

## SPECIAL TOPICS

### **3.3 AN EVALUATION OF WHETHER ANY PAST REDUCTION IN LAND USE DENSITY WITHIN THE COASTAL HIGH-HAZARD AREA IMPAIRS THE PROPERTY RIGHTS OF CURRENT RESIDENTS WHEN REDEVELOPMENT OCCURS. THE LOCAL GOVERNMENT MUST IDENTIFY STRATEGIES TO ADDRESS REDEVELOPMENT AND THE RIGHTS OF AFFECTED RESIDENTS BALANCED AGAINST PUBLIC SAFETY CONSIDERATIONS [163.3191(2)(m)]**

Pursuant to 163.3191 F. S., as part of the EAR process there is a requirement for local governments to evaluate whether any past reduction of density in the Coastal High Hazard Area (CHHA) has impaired the property rights of current residents when redevelopment occurs.

The Coastal High Hazard Area includes the barrier island areas of the County. There are about 49.5 linear miles of coastal, barrier island systems in the County. Of the 49.5 miles, 25.5 miles are incorporated into several coastal municipalities, and the County has no land use jurisdiction over these areas. The remaining 23 miles of coastal, barrier island area is unincorporated. 12.5 miles of the 23 miles of unincorporated land is in public ownership for natural resource preservation purposes. The conservation areas along the coast can be described as the North Peninsula State Recreation Area located in northern coastal Volusia County, and the Canaveral National Seashore located in southern Volusia. The remaining coastal area is made up of three general unincorporated sections: 1) North Peninsula, 2) Wilbur-by-the-Sea, and 3) Bethune Beach/Silver Sands.

The North Peninsula is comprised of mostly residential uses developed at varying densities. Housing types range from single-family dwellings on individual lots to high-rise multi-family structures located along the Atlantic Ocean. There are also some commercial uses located along the A-1-A corridor. The County has assigned the developed area of the North Peninsula with urban land uses that recognize the development patterns that have evolved since the 1950's. The last vacant parcels on the North Peninsula area are now being developed, as privately owned vacant coastal property within the County becomes rare. The development pattern on the North Peninsula has been established and the Comprehensive Plan has recognized this pattern. As a result of the Comprehensive Plan the County has made no effort to modify an existing pattern by attempting to limit the land use intensity on the North Peninsula barrier island area. However, the County has bought tracts of land, both vacant and developed, on the North Peninsula. Vacant tracts of land purchased were private in-holding parcels that were located within the North Peninsula State Recreation Area. The purchase of these properties by the County was to enhance the existing conservation land. The other land purchase on the North Peninsula included a run down beachfront hotel/restaurant, known locally as the Happy Whale. The Happy Whale site was purchased for a park and for enhanced beach access. The purchase of land on the North Peninsula will result in a reduction of density in the area. However, the County bought the property and there will be no impact on property rights. As has been mentioned, the existing Comprehensive Plan recognizes the development pattern on the North Peninsula. Therefore, the County Comprehensive Plan would not significantly impact redevelopment efforts as a result of a hurricane or any other disaster.

Wilbur-by-the-Sea is located between the incorporated limits of Daytona Beach Shores and Ponce Inlet. Wilbur-by-the-Sea is a community that dates back to the early 20<sup>th</sup> century and consists mainly of single-family dwellings on individual lots. Multi-family development is a very minor component of the community, and there are no high-rise buildings within the community. Even though Wilbur-by-the-Sea is unincorporated there is a great deal of community identity and involvement.

In 2003, the County was approached by the Wilbur Improvement Association (WIA) with regard to protecting the existing community character - dwellings on individual lots, through a local planning initiative. The desire for a local plan was driven by a community reaction to the installation of central sewer lines in the community. The community was under the impression that the existence of central sewer would serve as an impetus for higher density development in the neighborhood. In 2004 the County adopted a local plan for the Wilbur-by-the-Sea community. The local plan was formulated by the County to protect the existing density of the community. The plan did not address hurricane preparedness or coastal hazard issues. In addition, the local plan did not change the existing land use designations or zoning found within the community. However, the Comprehensive Plan Future Land Use Map (FLUM) has designated most of the Wilbur-by-the-Sea community with the Urban Low Intensity (ULI) land use category. The maximum density in the ULI is 4 units per acre. As was stated, the Wilbur-by-the-Sea community has a development history that predates current County regulations including the Comprehensive Plan. Portions of the Wilbur neighborhood are developed at a density of over 6 units per acre - much higher than the 4 units per acre allowed in the ULI. If these areas were destroyed during a hurricane, individual lots may be eligible to be redeveloped utilizing a non-conforming (grandfather) clause. However, if there are multiple properties in contiguous ownership, redevelopment of these areas will need to be consistent with the density requirements of the ULI category. County research conducted to support the Wilbur Local Plan revealed that much of the homes/parcels are in single ownership and are used as primary residences or second homes used by individuals that live in Florida part-time. Therefore, based on the ownership characteristics of the Wilbur neighborhood there is a good chance that most of the land holdings could be rebuilt (through the County grandfather clause), notwithstanding the 4 units per acre density cap of the existing ULI category. Therefore, no changes are suggested for the Wilbur neighborhood.

The Bethune Beach/Silver Sands area is located south of New Smyrna Beach and contains several land use types that range from high-rise residential, single-family dwellings on individual lots, to limited commercial uses. Central water and sewer is available within Bethune Beach/Silver Sands. Much of the Bethune Beach area was originally platted in the 1940's in a pattern that featured numerous 25-foot wide lots. The original plat facilitated a dense development pattern, and combined with the availability of central utilities, the result has been the development of residential uses at high to medium densities. The single-family portion of the Silver Sands area is a newer development pattern that features larger lots and a more traditional suburban density. The County designated the Bethune Beach/Silver Sands area mostly with the Urban Low Intensity land use category. Other areas that are developed with high-rise condominiums are designated with the Urban High Intensity land use designation.

The ULI allows up to 4 dwelling units per acre. Most of the Bethune Beach plat ULI area is developed at densities much greater than the 4 units per acre allowed by the ULI category. (A significant portion of this area is associated with densities well above 6 units per acre.) The ULI density, however, more closely represents the suburban development pattern of the Silver Sands single-family neighborhood that features lots in the 9 to 10 thousand square foot range.

The application of the ULI category on the Bethune Beach/Silver Sands area dates back to the 1990 adoption of the Comprehensive Plan. While the ULI was designated on the Silver Sands area, due to the fact that the ULI density most closely represents much of the Silver Sands platting characteristics, the Bethune Beach area was designated as ULI at the behest of the neighborhood. The intent of the Bethune Beach neighborhood with regard to the ULI category was to maintain a lower density for future development in the area. The County has made no land use changes in the Bethune Beach/Silver Sands area since the 1990 adoption of the Comprehensive Plan that would result in a reduction of density, but the Bethune Beach area is developed at a density that is much higher than what is currently allowed by the ULI designation. If Bethune Beach were to be redeveloped (due to major storm destruction) the same density may not be possible. The use pattern of a significant portion of the dwellings in the Bethune Beach area can be described as income-producing properties that are rented on both long and short-term basis. Some of the properties that are used for rental income are in common ownership, and these properties may be located in contiguous ownership. If these contiguous properties do not conform to the density requirements of the land use/zoning, then if destroyed, they cannot be rebuilt. In addition, through the years some dwellings have been converted to duplexes. These duplexes may be considered non-conforming, and if the duplex use is lost it cannot be replaced. Therefore, the probability of redeveloping the Bethune Beach area with a similar density is dependent on the ownership characteristics of the individual lots and the enforcement of non-conforming requirements of the Zoning ordinance to not allow the rebuilding of non-conforming uses that are scattered through the area. The 1990 designation of ULI in the Bethune Beach/Silver Sands area, especially the Bethune Beach area, may warrant a land use change to a more dense land use category to simply recognize the existing development pattern within the neighborhood that was in place before the Comprehensive Plan was adopted in 1990.