BOARD OF COUNTY COMMISSIONERS

INTER-OFFICE MEMORANDUM

To: Honorable Chairman and Members of the Board of County Commissioners
Parwez Alam, County Administrator
Gary Johnson, Director of Community Development

From: Herbert W.A. Thiele, Esq.
County Attorney

Date: May 14, 2002

Subject: CS/SB's 1906 & 550 - Revisions to the Local Government Comprehensive Planning and Land Development Act of 1985

Attached for your information and review is an "Update" prepared by our office on a bill that was recently adopted by the Florida Legislature. The enclosed Update was presented last week at the City, County and Local Government Law Certification Review Course held in Sarasota, Florida. The subject bill (CS/SB's 1906 & 550) revised Part II of Chapter 163, Florida Statutes (the Local Government Comprehensive Planning and Land Development Act of 1985), and will authorize a local government to establish a "special master process" for quasi-judicial proceedings associated with challenges to development orders.

Should you have any questions regarding this matter, please contact the County Attorney's Office.

Encl.

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**** UPDATE: A NEW OPTION, THE SPECIAL MASTER PROCESS ****

CITY, COUNTY AND LOCAL GOVERNMENT LAW
CERTIFICATION REVIEW COURSE
SARASOTA, FLORIDA
MAY 9, 2002

Herbert W. A. Thiele, Esq.
County Attorney
Leon County, Florida

In late March of 2002, the Florida Legislature adopted CS/SB's 1906 & 550, which forged a number of changes to Part II of Chapter 163, Florida Statutes (the Local Government Comprehensive Planning and Land Development Act of 1985). As of May 3, 2002, this bill has not been sent to the Governor, but the Governor has indicated in major newspapers that he supports the bill. Attached hereto is a copy of the pertinent sections of the bill that are reviewed below.

Notably, Section 163.3215, Florida Statutes, as revised by CS/SB's 1906 & 550, will authorize a local government to establish a "special master process" to address quasi-judicial proceedings associated with development order challenges. If a local government establishes this special master process, then the sole method by which an aggrieved and adversely affected party may challenge a decision of a local government granting or denying an application for a development order (as defined in Section 163.3164, F.S.), which materially alters the use or density or intensity of use on a particular piece of property, is by a petition for writ of certiorari filed in the circuit court. The petition for writ of certiorari must be filed in circuit court no later than 30 days following rendition of a development order or other written decision of the local government, or when all local administrative appeals have been exhausted, whichever occurs later. Under the special master process, owners, developers and applicants are provided the same methods available to third parties to appeal and challenge the consistency of a development order with a local comprehensive plan.

CS/SB's 1906 & 550 set forth the minimum components of the "special master process," including, in part, as follows:

(a) Notice provisions;

(b) A "clear point of entry" consisting of a written preliminary decision, with the time to request a quasi-judicial hearing running from the issuance of the written preliminary decision (note, however, that the local government is not bound by the preliminary decision);

(c) An opportunity for participation in the process by an aggrieved or adversely affected party;

(d) An opportunity for the disclosure of witnesses and exhibits prior to the hearing, and an opportunity for depositions of witnesses;

(e) A quasi-judicial hearing before an impartial special master who is an attorney with at least 5 years' experience; and

(f) An opportunity by all parties to present arguments and evidence (including public testimony), conduct cross-examination, and submit rebuttal evidence.

Furthermore, the local government's "special master process" may not require a party to be represented by an attorney in order to participate in the hearing. "Strict scrutiny" shall be the standard of review to be applied by the special master, and the local government is bound by the special master's findings of fact, unless said findings are not supported by competent substantial evidence. The governing body may, however, modify the conclusions of law if it finds that the special master's application or interpretation of the law is erroneous. Finally, the local government's final decision must be reduced to writing, including findings of fact and conclusions of law.

If the special master process is not adopted by a local government, then the developer or third party may bring a de novo action to challenge the local government's decision. This is in contrast to the system afforded prior to the bill's adoption, which had a developer challenging the decision by a writ of certiorari, and a third party challenging the decision by a de novo action. The de novo action must be filed no later than 30 days following rendition of a development order or other written decision, or when all local administrative appeals are exhausted, whichever occurs later.

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