HB 359 and HB439: The final blows to Florida's growth management laws

Florida is the fastest growing state in the United States.[1] Citizens must have *all* tools necessary to fight bad decisions by local governments when they approve sprawling developments that illegally destroy our state's unique flora and fauna and natural areas, pollute our waters, and unlawfully burden taxpayers. However, since 2019, there has been a concerted effort by some lawmakers to disempower citizens from challenging development. Their plan of attack has been three-fold: First, make it financially unfeasible for most citizens to challenge a local government's approval of a development order. Second, make it financially unfeasible for most citizens to challenge a comprehensive plan or plan amendment. Third, severely limit the types of claims that citizens can bring to challenge a development order.

House Bill 7103 was the first blow to citizen rights. HB 7103 became law in 2019 and entitled the prevailing party in a challenge to a development order to recover attorney fees and costs (Section 163.3215(8)(c)). This means that citizens and public interest groups who lose in a challenge to a development order could be on the hook to pay enormous legal costs of deep-pocketed developers and local governments, which could be in the hundreds of thousands or even millions of dollars. Since HB 7103, only the Conservancy of Southwest Florida (Conservancy) and one other public interest group has had the fortitude and financial strength to challenge an illegal development, even though Florida has experienced dramatic growth.

The second prong of the attack is this year's House Bill 359 and its companion Senate Bill 540. HB359/SB540 include many disastrous provisions, including one that would entitle prevailing parties to recover attorney fees and costs in challenges to comprehensive plans and plan amendments, which again could be in the millions of dollars. These mandatory fee-shifting provisions are an assault on the public's right to due process. The other provision is a change to Florida's Community Planning Act, which would severely *limit* challenges to development orders by only allowing challenges to a provision that "materially alters the use or density or intensity of use on a particular piece of property rendering it not consistent with the comprehensive plan." In other words, any provision of development orders that does not materially alter the use, density of intensity of a piece of property will be immune from challenge. Numerous public interest groups are concerned about HB359/SB540, as is the Conservancy.

House Bill 439 is the third spur in the assault, and doubles down on limiting challenges to development orders by redefining the definition of "intensity". Under the Community Planning Act, "intensity" currently includes a development's ***demand on natural resources and demand on public facilities and services***. These terms are very important as local comprehensive plans consist of numerous policies designed to minimize a development's impact on natural resources,

[1] https://www.census.gov/library/stories/2022/12/florida-fastest-growing-state.html

such as policies to protect water resources, requirements to minimize nutrient loading and pollution of freshwater and estuarine systems, and policies to protect wetlands and habitats. Furthermore, local comprehensive plans consist of many other policies designed to minimize a development's impact on public facilities and services such as roads, schools, water, sewer, parks, and law enforcement. However, if HB439 becomes law, "intensity" would only refer to a development's measurement quantified as square feet per unit of land. Thus, the public would no longer have the right to challenge a development order due to the project's unlawful impact on natural resources and public facilities and services. HB439 would make many provisions of local comprehensive plans unenforceable.

Citizen rights to combat damaging growth must be protected. House Bill 359/SB540 and House Bill 439 strip citizen rights and remove the basis for claims related to the protection of natural resources and protection of taxpayers' wallets. If these bills become law, they will ***destroy*** growth management and community planning throughout the state of Florida. Please help us knock the legs out from under this triple attack that has been waged against citizen rights by urging your legislature to ***reject*** HB439 and HB359/SB540, and by overturning the fee-shifting provision in Section 163.3215(8)(c).

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