



Florida's Regional Planning Councils: Compromising Property Rights and Limiting Florida's Economic Growth

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Abstract

State land use policy was driven by the goals of creating more compact urban development and encouraging alternative means of transportation to displace automobile travel for more than two decades, but these policies worked against the best interests of Floridians. Governor Scott subsequently abolished the Florida Department of Community Affairs and state oversight of comprehensive land use planning in 2011. However, Florida's eleven Regional Planning Councils have taken over some of the oversight formerly exercised by DCA, and have aggressively pursued the same policies that drove land use policy under DCA. Because of the Regional Planning Councils' power, the demise of the DCA has had less effect than DCA's critics had hoped. Florida's Regional Planning Councils have moved well beyond their original purposes of coordinating regional transportation networks and securing federal grants to take on central planning of local land use to further new urbanist goals to the exclusion of other approaches to land development. They have also removed a substantial amount of local control over land use policies and centralized it at the regional level. To move Florida's land use policies toward a more market-based foundation, the powers of the Regional Planning Councils should be greatly curtailed, and perhaps those Councils should be abolished.

One of Governor Scott's first acts as governor in 2011 was to abolish the state's Department of Community Affairs (DCA), and along with it, the state's direct oversight of growth management and land use planning. This returned most of the authority for land use planning to local governments, where they could design land use policies to address the diverse issues that localities face in a very heterogeneous state. The state still takes a significant role in developments of regional significance, such as airports and regional shopping malls, but local land use decisions are now made primarily by local governments. However, Florida's eleven Regional

Planning Councils have adopted the same general goals that DCA promoted, so while the demise of DCA removed the central organizer behind Florida's statewide growth management initiatives, the policy impact of eliminating DCA has been reduced because the DCA's agenda is now being promoted by the Regional Planning Councils.

For more than two decades Florida's land use policies were designed under the umbrella of the 1985 Growth Management Act that gave ultimate authority for the approval of land use policies to the DCA. DCA used its authority to the fullest, essentially dictating to

local governments how their local plans had to be designed to win DCA approval.¹ This type of central planning for land use tends to have the same types of problems that central economic planning has for goods and services more generally. The same type of market mechanisms that work for the efficient production of goods and services will also work for efficient patterns of land use, if we allow the market to work.² This was one of the ideas that motivated Governor Scott to eliminate the DCA.

While DCA has been eliminated, much of the planning bureaucracy that existed under the DCA remains. The 1985 Growth Management Act mandated the creation of a substantial land use bureaucracy within local governments, and also facilitated the use of Florida's eleven Regional Planning Councils to carry out the DCA's policy agenda. To fulfill the vision of land use policy that is market-driven, and more oriented toward the specific issues facing local governments, the Regional Planning Councils should have their powers substantially limited, or should be abolished.

The Regional Planning Council Agenda

Florida's 1985 Growth Management Act required all local governments in the state to draw up local comprehensive plans that conformed with the requirements of the Act. DCA was given the responsibility of judging whether the plans conformed with state law, approving those that did and disapproving those that did not. Many of the initial plans were denied approval by DCA, much to the surprise of the local governments, because DCA said the plans were not designed to prevent the proliferation of urban sprawl.³ Local governments were taken off guard by this because the Act had only the vaguest

references to urban sprawl, did not define the term, and said nothing about how its proliferation could be discouraged. Despite some protests that DCA was going well beyond its mandate and designing an anti-sprawl policy that was not in the 1985 Act, DCA prevailed, and over time local governments learned how to design their plans to win DCA approval. The original idea of the 1985 Act was to have local governments draw up their plans, subject to DCA approval, but the DCA's emphasis on designing plans to contain sprawl essentially changed the planning process so that local governments designed their plans to conform with DCA requirements. Although local governments did the work of writing the plans, DCA was undertaking central planning of land use policies by dictating how those plans had to be designed.

DCA was promoting "smart growth" policies that had as their goals more compact urban development and an emphasis on reducing automobile traffic by encouraging alternative modes of transportation. Smart growth, the term that was popular when DCA initiated its agenda, was largely supplanted by "new urbanist" principles, which are now being replaced by "sustainable development." The terms do not mean exactly the same things, but for purposes of this *Policy Brief*, the three terms will be used interchangeably because all three policy agendas promote essentially the same development outcomes: more compact urban development, the promotion of alternative means of transportation to replace automobile travel, urban infill, and the reduction of sprawl.⁴

Many Floridians prefer a smart growth lifestyle, but others prefer to live in single-family detached homes rather than in apartments or condos, and many prefer to drive their own automobiles rather than using mass transit, or biking or walking. The smart

growth agenda implemented through the state's growth management law was hurting Floridians in many ways. First, it was restricting the ability to develop suburban neighborhoods, which had the result of raising housing prices for all Floridians. It compromised property rights by restricting the way that Floridians could use their land. Second, its specific policies were preventing urban infill and reducing the ability to develop in the locations where DCA had hoped to see more development.⁵ The effects of DCA's actual policies were at odds with their stated goals.⁶ Third, it was making the siting of new business locations difficult and costly, which slowed Florida's economic development and allowed potential economic opportunities for Florida to escape to other states. Fourth, by restricting development as Florida's population was growing, it contributed to increased congestion, despite the fact that one of the complaints that led to the creation of the 1985 Act was the increasing congestion that came with population growth.⁷

Because of the top-down nature of Florida's land use policies under DCA, all of the land use planning organizations in Florida were pushed to adopt their smart growth, new urbanist policies, including the Regional Planning Councils. When DCA was abolished, its control over the state's land use policies was abolished too, but the policies that had been put into place after more than two decades of top-down growth management remained. The Regional Planning Councils, which were originally designed to facilitate regional transportation planning and to facilitate the acquiring and distributing of federal funds to local governments have evolved into organizations that promote smart growth initiatives that override local government decision-making and compromise individual property rights.

Federal Funding for the Regional Planning Councils

In 2009 the federal government created the Partnership for Sustainable Communities as a joint project of the Department of Housing and Urban Development (HUD), Department of Transportation, and the Environmental Protection Agency to promote sustainable development. "The Partnership for Sustainable Communities works to coordinate federal housing, transportation, water, and other infrastructure investments to make neighborhoods more prosperous, allow people to live closer to jobs, save households time and money, and reduce pollution."⁸

A reading of the Partnership's "Livability Principles" shows its smart growth, new urbanist orientation. The Partnership wants to "[t]arget federal funding toward existing communities—through strategies like transit-oriented, mixed use development and land recycling—to increase community revitalization and the efficiency of public works investments and safeguard rural landscapes." Transit-oriented development means, in effect, land use policies that discourage people from driving; "efficiency of public works investments" means compact development to reduce the amount of sewer lines and roads to single-family detached suburban homes; and "mixed use development" that safeguards rural landscapes means discouraging suburban living that many Floridians favor. As the following section demonstrates, Florida's Regional Planning Councils have taken advantage of the availability of federal funding to further this new urbanist agenda.

Policies of Florida's Regional Planning Councils

There are many examples to illustrate how the Regional Planning Councils are taking over the smart growth agenda that DCA promoted prior to its being abolished. The East Central Florida Regional Planning Council received a \$2.4 million HUD sustainable communities regional planning grant “to transform the communities using the [SunRail] commuter rail service as a catalyst for sustainable and inclusive growth.”⁹ The Southwest Florida Regional Planning Council, under the heading of “urban and rural setting,” says “the promotion of sustainable growth and development patterns will be critical to continued regional prosperity and quality of life.”¹⁰ The Council designs “land use planning that promotes public transit” and notes, “If vehicle occupancy continues to remain low, efforts to make alternative transportation modes more attractive and competitive should be intensified to increase auto occupancy.... Land use plans which foster increased transit ridership through increasing densities and concentrated development in designated areas can contribute to increased public transportation ridership.”

The West Florida Regional Planning Council incorporates a Sustainable Emerald Coast Advisory Committee, that has laid out smart growth goals for its region to “minimize sprawl and to lessen the need to build additional roads.... The Emerald Coast also will distinguish itself as a place where new development emphasizes and provides incentives for walkable, healthy, compact neighborhoods.... New communities will be built in ways that minimize the need and impact of cars and will promote walking, bicycling, and mass transit.”¹¹ The Treasure Coast Regional Planning Council promotes transit-oriented developments, which “are

compact, moderate to high intensity and density, mixed use areas within one half mile of a transit stop or station that is designed to maximize walking trips and access to transit. ... By focusing land use and urban design policies towards transit, local governments can help optimize future transit investments and potential transit ridership.”¹²

The South Florida Regional Planning Council has entered into a partnership with the Treasure Coast Regional Planning Council and about 45 local governments and other organizations to form the “Sustainable Communities Grant Consortium” to obtain funding for a regional sustainable communities vision and blueprint. Partner organizations “must sign a MOU [Memorandum of Understanding] and commit to work collaboratively to advance the region’s livability and sustainability” which subordinates the authority of the individual members to the executive committee of the consortium.¹³ The consortium received a \$4.25 million grant to carry out its new urbanist agenda.

These examples show the smart growth orientation of the Regional Planning Council goals, which attempt to create more compact development and an increase in reliance on mass transit. In principle, most people seem to support mass transit efforts, often with the thinking that if more people ride the bus, roads will be less congested. Most supporters do not want to take the bus themselves; they are hoping everyone else will, so that the roads will be less congested when they want to drive. But part of the plan is to increase the cost of driving, make roads more congested to discourage driving, and to limit parking so that people shift to mass transit because automobile travel is less convenient and less feasible. When seen this way, support for mass transit obviously weakens.

Many Floridians do enjoy the new urbanist lifestyle: they prefer apartment living and mass transit to single-family detached homes and automobile travel. But not all Floridians do, and land use policies designed to enhance the quality of life for Floridians should be oriented toward fostering a market that responds to the variety of consumer preferences rather than the policy goals of smart growth oriented urban planners. The Regional Planning Councils should be focused on transportation corridors that connect localities rather than the land use policies that take place within those localities.

Conclusion

Governor Scott abolished the Department of Community Affairs, and with it, state oversight of comprehensive land use planning with the idea that market processes work better to allocate land use than government planning. For more than two decades, state land use policy had been driven by the new urbanist goals of creating more compact urban development and encouraging alternative means of transportation to displace automobile travel. These policies worked against the best interests of Floridians. However, Florida's eleven Regional Planning Councils have taken over some of the oversight formerly exercised by DCA, and have aggressively been pursuing the same new urbanist policies that drove land use policy under DCA. Because of the Regional Planning Councils' power and new urbanist agenda, the demise of DCA has had less effect than DCA's critics have hoped.

Florida's Regional Planning Councils have moved well beyond their original purposes of coordinating regional transportation networks and securing federal grants to take on central planning of local land use to further

new urbanist goals. They have removed a substantial amount of local control over land use policies and centralized it at the regional level. To move Florida's land use policies toward a more market-based foundation, the powers of the Regional Planning Councils should be greatly curtailed, and perhaps those Councils should be abolished.

Endnotes

¹A hallmark of Florida's growth management law was "consistency" which required local plans to be consistent with the state plan and goals. When all local governments were required to adopt plans, more than half of the plans submitted for approval and 85 percent of the plans submitted by counties were rejected by DCA because they had at least one element that was not consistent with the state plan. See the discussion in Leonard Gilroy, Samuel R. Staley, and Sara Stedron, "Growth Management and Housing Affordability in Florida," *Backgrounder No. 53* (Tallahassee, James Madison Institute, October 2007), pp. 13-15, <http://www.jamesmadison.org/pdf/materials/610.pdf>, last accessed February 5, 2014.

²While this statement appears as an assertion in this *Policy Brief*, it is not explained further because the *Brief* focuses on the role of the Regional Planning Councils. Substantial support for this assertion appears in Randall G. Holcombe and Samuel R. Staley, *Smarter Growth: Market-Based Strategies for Land-Use Planning in the 21st Century* (Westport, CT: Greenwood Press, 2001) and Randall G. Holcombe and Benjamin Powell, *Housing America: Building Out of a Crisis* (New Brunswick, CT: Transaction Publishers, 2009) and in an extensive list of references in these books.

³For a more detailed discussion of the process, see Randall G. Holcombe, "Growth Management in Action: The Case of Florida," Chapter 8 in *Smarter Growth*, referenced in footnote 1.

⁴The three terms are not completely synonymous. Whereas smart growth was envisioned as being driven by government land use planning, new urbanism has been promoted by private sector developers in addition to government planners. Sustainable development has more of an emphasis on resource conservation. Another source of ambiguity is that none of the terms has been given a precise definition. Despite some differences, for present purposes the common goals of reducing automobile travel and creating more compact urban development mean that all three promote the same planning philosophy,

⁵The original 1985 Act required all roads in Florida to have targeted congestion levels, called levels of service. If a proposed development would add traffic to a road to cause it to fall below that target level, or would add traffic to a road that was already below the target level, then the development would not be allowed. The idea behind this was that it would encourage investment in roadway improvements in those areas, but the actual result was that it pushed development outside of already-congested areas, creating the sprawling development that DCA was trying to prevent.

⁶See, for example, Jerry Anthony, "Do State Growth Management Regulations Reduce Sprawl?" *Urban Affairs Review* 39, No. 3 (January 2004), pp. 376-397, for a study

concluding that growth management regulations do not have a measurable effect in reducing urban sprawl. See also Jerry Anthony, "The Effects of Florida's Growth Management Act on Housing Affordability," *Journal of the American Planning Association* 69, No. 3 (Summer 2003), pp. 282-295, for a study concluding that Florida's Growth Management Act caused housing prices in Florida to rise.

⁷The concurrency requirement in the 1985 Act was intended to reduce congestion by requiring that infrastructure was produced concurrent with development. The idea was that infrastructure would grow to accommodate development. In reality, infrastructure was not added in the areas experiencing the most growth, which were typically in areas with little development and low congestion levels. Paradoxically, sprawl continued without the infrastructure to support it, increasing congestion.

⁸www.sustainablecommunities.gov/aboutUs.html.

⁹www.ecfrpc.org, accessed January 15, 2014.

¹⁰www.swfrpc.org, accessed January 15, 2014.

¹¹www.wfrpc.org, accessed January 15, 2014.

¹²www.fltod.com, accessed January 15, 2014 from www.tcrpc.org.

¹³"Sustainable Communities Grant Consortium Agreement Between Palm Beach County and the South Florida Regional Planning Council in Accordance with the U.S. Department of Housing and Urban Development Sustainable Communities Initiative Grant Application Requirements," dated 2011.

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