing, as general opposition to changes in the character of the community, or as opposition to any and all development (Advisory Commission on Regulatory Barriers to Affordable Housing 1991, 1-1).

Florida Hometown Democracy

Admittedly, Florida Hometown Democracy's petition calling for more citizen participation and involvement is an attractive measure that speaks to those of us who advocate for bottom-up reform. However, the group distorts the notion of citizen participation. On the one hand, the group calls for citizen-based decisionmaking, but on the other it's selling a "community veto" to those voters who consider development as a threat to the environment, as well as to their status quo beliefs vis-à-vis NIMBYism.

The most effective weapon Florida Hometown Democracy will have in getting the measure passed will be exploiting the anxiety of homeowners who are leery of encroaching development, fearing it will adversely affect their property value. A community's desire to leave things alone is a natural response to uncertainties that come with change, which will appeal and mobilize NIMBY voters.

Ron Weaver, a Tampa land use attorney, has worked for several decades with developers, environmentalists, and elected officials on the issue of growth management. When asked about Florida Hometown Democracy's new constitutional amendment and its proposed solution to citizen participation and fixing growth management he said,

Almost everyone in Florida knows we have a growth management issue and not enough is being done about it. If proponents of Florida Hometown Democracy want healthy debate and action this time on growth management solutions, I commend them. However, the group is currently leading a NIMBY driven campaign threatening any hope of finding growth management solutions.

If the voters want mass denial they may get it for an election or two, but the outcry for new schools, hospitals, and retail located where house tops arose before the changeover will cause an outcry for help from local government that will be held hostage by the new law.³

Political Environment

Typically, elections are geared toward polarizing segments of voters with divisive rhetoric and negative campaigns. Placing these amendments on the ballot will subject the community to political communications that do not bring people together, but rather drive a wedge precluding meaningful citizen participation. This type of scenario plays into the strengths of NIMBY opponents who consider themselves adversely affected by the application for amendment, which essentially

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ensures a vote defeating the request.

A majority of the voters are too busy with daily struggles and raising their families to bother with local government affairs, let alone voting on local land issues. The greatest challenge to local candidates is mobilizing voters to exercise their constitutional rights.

If the constitutional amendment passes, then every two years, those same citizens will be responsible for deciding on real estate matters that will affect their neighborhood and community.

Therefore, citizen participation under the banner of this ballot initiative can be considered exclusive and not open to public discussion.

A Citizen Participation Plan

The petition for a community veto sounds like a great solution and it will appeal to voters who fear uncertainty and who want status quo policies. Citizens, instead of elected officials, would be ultimately responsible for voting on applications for permits, rezoning, site plans, government annexation and any matters requiring land use changes to the comprehensive plan.

Any hope for community-centered development hinges on bringing people together to resolve the conflict between growth and stability. Developing venues allowing opponents to voice their concerns helps maintain a sense of community and an atmosphere of cooperation.

The commission's report requiring applicants for a development order to prepare a citizen participation plan and require them to make a good faith effort to involve citizens in development review was bold and necessary. However, the report fell short of outlining the criteria for an effective citizen participation plan.

A citizen participation plan can take many forms and be implemented on various fronts, depending on the dynamics of the community. To begin with, the developer has to adopt the attitude that the community, often with the active encouragement of advocacy groups, has emerged as the force that grants

a company's license to operate. Therefore, citizen participation should begin during the early stages of planning.

It is during this critical phase that local neighbors begin forming opinions based on bureaucratic notices, negative media reports and community gossip. By including citizens in project definition, applicants can reassure residents that they have some control over their own neighborhood's destiny, even if they cannot prevent the passage of the project.

The citizen participation plan should demonstrate outreach to community opinion leaders, local news media, and potential opponents to the proposed project, as well as a budget and timeline for accomplishing these goals.

A Community Outreach Program

NIMBYism has become a mandate for citizen participation and developers need to consider alternatives for community approval of their projects. Community opposition is one of the most costly aspects of development, and many exciting real estate projects never get beyond the planning stage, because of neighbors screaming NIMBY. A builder can expect negative media coverage, defensive communications, and expensive setbacks with regard to the real estate approval process.

Regardless of what happens to growth management or how many radical initiatives come down the pike, developers will have to design and implement community outreach programs to affect positive outcomes at the local level.

Attorneys representing developers should advocate for such programs to avoid costly delays, high-profile controversy, and possible defeat of the project. A community outreach strategy is premised on facilitating citizen participation that secures a win-win scenario for the client and the community. Depending on the community, a number of good faith strategies and tactics can be employed.

Citizen participation activities

could consider one-on-one interviews, neighborhood coffees, and community visioning sessions. The key to a successful outreach initiative is implementing it before elected officials direct such action. This creates positive impressions within the community, as well as with elected officials setting up a smoother application process to include uneventful public hearings.

Community outreach can also get more sophisticated involving editorial board interviews, Web site communications, opinion research, developing educational materials, and door-to-door campaigns.

Conclusion

Florida Hometown Democracy has sparked a public debate that can grow legs for true reform in Florida, but only if the group uses its leverage to build political consensus and bring people who care about Florida together versus running a campaign driven by angst and bitter resentment.

"Florida Hometown Democracy's proposed amendment accelerates an unfortunate trend toward governing by emotion rather than by deliberation," said Steve Seibert, former secretary of the Florida Department of Community Affairs.⁴ "The amendment feeds on citizen frustration over the impacts of Florida's population growth, and demands a dramatic change in how we govern ourselves to address those impacts. The concerns may be legitimate, but the remedy will not solve the problems and will create a host of new ones."

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This column is submitted on behalf of the Environmental and Land Use Law Section, George F. Gramling III, chair, and Robert Manning, editor.

NIMBYism is a local symptom of a statewide issue, but if we can collectively advocate for proactive community outreach, we can begin putting out these local fires, and perhaps, isolate extreme measures fueled by emotional rancor and get

back to finding smart growth solutions.

While the political battle over the ballot initiative rages on into the foreseeable future, opportunities to reach out and positively build community consensus exist today,

which gives us hope for a better tomorrow in Florida. □

¹ www.floridagrowth.org.

² *Id.*

³ Ron Weaver was interviewed for this article on November 15, 2003.

⁴ Steve Seibert was interviewed for this article on November 18, 2003.

Florida's Hometown Democracy Amendment

Continued from page 38

fundamentals of Florida's Hometown Democracy Amendment. The initiative does not encompass "applications for permits, rezoning, site plans, government annexation, and any matters requiring land use changes to the comprehensive plans [sic]."

Florida's Hometown Democracy Amendment is *not* directed to local government development orders (e.g., building permits), nor to local government land development regulations (e.g., rezonings).² Instead, the proposed amendment initiative concerns the *legislative* function of enacting or amending local government comprehensive plans.

The Florida Supreme Court has recognized the legislative nature of comprehensive plan amendments, including "small-scale" future land use map amendments.³

Florida law presently allows, albeit limited, referenda on comprehensive plan amendments.⁴ The statute, enacted in 1995, provides:

An initiative or referendum process in regard to any development order or in regard to any local comprehensive plan amendment or map amendment that affects five or fewer parcels of land is prohibited.

The Florida Hometown Democ-

racy Amendment is deeply rooted in the most basic notion of Florida government: "All political power is inherent in the people."⁵

Legislative power resides in Florida's electorate, and the electorate has the power to limit the power previously delegated to elected representatives.

In *Florida Land Company v. City of Winter Springs*, 427 So. 2d 170 (Fla. 1983), Justice Ehrlich wrote for a unanimous Florida Supreme Court:

The citizens of the State of Florida in drafting and adopting the 1968 Constitution reserved certain powers to themselves, choosing to deal directly with some governmental measures. The referendum, then, is the essence of reserved power.

The importance of citizen participation in local government comprehensive land use planning is fully acknowledged in existing law.⁶

The failure of the status quo implementation of Florida's planning laws was recognized by Governor Jeb Bush when he established the Growth Management Study Commission in July 2000.⁷ That commission called for increased public participation in local planning, but the lack of government funding was not responsible for the failure of the commission's goal of "enhancing citizen involvement."⁸ Moreover, many of the commission's recommendations purporting to further that goal concerned development-related litigation procedures, not fundamental public participation in planning.

Accordingly, much of the "growth management reform" touted by critics of Florida's Hometown Democ-

racy Amendment and recommended by the Growth Management Study Commission is irrelevant to the fundamentals of the Florida Hometown Democracy Amendment.

Instead of offering bromides of "visioning" or "proactive community outreach" encouraged by status-quo apologists for "growth management reform," Florida's Hometown Democracy amendment simply proposes to offer Florida voters the opportunity to amend Florida's Constitution to put the *people* back in charge of the places where they live.

Florida Hometown Democracy, Inc., sponsor of the ballot initiative, maintains a Web site at www.floridahometowndemocracy.com, which is a paid, political advertisement. The full text of the proposed amendment is provided on the approved petition form, which can be downloaded. The Web site also offers additional information regarding Florida's Hometown Democracy Amendment. □

¹ FLA. STAT. §163.3215(2) (2003).

² See FLA. STAT. §163.3164(7), (8), (23), 380.04 (2003).

³ *Coastal Development of North Florida, Inc. v. City of Jacksonville Beach*, 788 So. 2d 204 (Fla. 2001); *Martin County v. Yusem*, 620 So. 2d 1288 (Fla. 1997).

⁴ FLA. STAT. §163.3167(12) (2003), enacted in 1995 Fla. Laws ch. 322, §1.

⁵ FLA. CONST. art. I, §1 (1968).

⁶ See FLA. STAT. §§186.002(2)(e), 187.201(26), 163.3167(11), 163.3181 (2003).

⁷ Executive Order 2000-196 (sixth "Whereas" clause).

⁸ Florida's Growth Management Study Commission, Final Report (February 2001), pages 17-23.

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