



Memorandum

To: Charter Review Commission

From: Daniel D. Eckert, County Attorney *Daniel D. Eckert*

Date: June 11, 2006

Re: Environmental core committee proposed amendments:
1) Comprehensive planning;
2) Repeal of requirement for beach vehicular access

Attached are drafts of two environmental core committee proposals. Upon recent case law review, I have concern regarding the legality of a portion of the comprehensive planning draft amendment. The provision limiting the prevailing effect of the county comprehensive plan to that "in effect upon an annexation" (second paragraph, first line) conflicts with general law authority of the county council for comprehensive planning. Cf. Ellis v. Burk, 866 So.2d 1236 (Fla. 5th DCA 2004) (invalidating charter limitation on revenue increases without voter approval; finding inconsistent with commission authority under general law to adopt budget and set millage). I therefore recommend deletion of this restriction. The committee unfortunately has not had the opportunity to address this recommendation.

AMENDMENT NO.

The title and ballot question shall be as follows:

COMPREHENSIVE PLANNING

Shall the Volusia County Home Rule Charter be amended to designate districts in which the county plan for future land use and conservation prevails over a conflicting municipal comprehensive plan for up to ten years after annexation and to abolish the Volusia Growth Management Commission?

YES - FOR APPROVAL

NO - AGAINST APPROVAL

The proposed amendment, in full, shall read as follows:

The Volusia County Home Rule Charter, Chapter 70-966, Laws of Florida (Sp. Acts), as previously amended, shall be further amended in pertinent part as follows:

(Except as provided herein or as otherwise provided by separate amendment, provisions of the Charter not shown are not amended.)

(Words in ~~struckthrough~~ type are deletions; words in underscored type are additions.)

~~Section 202.3. Volusia Growth Management Commission:~~

~~There is hereby created the Volusia Growth Management Commission (hereafter commission). The commission shall have the power and the duty to determine the consistency of the municipalities' and the county's comprehensive plans and any amendments thereto with each other. The commission may perform such other directly related duties as the commission from time to time deems necessary.~~

~~The determination by the commission shall be binding on the submitting government. No plan, element of a plan, or amendment of a plan adopted after the date this article becomes law shall be valid or effective unless and until such plan, element of a plan, or amendment has been reviewed by~~

~~the commission and has been certified as consistent. The review of any such determination of the commission shall be by certiorari.~~

~~The commission shall be composed of voting and non-voting members. There shall be one voting member from each municipality within the county and five voting members from the unincorporated area of the county. The appointment of each voting representative shall be made by the governing body of each respective jurisdiction. The Volusia County School Board, the St. Johns River Water Management District, and the Volusia County Business Development Corporation shall each designate one non-voting member to serve on the commission. The term of office of the commission members shall be fixed by the Rules of Procedures of the commission but shall not exceed four years.~~

~~Each voting member shall have a weighted vote. Each municipality represented shall have a vote equal to the percentage of its population with the overall county population. The unincorporated area representatives' combined vote shall not exceed the percentage of the unincorporated area's population with the overall county's population, and the individual vote of each unincorporated area representative shall be equal to the other. The determination of the weight of each vote shall be determined annually.~~

~~Rules of procedure for the commission's consistency review and for the manner in which this section is to be enforced and implemented, and amendments thereto, shall be proposed by the commission and shall not become effective until adopted by ordinance approved by a two-thirds vote of the entire membership of the council.~~

~~The commission, by a two-thirds vote, shall adopt an annual budget which may provide for independent staff and which shall be funded by the county. The budget may be amended upon two-thirds vote of the full council.~~

Section 202.3. Comprehensive planning.

There hereby are established comprehensive planning districts. The planning districts consist of lands governed by the county comprehensive plan when this section becomes effective, regardless of previous or subsequent annexation.

and classified natural resource management area, rural community or rural village or included geographically within the Highridge neighborhood, Hontoon Island, Enterprise and Wilbur-by-the-Sea local plans.

The county comprehensive plan in effect upon an annexation shall prevail over conflicting municipal plan or ordinance provisions within the planning districts until: (1) the expiration of ten years; (2) an interlocal planning agreement after this section becomes effective; or (3) county council consent to a municipal plan amendment. All plan amendments within ten years following an annexation require consent unless such land is subject to an agreement satisfying this section.

AMENDMENT NO.

The title and ballot question shall be as follows:

**REPEAL OF REQUIREMENT FOR
COUNTY COUNCIL AUTHORIZATION
OF BEACH VEHICULAR ACCESS**

Shall the Volusia County Home Rule Charter be amended to repeal a requirement for county council authorization of vehicular access to the beach?

YES - FOR APPROVAL

NO - AGAINST APPROVAL

The proposed amendment, in full, shall read as follows:

The Volusia County Home Rule Charter, Chapter 70-966, Laws of Florida (Sp. Acts), as previously amended, shall be further amended in pertinent part as follows:

(Except as provided herein or as otherwise provided by separate amendment, provisions of the Charter not shown are not amended.)

(Words in ~~struckthrough~~ type are deletions; words in underscored type are additions.)

Section 205.1. The Beach: Public Right of Access and Use.

The public has a right of access to the beaches and a right to use the beaches for recreation and other customary purposes. This right of access and use is a public trust, which the council shall by ordinance define, protect, and enforce. ~~Because prohibiting motor vehicle access to the beaches would deny beach use to many, the council shall authorize, as permitted by law, vehicular access to any part of the beach not reasonably accessible from public parking facilities.~~