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January 15, 2010

Virginia "Ginger" Delegal

General Counsel

Florida Association of Counties

100 S. Monroe St • Tallahassee, FL 32301

P.O. Box 549 • Tallahassee, FL 32302

Re: Report of the Growth Management Committee on Amendment 4 – "Hometown Democracy"

Dear Ginger:

The FACA Growth Management Committee was asked to review and provide an analysis of proposed Amendment 4 ("Hometown Democracy") and its impact on local governments. The following constitutes the consensus opinion of the Committee. Unlike other issues, there was a remarkable degree of uniformity in this opinion. For ease of use, the report presents the issues in a "Q & A" format. A copy of Amendment 4 is attached to the end of this report.

Question One: If approved, will Amendment 4 require a countywide referendum of all comprehensive plan amendments, land use related or not?

Answer: Yes.

Discussion: Amendment 4 requires that "before a local government may adopt a new comprehensive land use plan, or amend a comprehensive land use plan, such proposed plan or plan amendment shall be subject to vote of the electors of the local government by referendum, following preparation by the local planning agency, consideration by the governing body as provided by general law, and notice thereof in a local newspaper of general circulation." The Amendment defines "Local government comprehensive land use plan" as a "plan to guide and control future land development in an area under the jurisdiction of a local government." While "Local government comprehensive land use plan" is not defined in the Florida Statutes, the Florida Supreme Court in Advisory Opinion to the Attorney General re: Referenda Required for Adoption and Amendment of Local Government Comprehensive Land Use Plans, 902 So.2d 763, 772 (Fla. 2005) gave a very broad interpretation of what a "local government comprehensive land use plan" is, equating the term to all of the elements of the comprehensive plan as spelled out in Chapter 163, Part II.

Amendment 4 on the November 2010 ballot is unchanged from the amendment reviewed by the Florida Supreme Court in 2005. The Florida Supreme Court specifically declined to address whether the term “local government comprehensive land use plan” is misleading in Advisory Opinion to the Attorney General re: Referenda Required for Adoption and Amendment of Local Government Comprehensive Land Use Plans, 938 So. 2d 501 (Fla. 2006). Accordingly, it is the opinion of the Committee that Amendment 4 requires referendum approval of all comprehensive plan amendments, land use related or not.

One area of great concern is whether Amendment 4 impacts the requirement that the capital improvements element (CIE) be updated on an annual basis. The Committee believes that until otherwise directed by the Legislature, the plain language of Amendment 4 requires a referendum each time this element is amended.

Question Two: Is this true even if the amendment impacts a small portion of the County?

Answer: Yes. There is nothing in the language of Amendment 4 that could be construed as limiting referenda to the geographical area within a county affected by a particular amendment.

Question Three: Does Amendment 4 require a referendum concerning changes to the comprehensive plan due to a scrivener’s error?

Answer: No.

Discussion: As noted above, the proposed amendment is not specific as to which types of comprehensive plan amendments must go to voters. However, correction of a scrivener’s error is not aimed at substantive *amendment* to a comprehensive plan, but rather a *correction*. Accordingly, a true scrivener’s error should not be a comprehensive plan “amendment” for purposes of Amendment 4.

Question Four: Does Amendment 4 change the statutory comprehensive plan adoption procedures?

Answer: No.

Discussion: Section 163.3184, Florida Statutes, provides the detailed statutory process for adoption of a comprehensive plan or comprehensive plan amendment. Amendment 4 does not appear to change the process of local government consideration of plan amendments (e.g., the amendment provides that the ballot vote would take place “following . . . consideration by the governing body as provided by general law”). Therefore, it appears that under Amendment 4, local governments would go through their normal consideration of comprehensive plans and plan amendments (review, transmittal, final approval, etc.), and any plan or plan amendment approval (*not* denials) would *then* be subject to final voter approval before being formally adopted.

Because the proposed Amendment requires voter approval *prior* to “adoption” of any plan or plan amendment, and for general implementation purposes, it will likely be necessary to update statutory procedures to be consistent with the proposed amendment. For example, new language could be added to Section 163, to the effect that no comprehensive plan or plan amendment shall become effective unless and until approved by voters pursuant to Amendment 4 (e.g., Section 163.3189(2)(a) currently suggests that plan amendments cannot become effective until receipt of a final order from the State).

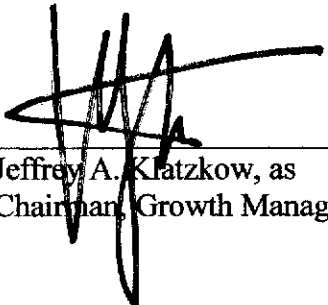
Question Five: Does Amendment 4 require that a proposed comprehensive plan amendment go to voters following local government consideration and denial?

Answer: No.

Discussion: Amendment 4 requires that, after consideration and prior to *adoption* of a comprehensive plan amendment, the proposed amendment must be presented to voters. In the case of local government rejection of a proposed plan, comprehensive plan amendment requests that are rejected at the local level are no longer being considered for *adoption* by the local government and would not be presented to voters.

Conclusion: There is little doubt that, if Amendment 4 is approved, the Legislature will need to amend Chapter 163 for purposes of incorporating Amendment 4 into the overall growth management process, and that Courts will slowly begin interpreting the full meaning of Amendment 4. It is also not unlikely that the Department of Community Affairs will provide guidance to local governments in assessing the impacts and requirements of Amendment 4. Amendment 4, however, would become effective immediately upon approval by the electors of Florida. Accordingly, until appropriate legislation is enacted by the State Legislature, or guidance provided by the Department of Community Affairs, or rulings issued by our Courts, it is the uniform opinion of this Committee that Amendment 4 should be broadly read.

In no particular order, the Chairman wishes to thank Stephen Fry of Martin County, Robert P. Banks of Palm Beach County, Nancy Stuparich of Desoto County, Kate Stangle of Osceola County, Alan W. Roddy of Sarasota County and Jeff Wright of Collier County for their efforts. My apologies to anyone I have missed.



Jeffrey A. Klatzkow, as
Chairman, Growth Management Committee

Amendment 4 – “Hometown Democracy” Ballot Language

The following is the proposed amendment, which is slated for the November 2nd, 2010 general election.

BALLOT TITLE: Referenda Required For Adoption And Amendment of Local Government Comprehensive Land Use Plans.

BALLOT SUMMARY: 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 amendment shall be subject to 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.

FULL TEXT OF PROPOSED AMENDMENT:

BE IT ENACTED BY THE PEOPLE OF FLORIDA THAT:

Article II, Section 7. Natural resources and scenic beauty of the Florida Constitution is amended to add the following subsection:

Public participation in local government comprehensive land use planning benefits the conservation and protection of Florida’s natural resources and scenic beauty, and the long-term quality of life of Floridians. Therefore, before a local government may adopt a new comprehensive land use plan, or amend a comprehensive land use plan, such proposed plan or plan amendment shall be subject to vote of the electors of the local government by referendum, following preparation by the local planning agency, consideration by the governing body as provided by general law, and notice thereof in a local newspaper of general circulation. Notice and referendum will be as provided by general law. This amendment shall become effective immediately upon approval by the electors of Florida.

For purposes of this subsection:

1. “Local government” means a county or municipality.
2. “Local government comprehensive land use plan” means a plan to guide and control future land development in an area under the jurisdiction of a local government.
3. “Local planning agency” means the agency of a local government that is responsible for the preparation of a comprehensive land use plan and plan amendments after public notice and hearings and for making recommendations to the governing body of the local government regarding the adoption or amendment of a comprehensive land use plan.
4. “Governing body” means the board of county commissioners of a county, the commission or council of a municipality, or the chief elected governing body of a county or municipality, however designated.