29

SINGLE SOURCE AWARD **BID # SS-13392-23**

Subject: ANNUAL FEE FOR SUPPLEMENTATION OF LEGISLATION/HOSTING AND COPIES OF JACKSONVILLE MUNICIPAL CODE

Department: JACKSONVILLE CITY COUNCIL

Description of Purchase:
Recommend approval of a Single Source award to CivicPlus, LLC dba Municode, Inc. for the Annual Fee for supplementation of legislation, online code hosting, up to five (5) semi-annual print copies, one-time codification of existing charter, code and zoning code of the Jacksonville Municipal Code for the Jacksonville City Council. Period of service is for a five (5) year term from date of award with two (2) three (3) year renewal options. Annual cost is $30,520.00 (including a 3% increase each renewal year). Total award expenditure amount not-to-exceed $145,000.00.

Funding Source: 00111.221001.531090.000000.00000000.00000.0000000 - To be executed by Signed Agreement through Office of General Counsel and processed via Purchase Order.

Single Source Award To: CivicPlus, LLC dba Municode, Inc.

Price Justification: See attachment

Total Award: $145,000.00 **Requisition #:** CCSS-500008-23

Attachments: Agency Memo, Single Source Form, Supplier Quote

Certification as to Single Source: Margret M. Sidman, Director/Council Secretary

THE ABOVE PURCHASE IS RECOMMENDED FOR AWARD IN ACCORDANCE WITH CHAPTER 126.206.

Analyst: Olive Wallace-Cohen

Dustin Freeman, Chief
Procurement Division

APPROVAL OF GENERAL GOVERNMENT AWARDS COMMITTEE

"ALL AWARD ACTIONS SUBJECT TO LAWFULLY APPROPRIATED FUNDS"

CHAIRMAN ***DATE***

ACTION OF AWARDING AUTHORITY DATE: _____

APPROVED_____ DISAPPROVED _____

OTHER _____

SIGNATURE OF AUTHENTICATION _____

MARGARET M. "PEGGY" SIDMAN
Director/Council Secretary
Office (904) 255-5133
Fax (904) 255-5230
E-Mail: SIDMANP@COJ.NET

117 West Duval Street
City Hall, Suite 425
Jacksonville, FL 32202

October 12, 2022

MEMORANDUM

TO: Dustin Freeman
Procurement Division

FR: Margaret M. Sidman, Director / Council Secretary MMS
Jacksonville City Council

RE: **Municode, Inc. n/k/a CivicPlus, LLC. Single Source Request FY 2022-2023**

Pursuant to Chapter 126 of the Ordinance Code, the City Council solicits the approval of the contract award for single source services for updating the Jacksonville Municipal Code, the official law of the Consolidated City of Jacksonville, including all general and permanent ordinances. The award for services is $145,000.00. The contract award includes the annual fee for supplementation of legislation, online code hosting, and up to five (5) printed copies (semi-annually). In addition, there is a one-time recodification of the code to reestablish the code to a 2022 version, the publication of the existing charter, code and zoning code, and up to five copies with three volumes per copy with tabs is $4,000.00 ($3,000.00 plus freight). The first-year annual expenditure is $30,520.00, which includes the annual rate of $26,520.00 plus the one-time recodification fee of $4,000.00 (which includes fee plus freight). The remaining four (4) years of contract is the first year annual plus the three percent (3%) increase each renewal year. The maximum indebtedness for the initial 5-year term is not to exceed $145,000.00.

On August 24, 2021, CivicPlus, LLC acquired all interest in, and ownership of Municode, LLC, f/k/a Municode, Inc. CivicPlus is the nation's leading civic technology company. Municode, Inc., the largest codifier of legal documents for local governments, has been uniquely qualified to provide a searchable online version of the City's Municipal Code. The merger creates a unified technology company with unparalleled experience, innovation capabilities, industry knowledge, and public sector digital transformation expertise. Market research on corporations providing codification services resulted in three (3) companies: CodeBook, General Code, and CivicPlus. Although online access is available with CodeBook and General Code, neither offers the digital expertise and innovation provided by CivicPlus. NOTE: General Code has two Florida local municipality users, CodeBook has zero Florida clients, and CivicPlus has 370 Florida clients. With the acquisition of Municode, Inc., CivicPlus's portfolio serves over 7,000 combined customers within the local government sector.

We appreciate your favorable consideration in approving the CivicPlus Single Source request as the provider for updating the Jacksonville Municipal Code. The services are requested for the City Council Budget for Fiscal Year 2022-2023, consistent with the Master Service Agreement initial term of five (5) years, and two (2) 3-year renewal terms.

Please contact Margaret M. Sidman, Director/Council Secretary of the Jacksonville City Council, at 904.255.5133, for additional information or correspondence.

Thank you for your consideration in this matter.

JUSTIFICATION FOR SINGLE SOURCE (JSS)

Pursuant to the City of Jacksonville Procurement Code§ 126.206 & § 126.312, when requesting a purchase from a vendor subject to the referenced sections, please complete this form to justify your request and submit to Procurement with applicable attachments.

1. Requesting Agency:	Office of the City Council
2. Nature and/or description of the requirement being requested. ***Identify each item, component or service being procured. (Attach quote/proposal):*** ***Why does the City need these particular goods or services?***	The request is for the renewal of proprietary source services for updating, reproducing, supplementing, distributing, and the publication of the Jacksonville Municipal Code.
3. Provide a detailed justification as to why the requested goods/services can only be efficiently and effectively procured through the recommended Single Source vendor:	CivicPlus is the sole vendor providing MunicodeNEXT, a code hosting platform, developed specifically to offer online access to local governments. The platform provides a seamless and integrated system for citizens to maintain connection with laws and ordinances. With the acquisition of Municode, Inc., CivicPlus portfolio serves over 7,000 combined customers within the local government sector.
4. Date of Request	10/5/2022

5. Summary of Market Research

[Provide a description of the market research performed, how it was performed, by whom, and market research results. Please spell out acronyms.]

[Market research was completed by Yvonne P. Mitchell, Chief of Administrative Services. A word search on "codification" provided three companies: CodeBook, General Code, and CivicPlus (Municode). Although online access is available with CodeBook and General Code, neither offers the digital expertise and innovation provided by CivicPlus. NOTE: General Code has two Florida local municipality clients, CodeBook has zero Florida clients, and CivicPlus has 370 Florida clients. CivicPlus portfolio serves over 7,000 combined customers within the local government sector.]

6. Other Documentation (Check and attach all that apply)

☐ Supplier Quote

√ Single Source Memo signed by Director

☐ Other [Click here to list other documentation]

municode
POWERED BY CIVICPLUS

CivicPlus
302 South 4th St. Suite 500
Manhattan, KS 66502 US

Date: 8/5/2022
Product: Codification - Supplements
Client: Jacksonville, FL

Jacksonville, FL – Annual Supplements - Statement of Work

QTY	Product Description	PRODUCT TYPE	Cost
1	Code of Ordinance Supplementation Services – Full Service Schedule Plus	Renewable	USD $24,000.00
1	Printed Copies – up to 5 copies per "print" schedule		
1	Freight – up to 5 copies		
1	Printed Supplements – Semi-Annual		
1	Online Supplements - Monthly		
1	Online Code with CodeBank	Renewable	USD $700.00
1	OrdBank	Renewable	USD $1,820.00
Annual Recurring Services		USD $26,520.00	

1. This Statement of Work ("SOW") is between Jacksonville, FL ("Client") and CivicPlus, LLC (collectively, the "Service Provider"), and shall be subject to the terms and conditions of the CivicPlus Master Services Agreement located at https://www.civicplus.com/master-services-agreement ("MSA"). By signing this SOW, Client expressly agrees to the terms and conditions of the MSA throughout the Term of this SOW.
2. This SOW shall remain in effect for an initial term equal to one year (12 months) from the date of signing ("Initial Term"). In the event that neither party gives 60 days' notice to terminate prior to the end of the Initial Term, or any subsequent Renewal Term, this SOW will automatically renew for an additional 1-year renewal term ("Renewal Term"). The Initial Term and all Renewal Terms are collectively referred to as the "Term".
3. The Annual Recurring Services will be invoiced upon signing. Client will receive a 20% discount on the first twelve (12) months of service.
4. Annual Recurring Services shall be invoiced on the start date of each Renewal Term. Annual Recurring Services shall be subject to a 3% annual increase each Renewal Term, starting on year three of service. Client will pay all invoices within 45 days of the date of such invoice. Additional services added throughout the Term will be pro-rated to align with the Renewal Term, then added to the Annual Recurring Services fee.
5. The Supplement Annual Recurring Services do NOT include:
    - Additional copies, reprints, binders and tab orders;

- Documents that contain unique formatting requirements, or any other form-based code requirements;
- Legal work, creation of fee schedules or additional tables, gender neutral review/implementation, external linking;
- Codifying complete replacement of complex subject matter such as, but not limited to, Zoning (or equivalent). This work is subject to a one-time editorial conversion fee and an increase in the annual supplement rate and online hosting fee(s). Quote provided upon receipt of material;
- Codifying a newly adopted full Chapter/Title/Appendix. This may be subject to a one-time additional editorial fee and an increase in the annual supplement rate and online hosting fee(s). Material to be reviewed upon receipt;
- Codifying a newly adopted term change legislation. This may be subject to a one-time additional editorial fee. Material to be reviewed upon receipt;
- The addition of Manuals, Policies, Procedures, Comprehensive Plans, Land Use, Unified Codes, Zoning (or equivalent). Quotation upon request; and
- Online Code hosting and online features.
- Rushed supplements will be assessed an additional one-time fee.

6. Client agrees to provide all necessary and correct documentation, materials and communication in a timely manner, as needed by Service Provider to complete the services herein (the "Services")and acknowledges Service Provider shall not be liable for non performance of the Services under this SOW due to Client failing to provide all necessary documentation, materials and communication necessary for the Services.

7. Client acknowledges Service Provider reserves the right to ship and close out any project if no feedback to the proofs is received within 45 days. Proofs not returned within 45 days may be subject to an additional proof update fee.

8. Client acknowledges Service Provider does not permanently retain prior versions of the Client's legal code or any other work product.

9. Additional services, including but not limited to additional labor required because of delays, errors or omissions on the part of Client, may be purchased upon mutual written agreement between the Parties.

10. Client acknowledges that Service Provider may provide legal analysis through codification, recodification or legal review services. Unless indicated otherwise, information sent via Internet email or through our websites cannot be guaranteed to be confidential. Client further acknowledges that any legal analysis provided by Service Provider is provided to Client's legal counsel for their use and direction. However, Client agrees the services provided for herein do not review legal codes for legal sufficiency, draw legal conclusions, provide legal advice, opinions or recommendations about Client's legal rights, remedies, defenses, options, selection of forms, or strategies, or apply the law to the facts of any particular situation or establish an attorney-client relationship. Service Provider is not a law firm and may not perform services performed by an attorney, and the services contemplated herein do not constitute a substitute for the advice or services of an attorney.

11. The Parties agree that Section 15 of the MSA shall not apply to public interpretation of legal code or work product. Service Provider shall not be responsible for the legal sufficiency or copyright infringement of any material initially or subsequently published.

12. In the event Client wishes to increase its Supplement Updates frequency, Client agrees to pay an annual increase in an amount to be agreed upon between the parties, such amount to be prorated from the time of purchase to align with Client's Renewal Term. Client shall provide CivicPlus with written notice, email is

sufficient, of its intent to acquire such services. Rush Supplement requests will be assessed an additional one-time fee.

Acceptance

By signing below, the parties are agreeing to be bound by the covenants and obligations specified in this SOW and the MSA terms and conditions found at: https://www.civicplus.com/master-services-agreement.

IN WITNESS WHEREOF, the parties have caused this SOW to be executed by their duly authorized representatives as of the dates below.

Client	Service Provider
By:	By:
_____	_____
Name:	Name:
_____	_____
Title:	Title:
_____	_____
Date:	Date:
_____	_____

Contact Information

Organization URL

Street Address

Address 2

City State Postal Code

CivicPlus provides telephone support for all trained clients from 7am –7pm Central Time, Monday-Friday (excluding holidays).
Emergency Support is provided on a 24/7/365 basis for representatives named by the Client. Client is responsible for ensuring CivicPlus has current updates.

Emergency Contact & Mobile Phone

Emergency Contact & Mobile Phone

Emergency Contact & Mobile Phone

Billing Contact E-Mail

Phone Ext. Fax

Billing Address

Address 2

City State Postal Code

Tax ID # Sales Tax Exempt #

Billing Terms Account Rep

Info Required on Invoice (PO or Job #)

Contract Contact Email

Phone Ext. Fax

Project Contact Email

Phone Ext. Fax

municode
POWERED BY CIVICPLUS

CivicPlus
302 South 4th St. Suite 500
Manhattan, KS 66502 US

Date: 8/5/2022
Product: Codes & Supps
Client: Jacksonville, FL
Bill To: Jacksonville, FL

Bristol, TN – Codes & Supps - Statement of Work

QTY	Product Description	PRODUCT TYPE	COST
1	Publication – existing Charter, Code and Zoning Up to 5 copy with tabs	One-Time	USD $3,000.00
1	Freight	One-Time	Actual
Total Investment		USD $3,000.00	

1. This Statement of Work ("SOW") is between Jacksonville, FL ("Client") and CivicPlus, LLC (the "Service Provider"), and shall be subject to the terms and conditions of the CivicPlus Master Services Agreement located at https://www.civicplus.com/master-services-agreement ("MSA"). By signing this SOW, Client expressly agrees to the terms and conditions of the MSA throughout the Term of this SOW.

2. This SOW shall remain in effect for an initial term starting at signing of this SOW and ending upon final completion of the project.

3. The Total Investment Initial Term fees for the project shall be invoiced as follows:

    a. Payment will be due in full October 1, 2022; or
    b. Payment will be due upon official approval of service.

4. Total Investment assumes Service Provider can rely upon the version of the Client's code ("the Code") furnished and it is in an editable, electronic format.

5. Client agrees to provide all necessary and correct documentation, materials and communication in a timely manner as agreed upon by the parties following execution of this SOW. Service Provider shall not begin work under this SOW until all necessary documentation, materials, of a general and permanent nature and in a useable format (MS WORD or editable PDF), and communication are received. Service Provider will not be liable or responsible for any delay in the time or completion of the services due to the action or inaction of Client.

6. Additional services, including but not limited to, additional labor required because of delays, errors or omissions on the part of Client, may be purchased upon mutual written agreement between the parties.

7. Republication services include:
    i. Updating preface page to reflect the 2022 Code edition;

ii. Removal of supplement numbers;
iii. Removal of Supplement History table and creation of a new table moving forward;
iv. Updating of preliminary pages (title page, officials' page, and preface);
v. New page numbers;
vi. Maintain existing OrdBank linking;
vii. Conversion of Graphics & Tabular Matter;
viii. Up to 5 printed copies of the new Code with tabs; and

8. Service Provider is not a law firm and may not perform services performed by an attorney, and the services contemplated herein do not constitute a substitute for the advice or services of an attorney. Nor is an attorney-client relationship established under this SOW or the services provided herein.

9. The Parties agree that notwithstanding the indemnification covenants at Section 15 of the MSA, shall not apply to public interpretation of Legal Code or work product. Service Provider shall not be responsible for the legal sufficiency or copyright infringement of any material initially or subsequently published.

Signature Page to Follow

Acceptance

By signing below, the parties are agreeing to be bound by the covenants and obligations specified in this SOW and the MSA terms and conditions found at: https://www.civicplus.com/master-services-agreement.

IN WITNESS WHEREOF, the parties have caused this SOW to be executed by their duly authorized representatives as of the dates below.

Client	Service Provider
By:	By:
_____	_____
Name:	Name:
_____	_____
Title:	Title:
_____	_____
Date:	Date:
_____	_____

Contact Information

Organization URL

Street Address

Address 2

City State Postal Code

CivicPlus provides telephone support for all trained clients from 7am –7pm Central Time, Monday-Friday (excluding holidays). Emergency Support is provided on a 24/7/365 basis for representatives named by the Client. Client is responsible for ensuring CivicPlus has current updates.

Emergency Contact & Mobile Phone

Emergency Contact & Mobile Phone

Emergency Contact & Mobile Phone

Billing Contact E-Mail

Phone Ext. Fax

Billing Address

Address 2

City State Postal Code

Tax ID # Sales Tax Exempt #

Billing Terms Account Rep

Info Required on Invoice (PO or Job #)

Contract Contact Email

Phone Ext. Fax

Project Contact Email

Phone Ext. Fax

CIVICPLUS
HELPING COMMUNITIES ENGAGE & INTERACT

To whom it may concern:

On August 24, 2021, CivicPlus, LLC wholly acquired all interest in and ownership of Municode, LLC, f/k/a Municode, Inc.

Currently, Municode, LLC is a wholly owned subsidiary of CivicPlus, LLC. At any time, CivicPlus may have all Municode current contracts and any outstanding proposals or quotes, including those with the customers, assigned to CivicPlus wherein CivicPlus shall inherit all rights and obligations in such documents.

If you have any questions, please feel free to reach out to legal@civicplus.com.

Sincerely,

Jennifer Dasenbrock
In-House Legal Counsel • CivicPlus

CORPORATE OFFICE
302 South 4th Street, Suite 500
Manhattan, KS 66502
888.228.2233 + FAX 785.587.8951

+CivicPlus.com

CIVICPLUS

Welcome to the CivicPlus Family!

Here are a few things you may want to know about us:

We are CivicPlus, LLC, a Kansas limited liability company.
Our owner/parent entity is CP Patti, LLC, a Delaware corporation.

A few of our numbers:

EIN: 48-1202104

DUNS: 883003113

E- Verify: 944093, Date of Authorization: 2/5/2016

Our contact information:

Headquarters address:	302 S. 4th Street, STE 500 Manhattan, KS 66502
PO Box for mailing payment:	PO Box 1572 Manhattan, KS 66505

Accounts receivable: Accounting@civicplus.com
Contracts questions: contracts@civicplus.com

AFFIDAVIT

The undersigned, Amy Vikander, of CivicPlus, LLC, being duly sworn upon their oath, does hereby state that CivicPlus does not knowingly employ unauthorized aliens and has registered with, is authorized to use, and uses the federal work authorization program commonly known as E-Verify when it hires new employees to confirm their work eligibility.

I swear or affirm, under the penalties for perjury, that the foregoing statements are true.

CivicPlus, LLC

By: Amy Vikander

Its Senior Vice President of Customer Success

Date: 2/21/22

Federal Work Authorization User Identification Number: 944093

Date of Authorization: 2/5/2016

Sworn to and subscribed before me

This day of 2/21, 2022

Notary Public

My commission Expires:

PHILLIP DEVINE
Notary Public, State of Kansas
My Appointment Expires
5/17/25

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IDAHO	MICHIGAN	UTAH	
ILLINOIS	MONTANA	VERMONT	

TRIBAL GOVERNMENTS

Aleut Community CPC-21

Confederated Tribes of the Chehalis Reservation

Karuk Tribe CPC-21

Northwest Intertribal Court System (NICS)

Osage Nation CPC-21

Prairie Band Potawatomi Nation

Puyallup Tribe of Indians

Robinson Rancheria CPC-21

Samish Indian Nation CPC-21

Tulalip Tribes

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(Pinellas County)

Town of Zolfo Springs
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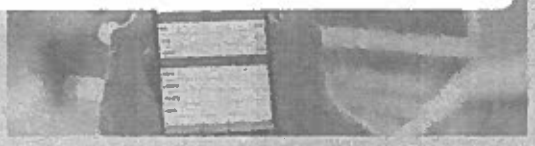

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municode

CONNECTING YOU & YOUR COMMUNITY

*Clients whose codes are posted on our website at www.municode.com

FLORIDA CLIENTS

*Alachua
*Alachua County
*Altamonte Springs
*Anna Maria
Apalachicola
*Apopka
*Arcadia
*Archer
Astatula
*Atlantic Beach
*Atlantis
*Auburndale
*Aventura
*Avon Park
*Baker County
*Bal Harbour
*Baldwin
*Bartow
*Bay County
*Bay Harbor Islands
*Belle Glade
*Belle Isle
*Belleair
*Belleair Beach
*Belleair Bluffs
*Belleair Shore
*Belleview
*Beverly Beach
*Biscayne Park
*Blountstown
*Boca Raton
Bonifay
*Bonita Springs
*Bowling Green
*Bradenton
*Bradenton Beach
*Bradford County
Branford
*Brevard County
*Bronson
*Brooksville
*Broward County
*Bunnell
*Bushnell
*Callaway
*Cape Canaveral
*Cape Coral
*Carrabelle
*Casselberry
Center Hill
*Century
*Charlotte County
*Chattahoochee
*Chiefland
Children's Trust of Alachua County
*Chipley
*Cinco Bayou
*Citrus County
*Clay County
*Clearwater
*Clermont
*Clewiston
*Cloud Lake
*Cocoa
*Cocoa Beach
*Coconut Creek
*Collier County
*Columbia County
Cooper City
*Coral Gables
*Coral Springs
Crescent City
*Crestview
Cross City
*Crystal River
*Cutler Bay
*Dade City
*Dania Beach
*Davenport
*Davie
*Daytona Beach
*Daytona Beach Shores
*DeBary
*Deerfield Beach
*DeFuniak Springs
*DeLand
*Delray Beach
*Deltona
*DeSoto County
*Destin
*Dixie County
*Doral
*Dundee
*Dunedin
*Dunnellon
*Eagle Lake
*Eatonville
*Edgewater
*Edgewood
*El Portal
*Escambia County
Estero
*Eustis
*Fellsmere
*Fernandina Beach
*Flagler Beach
*Flagler County
*Florida City
*Fort Lauderdale
*Fort Meade
*Fort Myers
*Fort Myers Beach
*Fort Pierce
*Fort Walton Beach
Fort White
*Franklin County
*Freeport
*Frostproof
*Fruitland Park
*Gadsden County
*Gainesville
*Gilchrist County
*Glades County
*Glen Ridge
*Golden Beach
*Green Cove Springs
*Greenacres
*Greensboro
Greenville
*Gretna
*Groveland
*Gulf Breeze
Gulf County
*Gulf Stream
*Gulfport
*Haines City
*Hallandale Beach
Hampton
*Hardee County
Havana
*Haverhill
*Hawthorne
*Hendry County
*Hernando County
*Hialeah
*Hialeah Gardens
*High Springs
*Highland Beach
*Highlands County
*Hilliard
*Hillsboro Beach
*Hillsborough County
*Holly Hill
*Holmes Beach
*Homestead
*Howey-In-The-Hills
*Hypoluxo
Indialantic
*Indian Creek Village
*Indian Harbor Beach
*Indian River County
*Indian River Shores
*Indian Rocks Beach
*Indian Shores
Indiantown
*Inglis
*Inverness
*Islamorada
*Jackson County
*Jacksonville
*Jacksonville Beach
*Jefferson County
*Juno Beach
*Jupiter
*Jupiter Inlet Colony
*Jupiter Island
*Kenneth City
*Key Biscayne
*Key Colony Beach
*Key West
*Keystone Heights
Kissimmee
*LaBelle
*Lady Lake
*Lake Alfred
*Lake Butler
*Lake City
*Lake Clarke Shores
*Lake County
*Lake Hamilton
Lake Helen
*Lake Park
*Lake Placid
*Lake Worth
*Lakeland
*Lantana
Largo
*Lauderdale Lakes
*Lauderdale-By-The-Sea
*Lauderhill
*Layton
*Lee County
*Leesburg
*Leon County
*Levy County
Liberty County
*Lighthouse Point
*Live Oak
*Longboat Key
*Longwood
*Loxahatchee Groves
*Lynn Haven
*Macclenny
*Madeira Beach
*Madison
*Maitland
*Malabar
*Manalapan
*Manatee County
*Mangonia Park
*Marathon
*Marco Island
*Margate
*Marianna
*Marion County
*Martin County
*Mary Esther
*Mascotte
Mayo
*McIntosh
*Medley
*Melbourne
*Miami
*Miami Beach
*Miami-Dade County
*Miami Gardens
*Miami Lakes
*Miami Shores Village
*Miami Springs
Midway
*Midway Fire District
*Milton
*Minneola
*Miramar
*Monroe County
*Monticello
*Montverde
*Moore Haven
*Mount Dora
*Mulberry
*Naples
*Nassau County
*Neptune Beach
*New Port Richey
*New Smyrna Beach
*Newberry
*Niceville
*North Bay Village
North Broward Hospital District
*North Lauderdale
*North Miami
*North Miami Beach
*North Palm Beach
*North Port
*North Redington Beach
*Oak Hill
*Oakland
*Oakland Park
*Ocala
*Ocean Ridge
*Ocoee
*Okaloosa County
*Okeechobee
*Okeechobee County
*Oldsmar
*Opa-locka
*Orange City
*Orange County
*Orange Park
*Orchid
*Orlando
*Ormond Beach
*Osceola County
*Oviedo
*Pahokee
*Palatka
*Palm Beach
*Palm Beach County
*Palm Beach Gardens
*Palm Beach Shores
*Palm Coast
*Palm Springs
*Palmetto
*Palmetto Bay
*Panama City
*Panama City Beach
*Parker
*Parkland
*Pasco County
*Pembroke Park
Perry
*Pensacola
*Pinecrest
*Pinellas County
*Pinellas Park
*Plant City
*Plantation
*Polk City
*Polk County
*Pomona Park
*Ponce Inlet
*Port Orange
*Port Richey
*Port St. Joe
*Port St. Lucie
*Putnam County
*Quincy
*Redington Beach
*Redington Shores
*Riviera Beach
*Rockledge
*Royal Palm Beach
*Safety Harbor
*San Antonio
*Sanford
*Sanibel
*Santa Rosa County
*Sarasota
*Sarasota County
*Satellite Beach
*Sea Ranch Lakes
*Sebastian
*Sebring
*Seminole
*Seminole County
Seminole Tribe of Florida
*Sewall's Point
Shalimar
Sneads
*Sopchoppy
*South Bay
*South Daytona
*South Florida Water Management District
*South Miami
*South Palm Beach
*Southwest Ranches
*Springfield
*St. Augustine
*St. Augustine Beach
*St. Cloud
*St. Leo
*St. Lucie County
*St. Marks
*St. Pete Beach
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*Sunrise
*Surfside
*Suwannee County
*Sweetwater
*Tallahassee
*Tamarac
*Tampa
*Tarpon Springs
*Tavares
*Taylor County
*Temple Terrace
*Tequesta
*Titusville
*Treasure Island
Trenton
*Umatilla
*Valparaiso
*Venice
*Vero Beach
*Virginia Gardens
*Volusia County
*Wakulla County
Waldo
*Walton County
*Washington County
*Wauchula
Webster
Welaka
*Wellington
*West Melbourne
*West Miami
*West Palm Beach
*West Park
*Wildwood
*Williston
*Wilton Manors
*Windermere
*Winter Garden
*Winter Haven
*Winter Park
*Winter Springs
*Yankeetown
Zolfo Springs

01/22

Commonly Asked Questions Regarding Zoning Hearings

The following are intended to convey complex legal issues in a simplified manner. They are not intended to provide legal advice to individuals. Please retain private counsel to answer your legal needs.

What is the difference between "Zoning" and "Land Use"? Land Use refers to the city's Future Land Use Map (FLUM) which is a colored map adopted as part of our Comprehensive Plan. The colors on this map correspond to broad categories of uses. There are only a few Land Use categories on the FLUM map. The Zoning Map includes much more detailed sub-categories. Zoning refers to all the sub-categories allowed below each Land Use. Think of it as a pyramid: the top of the pyramid is the Land Use, and below it is a wider portion that includes multiple possible Zoning districts that fit under that Land Use. Every piece of property in the city is assigned both a Land Use (big category of uses) and a Zoning (smaller, more specific sub-category).

Can the City add conditions to a traditional or "straight" zoning category (CM-1, CL-2, etc.)? The Florida Supreme Court in the 1956 case of Hartnett v. Austin found that this would amount to bargaining away the discretionary power to grant development approval, and disallowed it. This is why we say that "contract zoning" is not allowed under Florida law.

Then why are PUDs legal? Over time, urban planners began to see that traditional straight zoning categories (CM-1, CL-2, etc.) sometimes were too rigid, and did not allow for innovation or unusual circumstances. Traditional zoning categories are essentially an all or nothing proposition; the property owner is allowed all listed uses found in their zoning category, but cannot do any use that is not in their zoning category. In response to this modern zoning need, local governments amended their regulations to provide for a new flexible zoning category: the Planned Unit Development or Planned Urban Development. The PUD zoning category typically requires a whole series of findings that the application meets the PUD criteria in the code. In applying for this customizable zoning, the process may appear as a negotiation of requested uses and design elements. Government cannot force a property owner into a PUD zoning category; the property owner must choose to voluntarily enter into this process. All the specific rights, obligations and conditions of the PUD are therefore out in the open and voluntarily entered into at the time of the approval of the rezoning. If approved by ordinance, the PUD text and site plan then becomes the new code for that particular property.

Do "public rights" trump "private property rights"? United States constitutional law is premised on private property rights (life, liberty and property), which is a difference with some other industrial nations that may have a more communal sense of property. Historically in this country a private property owner had a right to all uses of their property, without any government or public interference. The only remedy available was to file suit under nuisance laws. The first case to support even the legality of applying some zoning regulation to private property was the 1926 U.S. Supreme Court decision in Village of Euclid v. Ambler Realty. The planning term "Euclidean zoning" comes from this case. Contemporary zoning identifies a list of uses that are allowed by right on a particular property. However, if government removes or restricts some of those existing uses, government must compensate the affected property owner. For instance, government cannot physically seize private land without a court finding of a public purpose <u>and</u> compensation for the taking; this is called condemnation or eminent domain. When a regulation or government action takes away all economic uses of private property it is called "inverse condemnation" and is also compensable. In 1995, Florida enacted the Bert J. Harris, Jr. Private Property Rights Protection Act that created an even more generous standard of taking for property owners. If a regulation or decision "inordinately burdens the reasonable, investment-backed expectation" of a property owner, government can potentially be held liable to pay them damages.

Can the government demand something for the public good in exchange for the approval of a development permit? In order for government to impose a condition to a development permit, the condition has to meet what is called the "dual rational nexus" test. This test came about from two

separate U.S. Supreme Court cases, called Nollan v. California Coastal Com. (1987) and Dolan v. City of Tigard (1994). The test requires that the demand be "rationally related" and "proportionate" to the impact of the requested development permit. In the Nollan case, the government agency demanded that the property owner give the public access to get to the beach from their property in order to get a permit to demolish their existing house and rebuild a bigger home. The court found that this involuntary demand, or "exaction" did not meet the legal test. In Dolan, the city demanded that the property owner give access to its waterfront for a city-wide greenway project, in order to approve paving the parking lot and expanding their plumbing supply store. The court also found this an illegal exaction.

Can the government apply new requirements on a case-by-case basis to an applicant? Local boards, such as the Planning and Zoning Board, have to apply the law as it is at the time of hearing the application. That means that the board members are limited to the existing criteria found in our regulations and cannot make up new rules on the spot and try to apply them to a particular applicant. The concept of "due process" implies that everyone applying for a permit will have the same rules apply to them as to everyone else, and those rules will be properly enacted ahead of time. Some enacted rules do allow conditions to be placed on an application, and the enacted rules explain what those conditions can be. The application of these conditions by the board cannot be "arbitrary or capricious", meaning the conditions must be based on evidence presented and linked to an existing criteria in the rules.

Can the board just vote to deny a project that the neighbors don't want? Zoning hearings are called "quasi-judicial hearings". Even though the strict rules of evidence don't apply, they are similar to court hearings, where evidence is presented and testimony is taken under oath. The board has to apply the evidence presented to the existing rules and make a decision based on that "competent, substantial evidence". The board cannot decide a case based on the "clamor of the crowd". However, citizen testimony that is fact-based and relevant to the criteria in the code can be used to determine whether or not the application should be granted or denied.

Why does the applicant/property owner get extra time to make a presentation, cross-examine witnesses and rebut opposing testimony, and why is their lawyer not under oath? The Florida courts in a series of decisions have created certain procedural rights that must be provided to the applicant property owner in a "quasi-judicial hearing", which includes rezonings and variances. The courts have also held that the applicant property owner has standing (a procedural right to appeal) whereas members of the public do not have automatic standing but must prove they have been harmed more than the general public (the "special injury" legal test). Our appellate court in Carillon v. Seminole County found that members of the public did not have a right to cross-examine witnesses as they are not legally a party to the quasi-judicial hearing. Lawyers, both in court and in quasi-judicial hearings, merely provide legal argument, they are not testifying.

Why does the City Attorney not present a case against the applicant? The City Attorney is prohibited by law to advocate against an applicant at a hearing or tell the board or commission how to decide a case. The board deciding a case has to remain impartial and neutral, like a judge in court, and therefore its legal counsel must also remain neutral until a final vote. Remember that the City Attorney cannot jeopardize the case by assuming the city will vote one way or the other. The City Attorney is available during the hearing to answer the board's legal or procedural questions. Once the city decides a case either to grant or deny the application, then the City Attorney's role completely changes, and the City Attorney vigorously defends the final decision of the city, whatever that may be. The City Attorney does not represent individual residents, public interest groups, or private developers. The City Attorney only has one client: the City of St. Augustine as a municipal corporation.

LAND USE & QUASI-JUDICIAL PROCEEDINGS
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INTRODUCTION

Local land use decisions are at the heart of the local government process. In Jacksonville, land use decisions often comprise up to 80 percent of the City Council's agenda for any given meeting. In addition, the Jacksonville Planning Commission conducts public hearings on several hundred applications for zoning exceptions, variances and waivers each year.

For local government to be effective in the land use arena, there must be a balance between the increasing formality of the process and community participation in the system. The significance of labeling the process as quasi-judicial or legislative is often confusing to the general public and equally unclear to the public officials who render these decisions. It is essential, however, that both the elected and appointed decision makers understand the rules that govern these types of proceedings. Similarly, both the zoning applicant and the general public must be provided with a reasonable opportunity to be heard in a public hearing system that is predictable, consistent and provides due process to all participants.

The standard of review to sustain the land use decisions rendered by local governments has undergone a dramatic transformation since the Legislature's adoption of the Growth Management Act in 1985. Although some areas remain unclear, the law of this State is well-settled that the local hearing procedures used to debate and decide quasi-judicial land use decisions must honor the expectations of both property owners and the general public that the following procedural requirements will be achieved:

- Fundamental fairness to all participants;
- Objective application of the law to the facts presented; and
- A reasonable opportunity to be heard on the issue at hand.

I. LEGISLATIVE ACTIONS: "FAIRLY DEBATABLE" STANDARD OF REVIEW

In Florida, land use and zoning decisions historically have been considered legislative in nature and were therefore subject to the "fairly debatable" standard of judicial review. See *Florida Land Trust Co. v. City of Winter Springs*, 427 So.2d 170 (Fla. 1983). Such decisions are presumed to be valid, as long as they are "reasonably based" upon the evidence presented *(i.e.*, reasonable people could differ as to the result) and will not be overturned unless proven to be clearly arbitrary and unreasonable. On appeal, the review of a legislative decision is generally a "de novo" (i.e., new) proceeding, wherein the parties have the opportunity to present testimony, evidence and witnesses to a new trier of fact -- the circuit court. The "fairly debatable" standard of review prevents a court from substituting its judgment for that of the decision making body and is thus very deferential to the decision rendered by the local government.

In 1985, however, things changed significantly. That is the year in which the State Legislature passed the Growth Management Act, found at Chapter 163, Part II, of the Florida Statutes, thereby requiring all "development orders" to be consistent with the local government's comprehensive plan for future development.

Initially, the standard of review applied by the courts was varied and inconsistent. Accordingly, the stage was set for the Florida Supreme Court to reconcile this conflict and resolve the following issues:

(1) Whether decisions on rezoning applications are legislative or quasi-judicial determinations; and

(2) What is the appropriate legal standard of review for quasi-judicial actions?

II. "QUASI-JUDICIAL" DEFINED

The Supreme Court's answer to these questions is found in the landmark case of *Board of County Commissioners of Brevard County v. Snyder*, 627 So.2d 469 (Fla. 1993). In *Snyder*, the Court concluded that a local government's actions are "quasi-judicial" where the decision is one that:

- Has an identifiable impact on a limited number of persons or property interests;
- Is contingent on facts arrived at from distinct alternatives presented at the local government hearing; and
- Can be viewed as policy *application*, rather than policy setting.

In the words of the Florida Supreme Court:

> **Legislative action results in the *formulation* of a general rule of policy, whereas, judicial action results in the *application* of a general rule or policy.**

Thus, according to the Supreme Court, it is the *character* of the hearing that determines whether the actions of local governments are legislative (policy making) or quasi-judicial (policy application). Applying this analysis, the courts have universally held that the following zoning decisions are quasi-judicial and therefore subject to the "strict scrutiny" standard of review:

- Site-specific Rezonings
- Zoning Exceptions
- Zoning Variances
- Zoning Waivers

Since the *Snyder* decision, it is unclear whether local land use hearings will become more "judicial" (*i.e.*, formal and adversarial) or more "quasi" (*i.e.*, informal procedures). What is clear, however, is that certain procedural safeguards must be adhered to when conducting quasi-judicial hearings. Of paramount importance is that the hearing procedures afford all parties constitutional due process. See *Jennings v. Dade County*, 589 So.2d. 1337, *review denied*, 598 So.2d 75 (Fla. 1992).

Procedural due process requires that all interested parties be provided reasonable notice of the hearing and an opportunity to be heard on the matter. It also requires that the parties be able to present evidence, cross-examine witnesses, and be informed of all facts presented to the quasi-judicial body. Both the City Council and the Planning Commission have promulgated special procedural rules for quasi-judicial hearings which are designed to ensure that all participants are fully accorded due process in these proceedings.

III. QUASI-JUDICIAL ACTIONS: "STRICT SCRUTINY" STANDARD OF REVIEW

When considering an appeal of a quasi-judicial decision of a local government, the courts are limited to reviewing the record made during the proceedings below. This "strict scrutiny" standard of judicial review was set forth by the Florida Supreme Court in *Educational Development Center, Inc. v. City of West Palm Beach Zoning Board of Appeals*, 541 So.2d 106 (Fla. 1989). According to the Florida Supreme Court, three questions are asked when a circuit court reviews a quasi-judicial decision of a local government:

(1) Whether procedural due process was afforded;

(2) Whether the administrative body applied the correct law; and

(3) Whether its findings are supported by competent substantial evidence.

Haines City Community Dev. v. Heggs, 658 So.2d 523 (Fla. 1995).

A. PROCEDURAL DUE PROCESS

Due process requires that there must be a hearing where evidence and testimony are taken and considered. The hearing must be conducted so that the applicant and public are given a reasonable opportunity to present the request and rebut information presented by persons appearing at the hearing. The Florida Supreme Court has not provided a detailed analysis of the procedural due process requirements in quasi-judicial proceedings, although it has clarified that such hearings do *not* have to meet the formal rules of evidence.

1. *Ex Parte* Communications

Ex parte communications are contacts made by one party to a proceeding with the decision maker outside of the presence of the other parties. Because such communications are made off the record and intended to influence the decision maker, they undermine the concept of an impartial, neutral decision maker. In the past, it was accepted that these types of communications with public officials were not prohibited.

The decision in *Jennings v. Dade County*, 589 So.2d 1337 (Fla. 3d DCA 1991), *rev. denied*, 598 So.2d 75 (Fla. 1992), however, dramatically altered the legal effect of such communications. The *Jennings* decision established that *ex parte* communications with the decision maker prior to a quasi-judicial hearing render the final decision on that matter presumptively prejudicial to those who were not parties to the prior communication. In many communities, including Jacksonville, it is common for constituents to freely discuss with board members and elected officials their position on issues of concern, including land use issues. The average constituent is not aware of the difference between a legislative matter, where they may freely communicate their concerns to decision makers, and a quasi-judicial zoning matter in their neighborhood, where *ex parte* communications are discouraged, if not prohibited.

In response to *Jennings*, many communities in Florida adopted procedures to deal with the issue of *ex parte* communications. Some local governments established a total prohibition on *ex parte* communications. In 1995, however, the Legislature adopted Chapter 95-352 (' 286.0115, Fla. Stat.) which provides a procedure that may be adopted by municipalities to permit site visits and *ex parte* contacts between board members and constituents of the community in which the land use decision is to be made. This amendment authorized access by the public to local public officials,

including *ex parte* communications in a quasi-judicial proceeding, subject to the adoption of local procedures pursuant to the statute.

Pursuant to both the statue and local ordinances, *ex parte* discussions are not presumed to be prejudicial to actions taken by the board or commission as long as the proper disclosure is made prior to or at the hearing. A further amendment was adopted in the 1996 legislative session, which provided that members of the public do *not* need to be sworn as witnesses and are *not* required to be subject to cross-examination. Parties are only subject to being sworn as witnesses and cross-examination upon the request of another party.

To enjoy the benefits of this statute, a municipality must adopt the procedures by resolution or ordinance. Jacksonville established such procedures in 1997 when it adopted Part 2, Chapter 50, Ordinance Code ("Procedures Governing Conduct of Public Officials with Respect to *Ex Parte* Communications"). These procedures are included as Appendix 1 to this outline. It is important to recognize, however, that the adoption and utilization of such procedures may not always be sufficient to avoid problems. The prohibition against *ex parte* communications is based on constitutional requirements of a fair hearing. Therefore, it is questionable whether a statute can waive something that is constitutionally-based. By erasing the presumption of prejudice, however, Section 286.0115 forces proof of prejudice as a result of the *ex parte* communication. If the nature of the *ex parte* communication is disclosed and adverse parties are provided the right to express contrary views, it becomes difficult to argue that prejudice has been suffered.

One of the problems that has developed since the Legislature acted to waive the *Jennings* Rule is that local government officials are meeting with constituents, *taking a position on the quasi-judicial issues*, and then disclosing the constituent meeting at a public hearing, as required by Section 286.0115, Florida Statutes. If the issue was functionally legislative, there would be no problem with the official taking a position prior to the public hearing. *Izaak Walton League of America v. Monroe County*, 448 So.2d 1170 (Fla. 3d DCA 1984). However, due process and the right to a fair hearing still apply in quasi-judicial matters. ***Thus, by publicly taking a position either for or against a quasi-judicial matter prior to the actual hearing date, a quasi-judicial officer subjects himself to being disqualified from taking any official action on the matter.*** See *State Board of Funeral Directors and Embalmers v. Cooksey*, 4 So.2d 253 (Fla. 1941); *Board of Public Instruction of Broward County v. State ex rel. Allen*, 219 So.2d 430 (Fla. 1969). Moreover, if the board member refuses to recuse himself, the entire decision is subject to reversal on appeal.

In *Huntley's Jiffy Stores, Inc. v. Brevard County*, Case No. 90-12261-AP (Fla. 18th Cir. 1991), Huntley's Jiffy Stores sought a rezoning of property for a retail, commercial use. Residents in the area opposed the rezoning, and the County denied the application. On appeal, the circuit court overturned the County's denial of the rezoning. In doing so, the court was highly critical of one County Commissioner who had apparently advised residents that he would oppose the rezoning. The Court stated:

> Disquieting in our search was the revelation that a Commissioner telegraphed his decision before considering the information upon which the decision was to be made. We think that was a questionable departure from the fundamental fairness which should prevail when any governing body considers a citizen's request.

In *ABC Ventures, Inc. v. Board of County Commissioners of Brevard County*, Case No. 95-8041-AP (Fla. 18th Cir., January, 1996), ABC Ventures sought a rezoning. Residents from the area had made their position in opposition known prior to the Commission's public hearing. At the

hearing, prior to listening to any comment from the applicant or the public on the application, the district County Commissioner moved to deny the rezoning. In overturning the County's decision, the Court noted that the proceedings were quasi-judicial, requiring impartial proceedings, and stated:

> [a]t the Board hearing before any evidence was received, [the district] County Commissioner . . . moved for denial of the Petitioner's rezoning request which would give some cause to question the Commissioner's impartiality on the issue before the Board.

The message in the *ABC Ventures* and *Huntley's Jiffy Stores* cases is that individuals participating in quasi-judicial proceedings have a right to expect impartial decisions to be made on the basis of the evidence presented. Decision makers are well advised not to take a position on a quasi-judicial land development application until each side has made its presentation at the public hearing. Taking a position on a land development issue prior to hearing both sides of the issue at the public hearing deprives one side or the other of its constitutionally protected right to a fair hearing.

B. APPLICATION OF THE CORRECT LAW

Application of the correct law means that the City Council, Planning Commission or other administrative body conducting the hearing must apply the law applicable to the land use decision. This is usually the Zoning Code or the Comprehensive Plan. More simply stated, the City Council or Planning Commission must apply the law as it exists, rather than how a member or members might *like* it to be. The requirement that the hearing body limit itself to considering the facts and applying the law to the matter properly before it is the principal limitation on the quasi-judicial power. This requirement applies equally to judicial review of zoning appeals. See *City of Jacksonville v. Taylor*, 721 So.2d 1212 (Fla. 1st DCA 1999).

In *Snyder*, the Supreme Court established that the appropriate standard of review for quasi-judicial actions is the "strict scrutiny" standard. Significantly, the court also adopted the analysis employed in *Machado v. Musgrove*, 519 So.2d 629 (Fla. 3d DCA 1987) *rev. den.*, 529 So.2d 694 (Fla. 1988). *Machado* adopted a strict scrutiny standard of review and "did not distinguish between rezonings based on whether they allow more or less intensive uses than those contemplated by the local plan." Noting that "strict scrutiny" is a term arising from the "necessity of strict compliance with comprehensive plan," the court cited both *Machado* and the lower court's *Snyder* decision as examples of the type of strict scrutiny review applicable in the judicial review of land use decisions." Thus, at least with regard to quasi-judicial rezonings, the court adopted a strict standard of judicial review that facilitates the effective enforcement of the consistency requirement.

1. Burdens of Proof.

(a) Rezonings

A rezoning is a change in the zoning district and, consequently, the permitted uses and structures allowed on a particular piece of property. In *Snyder*, the Florida Supreme court held that a property owner who is seeking rezoning of his property bears the initial burden of establishing that the proposed rezoning is consistent with the Comprehensive Plan and complies with all applicable zoning regulations. At this point, the burden shifts to the administrative board to demonstrate that maintaining the existing land use classification for the subject parcel accomplishes a "legitimate public purpose." In other words, the decision to deny the requested rezoning cannot be arbitrary,

discriminatory or unreasonable. Section 656.125 of the Zoning Code, attached as Appendix 2 to this outline, establishes criteria for rezonings and guidelines for establishing a legitimate public purpose sufficient to deny a rezoning.

(b) Zoning Exceptions

A zoning exception is defined in the Zoning Code as:

> A use that would not be appropriate generally or without restriction throughout the zoning district but which -- if controlled as to number, area, location or relation to the neighborhood -- could promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity or general welfare.

Such uses may be permissible in the zoning district if specific provision for the exception is made in the Zoning Code and the uses are found to be in conformity with the applicable standards and criteria of Section 656.131(c) of the Zoning Code. Namely, the applicant must establish that the proposed use:

(1) Will be consistent with the Comprehensive Plan, including any subsequent plan adopted by the Council pursuant thereto;

(2) Will be compatible with the existing contiguous uses or zoning and compatible with the general character of the area, considering population density, design, scale and orientation of structures to the area, property values, and existing similar uses or zoning;

(3) Will not have an environmental impact inconsistent with the health, safety and welfare of the community;

(4) Will not have a detrimental effect on vehicular or pedestrian traffic, or parking conditions, and will not result in the generation or creation of traffic inconsistent with the health, safety and welfare of the community;

(5) Will not have a detrimental effect on the future development of contiguous properties or the general area, according to the Comprehensive Plan, including any subsequent amendment to the plan adopted by the Council;

(6) Will not result in the creation of objectionable or excessive noise, lights, vibrations, fumes, odors, dust or physical activities, taking into account existing uses or zoning in the vicinity;

(7) Will not overburden existing public services and facilities;

(8) Will be sufficiently accessible to permit entry onto the property by fire, police, rescue and other services; and

(9) Will be consistent with the definition of a zoning exception, and will meet the standards and criteria of the zoning classification in which such use is proposed to be located, and all other requirements for such particular use set forth elsewhere in the Zoning Code, or otherwise adopted by the Planning Commission.

A use that is permissible by exception is a use to which the applicant is entitled, unless the zoning authority determines that - based on the standards and criteria set forth above - the proposed use would adversely affect the public interest. Therefore, the applicant has the initial burden before the Planning Commission of showing that his application meets the requirements of the statutory criteria for granting such exceptions. Once the petitioner demonstrates that his application meets these standards and criteria, the burden shifts to the Planning Commission to demonstrate, by competent, substantial evidence presented at the hearing and made a part of the record, that the exception requested by the applicant does not meet one or more standards and is therefore adverse to the public interest. *Irvine v. Duval County Planning Commission*, 504 So.2d 1265 (Fla. 1st DCA 1986). See *also Broward County v. G.B.V. International, Ltd.*, 787 So.2d 838 (Fla. 2001).

c. Zoning Variances

A zoning variance is defined in the Zoning Code as:

> A relaxation of the terms of Zoning Code which will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the Zoning Code would result in unnecessary and undue hardship.

In order to obtain a variance, the applicant must meet *all* of the standards and criteria set forth in Section 656.132(c) of the Zoning Code. Specifically, the applicant must show, by a preponderance of the evidence, that:

(1) The property has unique and peculiar circumstances which create an unnecessary and undue hardship;

(2) The variance is the minimum necessary to alleviate the hardship;

(3) The need for the variance is not the result of the actions of the property owner;

(4) The grant of variance would not create a detriment to adjacent and nearby properties or the public in general;

(5) The variance will not substantially diminish property values or alter the general character of the area; and

(6) The effect of the variance is in harmony with the intent of the relevant area of the Zoning Code.

The burden of proof is on the applicant for a variance to show an "undue hardship" that is related to the property, **not** a personal hardship on the applicant. In other words, it must be shown

that the existing zoning regulations make the property virtually unusable or incapable of yielding a reasonable return unless the variance is granted. This is a heavy burden to meet since it is unlikely that the facts will demonstrate the existence of all of these factors in any given case. In most cases, it is very difficult to substantiate the grant of a variance with substantial competent evidence.

d. Zoning Waivers

Waivers for minimum distance requirements and minimum street frontage are similar to variances, but have different criteria for approval. Waivers are authorized pursuant to the criteria set forth in Section 656.133 of the Zoning Code:

> (a) The waiver for minimum distance requirements from a church or school for a liquor license location may be granted if there exist one or more circumstances which negate the necessity for compliance with the distance requirements, including, but not limited to the following:
>
> > (1) The commercial activity associated with the alcoholic beverage use is of a lesser intensity than the commercial activity associated with the alcoholic beverage use which previously existed; *e.g.*, there has been a reduction in the number of seats or square footage or the type license;
> >
> > (2) The alcoholic beverage use is designed to be an integral part of a mixed planned unit development
> >
> > (3) The alcoholic beverage use is located within a shopping center with an aggregate gross leasable area of fifty thousand (50,000) square feet or more, inclusive of all outparcels and meets the definition of a "bona fide restaurant", as defined in s.656.805(c);
> >
> > (4) The alcoholic beverage use is not directly visible along the line of measurement defined in s.656.806 and is physically separated from the church or school, thereby negating the distance requirement as a result of the extra travel time; or
> >
> > (5) There are other existing liquor license locations of a similar nature in the immediate vicinity of the proposed location; provided, however, that no waiver shall be granted pursuant to this criterion if the proposed liquor license location is closer to the church or school than other existing locations.
>
> (b) The waiver for minimum required street frontage may be granted if the Commission makes a positive finding based on substantial, competent evidence that the application meets all of the following criteria:

> (1) There are practical or economic difficulties in carrying out the strict letter of the regulation;
>
> (2) The request is not based exclusively upon the desire to reduce the cost of developing the site or to circumvent the requirements of Chapter 654 (Code of Subdivision Regulations);
>
> (3) The proposed waiver will not substantially diminish the property values in, nor alter the essential character of, the area surrounding the site and will not substantially interfere with or injure the rights of others whose property would be affected by the waiver;
>
> (4) There is a valid and effective easement for adequate vehicular access connected to a public street which is maintained by the City or an approved private street; and
>
> (5) The proposed waiver will not be detrimental to the public health, safety or welfare, result in additional expense, the creation of nuisances or conflict with any other applicable law.

With respect to a waiver of the distance limitations for alcoholic beverage locations, the burden of proof is on the applicant to show that *one* or more circumstances exist which eliminate the need for the standard separation between the two uses. With respect to a waiver for street frontage, the applicant must show that *all five* of the criteria have been met. Both of these burdens of proof must be established by substantial, competent evidence.

C. SUBSTANTIAL COMPETENT EVIDENCE

In order to sustain a local government's quasi-judicial land use decision, it must be shown that there was "substantial competent evidence" presented to the board to support its rulings. *Board of County Commissioners of Brevard County v. Snyder*, 627 So.2d 469 (Fla. 1993). Although simply stated, this requirement of "competent substantial evidence" is -- in the words of one court – "susceptible to misunderstanding." *Lee County v. Sunbelt Equities, II, Ltd. Partnership*, 619 So 2d. 996, 1003 (Fla. 2d DCA 1993). According to the Second District Court of Appeal, the issue of competent substantial evidence "involves a purely legal question;" that is:

> [W]hether the record contains the necessary quantum of evidence. The circuit court is not permitted to go farther and *reweigh* that evidence (*e.g.*, where there may be conflicts in the evidence), or to substitute *its* judgment about what *should* be done for that of the administrative agency.

The seminal case defining "substantial competent evident" is *DeGroot v. Sheffield*, 95 So.2d 912 (Fla. 1957). In that case, the Florida Supreme Court defined competent substantial evidence as "such relevant evidence as a reasonable mind would accept as adequate to support a conclusion." A further elaboration of this definition was presented by the Fifth District Court of Appeal in *Lonergan v. Estate of Budahazi*, 669 So. 2d 1062 (Fla. 5th DCA 1996):

> The term "competent substantial evidence" does not relate to the quality, character, convincing power, probative value or weight of the evidence but refers to the existence of some evidence (quantity) as to each essential element and as to the legality and admissibility of that evidence. Competency of evidence refers to its admissibility under legal rules of evidence. "Substantial" requires that there be some (more than a mere iota or scintilla), real, material, pertinent, and relevant evidence (as distinguished from ethereal, metaphysical, speculative or merely theoretical evidence or hypothetical possibilities) having definite probative value (that is, "tending to prove") as to each essential element of the offense charged . . . [C]ircumstantial evidence is sufficient. Direct evidence is not required.

In sum, quasi-judicial decisions must be supported, in the record, by evidence that is both legally competent and quantifiably substantial. Examples of what does and does not constitute substantial competent evidence sufficient to support a local governments zoning decisions are set forth below.

1. Findings of Fact

Unfortunately, *Snyder* gives very limited guidance on the precise *procedural* requirements of a quasi-judicial hearing. Nevertheless, the Supreme Court did state that the local government "will *not* be required to make findings of fact" to support its decision on an application for rezoning. All that is required is that the record (*i.e.*, the testimonial and documentary evidence presented at the hearing) contain substantial competent evidence.

Although not mandated, however, written findings of fact can serve important public policy objectives. For example, written findings:

- Are essential to *effective* strict judicial scrutiny of quasi-judicial decisions.
- Greatly reduce the possibility of arbitrary or politically motivated rezoning decisions, thereby providing greater protection for private property rights; and
- Force close attention to the consistency requirement; if local governments must make written findings of fact to support their consistency determinations, local officials are likely to focus much more closely on the relationship between a proposed rezoning and the goals, objectives and policies of the local comprehensive plan.

By relieving local governments of this fact-finding responsibility with respect to site-specific rezonings, the Florida Supreme Court missed an opportunity to emphasize the importance of complying with the consistency requirement, made it much easier for local officials to disguise arbitrary decisions, and made effective judicial review of local rezoning decisions much more difficult. It is worth noting that detailed findings of fact are required to be made in almost every other type of quasi-judicial decision. For example, in *Irvine v. Duval County Planning Commission*, the Florida Supreme Court adopted the dissenting opinion of the lower court, which found that:

> without [detailed findings to support the approval of the application for a zoning exception], the reviewing court would be compelled to grope in the dark and to resort to guess-work as to what facts the Board had found to be true and what facts alleged were not found to be true.

2. Expert Testimony

Expert testimony is considered to be substantial competent evidence as long as the expert gives testimony that is within his area of expertise and is based either facts known to the expert, a hypothetical situation or facts disclosed at the hearing. It is important that expert witnesses state their qualifications on the record or submit their resume to the quasi-judicial body record.

The reports and recommendations of a local government=s professional planning staff have long been recognized as the type of expert testimony sufficient to sustain a quasi-judicial zoning decision where the statements in the report are supported by the facts and are not merely conclusory in nature. *ABC Real Estate Development, Inc. v. St. Johns County*, 608 So.2d 59 (Fla. 5th DCA 1992); *Battaglia Fruit Co. v. City of Maitland*, 530 So.2d 940 (Fla. 5th DCA 1988). In *Florida Mining & Materials v. City of Port Orange*, 518 So.2d 311 (Fla. 3d DCA 1987), however, the court reversed the city's denial of a zoning exception for a cement batch plant. Although, the City found that the proposed use would create potential traffic problems, the Court held that there was no substantial competent evidence to support the staff recommendation of denial where there was no factual basis to distinguish how the applicant's cement trucks would adversely affect a residential neighborhood any more than other large trucks which traveled through the neighborhood.

In addition to professional planning staff recommendations, the courts have also held decisions of a local government's Planning Commission may also constitute substantial competent evidence upon which to grant or deny a zoning request. *Hillsborough County Board of County Commissioners v. Longo*, 505 So.2d 470 (Fla. 2d DCA 1987); *Connetta v. City of Sarasota*, 400 So.2d 1051 (Fla. 2d DCA 1981).

In contrast, the "testimony" of attorneys does not constitute substantial competent evidence. *National Advertising Co. v. Broward County*, 491 So.2d 1262 (Fla. 4th DCA 1986). Attorneys generally appear on *behalf of* a party; they are advocates -- not witnesses. As such, absent stipulation by the opposing party, they cannot testify. Although mere conclusory assertions of law may sound persuasive, they fall far short of satisfying the requisite foundational element of "competent" evidence. As aptly stated by one court:

> [T]he practice we wish to see terminated is that of attorneys making unsworn statements of fact at hearings which trial courts [or quasi-judicial bodies] may consider as establishing facts. It is essential that attorneys conduct themselves as officers of the court; but their unsworn statements do not establish facts in the absence of stipulation. Trial judges cannot rely upon these unsworn statements as the basis for making factual determinations, and this court cannot so consider them on review of the record. If the advocate wishes to establish a fact, he must provide sworn testimony *through witnesses other than himself* or a stipulation to which his opponent agrees.

Leon Shaffer Golnick Advertising, Inc. v. Cedar, 423 So.2d 1015 (Fla. 4th DCA 1982).

3. Citizen Testimony

Florida courts have long acknowledged the legitimate interest of neighboring property owners in preserving the character of their neighborhood. As recently recognized by the Fourth District Court of Appeal:

> The role of the governmental entity is to arrive at sound decisions affecting the use of property within its domain. *This includes receiving citizen input regarding the effect of the proposed use on the neighborhood,* especially where the input is fact-based.

City of Dania v. Florida Power & Light, 718 So.2d 873 (Fla. 4th DCA, 1998).

In short, although citizen testimony may be considered, it can only be used to support a quasi-judicial zoning decision when it is based on something more than mere opinions. Popularity polls of neighborhood residents do not constitute substantial competent evidence. See *City of Apopka v. Orange County*, 299 So.2d 657 (Fla. 4th DCA 1974).

This issue regarding the weight and legal sufficiency to be accorded public "concerns" was recently revisited by the Third District Court of Appeal in the case of *Metropolitan Dade County v. Section 11 Property Corp.*, 719 So.2d 1204(Fla. 3d DCA 1998). In that case, the court expressly considered whether the opposition of neighboring property owners to a proposed land use could be considered as "competent substantial evidence" sufficient to withstand judicial review of the local government's decision to deny the zoning request. According to the developer (as well as the circuit court), the citizen testimony was "merely opinion" and therefore insufficient grounds for denying the proposed development. The Third District Court of Appeal, however, saw things differently:

> In the instant case, when the Commission examined the issue of compatibility, it properly considered aesthetics, as well as use. The Commission received the testimony of several neighbors who characterized the project as "industrial" and who stated that the project would be incompatible with the surrounding residential neighborhood. Specifically, one neighbor stated that the self-storage facility would be "an eyesore." He commented that any proposed landscaping to try to enhance the appearance of the self-storage facility would not be effective and stated, "it's almost like trying to put an elephant in a Volkswagen, you know the elephant is still there." **This fact-based testimony regarding the aesthetic incompatibility of the project with the surrounding neighborhood, coupled with the site plan, elevation drawings, and the aerial photograph constituted substantial competent evidence supporting the denial of the exception.**

Id. (citations omitted) (emphasis added).

a. Examples of Unacceptable Citizen Testimony

The comments of witnesses must be probative or competent as to whether the standards in the ordinance have been satisfied. The courts have universally held that objections of neighborhood residents, without more, are not a sound basis for denying a permit.

Examples of citizen testimony that does not constitute substantial competent evidence include: *Pollard v. Palm Beach County*, 560 So.2d 1358 (Fla. 4th DCA 1990) (special exception for an ACLF; neighbors testified as to traffic, light and noise problems that would occur if permit approved); *Flowers Baking Co. v. City of Melbourne*, 537 So.2d 1040 (Fla. 5th DCA 1989) (gas station will cause tremendous traffic problem adjacent to condominium inhabited by retirees); *City of St. Petersburg v. Cardinal Industries Development Corp.*, 493 So.2d 535 (Fla. 2d DCA 1986) (lay testimony insufficient to sustain denial; concerns that construction would be done by labor force from outside the area, wooden homes would be a fire hazard); *BML Investments v. City of Cassleberry*, 476 So.2d 713 (Fla. 5th DCA 1985), *rev. denied*, 486 So.2d 595 (Fla. 1986) (development plan approval denied; testimony of residents regarding relationship of project to surrounding neighborhood insufficient to deny plan approval); *City of Apopka v. Orange County*, 299 So.2d 657 (Fla. 4th DCA 1974) (special exception for airplane landing strip; noise and cost of future home construction cited by interested residents); *Conetta v. Sarasota*, 400 So.2d 1051 (Fla. 2d DCA 1981) (special exception for guest house; residents stated it would not conform to neighborhood); *Miami Mental Health Center v. City of Miami*, 3 Fla. L. Weekly Supp. 91 (Fla. 11th Cir. Ct. 1995) (two residents testified as to declining property values if mental health facility was approved; testimony disapproved as ambiguous); *Robinson v. City of Miami Beach*, 3 Fla. L. Weekly Supp. 320 (Fla. 11th Cir. 1995) (testimony by resident that helicopters are dangerous was unacceptable as contrary to a city code which allowed the permitting of helicopter pads); *Demarinis v. Town of Palm Beach*, 3 Fla. L. Weekly Supp. 150 (Fla. 15th Cir. Ct. 1995) (Applicant sought a permit to expand an outdoor dining area; homeowner's association president testified that residents objected; next door resident objected to the 4 L's: "liquor, later, longer, and louder;" none of this testimony was competent); *Jesus fellowship, Inc. v. Miami-Dade County*, 752 So.2d 708 (Fla. 3d DCA 2000) (Testimony by non-expert citizens insufficient to rebut expert testimony presented on behalf of landowner).

Similarly, expressions of mass opinions from neighborhood residents do not constitute substantial competent evidence. It has long been common practice at a hearing for someone to get up and ask the question: "How many people here oppose this project?" A large number of the citizens present stand or raise their hands. Acceptable behavior? Absolutely not.

The fact that there may be a large number of objectors to the approval of a permit or other quasi-judicial decision is not a sound basis for denial, no matter how strenuous the objections. The function of a quasi-judicial board must be exercised on the basis of facts adduced at the hearing and upon appropriate zoning principles and objectives as set forth in the zoning ordinance and should not be based on a mere poll or plebiscite of the neighbors. The merits of the application, rather than the number of opponents, should be the controlling consideration. Local governing bodies and boards acting in a quasi-judicial- capacity should base their decisions on fact and not indulge in "government by applause meter." *A.A. Profiles, Inc. v. City of Fort Lauderdale*, 850 F.2d 1483 (11th Cir. 1988).

b. Examples of Acceptable Citizen Testimony

One case that fully supports the testimony of neighborhood residents is *Board of County Commissioners of Pinellas County v. Clearwater*, 440 So.2d 497 (Fla. 2d DCA 1983). This case concerned an application for a public pier 200 feet in length with a 100 foot long T-end. The application was denied after residents appeared in opposition stating that the proposed dock would

have a material and adverse affect upon the material beauty and recreation advantages of the area. The circuit court reversed, citing a lack of expert testimony, and that the opinions of citizens did not constitute substantial, competent evidence. The appellate court reversed, finding local lay individuals with first-hand knowledge of the vicinity qualified as expert witnesses as to the issue of natural beauty and recreational advantages of the area.

Statements of neighbors regarding the affect of a development on their quality of life is also admissible. *City of St. Petersburg v. Cardinal Industries Development Corp.*, 493 So.2d 535, 538 (Fla. 2d DCA 1986); *Graham Companies v. Dade County*, Case No. 93-163AP, 2 Fla. L. Weekly Supp. 241, 242 (Fla. 11th Cir. Ct. Apr. 22, 1994). Lay citizens have the ability to testify how conditions in a neighborhood have changed over time, if they have witnessed those changes.

Other cases in which the testimony of residents has been found to be acceptable include: *Metro Dade County v. Blumenthal*, 675 So.2d 598 (Fla. 3d DCA 1995), *reversed en banc*, 675 So.2d 610(Fla. 3d DCA 1996) (resident Morgan Levy testified as to location and density of nearby developments; original opinion determined that Levy was not competent to testify to "zoning trends" (Judge Cope dissenting); *en banc* the court adopted Judge Cope's dissent, in which he noted that no one had ever used the word "zoning trends" except a Commissioner and that what Levy had done was simply to present information on nearby developments from which the County Commission could draw its own conclusions; Levy was competent to testify to that information); *Robinson v. City of Miami Beach*, 3 Fla. L. Weekly Supp. 320 (Fla. 11th Cir. 1995) (testimony by residents that existing unpermitted helicopter pad should not be permitted because helicopters made too much noise, blew covers off boats, caused houses to rattle, and windows to vibrate was expert testimony because the witnesses had observed these occurrences); and *Citivest Construction Corp. v. City of Tampa*, 3 Fla. L. Weekly Supp. 212 (Fla. 13th Cir. 1995) (permit was for single-family homes on sub-standard lots; resident testimony related to permitting standards; a resident who was an architect presented a picture board comparing home sizes of proposed and existing homes; a resident took pictures of all homes in the neighborhood and compared existing lot intensiveness with proposed lot intensiveness; testimony found to be "expert" testimony); *Marion County v. Priest*, 26 F.L. W. 1098 (Fla. 5th DCA 2001) (Marion County's denial of special use permit to withdraw 100,000 gallons of water to be sold outside county based on testimony of three homeowners in opposition to special use permit regarding impact on existing roads, existing water usage restrictions and salt water intrusion in wells in Levy County upheld as supported by substantial competent evidence).

IV. JUDICIAL REVIEW BY DISTRICT COURTS OF APPEAL

When the jurisdiction of a district court of appeal is invoked to review a circuit court's ruling on the decision of a quasi-judicial body, the scope of the court's review is quite narrow. Namely, the district courts of appeal are limited to considering two issues:

(1) Whether the circuit court afforded procedural due process; and

(2) Whether the circuit court departed from the essential requirements of law.

Fla. Power and Light Co. v. City of Dania, 761 So. 2d 1089 (Fla. 2000).

Thus, while the circuit courts examine the record of the quasi-judicial proceedings to determine whether "substantial competent evidence" exists to support the zoning decision, the

district courts of appeal look primarily at the issue of whether the circuit court applied the correct law in rendering its decision.

The most common reason cited for reversal of a circuit court's order quashing the decision of the quasi-judicial body is where they seek to reweigh the evidence presented during the quasi-judicial proceeding. This constitutes a "departure from the essential requirements of law," as the circuit courts are strictly prohibited from reweighing the record evidence presented below. Rather, the courts are restricted to *reviewing* the record of the proceedings below -- they are not permitted to substitute their judgment for that of the local government. See *Haines City Community Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995).

In sum, a circuit court acting in its appellate capacity is charged with simply ascertaining whether the challenged administrative action is *supported* by substantial competent evidence. In the words of the Florida Supreme Court:

> The question is not whether upon review of the evidence in the record there exists substantial competent evidence to support a position *contrary* to that reached by the agency. Instead, the circuit court should review the factual determination made by the agency and determine whether there is substantial competent evidence to *support* the agency's conclusion.

Education Dev. Center, Inc. v. City of West Palm Beach Zoning Bd. of Appeals, 541 So.2d 106, 107-08 (Fla. 1989); see also *City of Dania v. Florida Power & Light*, 718 So.2d 813 (Fla. 4th DCA 1998), 761 So.2d 1089 (Fla. 2000) ("The test is not whether the circuit court *would* have reached the same conclusion based on the evidence, but 'whether there was *any* substantial competent evidence upon which to base the [local government's] decision.'").

A "departure from the essential requirements of law" can also occur where the circuit court misstates the criteria of a local zoning ordinance. One such case was presented in *City of Jacksonville v. Taylor*, 721 So.2d 1212 (Fla. 1st DCA 1998). In *Taylor*, the circuit court had reversed the City's decision to deny the landowner his request for a zoning variance to reduce the required road frontage, concluding that there was no substantial competent evidence to support the denial. According to the circuit court, the City Council had misapplied the governing zoning code criteria; Mr. Taylor, the court reasoned, was entitled to the variance because surrounding properties had already received identical zoning variances.

The First District Court of Appeal reversed the circuit court's decision, concluding that it was the circuit court -- not the City Council -- that failed to apply the correct law, stating:

> The fact that certain other property owners have received a variance is not a consideration under the City of Jacksonville ordinance code, the law applicable here . . . . Obviously, the lower court's statement of the law is not consistent with the local zoning ordinance.

Once a case makes its way to the district court of appeal, the scope of review is generally limited to ascertaining whether the lower court applied the correct law. The appellate courts do not revisit the substantial competent evidence issue. That issue is determined at the circuit court level. However, if a circuit court exceeds its own scope of review and substitutes its judgment for that of the quasi-judicial body, the appellate courts will not hesitate to find reversible error. In *St. Johns*

County v. Smith, 766 So.2d 1097 (Fla. 5th DCA 2000), the Fifth District Court of Appeal reversed circuit court's decision denying an application for a PUD amendment to allow a solid waste transfer facility, holding that the lower court had reweighed and rejected the testimony given by the two expert witnesses. In *Florida Power & Light v. Dania*, 761 So.2d 1089 (Fla. 2000), the Florida Supreme Court held that the Fourth District Court of Appeal was precluded from assessing the record evidence. ("Once the district court determined from the face of the circuit court order that the circuit court had applied the wrong law, the job of the district court was ended. In proceeding to apply the right first-tier law, i.e., in evaluating the record for competent substantial evidence to support the Commission's decision, the district court usurped the jurisdiction of the circuit court.").

V. COMPREHENSIVE PLAN AMENDMENTS

In 1997 the Florida Supreme Court decided *Martin County v. Yusem*, 690 So.2d 1288 (Fla. 1997), which clarified the standard of review to be applied by courts when reviewing the local government's decision on an amendment to the local comprehensive plan. The court held that the local government's decision on a plan amendment is legislative in nature rather than quasi-judicial and, therefore, the deferential "fairly debatable" standard of review applies. However, the court suggested in a footnote that its holding may not apply in cases involving small-scale plan amendments.

In 2001, the Florida Supreme Court answered the unresolved question of whether small-scale comprehensive plan amendments are legislative or quasi-judicial in nature. In *Coastal Development of North Florida, Inc. v. City of Jacksonville Beach*, 788 So.2d 204 (Fla. 2001), the court held that small-scale comprehensive plan amendments are also legislative decisions. The Florida Supreme Court held that the same reasoning it used in *Yusem* also applies to small-scale amendments because: (1) the original adoption of a comprehensive plan is a legislative act, the proposed modification of that plan is likewise a legislative act; (2) the integrated comprehensive plan amendment review process by several levels of government indicates that action on a plan amendment is a policy decision; (3) Section 163.3184(10)(a) requires that the fairly debatable standard of review applies in an administrative hearing to determine consistency with the Growth Management Act; and (4) characterizing all comprehensive plan amendments as legislative will remove uncertainty and promote uniformity in the land use law context. The Court rejected the contention that small-scale plan amendments are distinguishable from other plan amendments because they involve changes to the future land use map that do not alter the plan's textual goals, objectives and policies, finding that the future land use map is part of the comprehensive plan and represents a fundamental policy decision of the local government and therefore any proposed change to that established policy likewise is a policy decision. Finally, the Court held that local legislative decisions on small-scale plan amendments may be challenged in an original *de novo* action in circuit court, subject to the fairly debatable standard of review.

VI. INTERPRETATION OF LOCAL COMPREHENSIVE PLANS

Dixon v. City of Jacksonville, 774 So.2d 763 (Fla. 1st DCA 2000), *rev. dismissed*, 831 So.2d 161 (Fla. 2002), involved an action for injunctive relief by neighbors challenging the consistency of the City's development order, which permitted the construction of a hotel, with its comprehensive plan, based on the argument that the hotel was not a permitted use within the applicable RPI (Residential, Professional, Institutional) future land use classification. The Court rejected the City's argument that deference should be given to the City's interpretation of its comprehensive plan.

The First District Court of Appeal determined that the strict scrutiny standard previously established in *Machado v. Musgrove* applies in determining the consistency of the development order with the comprehensive plan and that the construction of statutes and ordinances is a question of law that is reviewable *de novo*, unless their meaning is ambiguous. Even if a statute or ordinance is complicated, that does not necessarily render it "ambiguous." Although the RPI future land use classification did not mention, either specifically or by implication, hotels, another future land use classification expressly permitted hotels. Accordingly, based upon its "strict scrutiny" of the provisions of the City's comprehensive plan, the Court concluded that hotels were not a permitted use in the RPI classification.

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