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POLICY BRIEF

How to Streamline Housing Permitting in Florida

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In recent years, Florida has led the nation in housing price inflation. This surge in home prices is fueled by local land use policies aimed at tempering growth, as well as by increased demand in the post-COVID economy. Although rising housing costs are a national concern, few states would benefit from land-use reform as much as Florida.

Florida's state involvement in zoning and land use has a varied history characterized by tension between pro-growth and anti-growth interests. In 1972, it enacted several landmark planning and environmental laws. Then, in 1985, Florida adopted the Growth Management Act, a law that took a skeptical attitude toward increasing the housing supply and required local governments to justify their need for growth in binding comprehensive plans. In 1995, however, the state passed the Harris Act, which requires local governments to provide compensation to landowners for certain regulatory burdens, including initiatives aimed at slowing housing growth. In 2011, the passage of the Community Planning Act shifted power back to Florida's local governments by removing the requirement for them to justify growth and refraining from giving them over-arching land use policy guidance.[1]

These legislative changes have led to a lack of clear state policy on housing supply, leaving local governments with limited guidance. New state legislative action on land use policy can help clarify points of confusion while promoting needed housing supply. To identify potential improvements to Florida's growth management and land entitlements system, we consulted experts across the state.[2]

Three key policy recommendations emerged from these conversations:

1. Standardize the process for reviewing and approving local government decisions.
2. Hold local governments accountable for their land use decisions.
3. Increase the availability of by-right approvals for housing.

Outlined below are practical solutions for advancing these recommendations.

Standardize the Process for Land Use Approvals

Florida has never adopted a state law providing a uniform procedural process for processing, approving, and holding hearings on quasi-judicial land development applications or for reviewing the decisions made at those hearings. Instead, reforms have proceeded piecemeal. Because of this, landowners and developers face a procedural maze when seeking to have their applications reviewed. Developers struggle with the lack of standardization and must adapt to the planning and permitting requirements of each local government, often needing to hire local land use attorneys, planners, engineers, and even lobbyists in every local government where they do business. Additionally, developers face a slow-moving judicial review process when an appeal is sought. And while Florida has some statutory guidelines for hearings on legislative comprehensive plan amendments, these statutes are inadequate for safeguarding the property rights and due process rights of affected landowners.

Florida's current land-use review process is labyrinthine and lacks uniformity. For example, comprehensive plan amendments that are approved by a local government are subject to review by an Administrative Law Judge at the Division of Administrative Hearings (DOAH). Landowners seeking to amend a comprehensive plan cannot appeal a denial of their amendment to DOAH, however, and instead must file their claims in circuit court under a standard of review that is highly favorable to local governments.

Zoning decisions, on the other hand, may be challenged in several ways. If a legal challenge on a zoning matter is related to comprehensive plan consistency, then the challenge by a third party is a de novo action in circuit court, yet there is ongoing debate in case law about whether an unsuccessful applicant—rather than a third party—can bring this type of action. If a resident argues that a local government's action is void, such as due to a notice defect or a violation of public records or sunshine laws, the challenge must be pursued through a declaratory judgment action in circuit court. Otherwise, the challenge must be brought as a writ of certiorari, a procedurally complex and limited form of appeal that is often unfamiliar to both judges and civil litigators. The upshot is that to appeal or challenge a land use decision in Florida, land use attorneys are often required to bring multiple claims and cases just to ensure that the case can be properly heard.

The need for reforms was recently highlighted by a judicial decision that called into question whether the City Council of Tampa—Florida's third-largest municipality—has the legal authority to conduct rezoning hearings at all.[3] The decision has been appealed but has sowed uncertainty around the state. In past years, Florida's lawmakers studied measures such as incorporating local governments into its Administrative Procedures Act or otherwise creating a statewide consistent review of local government decisions, but these efforts stalled in the past and have not been seriously debated in recent years.[4]

The time has come for Florida to adopt comprehensive legislation that standardizes how the state processes, approves, and holds hearings on quasi-judicial land development applications,

and reviews the decisions on those applications. This legislation should cover issues such as comprehensive plan amendments, rezonings, variances, and special exceptions. Legislation that addresses these procedures uniformly, consistently, and fairly will increase the speed with which development applications are heard, decrease the cost to applicants, and reduce the uncertainty that currently plagues the process, resulting in more predictability for all parties involved.

Policy Recommendations:

1. Abandon the distinction between legislative and quasi-judicial land use decisions. All land use decisions that affect identifiable properties should be subject to a single new procedural system.
2. Require that local governments appoint impartial hearing officers to make land use decisions using comprehensive plans and land development codes with specific and objective criteria. Ensure the impartiality and independence of hearing officers by, for example, prohibiting ex parte contacts from all parties, including government staff and officials. This will insulate the system from political influence.
3. Mandate timelines and deadlines for the review of comprehensive plan amendments and development orders and have consequences for noncompliance. Give applicants the right to "call the question" to require a final decision. Prohibit agencies from raising new issues after the first agency review if these issues were not impacted by changes in a resubmittal, similar to the process used in Florida's environmental permitting system.
4. Establish clear procedures for conducting hearings on applications, including providing proper notice, creating a thorough record, allowing parties to present evidence and examine or cross-examine witnesses, and ensuring a written final decision that includes conclusions of law and findings of fact.
5. Develop a consistent statutory method of appeal with clear standards of review, which could include the right to have cases reviewed by the DOAH, followed by the right to appeal to a district court of appeal.[5]

Hold Local Governments Accountable for Their Land Use Decisions

Local governments are legally required to support growth through their comprehensive plans. In practice, however, there is no mechanism to enforce this requirement because state oversight of development was severely limited in 2011 by the Community Planning Act. Local governments have taken wildly different approaches to their growth and development. Some local governments have chosen to embrace growth, while others have successfully blocked it. These inconsistent approaches shift added growth pressures onto the local governments that are diligently planning for growth, while the local governments blocking growth face few consequences for their actions. Those consequences that they do face—property rights litigation—are not strong enough.

Increasing local government accountability will require a more robust level of state direction and enforcement. In the past, state oversight was explicitly aimed at "growth management," or limiting growth. We do not propose a return to that system. Instead, a refashioned state role would focus on requiring local governments to realistically plan for and accommodate projected growth. Local governments would be given flexibility in accommodating this growth, and the state would hold them accountable for their decisions.

Policy Recommendations:

1. Require local governments to plan for growth based on data from accepted sources. Although local governments are already mandated to periodically update their comprehensive plans to reflect official population projections, periodic updates of land development codes and regulations to reflect these projections should be required.
2. Require local governments to include proven measures to increase housing production in their comprehensive plans and land development codes, such as permitting accessory dwelling units, limiting parking mandates, removing lot and unit size requirements, and initiating meaningful upzoning. To accommodate the diversity across the state and the need for local flexibility, local governments should be provided with a menu of measures from which they must choose.[6]
3. Task the state land-planning agency (the Florida Department of Commerce) with ensuring that local governments are producing enough housing and are held accountable for these new measures. For example, require the agency to review local governments' updates to their comprehensive plan and land development codes to ensure that local governments are making changes quickly enough to account for projected growth. Local governments found lacking could be subject to the state mandating changes to the comprehensive plan and land development codes.
4. Local governments that are not supporting housing could have certain state funding opportunities revoked. For example, the state should not agree to provide any development incentives, such as for affordable housing and economic development, to local governments that have artificially increased housing prices through regulatory barriers. In addition, the state should withhold funding for or halt the construction of transportation projects when local governments do not accommodate their projected growth. While some local governments might be willing to forego incentives from the state, none would seriously consider forgoing transportation projects.

Increase the Availability of By-Right Approvals for Housing

Most of the housing built in Florida requires discretionary political approvals, which often involve a protracted, unpredictable process that drives up costs. Planned unit developments (PUDs), which are zoning districts tailored to a specific site through the use of site plans and

written conditions, are at the center of this issue. PUDs were initially conceived as a regulatory release valve that could allow local governments to take unique planning concepts into account while protecting property rights. Now, PUDs are the norm in most places in Florida. Some local governments even impose regulatory requirements that mandate the use of PUDs rather than traditional zoning categories. Too often, PUDs are simply used as a means of extracting concessions from landowners and developers, making housing more expensive. It is not unusual for local governments to ask developers to provide utilities and upgrades to roads, repairs to nearby public facilities, and even public art. Additionally, they frequently impose conditions on a PUD for affordable housing commitments, unit-size limitations, and architectural design as a part of the approval process.

Custom-tailored PUDs are enabled through discretionary rezoning approvals, a process that is much less efficient in terms of time and resource allocation compared to rezoning using modern Euclidean districts. A better system would allow for more by-right (administrative) approvals of housing production where the only question is whether a proposal complies with the criteria in the regulations. A handful of local governments have resisted the trend toward allowing or requiring more discretionary approvals, which has contributed to impressive urban growth. Examples include St. Petersburg and Miami, both of which have comprehensive plans and land-development codes that attempt to minimize rezonings and maximize staff discretion in reviewing applications. Notably, Miami has a form-based code and St. Petersburg has a hybrid form-based code, both of which tend to regulate land uses less and urban form more than traditional zoning codes.

In 2023, Florida passed the Live Local Act (the Act), pro-housing legislation that partially preempts local zoning regulations by legalizing residential construction in areas zoned for commercial, industrial, or mixed use.[7] Developers qualify by dedicating 40 percent of a project's dwelling units to affordable and workforce housing. The Act allows for administrative approval of projects, enabling significantly higher densities and intensities in exchange for below-market rents on 40 percent of the units. However, the success of the Act is challenged by PUDs, as many local governments have argued that the Act does not apply to these areas.

There are several ways to increase by-right approvals and thereby increase the supply of new housing by building on the recent success of the Live Local Act. We recommend that Florida amend the Act to strengthen its impact and build upon this initial success as follows.

Policy Recommendations:

1. Amend the Act to state that it applies to all land within PUDs or similar site-plan-controlled zoning categories that allow for the construction of commercial, industrial, or mixed-use projects.
2. Extend the success of the Act to allow additional development opportunities on land owned by religious and charitable organizations (a concept that has become known as

"Yes in God's Backyard"). The Act could also allow development on other institutional land.

3. In municipalities greater than 100,000 people, allow by-right (administrative) approval for building up to four units on all single-family lots within one mile of the central business district.
4. Expand the Act's preemptions for density, intensity, and height to include all zoning categories that allow for multifamily-level density, such as 10 units per acre, rather than limiting it to areas with nonresidential uses.
5. Encourage local government buy-in to the Act's objectives through appropriate incentives. Since the Act is only a partial preemption, more power could be given to local governments under limited circumstances. For example, the Act could be amended to provide that local governments that permit a certain residential density by right in all commercial and mixed-use zoning districts may choose to remove an industrial zoning district from the Act's reach. Or perhaps the jurisdiction could choose to require a different level of affordable housing (such as substituting the current requirement of 40 percent of the project at 120 percent of the Area Medium Income [AMI] with 20 percent of the project at 80 percent of AMI).[8] Finally, any of the Act's mandates could be relaxed if a local government is aggressively planning for projected growth as discussed above.

Conclusion

Florida's land use regulatory system is in urgent need of significant reforms to increase and streamline housing production. Three key policy changes are in order. First, the process for reviewing, approving, and challenging local government decisions on land development applications should be standardized across the state. Second, local governments should be given flexibility in meeting their projected growth targets but must be held accountable for their decisions. Finally, opportunities for by-right administrative approvals should be increased by refining and building upon the initial success of the Live Local Act.

About the Authors

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local government officials on zoning matters. He has also served as a local elected official and as an active participant in state policy making on the Connecticut Advisory Committee to the US Commission on Civil Rights and on the Commission on Connecticut's Development and Future. He received his JD from Vanderbilt University Law School.

Notes

1. Fla. Stat. Ann. §§ 163.2511-163.3253 (2023).
2. We interviewed a broad variety of individuals and interest groups to ensure a wide range of experience and positions, including land use attorneys, land planners, housing associations, and local government planners with development experience in all regions of the state. Interviewees were provided with a template of questions in advance (which are on file with the authors).
3. *Liberty Hospitality Mgmt., LLC v. Tampa,* Order Dismissing Petition for Writ of Certiorari, Case No. 22-CA-5055 (Fla. 13th Cir. Ct. July 29, 2024).
4. Robert Lincoln, "Executive Decisionmaking by Local Legislatures in Florida; Justice, Judicial Review and the Need for Legislative Reform," 25 Stetson L. Rev. 627 (1996).
5. Such a system has been extensively studied in the past. Indeed, one legislative committee concluded that a system of effective review could be implemented relatively easily using Florida's system of administrative review that has worked well for environmental laws and some limited land use challenges. Florida Senate Committee on Community Affairs, "Land Use Board of Appeals," Interim Project Report 2006-107 (2006).
6. Eli Kahn and Salim Furth, "Laying Foundations: Momentum Continues for Housing Supply Reforms in 2024" (Mercatus Policy Brief, Mercatus Center at George Mason University, July 22, 2024); Emily Hamilton, Salim Furth, and Charles Gardner, "Housing Reform in the States: A Menu of Options for 2024" (Mercatus Policy Brief, Mercatus Center at George Mason University, August 23, 2023).
7. S.B. 102 Florida Legislature (2023), modified by S.B. 328 Florida Legislature (2024).
8. Salim Furth and Eli Kahn, "Office Overhauls and 'God's Backyard': Reforms for Housing in Commercial Zones and Faith Land" (Mercatus Policy Brief, Mercatus Center at George Mason University, May 1, 2024).