

# **WORKSHOP**

## **Workshop to Consider Initiating Action in Preparation of Potential Adoption of the Hometown Democracy Constitutional Amendment**

**October 27, 2009  
12:00 – 1:30 p.m.**

**Leon County Board of County Commissioners' Chambers  
Leon County Courthouse, 5<sup>th</sup> Floor**

**This document distributed: October 21, 2009**

# Board of County Commissioners

## Workshop Request

Date of Meeting: October 27, 2009  
Date Submitted: October 19, 2009

To: Honorable Chairman and Members of the Board

From: Parwez Alam, County Administrator  
Vincent S. Long, Assistant Deputy County Administrator  
Wayne Tedder, Planning Director

Subject: Workshop to Consider Initiating Action in Preparation of Potential Adoption of the Hometown Democracy Constitutional Amendment

---

### **Statement of Issue:**

A workshop to obtain Board direction on whether to initiate any actions to prepare for the potential adoption of the Hometown Democracy (HD) Constitutional Amendment (Amendment 4) that will be placed on the general election ballot in 2010.

### **Background:**

The proposed Hometown Democracy Constitutional Amendment (Amendment 4) has broadly written language that uses terms that are not presently contained or defined in statutes nor in the Tallahassee/Leon County Comprehensive Plan (Attachment #1). It has been thought, by various sources, that Amendment 4, if passed, would affect the process of growth management to, at a worst case, require referendums on all Comprehensive Plan amendments, including textual amendments, Future Land Use Map (FLUM) amendments, and zoning amendments. Another case scenario is that a referendum will be required for only FLUM amendments. It seems apparent to most planners and attorneys practicing land use law that the language approved by the Florida Supreme Court for placement on the ballot is vague and, if passed, there most likely will be challenges to finally determine the full implementation of Amendment 4.

### **Analysis:**

Essentially, Amendment 4 calls for a referendum on any amendment to the "*comprehensive land use plan*," a term that is not used or defined in existing statutes nor contained within the "Tallahassee/Leon County Comprehensive Plan." The purpose of this agenda item is to determine if the Board wishes to explore options or strategies for preparing for the passage of the Amendment 4, should it happen.

Staff, including legal staff, has met to brainstorm strategies. Some strategies are:

1. Declare that Tallahassee and Leon County do not have a “Comprehensive land use plan,” and are thus unaffected by Amendment 4.
2. Declare that the FLUM is not a “comprehensive land use plan,” leaving the referendum process to Future Land Use Element text changes only.
3. Adopt a “comprehensive land use plan,” as part of the Comprehensive Plan or as a stand-alone ordinance. Attachment #2 presents a simplistic example. It would be a document that will be much more generalized in concept than the FLUM and the Future Land Use Element. This approach would define the City/County “Comprehensive Land Use Plan” consistent with the language included on the ballot for Amendment 4. With this option, amendments to only this generalized comprehensive land use plan would have to go to referendum.
4. Initiate a complete rewrite of the Comprehensive Plan.
5. Do nothing and wait for court challenges and decisions that will inevitably follow.

**Comprehensive land use plan** (Strategy #3) - The most proactive option is #3, but it does have its detractions. The obvious and most important one is that it will most likely lead the City/County almost immediately to a lawsuit following the first Comprehensive Plan amendments not taken to referendum. However, it is believed that adoption of a “Comprehensive Land Use Plan” will put the City/County in the strongest possible position when litigation does occur. After the November 2010 referendum on Amendment 4, Strategy #3 may no longer be available without a referendum.

There has been discussion, at the staff level, of adopting the “Comprehensive Land Use Plan” by simple ordinance rather than by amendment to the Comp Plan. After discussion with both City and County attorneys, and other land use attorneys, it is felt that a Comp Plan amendment is the most practical way to proceed. In addition, absent any legislative changes further tying the Constitutional amendment to the Comprehensive Plan, an ordinance would also be an acceptable way to proceed. However, should the Legislature create legislation that ties the amendment to the comprehensive plan, a stand-alone ordinance may be negated by such action.

The next Comprehensive Plan Adoption cycle will culminate with an adoption hearing scheduled for August 24, 2010. This will put the strategy in place approximately ten weeks prior to the November referendum on Amendment 4. Should Amendment 4 not pass, the adoption of a “Comprehensive Land Use Plan” will not create any extra steps for Comprehensive Plan amendments. The present process will remain the same and the “Comprehensive Land Use Plan” creates no additional provisions that are inconsistent with current Comprehensive Plan policy or map designations.

Examples of some of the consequences of passage of HD:

- Referendums held and no one shows up - This could happen, for example, on a one-acre parcel requesting a change from RP to Urban Residential where no one objects.
- Hundreds of thousands of dollars being spent by a FLUM applicant to convince the public to vote for a Comprehensive Plan amendment.
- In trying to correct a problem with the Comprehensive Plan, all local governments may have to spend hundreds of thousands of dollars to get the facts out to the public to fully educate them on an issue that has little or no public interest.
- A few NIMBY electors could show up to vote down a proposed Comp Plan amendment that makes sense from an overall health, safety, and welfare viewpoint.
- Will create a chilling effect on desired changes to the Comprehensive Plan in the interest of good growth management and planning. Imagine the Multimodal Transportation District going to a referendum.

The Supervisor of Elections office advises the following potential costs associated with holding a referendum:

- If held in conjunction with a regularly scheduled state/federal election held every two years: \$10,000 (advertising)
  - Stand-alone election, City of Tallahassee only:
    - Mail ballot: \$341,750
    - Precinct-based: \$342,200
  - Stand-alone election, Unincorporated Leon County only:
    - Mail ballot: \$330,420
    - Precinct-based: \$356,550
  - Stand-alone election, Leon County-countywide:
    - Mail ballot: \$441,250
    - Precinct-based: \$528,650

These estimated costs are per ballot, not the number of topics or issues. Because Tallahassee and Leon County have a jointly adopted plan, it is unclear whether all referendums on the plan will have to be voted on Countywide.

**Complete rewrite of the Comprehensive Plan (Strategy #4)** - The most complicated strategy would be the complete rewrite of the Comp Plan. The purpose of a rewrite would be to eliminate unnecessary detail from the plan so that the City or County would not have to place unnecessary changes on a referendum should Amendment 4 pass. If Amendment 4 does not pass, then this strategy could provide a more simplified Comprehensive Plan. This process will take 12 – 15 months to complete, requiring the final product to be voted on by the electorate should Amendment 4 pass. There is no assurance that a Comp Plan could be drafted that will meet the demands of landowners, environmentalists, developers, and residents, that it would be adopted at referendum.

Presently, there is insufficient staff to prepare a new plan; therefore, a consultant would be needed. The estimated cost of consultation is approximately \$600,000. Staff has been incrementally amending the plan during each amendment cycle (Comp Plan Reform Process) to eliminate unnecessary policy, redundancy, and as much of the detail as possible within the rules of the state statutes. While this strategy, on the surface, appears to be one that could have considerable policy support, staff believes that this process will require significant Board participation to vet many issues raised by the public in an unfocused manner.

### **Other Issues**

There are two other issues that require discussion in the context of the proposed Amendment 4:

- 1. Education Program** - It was suggested at the October 13, 2009 Board meeting that staff look at ways to better inform citizens of potential land use changes. An education program could be done so that citizens may be better able to evaluate Comp Plan issues and understand the implications of proposed changes. An education program has been done in the past and while well received by those that participated there was very little large-scale participation by citizens or citizen groups. Generally, speaking citizens will only become aware of Comp Plan policy if a change in the Future Land Use Map is proposed in proximity to their property.
- 2. Senate Bill 216**- was a bill passed during the 2009 session of the legislature (Attachment #3) that effectively prohibits local governments from advocating a position on any measures that are subject to a vote of the electors. This provision appears to prevent local government from advocating any Comp Plan amendment, even if the change is of significant benefit to the citizens of local government. It also prevents local governments from advocating any position on Amendment 4.

As the vote on Amendment 4 approaches, the Board should consider whether or not to initiate an education program prior to the General Election and/or after the General Election, should Amendment 4 pass. Staff has not developed any cost estimates for completing an education program.

### **Fiscal Impact:**

This item has no current fiscal impact. However, if Amendment 4 is passed, the City and County will be responsible for any referenda on Comprehensive Plan amendments that could be as much as \$528,000 per event.

### **Options:**

1. Authorize staff to initiate an amendment to the Comprehensive Plan to pursue creating a "comprehensive land use plan."
2. Direct staff to initiate a complete rewrite of the Comprehensive Plan.
3. Direct staff to take no further action until Amendment 4 is decided.
4. Direct staff to begin preparing an education program for Amendment 4.
5. Board Direction.

### **Recommendation:**

Board Direction.

Attachments:

1. Proposed Hometown Democracy constitutional amendment
2. Draft "comprehensive land use plan" map
3. SB 216

PA/VSL/WT/dl

FULL TEXT OF PROPOSED AMENDMENT:

BE IT ENACTED BY THE PEOPLE OF FLORIDA THAT:

**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 of a municipality, or the chief elected governing body of a county or municipality, however designated.

Serial Number 05-18 Date Approved June 21, 2005

Date: 8/19/09

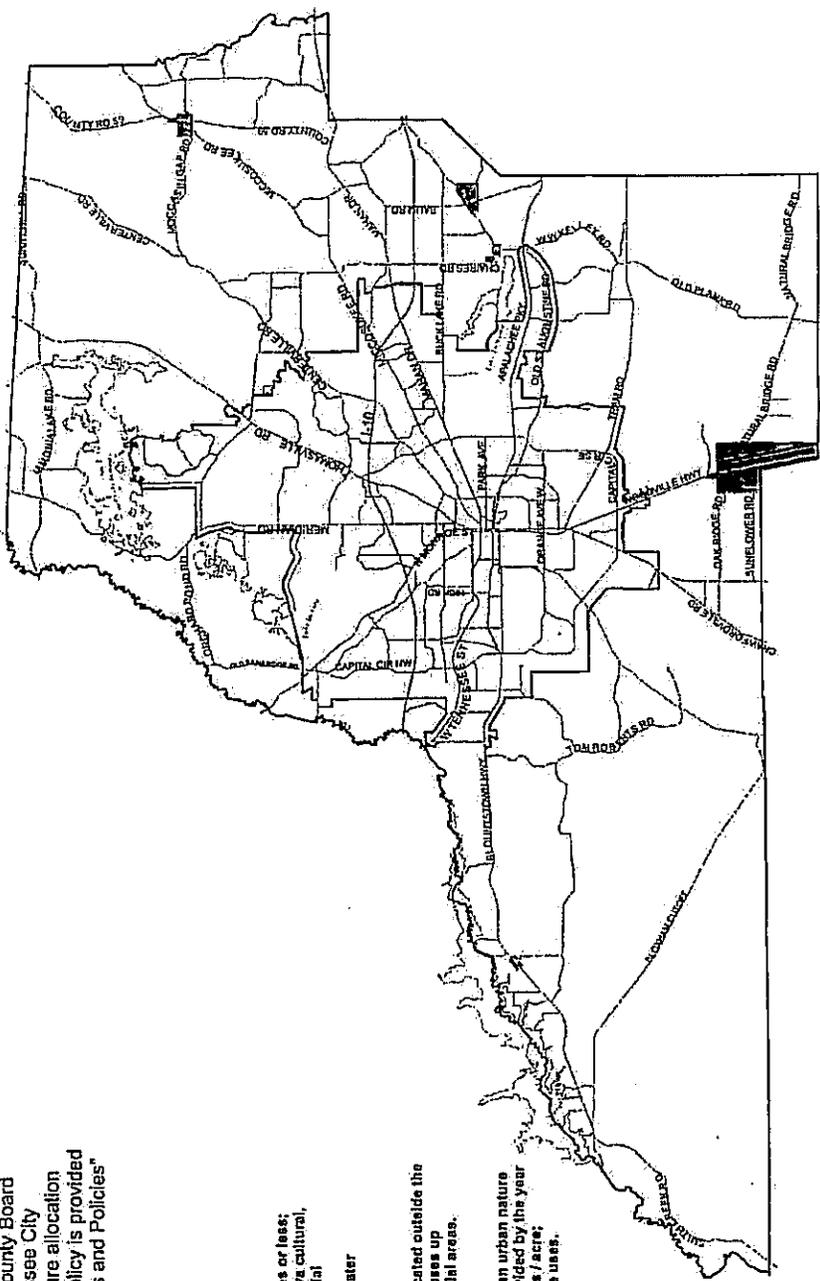
# Comprehensive Land Use Plan

**Draft**  
 For discussion purposes only.

This Land Use Plan is the overarching guide and control for growth and development decisions by the Leon County Board of County Commissioners and the City of Tallahassee City Commission. A more detailed depiction of the future allocation of land development patterns and public facility policy is provided within the "Comprehensive Plan Goals, Objectives and Policies" as required by Florida Statutes.

## Legend

-  **Rural-**  
 May include: Residential densities of 1 unit/10 acres or less; existing residential subdivisions; Agricultural, Silva cultural, conservation; recreation/open space and residential densities up to one unit/3 acres that may contain subdivisions or cluster subdivisions with even greater densities.
-  **Rural Communitites-**  
 Long established unincorporated communities located outside the urban development area. May include residential uses up to four units/acre and small to moderate commercial areas.
-  **Urban Development-**  
 That area for which future development will be of an urban nature and all public services are programmed to be provided by the year 2030. May include Residential uses up to 150 units / acre; commercial, office, industrial, parks & open space uses.



2009216er

1  
2 An act relating to campaign financing; creating s.  
3 106.113, F.S.; defining the terms "local government"  
4 and "public funds"; prohibiting a local government  
5 from expending, and a person or group from accepting,  
6 public funds for a political advertisement or  
7 electioneering communication concerning an issue,  
8 referendum, or amendment that is subject to the vote  
9 of the electors; providing an exception for certain  
10 electioneering communications; clarifying restrictions  
11 with respect to local officials; providing an  
12 effective date.

13  
14 Be It Enacted by the Legislature of the State of Florida:

15  
16 Section 1. Section 106.113, Florida Statutes, is created to  
17 read:

18 106.113 Expenditures by local governments.-

19 (1) As used in this section, the term:

20 (a) "Local government" means:

21 1. A county, municipality, school district, or other  
22 political subdivision in this state; and

23 2. Any department, agency, board, bureau, district,  
24 commission, authority, or similar body of a county,  
25 municipality, school district, or other political subdivision of  
26 this state.

27 (b) "Public funds" means all moneys under the jurisdiction  
28 or control of the local government.

29 (2) A local government or a person acting on behalf of

2009216er

30 local government may not expend or authorize the expenditure of,  
31 and a person or group may not accept, public funds for a  
32 political advertisement or electioneering communication  
33 concerning an issue, referendum, or amendment, including any  
34 state question, that is subject to a vote of the electors. This  
35 subsection does not apply to an electioneering communication  
36 from a local government or a person acting on behalf of a local  
37 government which is limited to factual information.

38 (3) With the exception of the prohibitions specified in  
39 subsection (2), this section does not preclude an elected  
40 official of the local government from expressing an opinion on  
41 any issue at any time.

42 Section 2. This act shall take effect July 1, 2009.