



Memorandum

To: Charter Review Commission

From: Daniel D. Eckert, County Attorney

A handwritten signature in black ink, appearing to read "Daniel D. Eckert", is written over the printed name.

Date: July 21, 2006

Re: Environmental standards

I have considered further a charter amendment to specify that the county council has the comprehensive planning authority requisite to establish countywide environmental standards. The purpose of amendment would be clarification of existing authority. Since the countywide effect of environmental standards has been undisputed, I conclude that amendment is unnecessary at this time.

Under current charter text, comprehensive planning authority inheres in the county council by necessary implication. Section 202.4 requires that the county council establish countywide environmental standards.¹ Environmental standards which regulate the use of land must be based on an adopted comprehensive plan.² The charter confers authority commensurate with the duty it imposes.³

¹Section 202.4. Minimum Standards for Environmental Protection.

The council ... shall establish minimum standards, procedures, requirements and regulations for the protection of the environment. Such minimum standards, procedures, requirements and regulations may include, but shall not be limited to, tree protection, aquifer protection, storm water management, waste water management, river and waterway protection, hazardous waste disposal, wetlands protection, beach and dune protection... The council shall establish such minimum standards... shall apply within all the incorporated and unincorporated areas of Volusia County. In the event of a conflict... the county ordinance shall prevail within the municipality to the extent of any conflict...

²Fla. Stat. §163.3201 (2006).

³ Cf. Charter section 204 ("...powers granted shall be construed liberally..."); M'Culloch v. Maryland, 17 U.S. (4 Wheat) 316, 421 (1819) (Marshall, C.J.) ("Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.")