

The Miami Herald

July 25, 2011

BUSINESS MONDAY

The next generation of Florida's growth management

BY SUSAN L. TREVARTHEN
Special to The Miami Herald

On June 2, 2011, Gov. Rick Scott signed into law House Bill 7207, the Community Planning Act. What will it mean for the residents, visitors, businesses and communities of Florida?



TREVARTHEN

Developers and those who oppose regulation are cheering. They argue that existing laws have stymied growth and delayed recovery from the Great Recession of the 21st century.

Environmentalists have raised concerns about decreased state scrutiny, decreased ability to challenge, and the potential impact of the legislation on land conservation.

Many planning advocates mourn what they see as the

death of growth management in Florida. They know that planning is an art, an iterative process of learning from mistakes and developing a vision over time. Because planning mistakes have long lives, the full impact will not be felt for years.

Cities and counties are celebrating the removal of some state mandates, while pointing out that many mandates remain, and raising concerns about the limitations on their continued ability to require growth to pay for itself. Some built-out cities see little change, because they already qualified for flexible treatment under the law.

Finally, many realize that the Act will not have much impact until the economy recovers, and the market for new development and redevelopment strengthens.

Prosperity requires more than just reducing regulation. Economic develop-

ment requires quality of life and an educated workforce. Appropriate state spending and investment in universities, schools and in initiatives that support the area's businesses, also are key.

There are many implications, both good and bad. The Act allows those who want to develop wisely to do so, and it addresses some "one size fits all" features of the prior law that prevented the best outcomes for some areas of the state. However, you don't write laws for those who want to do the right thing. You write laws to provide an enforceable minimum.

Stop signs are based on the need to protect others from the impacts of your driving decisions, and do not depend on your subjective intention as a driver. A traffic law that made it optional to respect a stop sign would be making a value judgment that it is accept-

able for people to be protected from being T-boned at intersections only some of the time, and that they can fend for themselves the rest of the time. Most people accept the stop sign, because the goal of safety is self-evident. They would never think of stopping as optional.

In community planning, we do not all approach the "stop sign" in the same way. We have different abilities to harm others and protect ourselves; the single family homeowners are driving around in Cooper Minis, the small infill developers drive 8-cylinder pickup trucks and some large scale commercial and residential developers have hired stunt drivers to handle fleets of armored personnel carriers.

Community planning is not as self-evident as traffic regulation because different communities have different visions. West Palm Beach

has planned a mid-scale environment on its downtown waterfront, with limitations in its charter on the height of buildings closest to the water. Miami, 70 miles to the south, has embraced the urban dynamism of star-studded architectural monuments, dozens of stories tall, directly on Biscayne Bay. That diversity was often discussed this session, where the Community Planning Act was sometimes promoted to "let cities be cities."

The Act expresses the intent to preserve community planning, celebrate the diversity of aims to which it could be dedicated and enable it to be more fully expressed through local planning regulations. The concern is whether the details in 350 pages of legislation, crafted hurriedly in the last, intense days of the legislative session (and not even debated a single time on the floor of the Florida Senate),

adequately assure that every development decision, not just the well-meaning ones, will implement that laudable intent.

Good outcomes are possible without state mandates. The Community Planning Act may open the door to progress where onerous regulations previously blocked the way. But communities should proceed carefully in exercising their new-found freedoms, so that they do not inadvertently discard appropriate regulations that could lead them to a brighter, more enjoyable and more prosperous future.

Susan L. Trevarthen is a member and chair of the municipal land use and zoning law group of Weiss Serota Helfman Pastoriza Cole & Boniske, P.L. in Fort Lauderdale. She is a board-certified local government attorney.