

# *AFFORDABLE HOUSING* LEGISLATION

2019 Session:  
**HB 7103**

FLORIDA HOUSING COALITION





# Our Thanks to the Florida Housing Catalyst Program



**AFFORDABLE HOUSING CATALYST PROGRAM**

## Sponsored by the Florida Housing Finance Corporation



we make housing affordable™

THE FLORIDA HOUSING COALITION



# FACILITATOR ▪



Michael Chaney  
TECHNICAL ADVISOR  
FLORIDA HOUSING COALITION



## *Affordable Housing Innovations in HB 7103*

APA COURSE Number: 9181088

CM Credits: 1

<https://www.planning.org/events/eventsingle/9181088/>

THE FLORIDA HOUSING COALITION



# INTRO of PANELISTS



**Jaimie Ross**

*PRESIDENT & CEO  
FLORIDA HOUSING COALITION*



**Thomas Hawkins**

*Program Director of the online Master of Urban and  
Regional Planning Program and  
Lecturer in the College of Design, Construction and  
Planning  
UNIVERSITY OF FLORIDA*



**Jeff Branch**

*LEGISLATIVE ADVOCATE  
FLORIDA LEAGUE OF CITIES*

THE FLORIDA HOUSING COALITION





# AGENDA

- Inclusionary zoning – how to craft an ordinance that meets the new law; Keys plan, state definition of essential service personnel
- Impact fees- timing for collection (new provision) and exemption for affordable housing
- Expedited permitting—this section applies to all development, not just affordable housing- doesn't change the expedited requirement for affordable housing in SHIP law
- Surprising/disturbing items added to the Housing bill
  - Thwarting of Growth Management enforcement
  - Condo/High Rise fire safety
  - Private Provider provisions
- Conversation about Home Rule

THE FLORIDA HOUSING COALITION



# INCLUSIONARY ZONING

PRESENTED BY



Jaimie Ross  
President & CEO  
*FLORIDA HOUSING COALITION*

THE FLORIDA HOUSING COALITION





# State Law

Every jurisdiction in Florida has the obligation to provide for housing its entire current and anticipated population, including the most vulnerable, such as those with special needs and farmworkers.

- Chapter 163.3177 (6)(f)



THE FLORIDA HOUSING COALITION



# The Housing Element of the Comprehensive Plan

- The Housing Element requirement does not mean that local governments have to build all this housing themselves....
- It does mean that local government should use its police powers (to carry out laws for the health and safety of its residents), its land use authority, and its compliance with the spirit and intent of fair housing and affordable housing laws to create an environment in which affordable housing will be provided by the private sector.



# How is Housing Made Affordable? Government Resources

- Land Use  
Planning/Permitting
- Financing/Long  
Term Affordability



THE FLORIDA HOUSING COALITION



# Land Use Planning/Permitting

- Local government's role is to create an environment conducive for the private sector to produce affordable housing.
- Local land use planning and regulatory reform can promote affordable housing.



THE FLORIDA HOUSING COALITION





# Regulatory Reform contained in HB 7103 intended to promote affordable housing

- Inclusionary housing policies
- Impact fee waivers and impact fee timing
- Expedited permitting

THE FLORIDA HOUSING COALITION



# Land Use Planning that Promotes Affordable Housing Supported in State Statute

- Section 125.01055 (166.0415) Affordable Housing. – Notwithstanding any other provision of law, a county (municipality) may adopt and maintain in effect any law, ordinance, rule, or other measure that is adopted for the purpose of increasing the supply of affordable housing using land use mechanisms such as inclusionary housing ordinances.



# Inclusionary Housing

- A local land use regulation (planning tool) that requires the market rate housing developer to include a percentage of affordable housing within the market rate development
- Variety of forms: ordinance, overlay district, negotiated development agreement

# Guidelines provided for Local Governments in HB 7103

- New statutory provision: An inclusionary housing ordinance may require a developer to provide a specified number or percentage of affordable housing units to be included in a development or allow a developer to contribute to a housing fund or other alternatives in lieu of building the affordable housing units.



# Guidelines provided for Local Governments in HB 7103

- In exchange, a county must provide incentives to fully offset all costs to the developer of its affordable housing contribution. Such incentive may include, but are not limited to:



# Guidelines provided for Local Governments in HB 7103

- (a) Allowing the developer density or intensity bonus incentive or more floor space than allowed under the current or proposed future land use designation or zoning;
- (b) Reducing or waiving fees, such as impact fees or water and sewer charges; or
- (c) Granting other incentives.





# Positive effect from HB 7103

- Should reduce local government hesitance to mandate affordable housing in exchange for increased development rights.
- But now it is even more important for local governments to stop enriching private land owners at the expense of the public.
- How?

# Land Value Capture

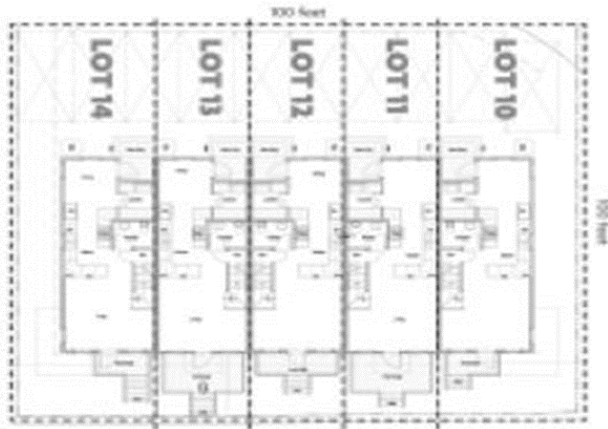
- Recognize that land use changes or “up-zonings” create value for the private sector
- Inclusionary requirement returns a portion of that increase in value for the benefit of the public as required by the housing element law
- Local Government should never provide land use benefits (e.g. form-based zoning, approved PUD, master planned community) without getting affordable housing in exchange.

# Inclusionary Housing: Keeping the Developer Economically Whole

INCLUSIONARY HOUSING

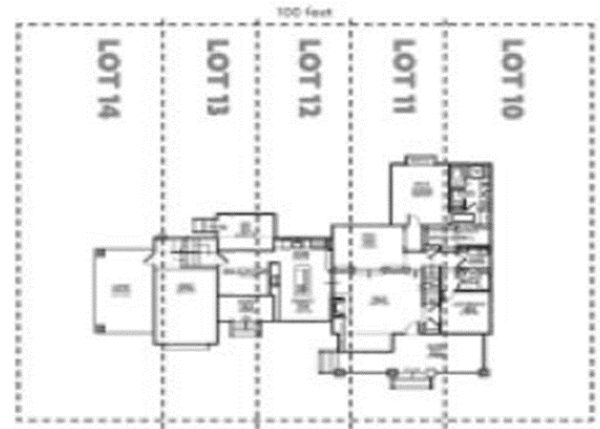


K2 - INCLUSIONARY HOUSING  
TALLAHASSEE, FLORIDA



5 inclusionary lots on 1/4 acre

ESTATE HOME



1 estate lot on 1/4 acre

THE FLORIDA HOUSING COALITION



# Density and Intensity



THE FLORIDA HOUSING COALITION





# Financing & Affordability

- Subsidy to the developer for construction or rehabilitation of housing which will be sold at an affordable price or rented at an affordable rent
- The private sector builds and manages affordable housing
- Subsidy agreements require long term affordability and compliance monitoring for rental
- For affordable homeownership, typically recapture agreements, some moving toward permanent affordability with CLTs.

# The Keys

- FHFC is directed to create new affordable workforce housing opportunities to essential services personnel in areas of critical state concern

## Findings:

- The lack of affordable workforce housing has been exacerbated by the dwindling availability of developable land, environmental constraints, rising construction and insurance costs, and the shortage of lower-cost housing units.
- As this state's population continues to grow, essential services personnel vital to the economies of areas of critical state concern are unable to live in the communities where they work, creating transportation congestion and hindering their quality of life and community engagement.

# Essential Services Personnel

- Amends Section 420.503 to provide in 420.503 (18) a new definition of “essential services personnel” to mean natural persons or families whose total annual household income is at or below 120 percent of the area median income, adjusted for household size, and at least one of whom is employed as police or fire personnel, a child care worker, a teacher or other education personnel, health care personnel, a public employee, or a service worker.
- Only applies to the Community Workforce Housing Innovation Pilot (CWHIP) Program. Local governments are still free to define “essential services personnel” in accordance with their SHIP local housing assistance plan (LHAP).

- IMPACT FEES
- EXPEDITED PERMITTING
- MANDATORY ATTORNEYS FEES

PRESENTED BY



Thomas Hawkins

Program Director, online Master of Urban  
and Regional Planning Program and  
Lecturer in the College of Design,  
Construction and Planning




*UNIVERSITY OF FLORIDA*

THE FLORIDA HOUSING COALITION





# Impact fee changes

- Section 5 of Ch. 2019-165 (on page 5)
- Local government cannot collect impact fees earlier than the date of issuance of building permit. 
- Local government must grant impact fee credit for any proportionate share agreement payment (or any other exaction) related to public education facilities. 
- “Impact fee credits” get superpowers! 

THE FLORIDA HOUSING COALITION




# Impact fee changes

- Codifies dual rational nexus test
- Test has two parts:
  - Local government must demonstrate a reasonable connection, or rational nexus, between the need for additional capital facilities and the growth in population generated by the development.
  - Local government must show a reasonable connection, or rational nexus, between the expenditures of the funds collected and the benefits accruing to the development.
- Florida Supreme Court adopted test in 1991 decision *St. Johns County v. Northeast Florida Builders Association, Inc.*

THE FLORIDA HOUSING COALITION



# Impact fee changes

- Local government may waive impact fees for affordable housing. 
- Good thing for affordable housing advocates and affordable housing developers.
- Essentially permission by Legislature to not meet second prong of dual rational nexus test.

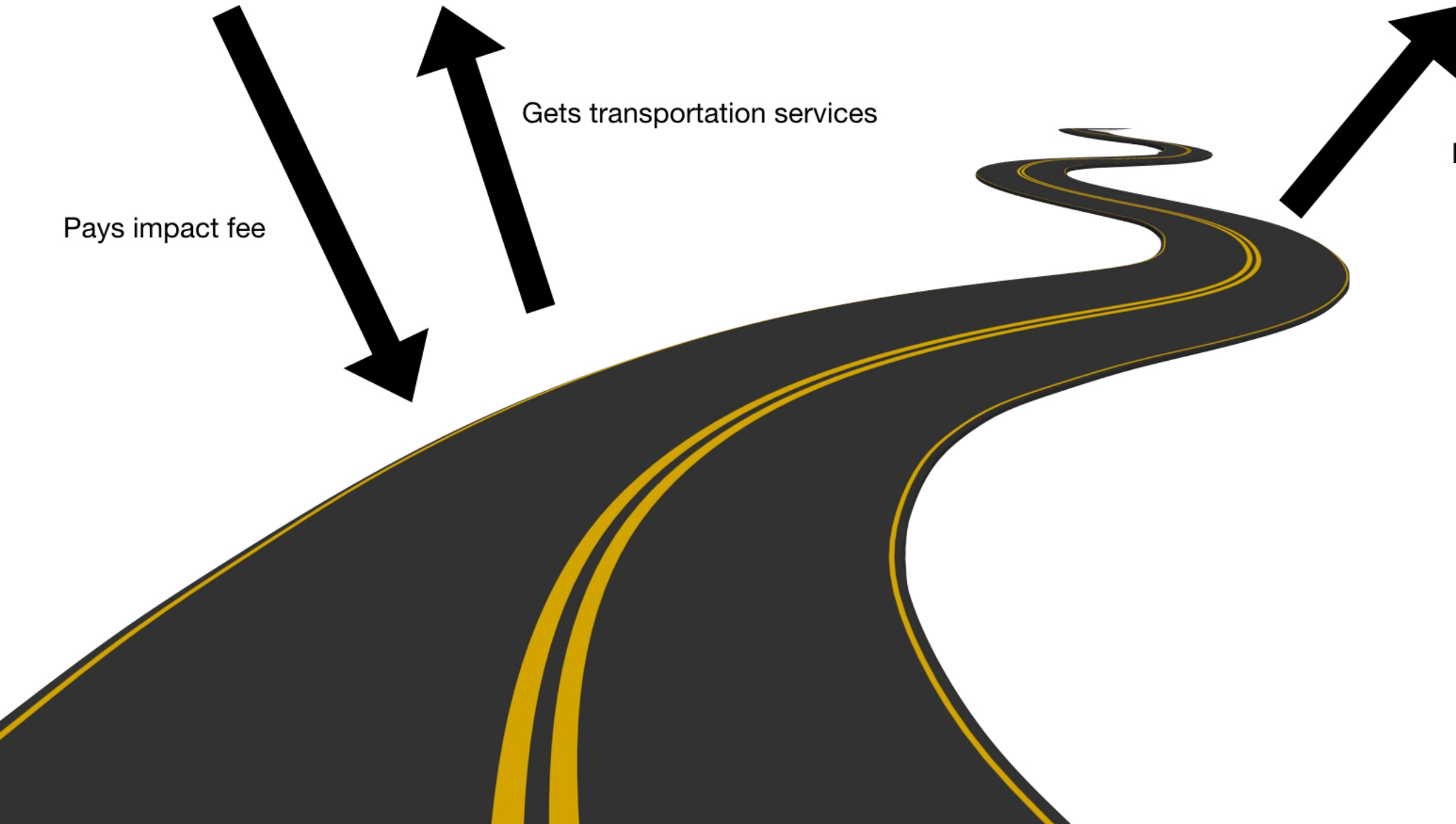
Developer of market rate housing

Developer of affordable housing

Gets transportation services

Pays impact fee

Doesn't pay impact  
fee, still gets  
transportation  
services



# TAXES AND FEES

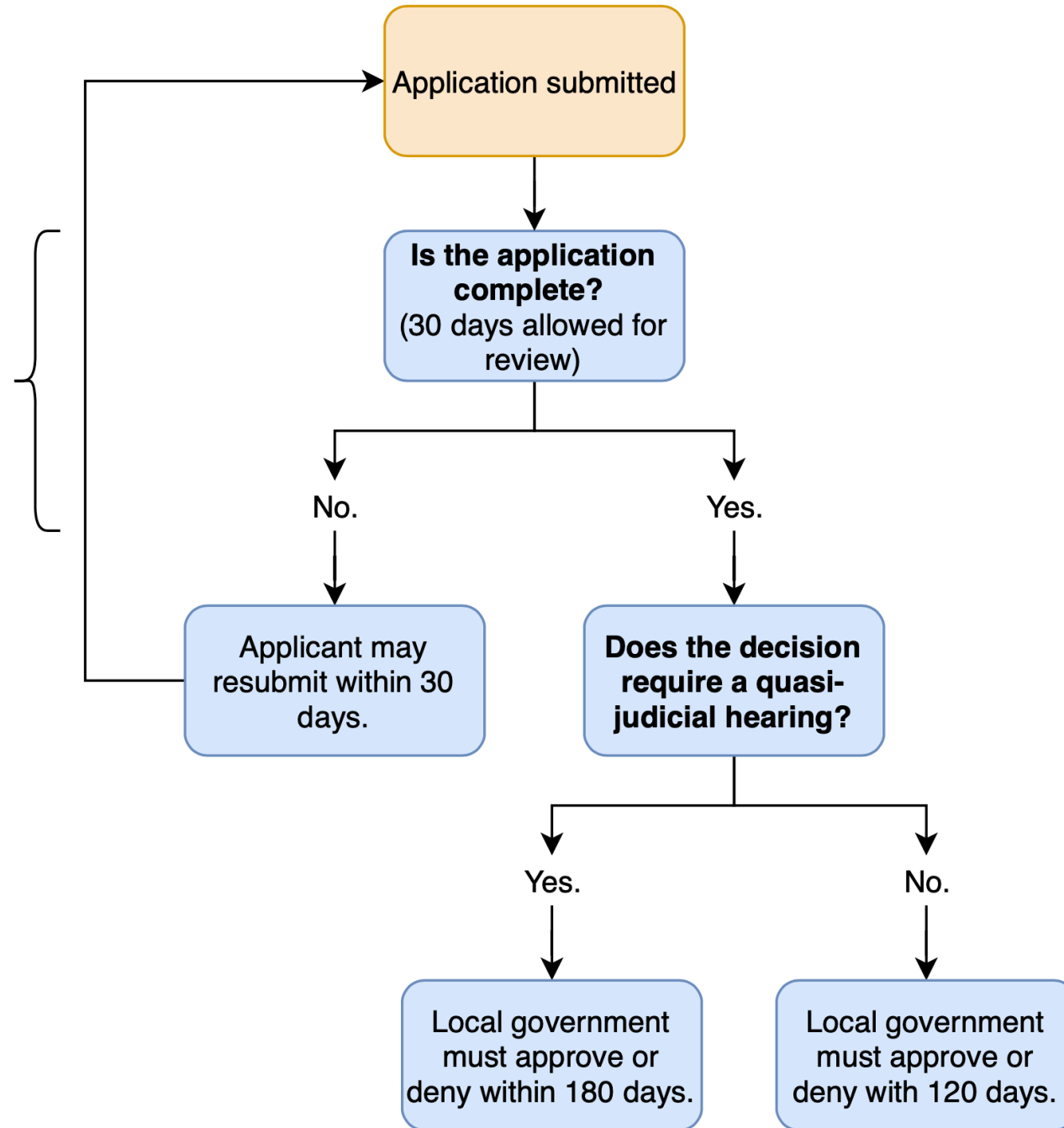
	<b>Amount charged is in proportion to government service delivered</b>	<b>Charged person may choose whether to pay</b>	<b>Requirement to be lawful</b>
<b>TAX</b>	<i>No.</i> Taxes are general government revenues which need not be spent to benefit specific taxpayers.	<i>No.</i> Paying taxes is compulsory.	State law must specifically authorize a local government tax.
<b>FEE</b>	<i>Yes.</i> Fees are charged in exchange for a service rendered and some reasonable relationship exists between the amount of the fee and the value of the service.	<i>Yes.</i> Fees are charged only to persons choosing to use the service which is the subject of the fee.	The impact fee must meet the dual rational nexus test.



# Development approval timelines

- For counties, Section 2 of Ch. 2019-165 (on page 3)
- For cities, Section 8 of Ch. 2019-165 (on page 9)
- State law now requires local governments to reach a decision on development applications within 120 days or 180 days of determination that application is complete.

Local government may  
request additional  
information only three  
times.



# Development approval timelines

- Applies to “development orders” and to “development permits”
- These terms are defined broadly but exclude:
  - building permits, and
  - comprehensive plan amendments.
- Applicant and local government may mutually agree to a longer timeline.
- The statute does not provide a penalty for a local government failing to meet deadlines. But an applicant could pursue judicial remedy.

# Mandatory attorney fees for consistency challenges

- Section 7 of Ch. 2019-165 (on page 9)
- Entitles parties to consistency challenges to summary procedures
- Entitles prevailing parties to consistency challenges to recover attorney fees and costs
- **THESE CHANGES EFFECTIVELY END COMPREHENSIVE PLAN ENFORCEMENT IN FLORIDA**



**Growth Management**

A 3D architectural rendering of two classical columns supporting a horizontal beam. The columns are fluted and have papyrus capitals. The beam is a solid, light gray rectangular block. The text "Growth Management" is inscribed on the top surface of the beam in a bold, black, serif font. The perspective is from a low angle, looking up at the columns and beam against a plain white background.

# Compliance

- Requirement that local government comprehensive plans **comply** with minimum standards set by state law
- Primary enforcement by State of Florida
- Citizens may also petition for review

# Consistency

- Requirement that all local government development orders be **consistent** with the applicable comprehensive plan
- No state enforcement
- Only enforcement is by citizens using Florida Statutes section 163.3215



**Community Planning Act**  
Standards for growth management in  
ch. 163, Florida Statutes



**Compliance**

**Local government  
comprehensive plan**  
Local plan for growth



**Consistency**

**Development orders**  
Decision whether to approve  
development

The Local Government Comprehensive Planning Act of 1975 “failed to provide state government with any teeth to enforce effective local government planning.”

— Richard G. RuBino and Earl M. Starnes, in *Lessons Learned*

THE FLORIDA HOUSING COALITION



- PRIVATE PROVIDERS
- HIGH RISE CONDO FIRESAFETY
- DISCUSSION OF HOME RULE IN GENERAL

PRESENTED BY



Jeff Branch  
Legislative Advocate  
*FLORIDA LEAGUE OF CITIES*

THE FLORIDA HOUSING COALITION



# General Information

- It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public's health, safety, and welfare. Every local government must enforce the Florida Building Code and issue building permits.
- Private Providers: licensed building code administrators, engineers, and architects.

S. 553.72, F.S.

Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

THE FLORIDA HOUSING COALITION



# Private Providers

- Expands definitions of plan review and inspections substantially
- Includes site work and site plans carried out by other city departments
- Limits the number of times a private provider can be audited
- Prescribes strict time limits for reviews
- Prohibits a local jurisdiction from charging an inspection fee & only allows a “reasonable administrative fee”



# High-rise condominium safety

- Sections 15 through 17 of Ch. 2019-165 (on page 18)
- Florida law requires older condominium and co-op high-rise buildings to be retrofitted with sprinklers or emergency life safety systems.
- Owners may, by majority vote, may forgo firesafety retrofits.
- Bill extends deadline for firesafety retrofitting from 2020 to 2024.



# High-rise condominium safety

- Bill excludes individual balconies from safety requirement that handrails and guardrails be retrofitted.
- State Fire Marshal must author study by July 2020 identifying high-rise condominiums statewide which are not retrofitted for firesafety.

# Home Rule General Discussion

- Since 1968, Floridians have recognized the need for cities to have Home Rule Powers.
- Powers gives each city the flexibility and authority to craft its laws specifically to its own unique needs.
- Quote by Gov. DeSantis on why he vetoed HB 1299

“These measures have not, as far as I can tell, frustrated any state policy or harmed the state’s interests,” “Under these circumstances, the state should simply allow local communities to address this issue through the political process. Citizens who oppose plastic straw ordinances can seek recourse by electing people who share their views.”

THE FLORIDA HOUSING COALITION





THE FLORIDA HOUSING COALITION



# POLL

I want more information on:

- Inclusionary Zoning
- Expedited Permitting
- Impact Fees
- No more information needed







# AFFORDABLE HOUSING CONFERENCE HOME MATTERS IN FLORIDA

REGISTER NOW!

AUGUST 26-28, 2019 | ROSEN CENTRE HOTEL | ORLANDO

Florida's premier statewide affordable housing training and technical assistance event brings together more than 800 housing professionals from every part of Florida, including housing developers, service providers, planners, public and private sector funders, and advocates.

## LEARN FROM INDUSTRY EXPERTS

### State of the State

Plenary forum of hot topics including Opportunity Zones, long term affordability, and disaster recovery.

### Housing Success Stories

Home Matters Showcase. We celebrate success by lifting up the approaches and strategies that have worked.

## CONFERENCE SYMPOSIUMS

- SHIP Administrators' Training sponsored by Florida Housing Finance Corporation
- Florida Community Land Trust Institute Certification Program sponsored by Freddie Mac
- ...And more.

## NETWORK WITH PEERS

Share lessons learned with colleagues from across the state:

- Florida Realtors
- Housing Counselors
- Utility Companies & Energy Efficiency Partners
- Planners and Local Government Administrators

## WORKSHOPS AND WORKSHOP TRACKS

More than 30 workshops and workshop tracks



For more information,  
contact the  
Florida Housing Coalition at  
[info@flhousing.org](mailto:info@flhousing.org) or  
850-878-4219.

# Thank you

- The Florida Housing Coalition is a statewide nonprofit that provides training and technical assistance to local governments and their nonprofit partners through the Catalyst Program for Training and Technical Assistance administered by the FHFC.
- Contact [ross@flhousing.org](mailto:ross@flhousing.org) for more information.

THE FLORIDA HOUSING COALITION

