TLCPD

*Tallahassee-Leon County Planning Department*

# MEMORANDUM

*To:* **Cherry Shaw, Assistant County Attorney**

*From:* **Enid Ehrbar, Senior Planner**

*Date:* **February 7, 2003**

*Subject:* **Planning Commission Consistency Findings on Exemptions to Legal Access Requirements**

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The Tallahassee-Leon County Planning Commission reviewed the modifications to Chapter 10, Section 10-1527 (a) that provides for exemptions to legal access requirements for lots of record and voted 5 - 0 to find the changes consistent with the Comprehensive Plan. A copy of the consistency review and the ordinance are attached to this memo.

If you have any questions regarding the Planning Commission's action, please call me at 891-8600.

TLCPD

*Tallahassee-Leon County Planning Department*

# MEMORANDUM

*To:* Members of the Tallahassee / Leon County Planning Commission
*From:* Enid Ehrbar, Senior Planner
*Date:* January 25, 2003
*Subject:* Consistency Review for Licenses of Way as Legal Access

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The Planning Department staff has been asked to review the proposed revisions to Section 10-1527 of the Leon County Code of Laws entitled "General Layout Design Standards" for consistency with the Comprehensive Plan. Staff has reviewed versions of this ordinance previously. The Planning Commission reviewed this ordinance in September of 2001 and had additional questions and continued their review (see attached minutes, Attachment 2). Because of staff changes in the County Attorney's office, the consistency review was not rescheduled before the Planning Commission. It is now being brought back to you for consistency review with the Comprehensive Plan. The ordinance has been amended substantially since the last review before the Planning Commission.

Staff has reviewed the proposed changes in relation to the Comprehensive Plan policies and finds the proposed ordinance consistent with the Plan based on the limited policy language contained in the Plan, as well as the limited application of this change to the land development regulations. The Plan does not contain language that addresses this issue directly. The Plan does contain limited policies on the matter of legal access, such as access for canopy roads and access to arterial roads by new subdivisions. During the previous review of this ordinance the Planning Commission was concerned about the health, safety and welfare issues related to access and wondered if there was any language in the Plan that might relate to this. The Plan does contain Transportation Policy 1.5.11, which states the following:

*1.5.11: Land development regulations shall establish standards for access to development in order to protect emergency access and to promote convenient daily use. Land development regulations standards for access shall be based upon established guidelines, which are reviewed and interpreted to reflect local conditions and experiences. These standards shall:*

1. *establish a range of allowable dwelling units and non residential floor area which may be served by a single point of access to a public street;*
2. *establish criteria for length of public and private streets from a single point of access; and*
3. *establish criteria for emergency vehicle access in terms of turning radius, slope, roadway width, and roadway surface.*

Generally very specific provisions of such limited application do not raise Comprehensive Plan consistency issues, and land development regulations often allow for flexibility to deal with special circumstances. The policy above states that the land development regulations must establish access criteria in order to "protect emergency access and to promote convenient daily use." In general, that is what the land development regulations do. In this case however, the proposed land development regulation is establishing a limited exception to the general rule that may not protect access to a limited number of parcels. It is significant, however, that the ordinance, as redrafted, does not allow creation of new parcels without standard access. The purpose of the ordinance is to allow issuance of permit for parcels that have existed since well before adoption of the Comprehensive Plan.

This ordinance language allows access to property other than a publicly dedicated street or access easement. This alternative is referred to as a "license of way." It is an agreement between property owners to allow one owner access to their property through the others, while not requiring a dedicated road or access easement. It is staff's understanding that this language is intended to allow persons with historic in-holdings in areas such as large plantations to receive permits for buildings, even though they are not on dedicated roadways. The original County code did not allow permits to be issued without legal access to a dedicated street. This was changed with the adoption of the modifications to the access requirements in February of 2001. The larger land owners were not willing to grant road easements or rights of way, but it had been staff's understanding that they would be willing to allow the land owner to continued access through this mechanism.

After adoption the Board was notified that the new language to allow the license of way was not adequate because landowners did not want to sign agreements to ensure continuing access. This has resulted in this additional modification that allows an access waiver for a lot of record created on or prior to January 1, 1984 that has existing access at the time a permit is applied for and that has access through one or more adjoining large parcels (1000 acres or larger).

This proposed modification to the land development regulations would allow the issuance of a building permit for the construction of at least one single family dwelling on property even if legal access has not been established. County Growth Management, the County Attorneys Office and the Planning Department have previously expressed our concerns regarding this modification, but were directed to assist in resolving the issue that was keeping a landowner from acquiring a permit for residential use. This proposed modification to the access ordinance narrows the focus of the exemption, and allows the

resolution of the situation that brought the request for these modifications. The Planning staff cautions that not requiring legal access could later cause problems for affected lot owners if the larger landowner decides to terminate the "gentlemen's agreement" that allows the smaller parcel to have access across the larger piece of land. This could be precipitated through subdivision of the larger piece of land, with sale to another owner, or through an act of the current owner. The land owner being deprived of access would likely turn to the government to remedy the situation much as this land owner has done, even though the proposed language seeks to hold the County harmless for unanticipated problems caused as a result of access to the property being denied in the future. Access for emergency and law enforcement vehicles could also be compromised. The current language, however, would greatly limit the number of circumstances in which these problems might occur.

Although due to the limited application and the wording of the Comprehensive Plan policy, this does not appear to rise to the level of a Comprehensive Plan consistency issue, staff is very concerned that this proposed language may have unintended consequences as described above.

cc: Jean Gregory

Attachment 1. Ordinance
Attachment 2. September 19, 2001 Planning Commission Minutes