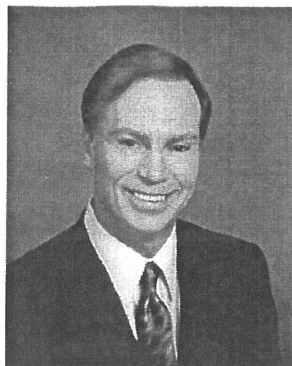


FLORIDA HOMETOWN DEMOCRACY AND EMINENT DOMAIN
Eminent Domain Section, Hillsborough County Bar Association



It will be interesting to see how planning by referendum affects Florida's economy and the use of eminent domain.

Mark Bentley, Esquire, AICP
Mark Bentley, P.A., Tampa, Florida

On November 2, 2010, the proposed "Florida Hometown Democracy Amendment," which seeks to amend Section 4 of Florida's Constitution, will be on the ballot. The Amendment was initiated by Florida Hometown Democracy, a non-partisan grass-roots organization. In the event the Amendment is successful, it would require any future amendment to a local government's comprehensive plan to be acted upon by a general or special election, effectively providing the public with veto power over local government planning. This public referendum requirement would add another step to the already complex, time-consuming comprehensive plan amendment review and approval process.

The proposed Amendment states in pertinent part that:

... [B]efore a local government may adopt a new comprehensive land use plan, or amend a comprehensive land use plan, such proposed plan or plan amendment shall be subject to vote of the electors of the local government by referendum. . . ."

According to the state of Florida, local governments adopted an average of 7,878 amendments and 1,062 plan change packages per year between 2001 and 2005. Given this volume of plan amendments, the Hometown Democracy Amendment will undoubtedly have an impact on how local legislators make policy decisions regarding future growth in their communities.

Some issues and concerns raised by the proposed Amendment:

1. What changes will be subject to a referendum?

The language of the Amendment states that it relates to an amendment to a "comprehensive land use plan." This language is

confusing, as there is no mention of a “comprehensive land use plan” in Florida’s Growth Management Act. The Act addresses only a “Comprehensive Plan” in its entirety. Therefore, it appears that application of the Amendment’s requirements would not be limited to proposed changes to the land use map element of a local government’s Comprehensive Plan. Instead, a proposed amendment to any part of the government’s Comprehensive Plan, whether initiated by the local government or by a private citizen, would be subject to a public vote. A recent survey on this issue indicates that the vast majority of Florida’s local government planning officials interpret the proposed Amendment’s reference to a local government’s “comprehensive land use plan” to mean its entire Comprehensive Plan and not just the land use map element of its Plan.

2. When must a vote by referendum be held?

The Amendment, if approved, will become effective on November 2, 2010. Thereafter, any comprehensive plan amendment may be acted upon at the next regularly scheduled election or at special election. In all practicality, conducting a special election is highly unlikely as the local government has to “foot the bill,” which would be cost prohibitive. For example, an official state estimate indicates that a special election for a large county could cost up to \$330,000.

3. Will the Amendment have any impact on eminent domain?

Possibly. Because any plan amendment will be subject to public veto, plan amendments that propose an increase in density, intensity, and/or relate to land use changes outside of established urban areas will most likely be unsuccessful. Decreased development requires less need for the acquisition of roads, schools, parks, water, sewer, and other infrastructure improvements that may require the use of eminent domain power.

The Amendment may also have an impact on the eminent domain valuation process. It would be extremely risky and inappropriate for an appraiser to speculate that any property could obtain a map amendment that would enhance its value. Therefore, any valuation involving the application of Florida’s “reasonable probability doctrine” as established in Broward County vs. Patel, will be solely limited to zonings, variances and special use permits.

This brief analysis demonstrates some of the consequences of this far-reaching, complex Amendment. It will be interesting to see how planning by referendum will impact Florida’s economy and the use of eminent domain.