

WHITE PAPER

Hometown Democracy – Proposed Florida Constitutional Amendment 4

I. SUMMARY

Hometown Democracy will require a referenda vote by the general electorate for the adoption or amendment of a local government comprehensive plan. The overall impact of Hometown Democracy would be devastating to Florida growth management, causing burdensome delays, increased taxes and governmental administrative costs, unnecessary layers of bureaucracy, combative lobbying campaigns, voter confusion and, ultimately, unwise, uneducated or misguided results. Rather than support the ballot initiative, it would be more productive to promote a constructive dialogue on improving Florida's growth management laws.

II. CURRENT SITUATION

In Florida, the 1985 Growth Management Act required that each community have a comprehensive plan and make growth decisions in accordance with that plan. Think of a comprehensive plan like a constitution for growth in a community providing a road map for the future long term development of a community. Therefore, amendments to a comprehensive plan should be infrequent and taken only after critical analysis. Accordingly, changes to a comprehensive plan must be reviewed by the Department of Community Affairs ("DCA") and adopted by the local governing body. A comprehensive plan can theoretically be amended only twice per year but there are numerous exceptions which often result in numerous changes per year. In spite of the intended sanctity of comprehensive plans, the truth is comprehensive plans are frequently amended. In reality, DCA reviews an average of 12,000 comprehensive plan amendments each year.

The fact that there are a plethora of comprehensive plan amendments is driving the frustration that has aggravated the proponents of Hometown Democracy to action. The proponents are perturbed that comprehensive plans are not being followed and feel that the plans are being amended at will by developers. The aim of the Hometown Democracy proponents is to stop growth in Florida by creating an unrealistic and counter-productive method (referenda vote by the general electorate) of amending such plans. At first blush Hometown Democracy seems like an understandable, if misguided response to the many amendments to comprehensive plans that will result in increased public participation in the planning and growth management process via a direct democracy process. However, the reality is that the proposed Amendment, which would give voters in each community veto power over their elected officials for major land-use planning decisions, would create chaos in Florida. Unfortunately, while advocates believe Hometown Democracy will remedy Florida's growth concerns, their proposed solution impracticable and potentially could create a climate destructive to any positive future growth.

Hometown Democracy has sparked a public debate that can spur true reform in Florida if we can bring people together to fix the growth management system. Instead of veering down a "romanticized" path that will ultimately make the development process more politicized, cumbersome and expensive. Let's work together to come up with the right solutions that make Florida a more desirable place to live, work and play while creating neighborhoods and community projects that embrace smart growth and preserve natural areas and habitat.

III. EFFECT OF PROPOSED CHANGES

There are myriad potential negative impacts of Hometown Democracy detailed below by category of impact:

- **Comprehensive Plan Amendments: Not All Are Created Equal**

Not all comprehensive plan amendments are created equal. While the proponents of Hometown Democracy are attempting to stop growth, not all comprehensive plan amendments are for development.

- **Public Safety Amendments** – If a community wants to place traffic calming devices on a road, it will likely require a comprehensive plan amendment to amend the level of service of the road. While the impacted community may want to improve the amendment, the community members using the neighborhood road as a speedway will likely vote against such an amendment.
- **Necessary Community Uses** – It is a fact of life in a community that there are certain “undesirable” land uses that are needed in a community but no one wants to have such a land use next door to them. Some of these uses include hospitals (loud vehicle traffic like ambulances), landfills (frequent traffic and odor issues), crematorium (air pollution considerations), and affordable housing (perceived decrease of property values). While the impacted community may want to vote down the amendment, other community members using the community service or not wanting such community service located near them will likely vote in favor of such an amendment. In this case the winner will be the most informed voters who can mobilize an election showing rather than thoughtful long term planning.
- **State Compliance/Required Updating** – Comprehensive Plans are required to be updated every seven years. What happens if the general electorate votes down a required amendment? In addition, the legislature directs local governments to consider issues such as conservation or energy use by requiring a topic, known as an element, to be addressed in the comprehensive plan. If a vote was conducted on the amendment for energy use, and was voted down, that could have the impact of making a local government out of compliance with state requirements impacting funding.

So while the goal of Hometown Democracy is to scale back the volume of comprehensive plan amendments, the unintended consequence will likely be to delay local governments from addressing public safety issues (i.e. traffic calming, smart growth) and complying with state requirements (i.e. required updating of plans every 7 years and implementing required elements such as traffic concurrency) while empowering NIMBY patterns of land development.

- **Representative Democracy**

Proponents of Hometown Democracy contend that growth management in Florida is non-

existent as evidenced by too frequent comprehensive plan amendments and corruption surrounding proposed developments that require comprehensive plan amendments for approval. While the Hometown Democracy stated goal is anti-corruption and public participation; the end result will create a new level of spending and championing by developers for development oriented amendments. Growth will be driven more than ever by deep pocket special interest groups that can pay for expensive advertising in communities where a particular comprehensive plan amendment is desired. The potential for NIMBY votes on important community issues like increased density, traffic calming, etc. will occur. This is the time to thoughtfully analyze the growth management process to create a system that will allow the public, governmental officials and planning professionals participation to build a better Florida.

- Voter Issues

- Informed Voter – The volume of comprehensive plan amendments alone would put an incredible, if not impossible, burden on a voter approval process. Though the intent is to dramatically decrease the number of proposed comprehensive plans, it is unreasonable to assume that even informed voters will have the time and inclination to decipher highly complex and technical land use terminology for each proposed comprehensive plan amendment. Voters rarely show up for a local-only election as it is – if there was a comprehensive plan amendment only referendum, with no other election issues on the ballot, then the smallest minority of eligible voters would sway the decision which would actually undermine citizens faith in the democratic process. For the small number of citizens who do vote, experience has shown that when these types of issues have been on the ballot, voters turned to press or advertising to have proposed comprehensive plan amendments translated. Thus, the proposed amendment actually will undermine the stated goal of public participation.
- EXPERTISE – The proposed amendment undermines the efforts of trained land-use professionals who are answerable to elected officials, and of course the elected officials who are decision makers. Recognizing the highly complex nature of growth management, eliminating competent professional planning staff from the process is a recipe for sure failure, and may actually result in adverse unanticipated consequences.
- NIMBY – Not In My Backyard – is a term of art when a necessary use is lobbied for or against by neighbors. For example, while most experts argue that increased density is needed to allow for mass transit to be successful; many people are averse to having dense developments in their neighborhoods. In addition, there are necessary but undesirable community services that have to be put somewhere, such as affordable housing, prisons, landfills, etc., such that it is reasonable that affected parties will vote against but the unaffected parties will vote for. Should community issues be decided by advertising and propaganda or special interest groups with deep pockets? Should technical issues be lumped in with developments of significant impact – under Hometown Democracy that would occur.

- Voter Turnout - Voters will decide whether to amend the Florida Constitution to require a referendum each time a local government approves a comprehensive plan amendment. Actually, the decision will be made by those voters who actually make it to the polls, and then by those who actually make their way down the ballot to referendum issues! Again, do we want important community issues decided by a vocal minority, special interests or professionals?
- Election Costs – Ballots will necessarily be longer to include proposed comprehensive plan amendments. Accordingly, the costs for absentee ballots will also increase due to preparation and mailing costs. Will special elections be needed? The governmental administrative costs to handle the thousands of comp plan amendments would surely mean increased taxes. In an era of ever-tightening budgets, this is an unwise use of scarce resources.
- Legal Challenges – Hometown Democracy creates uncertainty because the mechanics of the referenda vote is unclear. Will each comprehensive plan amendment be voted on individually or will all comprehensive plan amendments be voted on as a group? Will comprehensive plan amendments require special elections or only be voted on at regular elections? No one knows how the growth management process will proceed if Hometown Democracy is approved. Will growth come to a complete halt? Will Florida lose more jobs? Will more residents leave Florida? We don't know the answer to these questions but you can bet it will keep land use lawyers busy for years to come.
- Legislative Branch Reaction – There is another legislative session in the interim before the Hometown Democracy vote takes place. The legislature could just entirely gut growth management in response to Hometown Democracy rendering growth management in Florida non-existent.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

Hometown Democracy will have a potentially large impact on the finances of local government since more frequent local elections will need to be held (up to twice per year). Ballots will be longer so the preparation and mailing costs of absentee ballots will increase.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

According to the Florida Chamber of Commerce and 1000 Friends of Florida, adoption of Florida Hometown Democracy will have a potentially devastating effect on Florida's economy. This is because developers will look to other states for investment due to uncertainty of obtaining development approvals, even for desirable development incorporating smart growth principles, sustainable development and transit oriented development.

VI. CONSTITUTIONAL ISSUES

Hometown Democracy is a constitutional amendment so will naturally impact the constitution. This is the proposed text:

Article II, Section 7. Natural resources and scenic beauty of the Florida Constitution is amended to add the following subsection:

Public participation in local government comprehensive land use planning benefits the conservation and protection of Florida's natural resources and scenic beauty, and the long-term quality of life of Floridians. Therefore, before a local government may adopt a new comprehensive land use plan, or amend a comprehensive land use plan, such proposed plan or plan amendment shall be subject to vote of the electors of the local government by referendum, following preparation by the local planning agency, consideration by the governing body as provided by general law, and notice thereof in a local newspaper of general circulation. Notice and referendum will be as provided by general law. This amendment shall become effective immediately upon approval by the electors of Florida.

For purposes of this subsection:

1. "Local government" means a county or municipality.
2. "Local government comprehensive land use plan" means a plan to guide and control future land development in an area under the jurisdiction of a local government.
3. "Local planning agency" means the agency of a local government that is responsible for the preparation of a comprehensive land use plan and plan amendments after public notice and hearings and for making recommendations to the governing body of the local government regarding the adoption or amendment of a comprehensive land use plan.
4. "Governing body" means the board of county commissioners of a county, the commission or council

V. OTHER INTERESTED PARTIES

Florida Chamber of Commerce' Amendment 4 Blog –

<http://www.onevoiceforflorida.com/blogs/98c4e68d-b9dd-42b1-8b9e-0b310b8b5929>

1,000 Friends of Florida - <http://www.1000fof.org/planning/fhd.asp>