

**Fundamental Skills for Real
Estate Development
Professionals II (cont'd) -
Project Entitlement**

November 6, 2013

Fundamental Skills for Real Estate Development Professionals

Project Entitlement:

Objectives:

- What are Entitlements
- Why you should care about Entitlements
- How to manage the Entitlement Process
- The Process: The “Who” and the “How”
- Tips and Techniques: Sustainability to Civic Engagement

Entitlements

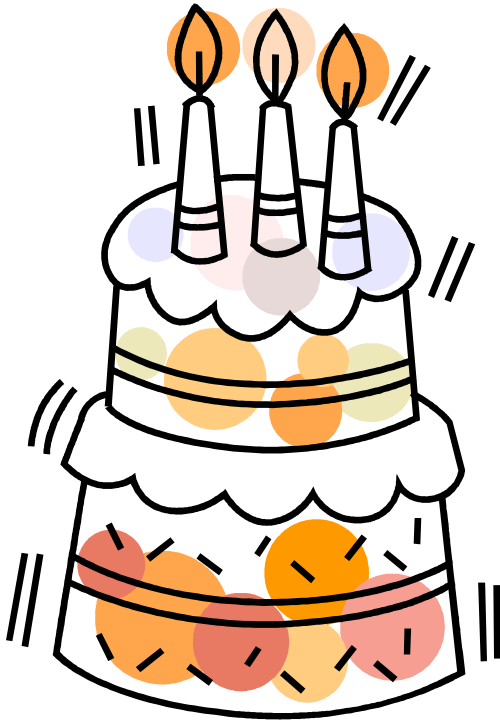
Entitlements are legal rights conveyed by approvals from governmental entities to develop a property for a certain use, intensity, building type or building placement.

Entitlements can be a major factor in the ultimate use, viability, and value of your property.

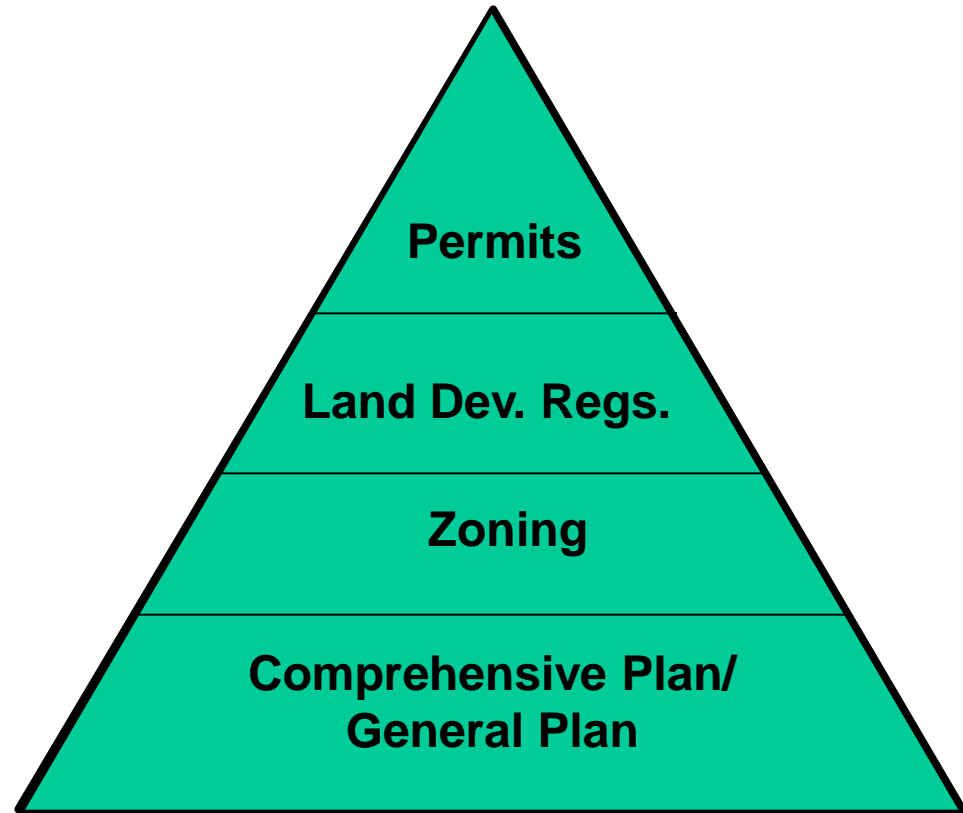
Form of:

Land Use Approvals, Zoning, Site Plan Approval and Permits

The Layers of Regulation



Multi-Layer Cake



Entitlement Process

Why Should I Care About Entitlements?

Home > Land Use and Entitlements, Land Use and Entitlements > Permits and Zoning >

March 1, 2005 | Posted By

PERMITS AND ZONING

Horwitz v. City of Los Angeles (Beglari)

124 Cal. App. 4th 1344 (2d Dist. Dec. 15, 2004) (review filed Jan. 24, 2005)

Trial court properly is residence where permit of resident - which all clearly erroneous because

“...issue and the

Home > Land Use and Entitlements, Land Use and Entitlements >

May 3, 2006 | Posted By

CITIES CAN LIMIT BIG BOX RETAIL BUT THEY HAVE TO BE FAIR TO THE LITTLE GUY

Wal-Mart Stores, Inc., et al. v. City of Turlock

By [Michael Wilmar](#) and [Michael Leake](#)

In *Wal-Mart Stores, Inc., et al. v. City of Turlock*, (a City of Turlock zoning ordinance which amended grocery departments. Under the ordinance, the City exceed 100,000 square feet of gross floor area and c

“Under the ordinance of “discount superstores that exceed 1

“The lawsuit against the US Fish and Wildlife Service, the corps and the Interior Department asks a judge to revoke a 2006 permit for Mirasol...”

naplesnews.com

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New lawsuits filed against Mirasol development

By ERIC STAATS

Originally published 11:13 a.m., April 2, 2008
Updated 09:49 p.m., April 2, 2008

A pile of lawsuits over plans to build new homes and golf courses in the Cocohatchee Slough in northern Collier County got taller Wednesday.

Since 2000, environmental groups and developers have scored victories in their fight over development in wetlands and wood stork habitat northwest of Immokalee Road and Collier Boulevard — and neither had given up.

The latest challenge, which landed Wednesday in federal court in Fort Pierce, renews the battle over a U.S. Army Corps of Engineers permit for Mirasol, which is planned for up to 799 homes and 36 golf holes.

Why Should I Care About Entitlements?

“Despite governmental approval, the 136 occupied apartments violated the county’s comprehensive plan....”

m.naplesnews.com

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LEGAL

FLORIDA COURTS AGREE: IF BUILDINGS VIOLATE LAWS, THEY MUST BE RAZED

By AISLING SWIFT

Published Tuesday, September 5, 2006

“...the court ruled that the law required demolition....”

Four years ago, a Florida appeal court affirmed a ruling ordering a developer to raze a \$3.3 million, five-building apartment complex that towered over neighboring homes, despite its approval by the Martin County Commission.

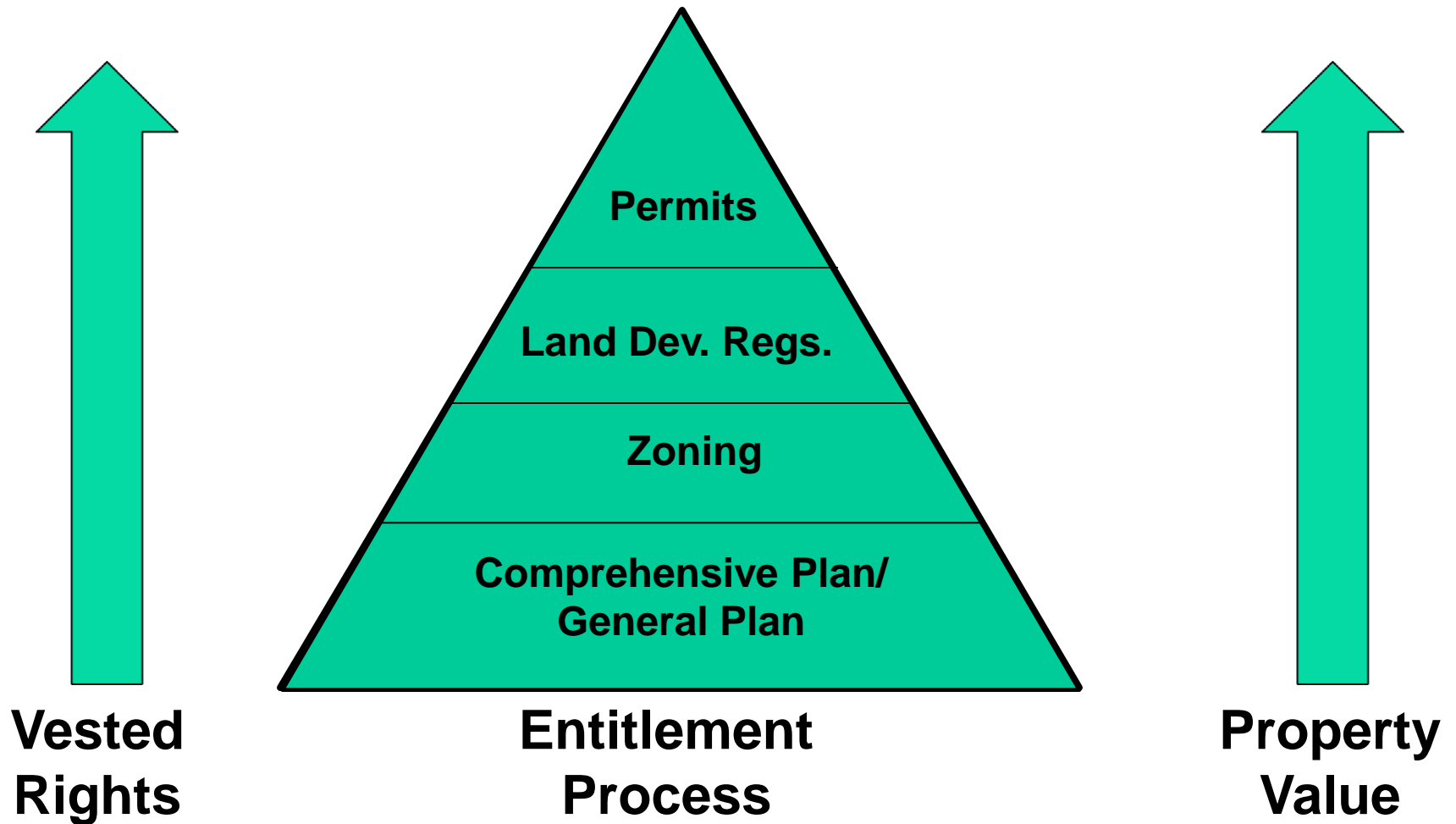
The District Court of Appeal's 2001 ruling conceded the issue raised in a lawsuit by a neighboring property owner was unprecedented in Florida. But the court ruled that the law required demolition of The Villas at Pinecrest Lakes in Jensen Beach, a beach town north of Palm Beach County.

Despite governmental approval, the 136 occupied apartments violated the county's comprehensive plan and were built closer to neighboring homes than the law allowed.

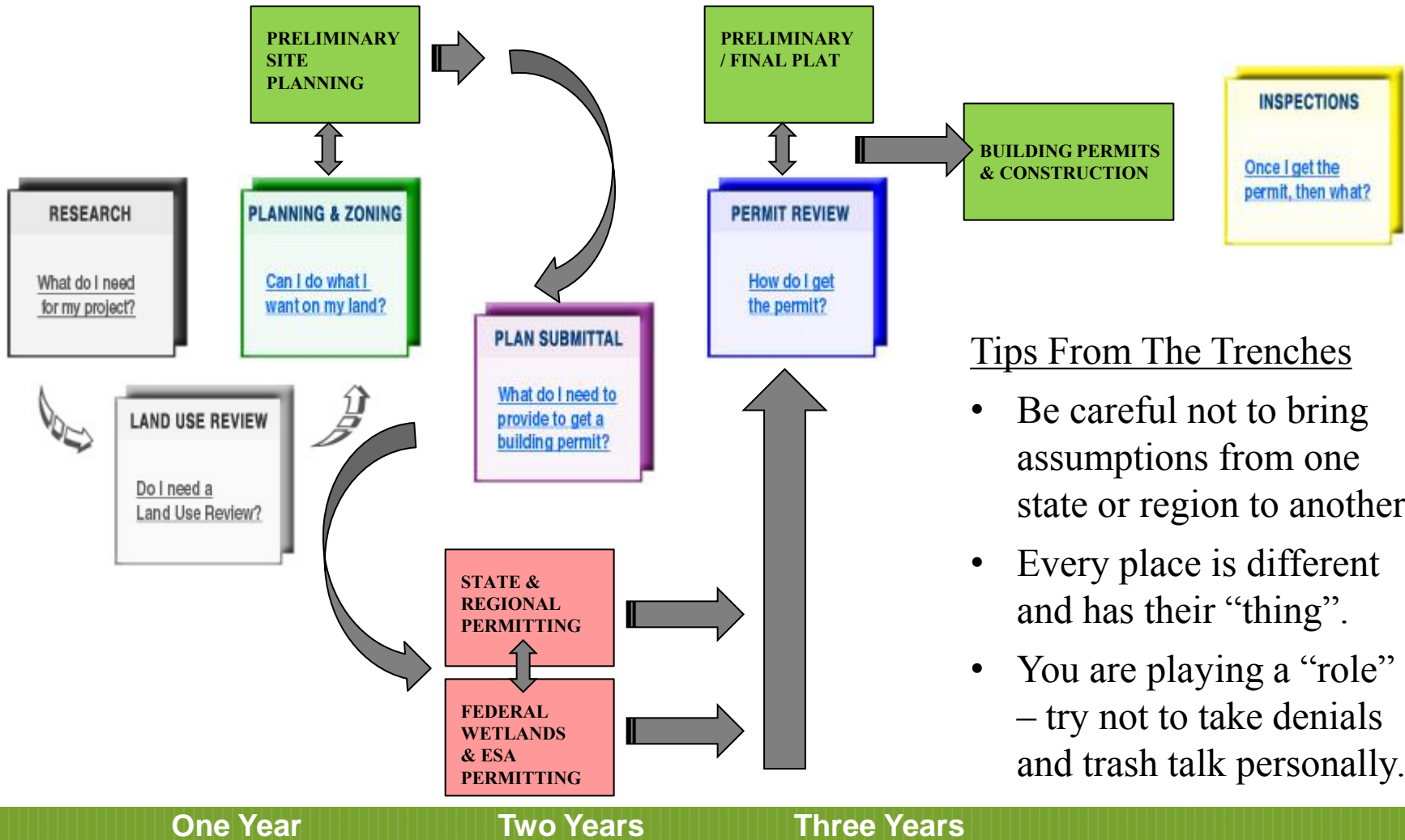
Bad “Entitlements” Day:



Layers of Regulation



Approval Process - OVERVIEW:



Tips From The Trenches

- Be careful not to bring assumptions from one state or region to another.
- Every place is different and has their “thing”.
- You are playing a “role” – try not to take denials and trash talk personally.

The Process: Key Terms



Concurrency:

Roads, Utilities and Government Services in place when they are needed.

Exaction:

A condition for development imposed on a parcel of land requiring land or funds to gain approval.

See: assessment, blackmail, charge, claim, coercion, compulsion ...

Mitigation:

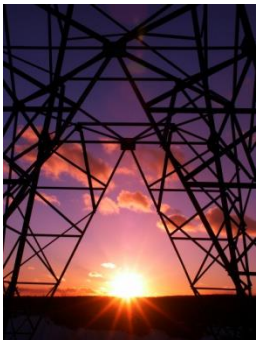
Compensation for an impact to the environment or offsite infrastructure.

Sunsetting:

A government approval/permit expires due to lack of use.

Vesting:

Point at which certain approvals can no longer be taken away or modified.



The Process: Engaging Consultants



Typical Consultants for Entitlement Work

- Planner (zoning and land use)
- Engineer (technical reports and plans)
- Land Use Attorney (zoning and legal agreements)
- Ecologist/Biologist (endangered species and wetland studies)
- Architect (building design and site layout)

The Process: Managing Consultants



Consultant Management

- Be Specific about scope and deliverables – zoning, permits, approvals etc.
- Carefully check invoices monthly and report discrepancies quickly
- Be prepared for “unforeseen” costs and delays – budget for these but do not share with consultant
- Request proposals in “menu” format to account for potential problems/tasks
- Professionals are not equally qualified
- Know the personality of each consultant
- Document milestones and missed milestones keep your emails

The Process: Jurisdictional Interaction



- **Tiered Entitlement System**
 - More detailed permits must be consistent with more general permits



- **Interdependent**
 - Each level can prevent a project from going forward
 - Not all reviewing agencies share the same perspective on approval criteria – resulting in a disjointed, non-linear and sometimes conflicting process



The Process: Permitting Agencies



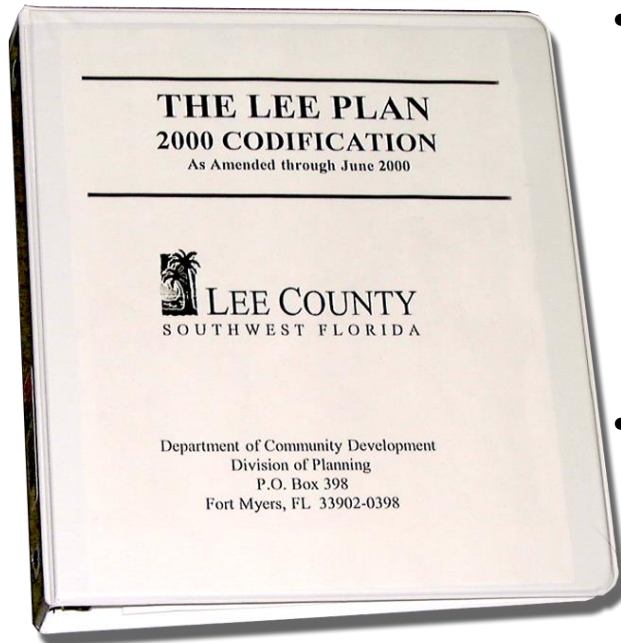
Federal Commenting Agencies

- US Fish and Wildlife (FWS)
- Environmental Protection Agency (EPA)
- Army Corps of Engineering (ACOE)
- Housing and Urban Development (HUD)
- Department of Energy (DOE)

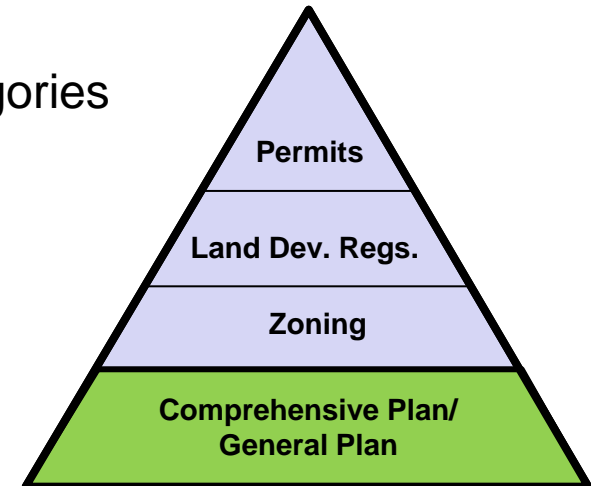
State & Regional Commenting Agencies

- Local Government (Planning, Zoning, Building)
- Regional or State Planning Agencies
- Department of Transportation (DOT)
- Dept. of Environmental Protection (DEP/DNR)
- Department of Agriculture or Forestry
- Fish and Wildlife Commission (FFWCC or FWC)
- Water Management District

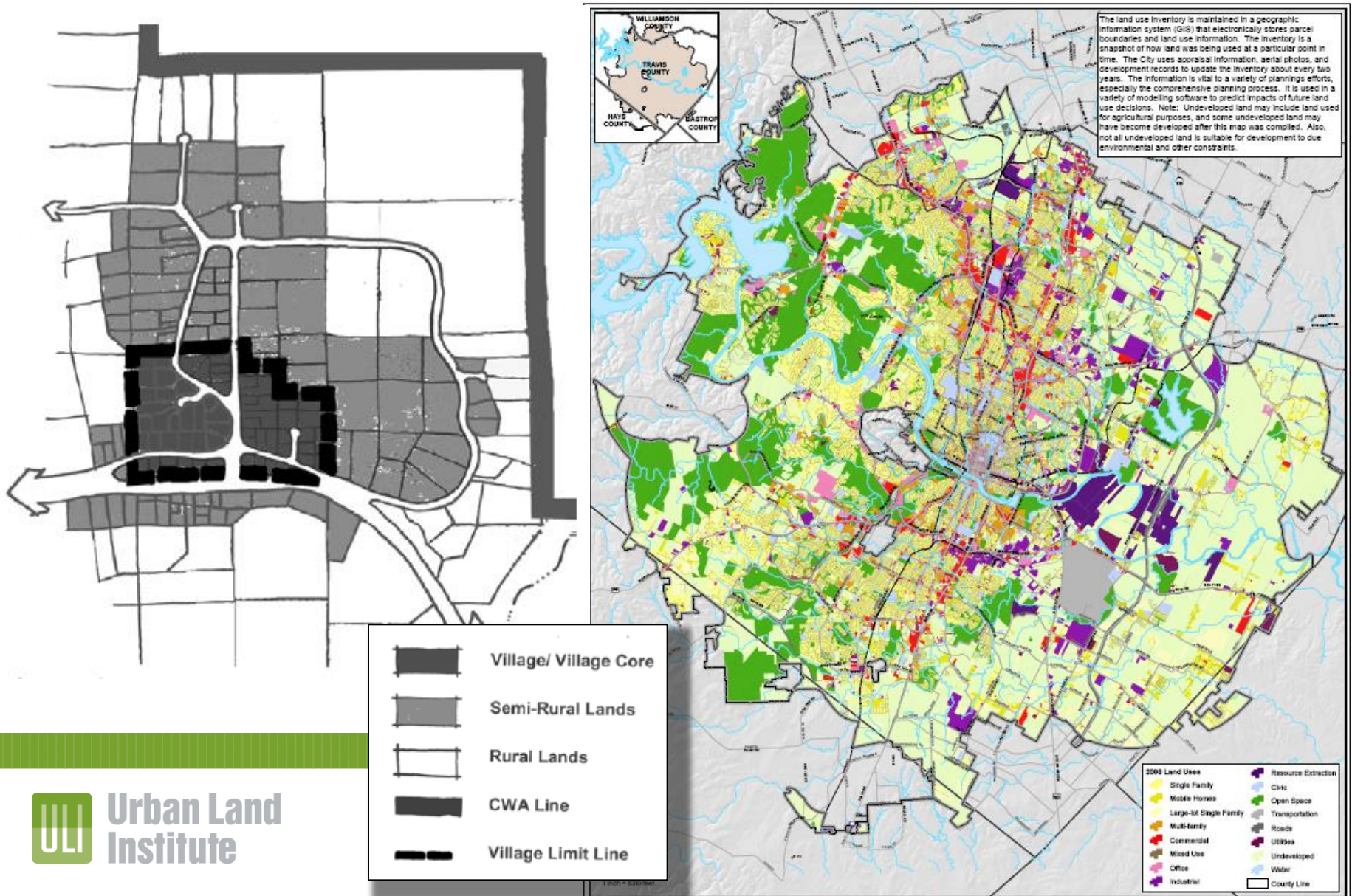
Entitlements – Comprehensive Plan (General Plan)



- **Comprehensive Plan Amendments**
 - Statement of Community Vision (Values)
 - Blueprint for future (long range) growth
 - Protects natural resources
 - Focuses infrastructure investment
 - Usually includes both map and text
- **Key elements**
 - General land use categories
 - Goals and objectives

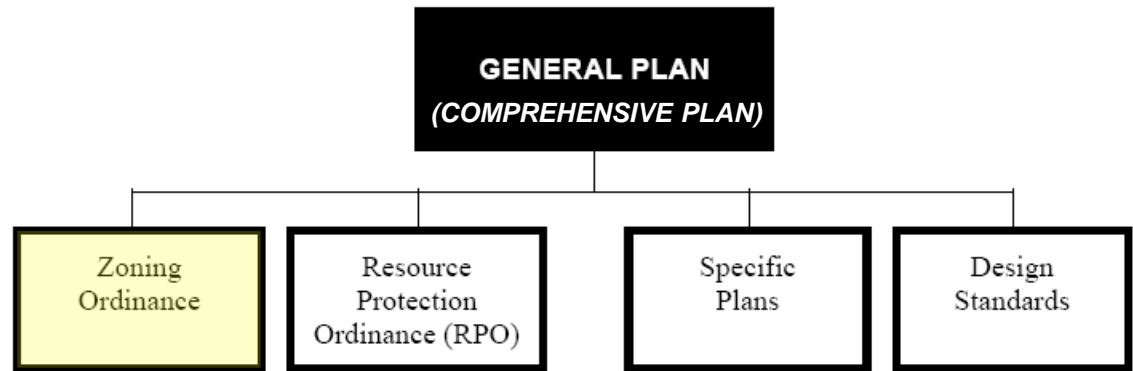
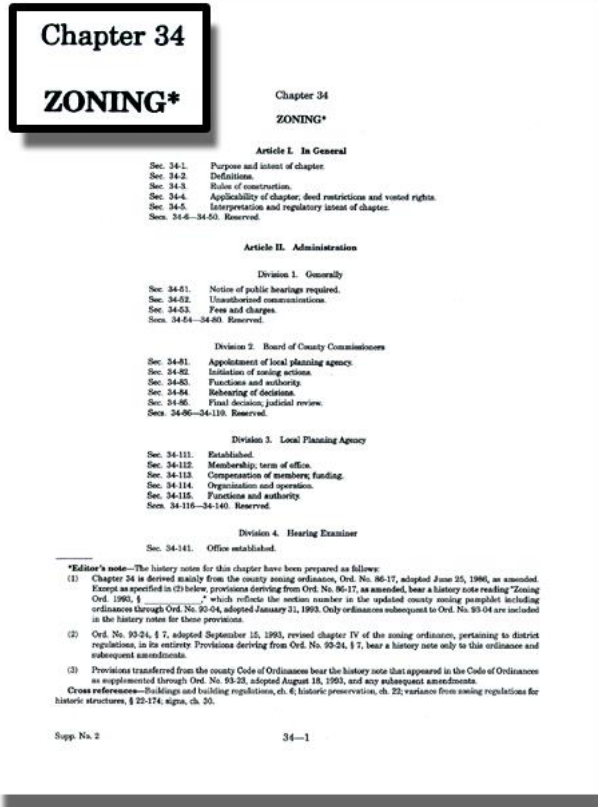


Entitlements – Future Land Use Map

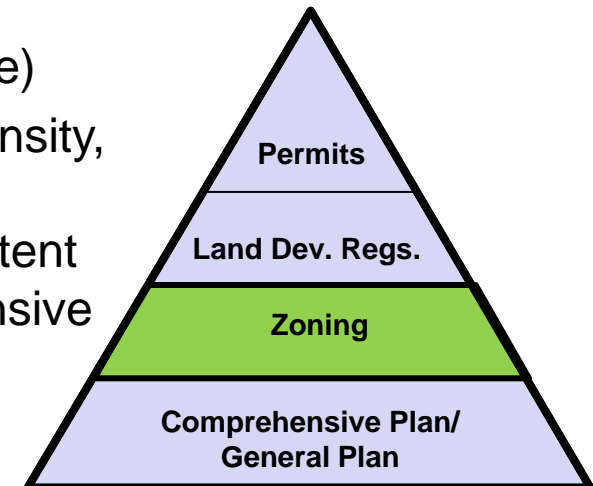


Entitlements – Land Development Codes

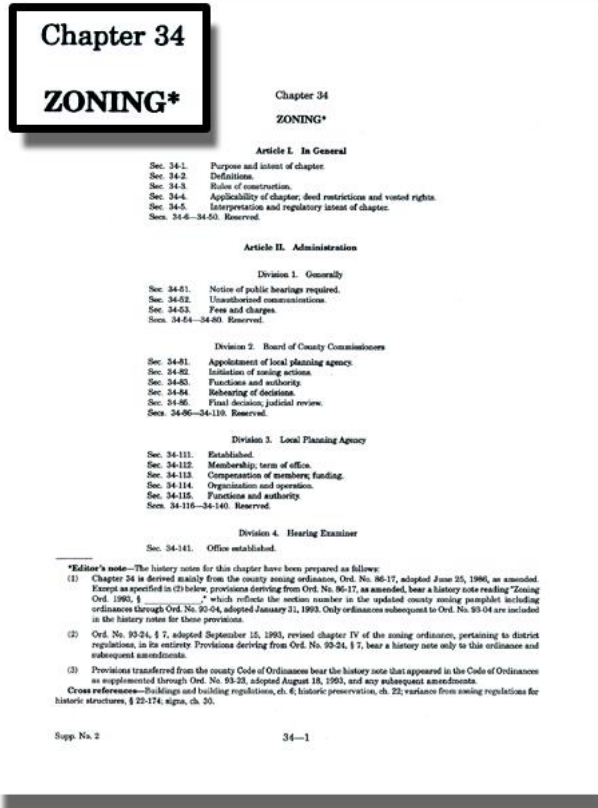
Relationship of General Plan to Implementing Ordinances



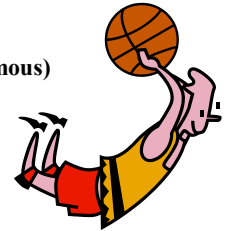
- Zoning (Right-to-Use)
 - Specific use, density, intensity, height, setbacks consistent with Comprehensive Plan



Entitlements – Types of Zoning

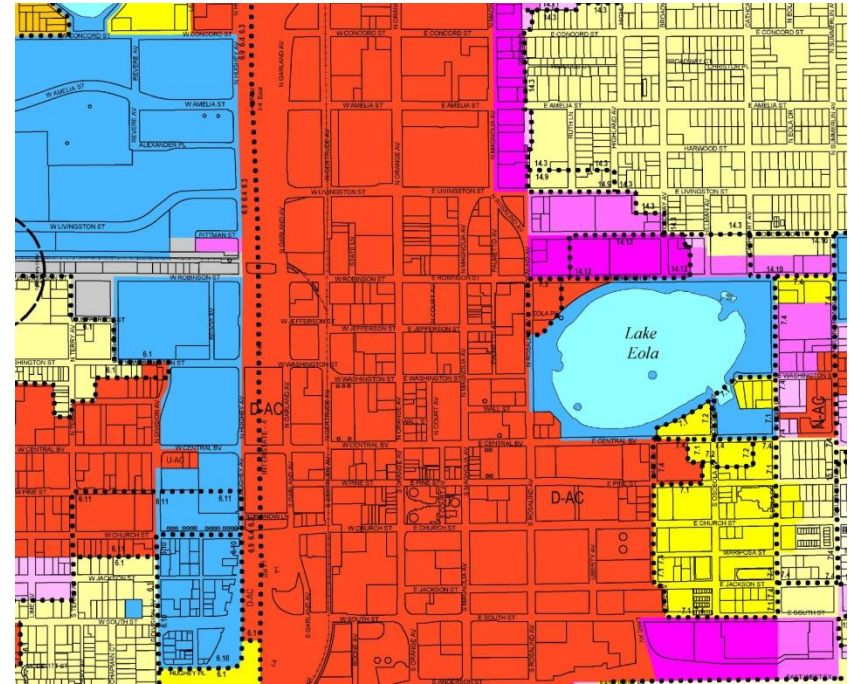
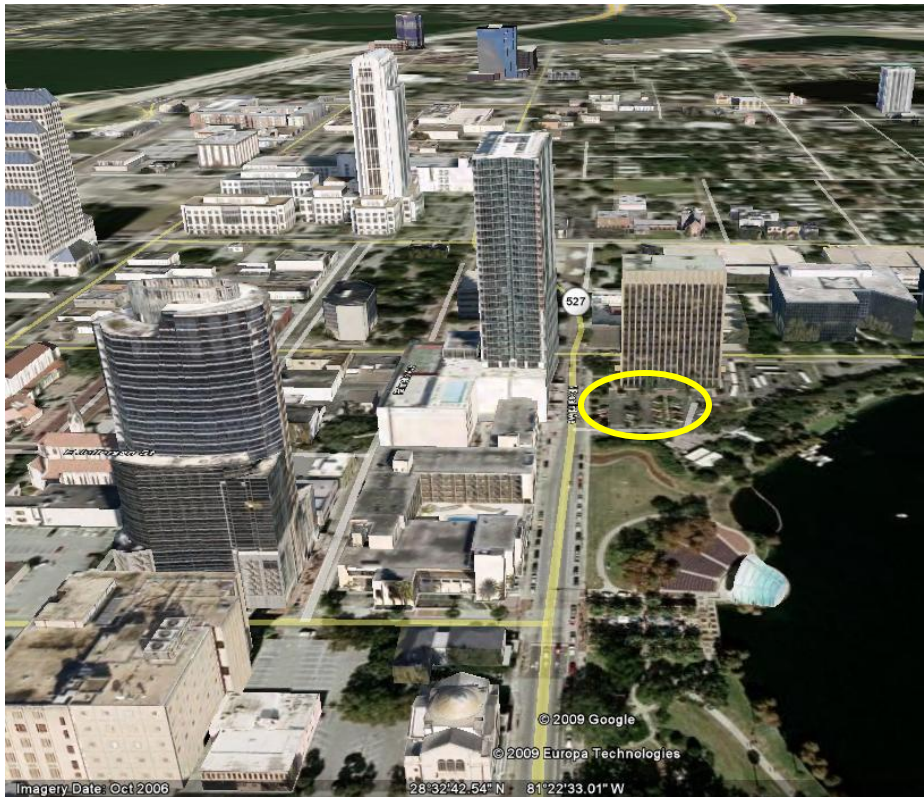


“Zoning, that’s a slam-dunk...right?” (anonymous)



- ✓ Conventional Zoning Districts
 - Commercial ,C1
 - Residential, R1
 - Industrial, I
 - Mixed Use, MU
- ✓ Site Specific Zoning
 - Planned Unit Development – PUD
 - Residential Planned Development – RPD
 - Commercial Planned Development – CPD

Entitlements – Conventional Zoning



- Right to the use
- Right to the density
- Government may still regulate “how” the use is built

Entitlements – Planned Developments

- **Planned Development Approvals**
 - More flexible, but usually requires Master Plan to tie down details
 - Negotiated site-specific zoning category
 - Creates more certainty for local government and public



Entitlements – Review of Zoning

Chapter 34

ZONING*

Chapter 34

ZONING*

Article I. In General

- Sec. 34-1. Purpose and intent of chapter.
- Sec. 34-2. Definitions.
- Sec. 34-3. Rules of construction.
- Sec. 34-4. Applicability of chapter; deed restrictions and vested rights.
- Sec. 34-5. Interpretation and regulatory intent of chapter.
- Secs. 34-6—34-50. Reserved.

Article II. Administration

Division 1. Generally

- Sec. 34-01. Notice of public hearings required.
- Sec. 34-02. Unauthorized communications.
- Sec. 34-03. Fees and charges.
- Secs. 34-04—34-80. Reserved.

Division 2. Board of County Commissioners

- Sec. 34-81. Appointment of local planning agency.
- Sec. 34-82. Initiation of zoning actions.
- Sec. 34-83. Functions and authority.
- Sec. 34-84. Rehearing of decisions.
- Sec. 34-86. Final decision; judicial review.
- Secs. 34-86—34-110. Reserved.

Division 3. Local Planning Agency

- Sec. 34-111. Established.
- Sec. 34-112. Membership; term of office.
- Sec. 34-113. Compensation of members; funding.
- Sec. 34-114. Organization and operation.
- Sec. 34-115. Functions and authority.
- Secs. 34-116—34-140. Reserved.

Division 4. Hearing Examiner

- Sec. 34-141. Office established.

*Editor's note—The history notes for this chapter have been prepared as follows:

- (1) Chapter 34 is derived mainly from the county zoning ordinance, Ord. No. 86-17, adopted June 25, 1986, as amended. Except as specified in (2) below, provisions deriving from Ord. No. 86-17, as amended, bear a history note reading "Zoning Ord. 1986, § _____" which reflects the section number in the updated county zoning pamphlet including ordinances through Ord. No. 93-04, adopted January 31, 1993. Only ordinances subsequent to Ord. No. 93-04 are included in the history notes for these provisions.
 - (2) Ord. No. 93-24, § 7, adopted September 15, 1993, revised chapter IV of the zoning ordinance, pertaining to district regulations, in its entirety. Provisions deriving from Ord. No. 93-24, § 7, bear a history note only to this ordinance and subsequent amendments.
 - (3) Provisions transferred from the county Code of Ordinances bear the history note that appeared in the Code of Ordinances as implemented through Ord. No. 83-23, adopted August 18, 1983, and any subsequent amendments.
- Cross references—Buildings and building regulations, ch. 6; historic preservation, ch. 22; variance from zoning regulations for historic structures, § 22-174, signs, ch. 20.

Supp. No. 2

34-1

Review Zoning use limitations

- What tenants/uses can occupy the property?
- How much demand is there for the allowable uses?
- How much of the land is useable due to shape or preservation requirements?

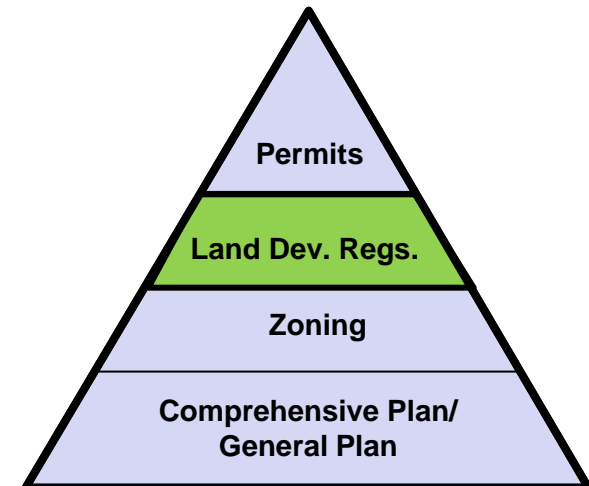
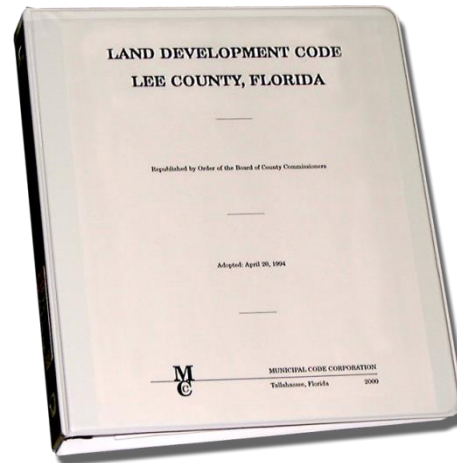
Some (older) zoning is irreplaceable and cannot be replicated today

Avoid “sunsetting” (loss of site specific zoning due to inactivity on the site)

Pros and Cons of Conventional versus Site Specific

Entitlements – Land Development Codes

- **Land Development Codes & Regulations**
 - Detailed regulations implementing the Comprehensive Plan
 - Typically include height, setback and lot dimension regulations, etc.
 - Establish rules for Construction permits

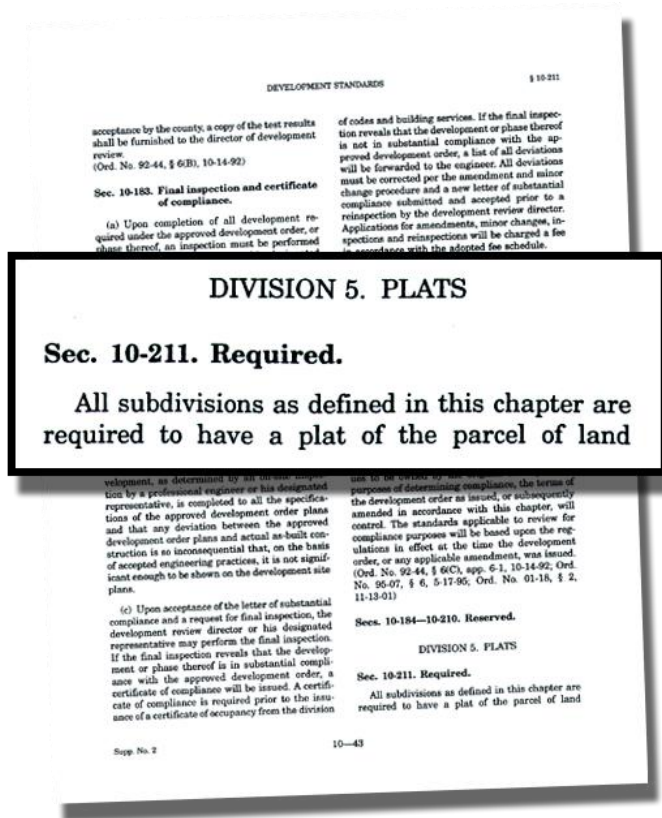
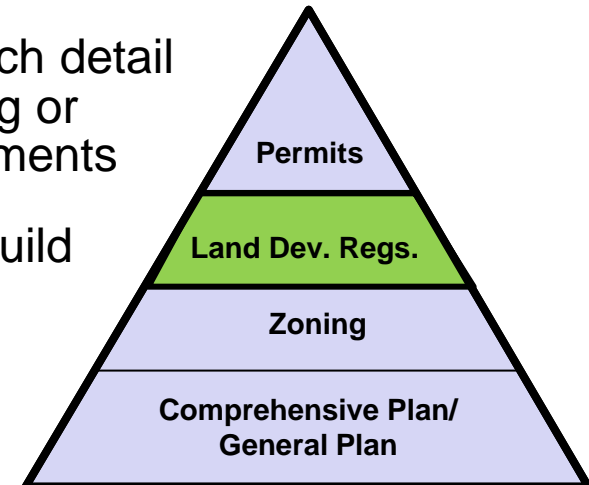


Entitlements – Plats and Development Approvals

- **Subdivision / Plat Approvals**
 - Requirements of dividing land
 - Impact fees, exactions and other government requirements are imposed here

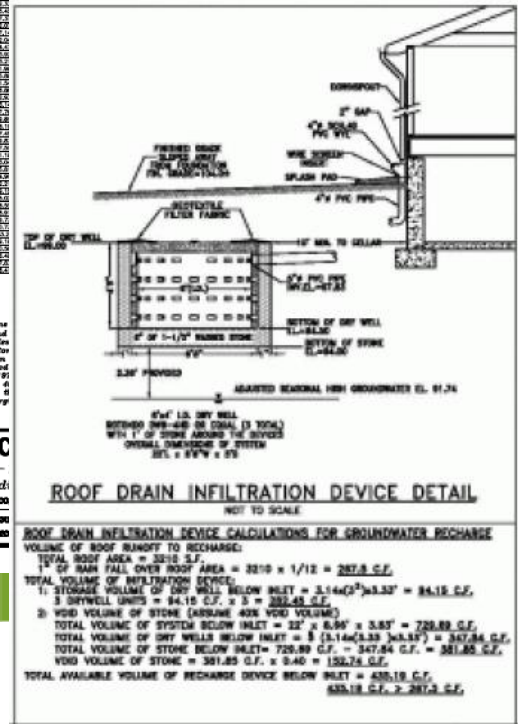
- **Site Plan & Engineering Approvals**

- Final plans which detail civil engineering or related requirements
- Necessary to build horizontal improvements





Urban Land Institute



Entitlements – Permitting (Environmental):

Wetlands/Unique and Sensitive Lands

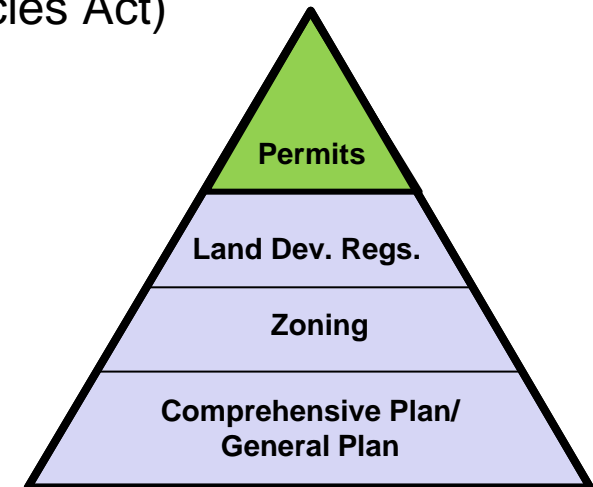
- Determine if property is “Jurisdictional”
- Must demonstrate avoidance and minimization of impacts – the mitigation

Endangered Species

- State or Federally regulated species (Endangered Species Act)
- Impacts and Mitigation (Take Permits)

Water Quality

- TMDLs & Numeric Nutrient Standards
- Must demonstrate minimization of adverse impacts



Entitlements – State and Federal Environmental Permitting:

- Federal Wetland Jurisdictional Determination
 - Wetlands – complex
 - Uplands and other types – not as complex
- Dredge and Fill Permit
- Federal Commenting Agencies
 - Often more onerous than the primary agency



Understanding Entitlement Negotiation – What are the tools?

Smart Growth seen as key to livability

Land use experts like the balance it strikes

By STACIE ZINN

Special to The News Press

Growth projections can sometimes be scary.

By 2025, Census data show that the population of the United States will increase by 65 million people. The population of Florida will increase by some 26 percent adding another 5.5 million people to the state.

Locally, the populations of Lee and Collier counties are set to explode, with some estimates putting the number of people living in the Naples area alone at 400,000 in just the next 20 years.

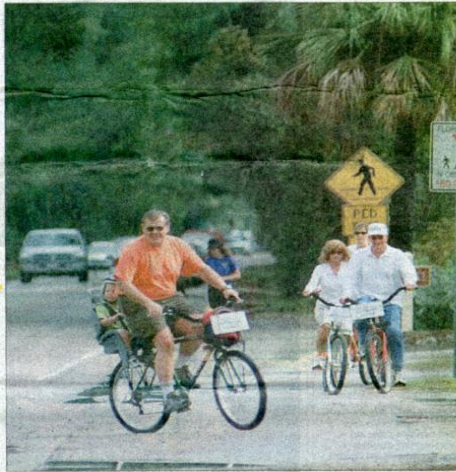
Where are all of these people going to live? And more importantly, how will land developers and community planners offer enough housing for the increased population while maintaining quality of life for everyone?

That was the focus of a symposium held this month in Boca Raton by the **Urban Land Institute**, a nonprofit, education and research institute based in Washington, D.C., that focuses on land use issues. The symposium drew real estate and land use experts from around the nation, as well as county officials and about 100 local industry real estate professionals.

At issue was the concept of Smart Growth, a method of looking at inevitable growth in a way that enhances livability, the environment and the economy. The approach laid out at the symposium suggested that Smart Growth, in opposition to the kind of ad-hoc growth commonly experienced, can be successful if a consensus between environmental, lifestyle and economic interests can be reached.

See SMART GROWTH / 56

Smart growth panelists / 56



STEPHEN HAYFORD/The News Press

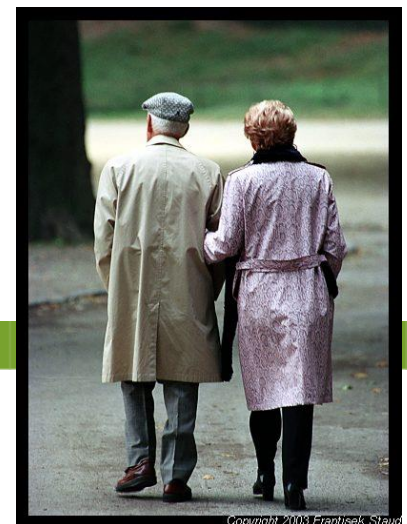
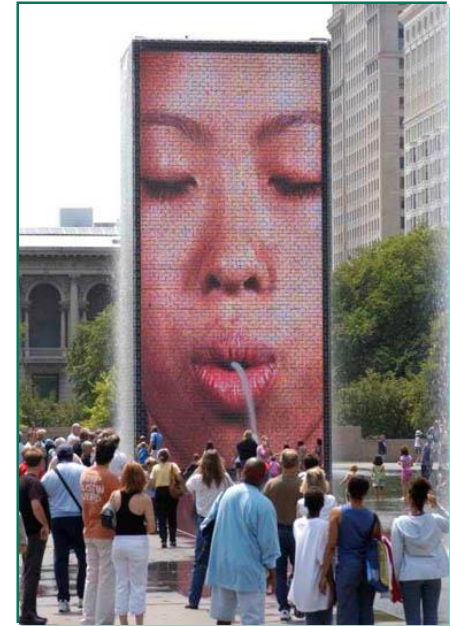
MAINTAINING A BALANCE: Tom Montgomery, visiting from Minnesota, and 2-year-old grandson Graham West turn onto a bike path from Parkside Way on Sanibel Island. The island has preserved natural areas and carefully managed residential and commercial growth, providing residents and visitors alike with a sanctuary from sprawl.

- **Understand Community Values:**
- **Design - Density and Appearance**
 - Basic changes to density and intensity need to be carefully evaluated
 - Good design components may convince local governments to allow higher density/intensity
- **Exactions/Impact Fees**
 - Need to negotiate and understand
- **Strategic and Tactical Initiatives**
 - Utilizing “appropriate” tools and programs to enhance the acceptance of your project in your local community

Strategic and Tactical Initiatives – Community Values:

Decision Drivers:

- Density/Context
- Environment
- Economic Development
- Retirees – Families – or Worker Bees
- Community Aesthetic
- Rental versus Condo
- Open Space
- Community Icons
- Community Involvement



Strategic Initiatives - Sustainability:

“Sustainable development is a pattern of resource use that aims to meet human needs while preserving the environment so that these needs can be met not only in the present, but also for generations to come.....” – The Brundtland Commission

- **Environmental Sustainability**
 - Carrying Capacity
 - Protection of Natural Systems
 - Material Selection
 - Efficiency
- **Economic Sustainability**
- **Sociopolitical Sustainability**
- **ME green versus WE green**



“I’m starting to get concerned about global warming.”

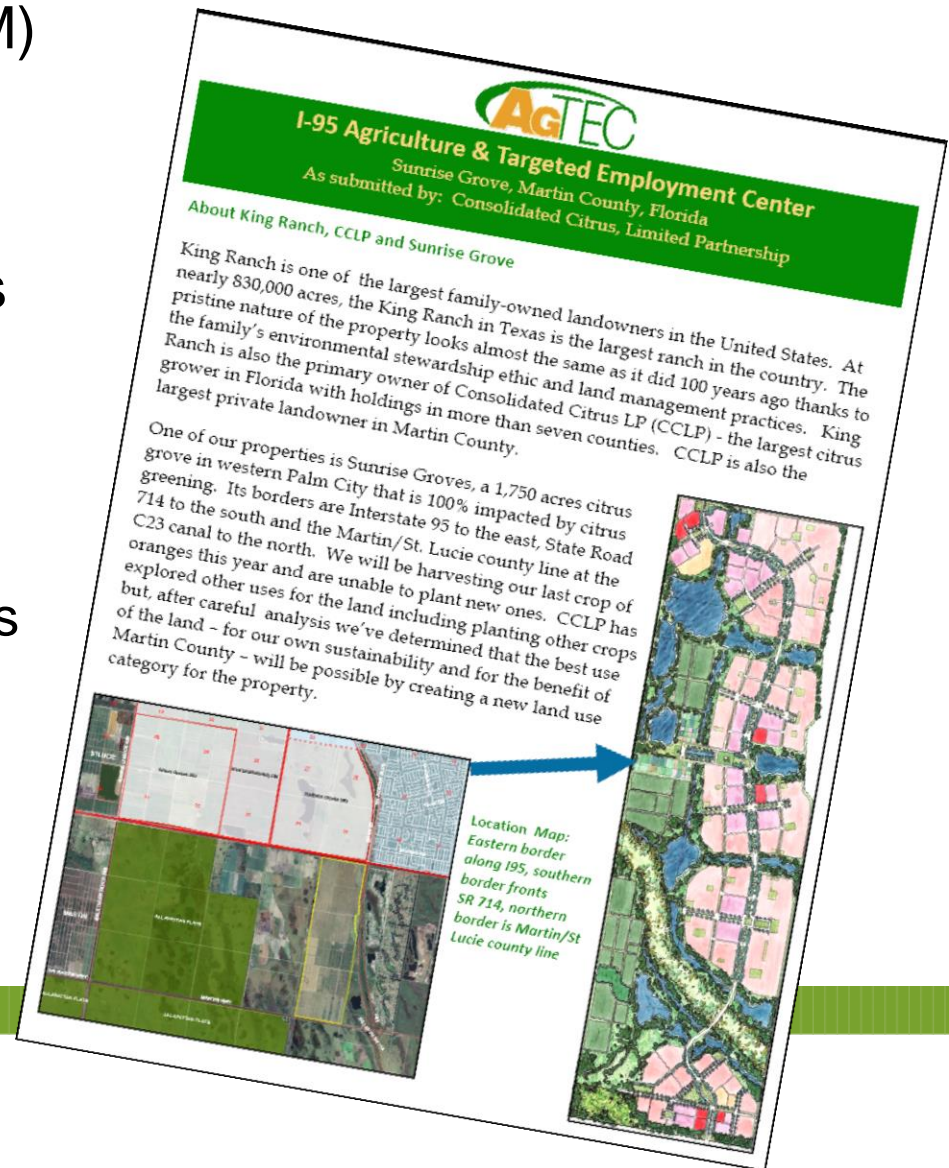
Strategic Initiatives - Smart Growth:

“Smart Growth generally refers to development that supports the economy, the community, and public health.” – EPA Definition

- Compact Development
- Create Strong Local and Regional Economies
- Concentrated Infrastructure and Public Services
- Conservation of Resources
- Mix of Uses – Integrated Communities
- Walkable Neighborhoods – Transportation Choices
- Integrated Open Space, Recreation and Water Management
- Large areas reserved for farm and forest

Strategic Initiatives - Civic Engagement:

- Information Harvesting (WIIFM)
- Value of Establishing a Brand
- Identify Potential Opposition
- Identify Community Advocates
- Intentional Communication
 - Internet Site
 - Small Group Meetings
 - Presentations to Civic Groups
 - One on One with Opposition
- Accept Feedback
- Incorporate Tactical and Strategic Refinements



Case Studies – The Good, The Bad and the Ugly



Case Study – Horse Creek Estates and Compatibility:



- Last 86 acre parcel of established subdivision
- Used as a “public” area for last 30 years
- Conventional RSF-3 zoning allows up to 249 units/lots
- All utilities (water, sewer, power and phone) available at property boundaries.
- Easy access from at least 2 existing roads

Case Study – Horse Creek Estates – Community Issues:



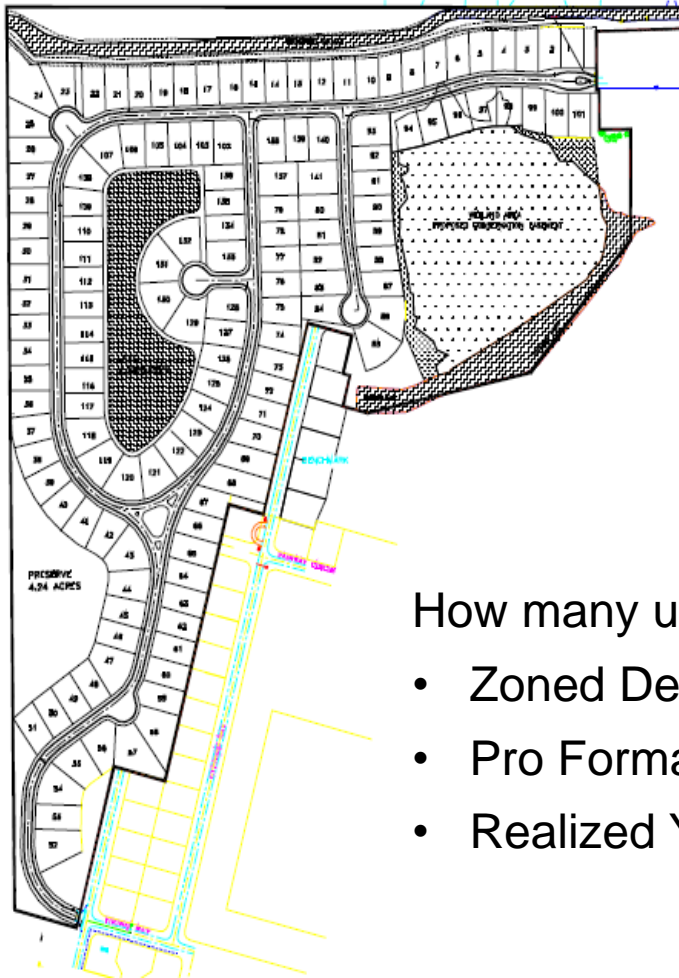
- Significant environmental issues with wetlands and endangered species
- Subject County has history of stiff “anti-growth” opposition
- Proposed “new” development in an established neighborhood
- “Externalized” impacts
- Children “not welcome” by wealthy development to the west
- New development not considered compatible with older development

Horse Creek – The Process



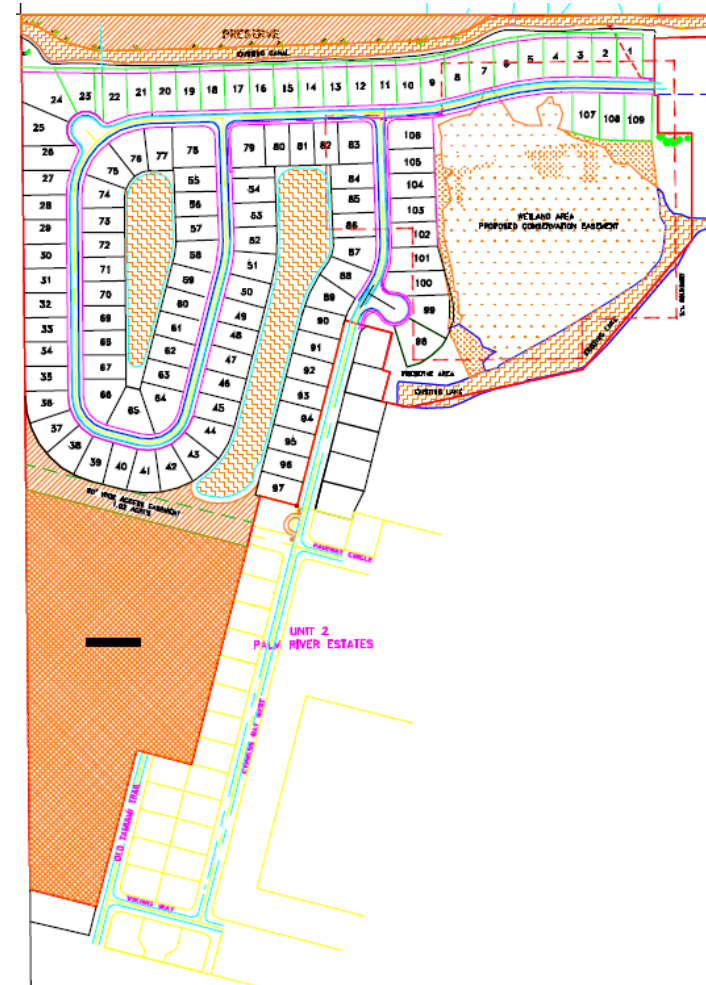
- Used land use attorney to represent developer at public hearings
- Neighbors also hired an attorney
- Neighbors organized and protested project approval at hearings
- Other adjacent developments joined in opposition
- After 10th hearing land use attorney fired
- Public meetings with upset neighbors
- Many one-on-one meetings with most vocal neighbors
- Many cups of coffee and iced tea with neighbors learning about concerns and fears.
- Made friends with neighbors

Case Study – Horse Creek Estates

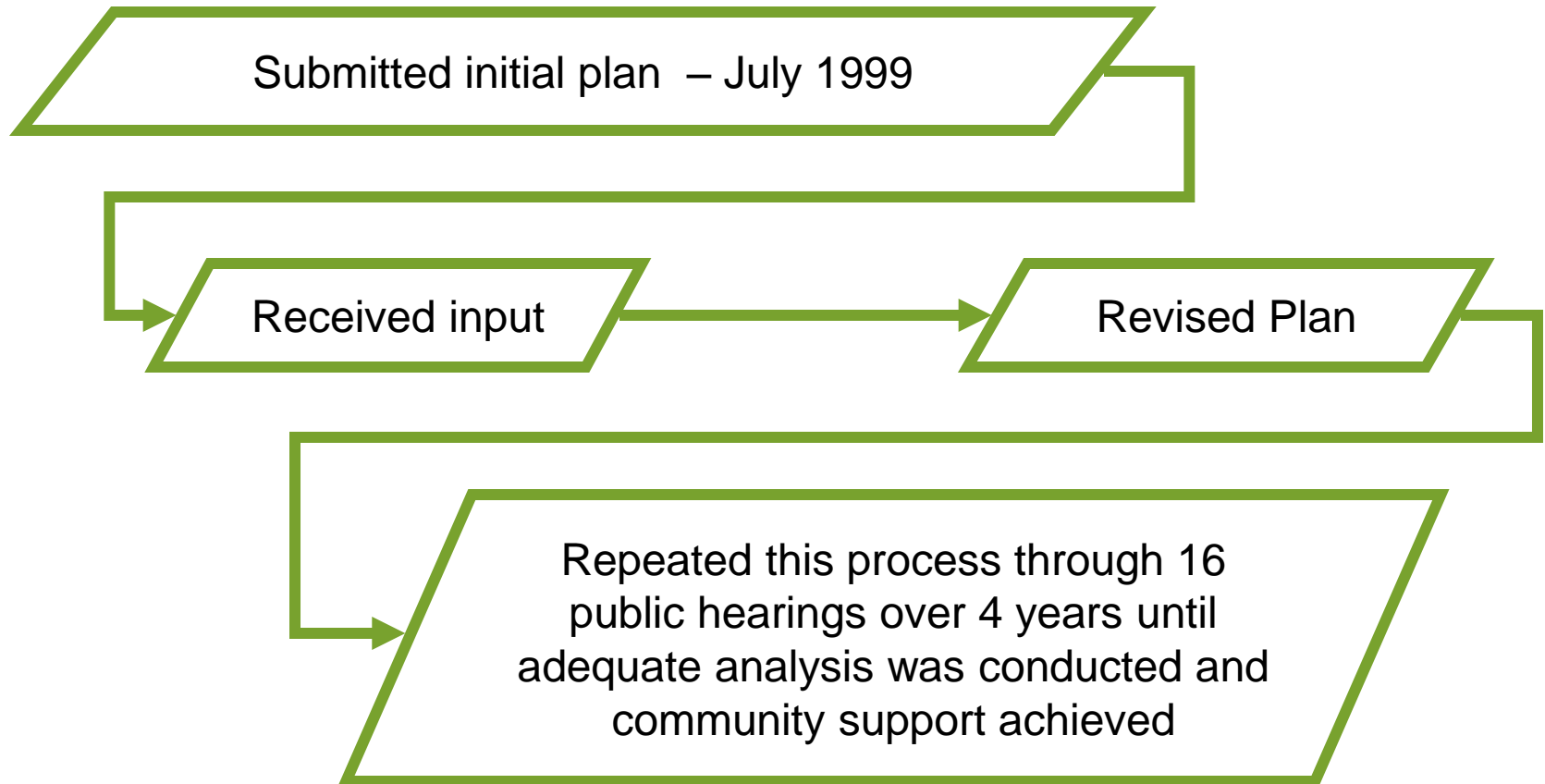


How many units will I end up with?

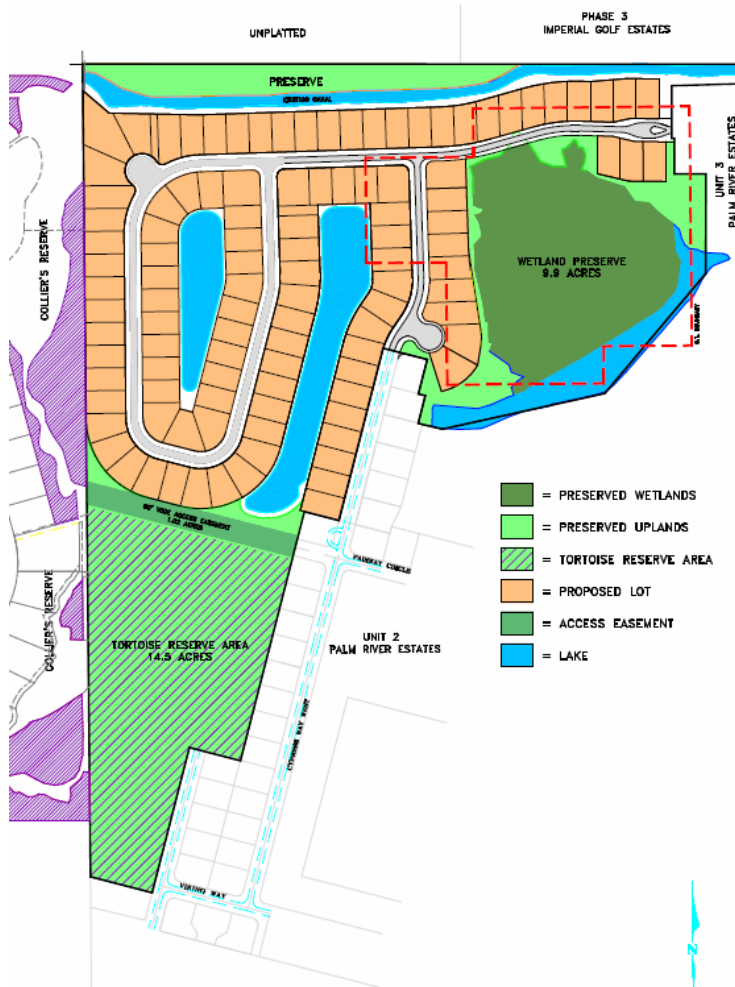
- Zoned Density = 249
- Pro Forma Yield = 141
- Realized Yield = 109



Horse Creek – The Process



Case Study – Horse Creek Estates Final Plan



- Approved for 109 lots
- Created onsite 16 acre Gopher Tortoise preserve
- Paid for offsite speed humps to reduce speeding by cars and construction traffic
- Paid for plaque in GT preserve to educate public about historic road that once traversed property
- Paid for \$130k for offsite improvements to landscaping on west side of project
- Agreed to limited construction hours to build project from 9am-2:30pm on weekdays
- Internalized project “impacts”



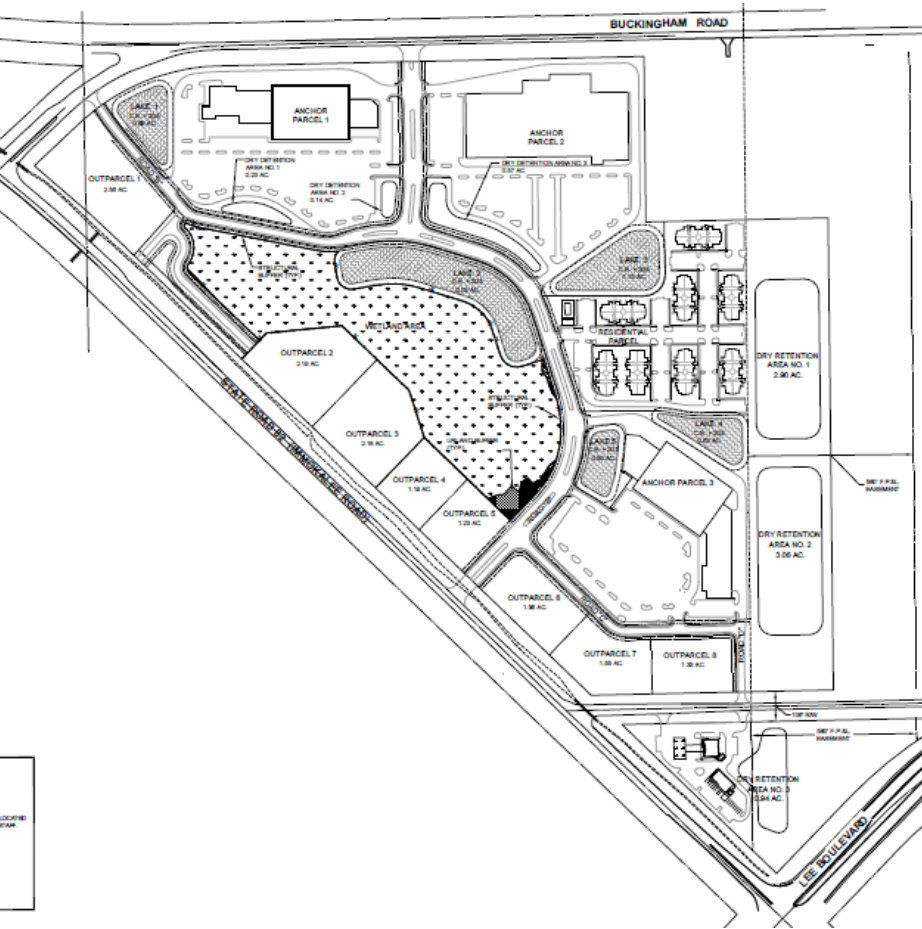
Urban Land Institute



- Local Government did not want to have a big box store in the area.
- Neighbors objected to having a Wal-Mart in their back yard.
- Had to prove/demonstrate to government and neighbors that use would be compatible with existing uses
- Had to make significant concessions regarding store hours, delivery hours and architecture to win approval (2003).

Store to open in 2014 as road concurrency is now satisfied.

Case Study – Colonial Plaza



- Local Government desperately wanted quality development in general area. Government allowed flexible swaps of land uses within project.
- No objections from neighbors.
- Had to prove/demonstrate to government site development would be themed and have internal compatibility with planned uses
- Significant road capacity issues and had to agree to pay a “proportionate share” of the cost to widen the roads at a total cost of \$7.5 million.
- Significant endangered species issues costing \$1.1 million for mitigation

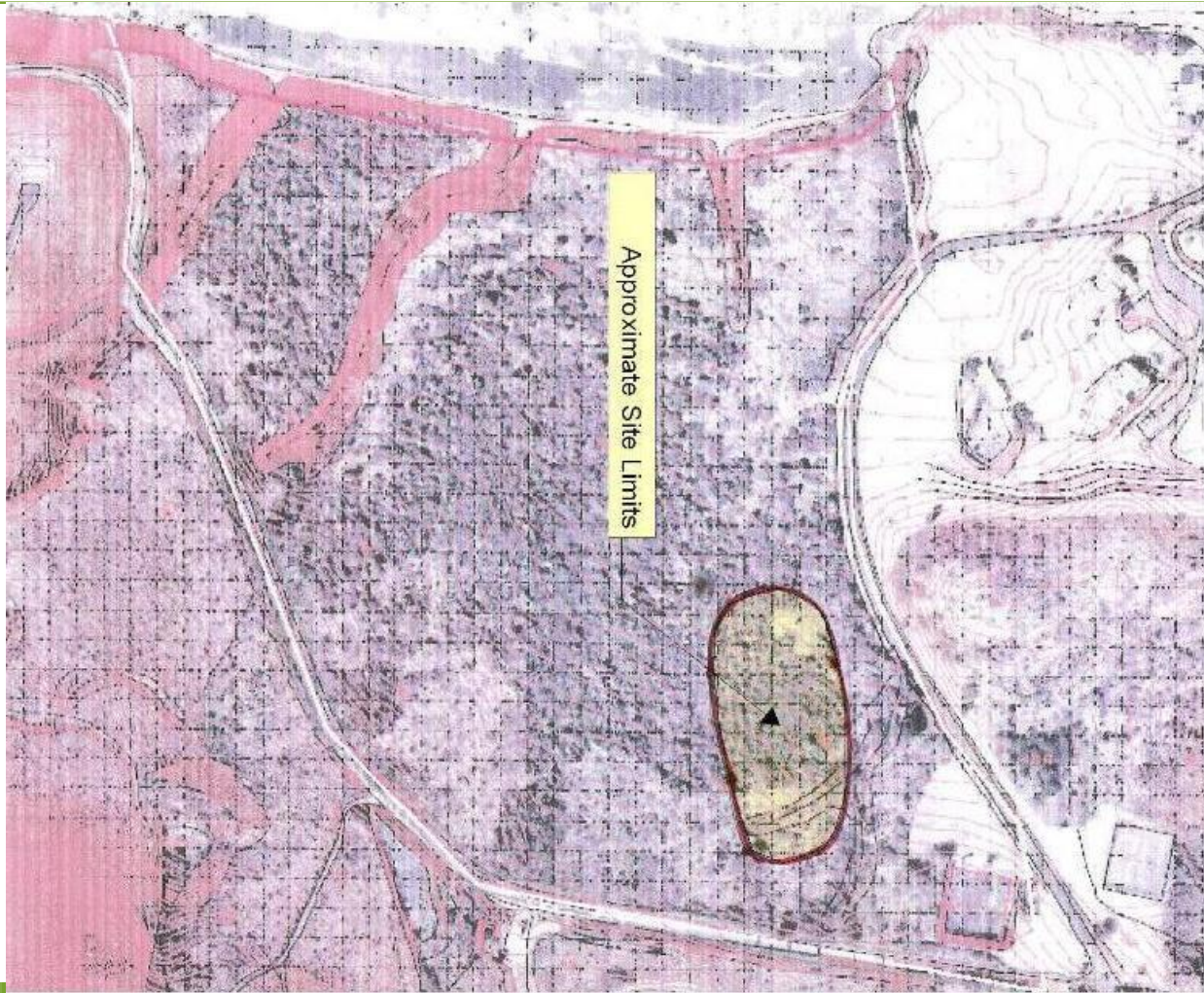
Case Study – St Croix



- 43 acres on St Croix north shore
- Near the “Salt” River
- Adjacent land use is commercial and multifamily
- Potable Water available
- No wetlands
- Significant topography



Case Study – St Croix



Case Study – St Croix



Entitlements – Take Away Value

1. Understand Time and Cost involved
2. Develop and Implement a Sound Entitlement Strategy
3. Proactively think about Interactivity between permitting entities
4. Understand “Community Values”
5. Frame Justification in a Larger Local/Regional Planning Context
6. Think Long Term About the Project/Property and Long Term About Setting Precedent in the Entitlement Process

Questions or Comments:

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November 6th, 2013

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