



ActionLine

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(and Other Changes)*

*Florida Sustainable Development & Growth
Management in a Post-DCA Era*

Florida Sustainable Development & Growth Management in a Post-DCA Era

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Submitted on behalf of the Development and Green Building Committee



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Sustainable Development and specifically, green building is poised for continued growth in Florida. The most often-quoted definition of sustainable development is development that “meets the needs of the present without compromising the ability of future generations to meet their own needs.”¹ Green buildings are resource efficient and consume far less energy and water than their predecessors. Fla. Stat. § 255.253(6) defines a “sustainable building” as “a building that is healthy and comfortable for its occupants and is economical to operate while conserving resources, including energy, water, and raw materials and land, and minimizing the generation and use of toxic materials and waste in its design, construction, landscaping, and operation.”

In spite of the recent recession, the green building trend continues to gain momentum and is projected to achieve robust gains for the foreseeable future. With this opportunity for growth, however, come the hurdles of untested legal obstacles. Navigating these uncharted waters can be challenging as a multitude of governmental entities converge to regulate an area of law still in its infancy. It is critical to understand the underlying legal and technical issues associated with green building and sustainable development as this market segment expands and also how growth management and green building intersect at the local government level.

Commencing with the 1985 Local Government Comprehensive Planning and Land Development Regulation Act, Florida growth management was directly managed by the state executive and legislative branches. That all changed in 2011 when growth management and government reorganization legislation terminated the Department of Community Affairs (“DCA”) and transferred the surviving growth management functions to the newly created Division of Community Development within the new Department of Economic Opportunity (“DEO”). As of October 1, 2011, DEO operates the State Land Planning Agency to administer Florida’s local government comprehensive planning, DRI and other growth management programs.

While state oversight of local planning is still mandated in select areas, most comprehensive plan amendments only receive comments from and can be challenged by the DEO when proposed plan amendments have adverse impacts to important state resources and facilities. Additionally, the burden of proof has changed in most third-party challenges to plan amendments to the “fairly debatable” test. This means that if the issue is subject to fair debate,

the decision of the local government is upheld. The 2011 legislation also repeals state mandates for transportation, education and parks and recreation concurrency making these elements optional. This new flexibility on concurrency and lighter burden of proof has given local governments a greater opportunity to regulate development impacts on their communities. While many local governments have indicated a desire to continue utilizing some form of concurrency, others have indicated a desire to abandon concurrency. Though any analysis at this point is premature, the legacy of the 2011 Florida legislative session may be to provide the local government empowerment necessary to regulate growth management more comprehensively on a local level, including by directly addressing sustainable development.

Since 2009, I have annually compiled an index containing excerpts from Florida municipal codes that address sustainable development through green building, low impact development, and renewable energy, including Property Assessed Clean Energy (PACE) programs. Please visit the complete index posted here: <http://www.carltonfields.com/Index-of-Sustainable-Development-Provisions-in-Florida-Municipal-Codes/>. In the past four years, Florida local governments have enacted an increasing number of green development initiatives. As of the 2012 update, 94 out of the 324 (29 percent) Florida local governments surveyed had enacted some form of sustainable development legislation. To encourage green development, these municipalities offer varying types of incentives to developers constructing new buildings or retrofitting existing buildings to make them more sustainable. The most commonly utilized programs take the form of tax incentives (credits, deductions, and exemptions), permitting fee waivers, density bonuses, and expedited approval processes. The most innovative programs integrate other low-cost inducements such as marketing and publicity incentives to encourage adoption. Even where such incentives have not yet been codified, increasing emphasis on such values is apparent. Some local governments have incorporated definitions of green building terms in preparation of future legislation. Additionally, numerous local governments have appointed “green task forces” or promised green initiatives in their comprehensive plans. Time will tell how many Florida local governments will adopt sustainable development provisions as a response to community demand rather than state oversight. Please also visit the committee blog at <http://floridagreenbuildinglaw.com/>. 

Endnotes:

1 World Commission on Environment and Development, *Our Common Future*, 1987