TOWN OF MALABAR
PLANNING AND ZONING ADVISORY BOARD
REGULAR MEETING
WEDNESDAY JANUARY 11, 2017
7:30 PM
MALABAR COUNCIL CHAMBER
2725 MALABAR ROAD
MALABAR, FLORIDA

AGENDA

A. CALL TO ORDER, PRAYER AND PLEDGE
B. ROLL CALL
C. ADDITIONS/DELETIONS/CHANGES
D. CONSENT AGENDA :

1. **Approval of Minutes** Planning and Zoning Meeting – 12/14/2016
   Exhibit: Agenda Report No. 1
   Recommendation: Request Approval

E. PUBLIC HEARING: none
F. ACTION:
G. DISCUSSION:

2. **Amend Code to Require P&Z Review each of the "LC" use in the R/LC Zoning**
   Exhibit: Agenda Report No. 2
   Recommendation: Discussion

H. ADDITIONAL ITEMS FOR FUTURE MEETING:
I. PUBLIC:
J. OLD BUSINESS/NEW BUSINESS:

OLD BUSINESS:

- Review Sunshine Memo from Attorney Bohn
- Discuss the duties of the Planning & Zoning Board for the Town of Malabar per Florida Statues 163.

NEW BUSINESS:

- Reminder for Local Government Planning Officials' Training Event January 20, 2017 in Titusville 8:15AM- 4PM.

K. ADJOURN

NOTE: THERE MAY BE ONE OR MORE MALABAR ELECTED OFFICIALS ATTENDING THIS MEETING.
If an individual decides to appeal any decision made by this board with respect to any matter considered at this meeting, a verbatim transcript may be required, and the individual may need to insure that a verbatim transcript of the proceedings is made (Florida Statute 286.0105). The Town does not provide this service in compliance with the Americans with Disabilities Act (ADA), anyone who needs a special accommodation for this meeting should contact the Town's ADA Coordinator at 321-727-7764 at least 48 hours in advance of this meeting.

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 1
Meeting Date: January 11, 2017
Prepared By: Denine M. Sherear, Planning and Zoning Board Secretary

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SUBJECT: Approval of Minutes

BACKGROUND/HISTORY:

The minutes must reflect the actions taken by the Board:

- Who made the Motion
- What is the motion
- Who seconded the motion
- What was the vote

Malabar has historically included discussion to provide the reader the understanding of how the Board came to their vote. It is not verbatim and some editing is done to convey the thought. People do not speak the way they write.

ATTACHMENTS:
Draft minutes of P&Z Board Meeting of December 14, 2016

ACTION OPTIONS:
Secretary requests approval of the minutes.

"The following draft minutes are subject to changes and/or revisions by the Planning and Zoning Board and shall not be considered the official minutes until approved by the P&Z Board."

MALABAR PLANNING AND ZONING BOARD REGULAR MEETING
December 14, 2016 7:30 PM

This meeting of the Malabar Planning and Zoning was held at Town Hall at 2725 Malabar Road.

A. CALL TO ORDER, PRAYER AND PLEDGE:

Meeting called to order at 7:37 P.M. Prayer and Pledge led Vice-Chair Liz Ritter.

B. ROLL CALL:

CHAIR:	
VICE-CHAIR:	LIZ RITTER
BOARD MEMBERS:	BUD RYAN
	WAYNE ABARE
	GEORGE FOSTER
	DOUG DIAL
ALTERNATE:	ALLEN RICE
ALTERNATE:	MARY HOFMEISTER
BOARD SECRETARY:	DENINE SHEREAR
ADDITIONAL ATTENDEES:	
TOWN ADMINISTRATOR:	DOUG HOYT
MAYOR	PAT REILLY

C. NOMINATIONS FOR CHAIR AND VICE CHAIR FOR 2016/2017

Nomination for Chair:

Ryan Nominates Liz Ritter for Chair, Dial seconds; Roll Call Vote
Foster, Nay; Abare, Nay; Ryan, Aye; Dial, Aye; Ritter, Aye

Foster Nominates Wayne Abare for Chair, Foster seconds; Roll Call Vote
Foster, Aye; Abare, Aye; Ryan, Nay; Dial, Nay; Ritter, Nay
Liz Ritter for Chair of PZ Board, Roll Call Vote 2 Nay, 3 Ayes

Nomination for Vice Chair:

Dial Nominates Wayne Abare for Vice Chair, Foster seconds; Roll Call Vote
Foster, Aye; Abare, Aye; Ryan, Nay; Dial, Aye; Ritter, Nay
Ritter Nominates Bud Ryan for Vice Chair, Ryan seconds;
Wayne Abare for Vice Chair of PZ Board, Roll Call Vote 3 Ayes, 2 Nay

D. ADDITIONS/DELETIONS/CHANGE:

E. CONSENT AGENDA:

1. **Approval of Minutes** Planning and Zoning Meeting – 10/12/2016
   Exhibit: Agenda Report No. 1
   Recommendation: Request Approval

Motion: Abare / Ryan to Approve the Minutes of 10/12/16 as corrected **Vote: All Ayes.**

Corrections:

Ritter page 3/7 packet (10/12/2016)

- 1st Para under "Public" last sentence FLP = FPL

Ritter page 4/7

- 1st Para, first sentence after 2 ½ foot strip so the "Feed Store" not ~~Town~~.
- 7th Para, last sentence clarify DH said the road (West Railroad Ave)

Sherear page 5/7 under D."Consent Agenda", Motions and the dates of the minutes should both be 2016.

F. ACTION:

G. DISCUSSION:

2. Discussion Item for Future Meetings- none

H. ADDITIONAL ITEMS FOR FUTURE MEETING

I. PUBLIC- none

J. OLD BUSINESS/NEW BUSINESS:

Old Business:

New Business:
Ritter congratulated Doug Dial on becoming a regular PZ Member and welcomed New Alternate PZ Members, Mary and Allen.

K. ADJOURN
There being no further business to discuss, MOTION: Abare/Ryan to adjourn this meeting. Vote: All Ayes. The meeting adjourned 7:42 P.M.

BY:

_____
Liz Ritter, Chair

_____
Denine Sherear, Board Secretary

_____
Date Approved: as corrected

O. *R/LC "Residential and Limited Commercial."* The R/LC district is established to implement comprehensive plan policies for managing development on land specifically designated for mixed use Residential and Limited Commercial development on the Comprehensive Plan Future Land Use Map (FLUM). Such development is intended to accommodate limited commercial goods and services together with residential activities on specific sites designated "R/LC" which are situated along the west side of the US 1 corridor as delineated on the FLUM. For instance, sites within this district are intended to accommodate neighborhood shops with limited inventory or goods as well as single family and multiple family structures with a density up to six (6) units per acre. Commercial activities shall generally cater to the following markets:

- Local residential markets within the town as opposed to regional markets; or
- Specialized markets with customized market demands.
- A Malabar Vernacular Style is required for all development along arterial roadways.

Areas designated for mixed use Residential and Limited Commercial development are not intended to accommodate commercial activities with a floor area in excess of four thousand (4,000) square feet, such as large-scale retail sales and/or service facilities or trade activities. These types of commercial activities generally serve regional markets and the intensity of such commercial activities is not generally compatible with residential activities located within the same structure or located at an adjacent or nearby site. Such stores would usually differ from limited commercial shops since the former would usually require a floor area larger than four thousand (4,000) square feet; would generally carry a relatively larger inventory; and require substantially greater parking area. Uses, which are not intended to be accommodated within the limited commercial area, include the following: large-scale discount stores; health spas; supermarket; department stores; large scale wholesaling and warehousing activities; general sales, services or repair of motor vehicles, heavy equipment, machinery or accessory parts, including tire and battery shops and automotive service centers; commercial amusements; and fast food establishments primarily serving in disposal containers and/or providing drive-in facilities.

Single family or multiple family residential uses with a density no greater than six (6) units per acre may also be located in the R/LC district. Such residential uses may be located either within a freestanding structure or within a structure housing both Residential and Limited Commercial activities. The R/LC district is intended and shall be interpreted to be a "commercial" district with respect to required setbacks and other size and dimension provisions referenced by zoning district in this Code.

(Ord. No. 94-4, § 2, 4-3-95; Ord. No. 07-02, §§ 1—4, 4-2-07; Ord. No. 14-01, § 2, 2-3-14)

Section 1-3.2. Land use by districts.

Table 1-3.2 "Land Use by Districts" stipulates the permitted and conditional uses by district.

Permitted uses are uses allowed by right provided all applicable regulations within the land development code are satisfied as well as other applicable laws and administration regulations. Conditional uses are allowable only if approved by the Town pursuant to administrative procedures found in Article VI. The applicant requesting a conditional use must demonstrate compliance with conditional use criteria set forth in Article VI.

No permitted use or conditional use shall be approved unless a site plan for such use is first submitted by the applicant. The applicant shall bear the burden of proof in demonstrating compliance with all applicable laws and ordinances during the site plan review process. Site plan review process is set forth in Article X.

Cross reference—Alcoholic beverages, ch. 4

P&Z 01/11/2017

Agenda Item # 2

COMP PLAN re: Limited Commercial Uses in R/LC

CHAPTER ONE

FUTURE LAND USE ELEMENT

PURPOSE

The purpose of the Future Land Use Element is the designation of future land use patterns as reflected in the goals, objectives and policies contained in the Town of Malabar's Comprehensive Plan. The supporting data provides a broad survey of current land use patterns, natural land features, and availability of public facilities for existing and future development. Future land use patterns are depicted on the Future Land Use Map (Map FLU-9).

PLANNING TIMEFRAMES

The Town of Malabar Comprehensive Plan provides guidance on development and redevelopment over two planning periods: a 5-Year period ending FY 2013 (short term) and a 10-Year period ending FY2018 (long term).

residential neighborhoods. Such development is intended to provide essential household services in locations highly accessible to residential areas. For instance, sites within this designation are intended to accommodate neighborhood shops with limited inventory or goods. Such shops generally cater to the following markets: 1) neighborhood residential markets within the immediate vicinity as opposed to city-wide or regional markets; or 2) a specialized market with customized demands. Commercial development within the limited commercial designation shall generally be restricted to any of the following uses: neighborhood convenience stores; small limited item shops and stores restricted to retail sales of convenience items and services including barber, beauty care, and other personal services; small scale drugstores, laundry and dry cleaning pick-up stations; specialty shops; small scale activities associated with a specialized facility.

Areas designated for limited commercial development are not intended to accommodate large scale retail sales, service, and trade activities, generally serving a city-wide or regional market. Such stores would usually differ from limited commercial shops since the former would usually require a larger floor area, carry a relatively larger inventory and require a substantially greater parking area. Uses, which are not intended to be accommodated within the limited commercial area, include the following: large scale discount stores; health spas, supermarkets; department stores; large scale wholesaling and warehousing activities; general sales, service or repair of motor vehicles, heavy equipment, machinery or accessory parts, including tire and battery shops and automotive service centers; commercial amusements; fast food establishments primarily serving in disposable containers and/or providing drive-in facilities, and other similar services to be expressly defined in the zoning ordinance.

No residential uses shall be located in a CL designated area.

1-2.2.4 Policy:

General Commercial Development (CG). The general commercial areas are designated on the Future Land Use Maps for purposes of accommodating general retail sales and services. These areas are located in highly accessible areas adjacent to major thoroughfares which possess necessary location, site, and market requirements. Zoning policy shall stipulate provisions regulating specific land uses.

The areas designated for general commercial development are specifically not adaptive to permanent residential housing and such uses shall be located in other areas designated for residential development.

1-2.2.5 Policy:

Residential and Limited Commercial Development (R/LC). The R/LC Future Land Use Map designation is intended to accommodate and shall accommodate a mixture of land uses expressly restricted to uses allowed in the "limited commercial" designation together with uses allowed on lands designated for high density residential activities with a density no greater than six (6) units per acre. Such residential uses may be located either within a free standing structure or within a structure housing both Residential and

Limited Commercial activities. The "R/LC" FLUM designation is intended and shall be interpreted to be a "commercial" district with respect to required setbacks and other size and dimension provisions referenced by zoning district in the Town's Land Development Code. The "R/LC" Future Land Use Map (FLUM) designation is intended to apply to and shall only be applied to sites situated on the west side of the US 1 corridor, sites on Malabar Road and sites situated on the east side of Babcock Street. The "R/LC" FLUM designation shall apply only to the following specific areas:

a. Land south of the south property line of parcel 252 and 251 located 400+/- feet south of Riverview Home S/D; east of the FEC R/W; north of an irregular line formed by the south property line of lots 15-21 which front on the south side of Malabar Road; the east property line of lot 21 fronting on the south side of Malabar Road; and west of an irregular line formed by the US 1 R/W and the west property line of lot 22 which fronts on the south side of Malabar Road.

b. Land south of Orange Avenue R/W and north of Township Road within the Drake S/D, lots 41, A, B, C, D, E, F, G and West of US 1; and the land east of Crescent Road, north of Oak Street R/W, and west of the US 1 R/W.

c. Land South of the north property line formed by parcel 7.1, approximately 860 feet south of Oak Street and on the West side of US 1 Highway; and the west and south property lines of parcel 7.1 and east of the west property lines of the following lots all of which abut US 1 R/W and are located in the Sunnybank on the Dixie S/D; lots 1-10 in block C, lots 1-12 in block B, and lots 1-4 in block A; north of the south property line of lot 1, block A, Sunnybank on the Dixie S/D; and west of the US 1 R/W.

d. Land on either the north or south side of Malabar Road between the F.E.C. Railroad and the west end of Town.

e. Land on the east side of Babcock Street from I-95 south to Osage Street. These sites currently are characterized by a mixture of generally small scale commercial businesses together with predominantly single family residential land uses. Acres designated "R/LC" are not suitable for and shall not be developed for large scale general retail activities or other commercial activities more intense than land uses expressly provided for in the "limited commercial" Future Land Use Map designation (Reference Policy 1-2.2.3) since such development would be incompatible with existing and anticipated future residential development within or in the vicinity of areas designated "R/LC" on the Future Land Use Map.

1-2.2.6 Policy:

Criteria for the residential and Limited Commercial Development R/LC Designation. The following criteria for development within the R/LC FLUM designation shall be incorporated into the Town of Malabar Land Development Regulations:

- a. *Percent of Site for Mixed Use Development.* Within the R/LC designation where Residential and Limited Commercial activities are proposed to occupy the same site and/or the same building the following minimum and maximum percentages shall apply:

	Minimum	Maximum
Limited Commercial	20%	90%

Residential	10%	80%

b. *Limited Commercial Uses.* Limited Commercial uses within the R/LC FLUM designation shall have a minimum floor area of nine hundred (900) square feet and a maximum of four thousand (4,000) square feet.

c. *Residential Uses.* Single family units shall have a maximum density of four (4) units per acre. Multiple family uses shall have a density no greater than six (6) units per acre. However, any residential site located with a high surficial aquifer area on the Atlantic Coastal Ridge and not served by central water and wastewater shall have a density no greater than two (2) units per acre.

d. *Minimum Lot Requirements.* Lots within the R/LC FLUM designation shall have a minimum lot size of 20,000 square feet, a minimum width of 100' and a minimum depth of 150'.

e. *Setbacks Requirements.* Single family units shall have setbacks of 25' in the front, 10' on the interior and street sides, and 20' in the rear. Multiple family units shall have setbacks of 50' in the front, 10' on the interior side, 20' on the street side, and 25' in the rear.

f. *Building Height Requirements.* Any building within the R/LC FLUM designation shall have a maximum height of thirty-five (35) feet or three (3) stories.

g. *Coverage Requirements.* Single family residential uses shall have an impervious surface ratio of 50% with a minimum open space requirement of 50%. Multiple family residential uses shall have an impervious surface ratio of 65% with a minimum open space requirement of 35%. Limited commercial uses shall have a maximum floor to area ratio (FAR) of 0.20.

h. *Buffering.* The R/LC district is intended and shall be interpreted to be a "commercial" district with respect to required buffering and other provisions referenced by zoning district in the Land Development Code.

P&Z 01/11/2017

Agenda Item # OLD BUSINESS

SUNSHINE MEMO

MEMORANDUM

To: Town Council, Mayor Reilly

From: Karl W. Bohne, Jr.

Date: November 1, 2016

Re: Sunshine Law/Public Records Law/Quasi-Judicial Proceedings/Voting Conflicts

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I. The Florida Sunshine Law is contained in Chapter 286 of the Florida Statutes.

A. What public agencies are covered by the Sunshine Law?

The courts have expressed a view that the legislature intended to extend the application of the Sunshine Law so as to bind every board or commission of the state or of any county or political subdivision over which it has dominion and control. This means that the Sunshine Law is applicable to any government at the municipal as well as the state and county levels. The Sunshine Law applies to the Town Council

1. What is meeting subject to the Sunshine Law?

The Sunshine Law extends to the **discussions** and **deliberations** as well as the formal action taken by a public board or commission. There is no requirement that a quorum be present for a meeting of members of a public board or commission to be subject to the Sunshine Law.

Instead, the law is applicable to any gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by the board or commission. The Sunshine Law covers every thought, affirmative act and the entire decision making process.

2. Can the Sunshine Law apply to a single individual or a situation where two members are not actually present?

While ordinarily Florida Statutes 286.011 is applicable to two or more members of the same board or commission, certain factual situations have arisen where the presence of two individuals may not always be necessary in order for a violation of law to occur. Courts have expressed a view that the Statute should be construed so as to frustrate <u>all</u> evasive devises.

In one case, the use of memoranda to conduct city business was held to be subject to the Sunshine Law. A member of a city commission initiated a memorandum reflecting his thoughts on a given subject, and appended to this memo a writing space for other members to concur or disapprove

in the position taken. The originator of the memorandum then placed it in a receptacle at the offices of the public body. It was determined that this was a violation of the Sunshine Law and constituted a meeting between two or more members.

A meeting between individuals who are members of different boards is not subject to the Sunshine Law unless one or more of the individuals has been delegated the authority to act on behalf of his respective board. For example, an individual town council member may meet privately with an individual member of the code enforcement board to discuss town issues. Since two or more members of either board are not present, there was no violation because no delegation of the decision making authority had been made and neither member was not acting as a liaison between members of the respective boards.

Additionally the use of non-members as liaisons between board members of the same board is a violation of the Sunshine Law. These generally create *de facto* meetings in violation of the sunshine law.

B. To what agency actions or activities is the Sunshine Law directed?

1. Does the term "meeting" include such things as briefing sessions, workshop meetings, informal discussions and other meetings of the public body where no formal vote is taken?

The answer to this question is probably "yes". The law is applicable to any gathering where the members deal with some matter on which foreseeable actions will be taken by the board. The attorney general has determined that gatherings such as workshop meetings, conference sessions or meetings, conciliation conferences, fact finding decisions, executive work sessions, and courtesy meetings are all subject to the commands of the Sunshine Law. Additionally, the law is applicable to all deliberations of the public body.

C. May public officials meet together at luncheon meetings, social gatherings, and inspection trips?

Luncheon meetings, social gatherings and the like would not be subject to the Sunshine Law merely because of the presence of two or more members of a board or commission IF there was no discussion among the public officials relating to public business or foreseeable action which would be taken by the board.

1. Are telephone conversations within the scope of the Sunshine Law?

Telephone conversations between members of a public body are illegal if the conversation is held to discuss public business in a place inaccessible to members of the public and press for the specific purpose of avoiding public scrutiny.

2. Are the uses of computers subject to the Sunshine Law?
The use of computers or in any case any type of electronic medium, emails twitter, Facebook, etc., to carry out public business, by members of a public board or commission to communicate amongst themselves on issues pending before the board is subject to the Sunshine Law.

3. Are consultations with legal counsel subject to the Sunshine Law?

(a) A governmental body may meet in private with its attorney to discuss pending litigation to which the entity is presently a party for a court or administrative agency, provided that the following conditions are met:

i. The entity's attorney shall advice the entity at a public meeting that he desires advice concerning litigation.

ii. The subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures.

iii. The entire session shall be recorded by a certified court reporter. Thereafter, the court reporter's notes shall be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.

iv. The entity shall give reasonable public notice of the time and date of the attorney/client session and the names of persons who will be attending the session.

v. The transcript shall be made part of the public records upon conclusion of the litigation.

4. Inaudible discussions.
A violation of the sunshine law may occur if, during the meeting or during a recess, board members discuss issues before the board in a manner not generally audible to the public attending the meeting. Discussions of public business which are audible to a select few at the dais may violate the openness requirements of the law.

D. Appearance at Council meeting via telephone

Based on several Attorney General Opinions a Council member who is unable to attend a Council Meeting due to illness or physical disability or with a finding of extra-ordinary circumstances by the respective board may do so via telephone and may also cast a vote via telephone. It has been determined that an absence due to illness or physical disability is an "extraordinary circumstance" which justifies such attendance via telephone. But those are not the only 2 circumstances which constitute extra-ordinary circumstances. The attendance via telephone cannot be used to establish a quorum. So there must be a quorum present (in our case 3 members). If the quorum is present then the telephone appearance is acceptable. The Council member appearing by phone must be

able to hear the meeting and must be able to be heard by the public. The minutes must reflect that the Council member is appearing via telephone due to illness or physical disability or other extra-ordinary circumstances, as the case may be.

E. Curing Violations

It has long been held that Sunshine law violations can be cured by independent, final action done completely in the sunshine. However, such meetings must be more than a perfunctory or ceremonial ratification. Based on numerous cases discussing the ability to cure a violation it has been the thought that if you "cure" the matter the violation no longer exists.

When a violation of the sunshine law occurs the act taken is void. The "act" can be cured at a subsequent meeting. The curing of the act does not absolve the public body of its responsibility for violating the sunshine law. The "cure" merely is a way to salvage o void act by reconsidering it in the sunshine. This seems to mean that the criminal and non-criminal sanctions may still apply to the violators.

II. Florida's Public Records Law is contained in Chapter 119 of the Florida Statutes.

A. Materials of Public Records

In 119.011(1) of the Florida Statutes defines Public Records to include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

Therefore, any material regardless of form which is used to perpetuate or communicate or formulize knowledge and is received by and agency in connection with official business is a public record.

Any documentation an individual member receives from any source and the documentation is for the purpose of communicating public business this document must be a public record and given to the clerk of the Town. This applies to records received by a member at Town hall or anywhere else. So long as the record is intended to communicate official business it must be maintained as a public record.

Any communication that can be saved in a hard format would also be a public record. This includes emails, twitter messages, texted messages, Facebook postings, or any similar type of communications. The fact that you may have received such a communication on a private account does not exempt it from being a public record. If the contact relates to public business then it is a public record. Purely private matters are not public records.

Information stored in a public agency's computer "is as much a public record as a written page in a book or a tabulation in a file stored in a filing cabinet . . . ."

"E-mail" messages made or received by agency employees in connection with official business are public records and subject to disclosure in the absence of an exemption.

The nature of information--that is, that it is electronically generated and transferred--has been determined not to alter its character as a public record under the Public Records Act. Thus, the e-mail communication of factual background information and position papers from one official to another is a public record and should be retained in accordance with the retention schedule for other records relating to performance of the agency's functions and formulation of policy. Id. Similarly, e-mails sent by city commissioners in connection with the transaction of official business are public records subject to disclosure even though the e-mails contain undisclosed or blind recipients and their e-mail addresses.

The Florida Supreme Court has ruled that private e-mail stored in government computers does not automatically become a public record by virtue of that storage. "Just as an agency cannot circumvent the Public Records Act by allowing a private entity to maintain physical custody of documents that fall within the definition of 'public records,' . . . private documents cannot be deemed public records solely by virtue of their placement on an agency- owned computer." The Court cautioned, however, that the case before it did not involve e-mails "that may have been isolated by a government employee whose job required him or her to locate employee misuse of government computers."

B. Response to Request.

Any person requesting the examination/copying of a public record need not disclose their identity. Furthermore, a request can be anonymous. The request does not have to be written. The motivation behind the request is not relevant. Production of public records may not be conditioned upon a requirement that the person seeking inspection disclose background information about himself or herself. A custodian, however, may request information which will facilitate the receipt or delivery of copies of public records if such information has not been provided. For example, if hard copies of documents are requested, the custodian may inquire how such copies should be provided or if a deposit is required for the production and copying of public records, the custodian may inquire how such information may be communicated to the requestor.

Also, a records request cannot be denied because it is "overbroad". Section 119.07(1)(c), Florida Statutes (2013), requires both prompt acknowledgement of the request and a prompt good faith response: "A custodian of public records must acknowledge requests to inspect or copy records promptly and respond to such requests in good faith." Section 119.07(1) provides that a delay in making public records available is only permissible under limited circumstances. Section 119.07(1)(c) permits a delay for a records custodian to determine whether the records exist; however, unjustified delay in making non-exempt public records available violates Florida's public records law... An unjustified delay in complying with a public records request amounts to an unlawful refusal under section 119.12(1). It is not only the length of the delay, but also whether the delay was

unreasonable or excused under Chapter 119.

C. Redaction.

The plain language of the statute does not require the agency to state the basis of the exemption applicable to "each redaction." Instead, the statute simply requires the agency to "state the basis of the exemption that [the agency] contends is applicable to the record" and to provide a statutory citation for the exemption. § 119.07(1)(e), Fla. Stat. (2014) (emphasis added). Thus, section 119.07(1)(e) plainly requires only record-by-record not redaction-by-redaction identification of the exemptions authorizing the redactions in each record.

D. Attorney Fees.

The Florida Supreme Court has stated that if the actions of the public body were unlawful then the attorney fees provision of the statute applies. There is no requirement that the public body acted unreasonably or in bad faith.

III. Quasi Judicial Proceedings

The Town Council will be asked on occasions, to decide matters that come before it as a quasi-judicial body. The council sits as the Judge of the evidence and makes its determination based on competent substantial evidence. An example of matters that are considered as quasi-judicial, include, but are not limited to, site plan decisions, subdivision plat decisions, permitting decisions, special exceptions, certain rezonings, etc.

The evidence that meets this standard is more than mere opinion. It must be fact based opinion. This usually comes in the form of expert testimony. Unsupported opinions do not rise to the level of competent substantial evidence. Put another way, opinions that are not based on facts are generally not regarded as competent substantial evidence.

Furthermore, as a fact finding body you must abide by certain rules. You cannot prejudge a matter. You must hear all the evidence before you came to a conclusion. You should refrain from exparte communication. This means you should refrain from viewing property, talking to witnesses, or receiving documents outside the public hearing. If you are presented with an exparte communication such communication should be revealed and disclosed at the beginning of the quasi-judicial hearing. This gives all interested parties notice of the communication and a chance to further inquire.

Your decision must be based on what the code states. You must refrain from interjecting your opinions on the wisdom of what a code prescribes. Your opinions are irrelevant. Furthermore, the opinions of others on the wisdom of a code are equally irrelevant. Ambiguities in a code must be interpreted in favor of a property owner and construed against the Town.

IV. Voting Conflicts

A voting conflict arises when an official is called upon to vote on:

> any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

> If a voting conflict exists and the appointed local official will not participate in the measure then the official must:

> a. Abstain from voting;
> b. Before the vote, publically state the nature of the conflict; and
> c. Within 15 days of the vote, file a voting conflict memorandum.

> If the official desires to participate in the discussions then the official must:

> a. Abstain;
> b. File the voting conflict memorandum prior to the meeting in which case a copy must be provided to the other members and it must be read at the next meeting after the filing; or
> c. If the disclosure is not made prior to the meeting or the conflict was unknown prior to the meeting; the official must make the disclosure prior to participating followed by the memorandum within 15 days after the disclosure which shall be given to the other members and read at the next meeting.

> If you are faced with a situation that involved a quasi-judicial matter and you are so biased that you can not be fair an objective you should abstain from voting. This is not a true voting conflict under Florida's Voting conflict law but it is a matter of Due Process for an applicant. As I previously stated an applicant who presents a quasi-judicial matter to the Council is entitled to have the matter reviewed by a fair and impartial council. If a council member is biased against a matter then they should not vote on it.

P&Z 01/11/2017

Agenda Item # OLD BUSINESS

DUTIES OF P&Z BOARD

F.S. 163

participate in board deliberations and debate, but they may make motions and vote only in the absence or voting disqualification of a regular member or the vacancy in a regular member's seat.

(2) *Local planning agency.* The Malabar Planning and Zoning Board is hereby designated the local planning agency in accordance with F.S. 163, the Local Government Comprehensive Planning Act and as such shall conduct the comprehensive planning program and prepare the elements or portions of the comprehensive plan for presentation and approval by the town council.

(3) *Authority and functions of planning and zoning board.* The authority of the planning and zoning board is intended to be advisory only. Nothing herein shall be construed to grant to the planning and zoning board final decision making authority. The planning and zoning board shall review proposed site plans, developments, subdivisions, zoning or land use changes for consistency with the Town Code and comprehensive plan and forward their recommendations to council in writing. If any such application is recommended for denial, the written recommendation shall state specifically what provision of the Code or comprehensive plan was not met. The planning and zoning board shall review and recommend updates to the capital improvement plan annually. They shall also undertake any other duties assigned to them by council.

(4) *Land development regulations.* The planning and zoning board shall be familiar with the Malabar Land Development Regulations contained in the Land Development Code portion of the Malabar Code. These regulations are found in the chapters identified as Article I (Preamble) Article XX (Definitions) as updated from time to time. F.S. 163 mandates that local governments adopt and enforce land development regulations. Those regulations shall be consistent with their adopted comprehensive plan. That statute also requires that the provisions set forth in the comprehensive plan be implemented through adoption of ordinances.

(5) *Administrative staff.* The planning and zoning board shall consult with town staff as well as other outside professionals in preparing recommendations for amendments to the comprehensive plan. They should also use staff to assist in preparing proposed ordinances and regulations designed to promote orderly development.

(6) See division 1, section 2-211 above for other regulations.

(b) *Designation as local planning agency.* Pursuant to and in accordance with F.S. § 163.3174, the Local Government Comprehensive Planning Act, the town planning and zoning board is hereby designated and established as the local planning agency for the city. The local planning agency, in accordance with the Local Government Comprehensive Planning Act of 1975, F.S. § 163.3161—3211 shall:

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Title XI COUNTY ORGANIZATION AND INTERGOVERNMENTAL RELATIONS	Chapter 163 INTERGOVERNMENTAL PROGRAMS Entire Chapter	SECTION 3174 **Local planning agency.**

163.3174 Local planning agency.—

(1) The governing body of each local government, individually or in combination as provided in s. 163.3171, shall designate and by ordinance establish a "local planning agency," unless the agency is otherwise established by law. Notwithstanding any special act to the contrary, all local planning agencies or equivalent agencies that first review rezoning and comprehensive plan amendments in each municipality and county shall include a representative of the school district appointed by the school board as a nonvoting member of the local planning agency or equivalent agency to attend those meetings at which the agency considers comprehensive plan amendments and rezonings that would, if approved, increase residential density on the property that is the subject of the application. However, this subsection does not prevent the governing body of the local government from granting voting status to the school board member. The governing body may designate itself as the local planning agency pursuant to this subsection with the addition of a nonvoting school board representative. All local planning agencies shall provide opportunities for involvement by applicable community college boards, which may be accomplished by formal representation, membership on technical advisory committees, or other appropriate means. The local planning agency shall prepare the comprehensive plan or plan amendment after hearings to be held after public notice and shall make recommendations to the governing body regarding the adoption or amendment of the plan. The agency may be a local planning commission, the planning department of the local government, or other instrumentality, including a countywide planning entity established by special act or a council of local government officials created pursuant to s. 163.02, provided the composition of the council is fairly representative of all the governing bodies in the county or planning area; however:

(a) If a joint planning entity is in existence on the effective date of this act which authorizes the governing bodies to adopt and enforce a land use plan effective throughout the joint planning area, that entity shall be the agency for those local governments until such time as the authority of the joint planning entity is modified by law.

(b) In the case of chartered counties, the planning responsibility between the county and the several municipalities therein shall be as stipulated in the charter.

(2) Nothing in this act shall prevent the governing body of a local government that participates in creating a local planning agency serving two or more jurisdictions from continuing or creating its own local planning agency. Any such governing body which continues or creates its own local planning agency may designate which local planning agency functions, powers, and duties will be performed by each such local planning agency.

(3) The governing body or bodies shall appropriate funds for salaries, fees, and expenses necessary in the conduct of the work of the local planning agency and shall also establish a schedule of fees to be charged by the agency. To accomplish the purposes and activities authorized by this act, the local planning agency, with the approval of the governing body or bodies and in accord with the fiscal practices thereof, may expend all sums so appropriated and other sums made available for use from fees, gifts, state or federal grants, state or federal loans, and other sources; however, acceptance of loans must be approved by the governing bodies involved.

(4) The local planning agency shall have the general responsibility for the conduct of the comprehensive planning program. Specifically, the local planning agency shall:

(a) Be the agency responsible for the preparation of the comprehensive plan or plan amendment and shall make recommendations to the governing body regarding the adoption or amendment of such plan. During the preparation

of the plan or plan amendment and prior to any recommendation to the governing body, the local planning agency shall hold at least one public hearing, with public notice, on the proposed plan or plan amendment. The governing body in cooperation with the local planning agency may designate any agency, committee, department, or person to prepare the comprehensive plan or plan amendment, but final recommendation of the adoption of such plan or plan amendment to the governing body shall be the responsibility of the local planning agency.

(b) Monitor and oversee the effectiveness and status of the comprehensive plan and recommend to the governing body such changes in the comprehensive plan as may from time to time be required, including the periodic evaluation and appraisal of the comprehensive plan required by s. 163.3191.

(c) Review proposed land development regulations, land development codes, or amendments thereto, and make recommendations to the governing body as to the consistency of the proposal with the adopted comprehensive plan, or element or portion thereof, when the local planning agency is serving as the land development regulation commission or the local government requires review by both the local planning agency and the land development regulation commission.

(d) Perform any other functions, duties, and responsibilities assigned to it by the governing body or by general or special law.

(5) All meetings of the local planning agency shall be public meetings, and agency records shall be public records.

History.—s. 6, ch. 75-257; s. 1, ch. 77-223; s. 5, ch. 85-55; s. 2, ch. 92-129; s. 9, ch. 95-310; s. 9, ch. 95-341; s. 1, ch. 2002-296; s. 10, ch. 2011-139; s. 2, ch. 2012-99.

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Title XI	Chapter 163	SECTION 3194
COUNTY ORGANIZATION AND INTERGOVERNMENTAL RELATIONS	INTERGOVERNMENTAL PROGRAMS Entire Chapter	**Legal status of comprehensive plan.**

163.3194 Legal status of comprehensive plan.—

(1)(a) After a comprehensive plan, or element or portion thereof, has been adopted in conformity with this act, all development undertaken by, and all actions taken in regard to development orders by, governmental agencies in regard to land covered by such plan or element shall be consistent with such plan or element as adopted.

(b) All land development regulations enacted or amended shall be consistent with the adopted comprehensive plan, or element or portion thereof, and any land development regulations existing at the time of adoption which are not consistent with the adopted comprehensive plan, or element or portion thereof, shall be amended so as to be consistent. If a local government allows an existing land development regulation which is inconsistent with the most recently adopted comprehensive plan, or element or portion thereof, to remain in effect, the local government shall adopt a schedule for bringing the land development regulation into conformity with the provisions of the most recently adopted comprehensive plan, or element or portion thereof. During the interim period when the provisions of the most recently adopted comprehensive plan, or element or portion thereof, and the land development regulations are inconsistent, the provisions of the most recently adopted comprehensive plan, or element or portion thereof, shall govern any action taken in regard to an application for a development order.

(2) After a comprehensive plan for the area, or element or portion thereof, is adopted by the governing body, no land development regulation, land development code, or amendment thereto shall be adopted by the governing body until such regulation, code, or amendment has been referred either to the local planning agency or to a separate land development regulation commission created pursuant to local ordinance, or to both, for review and recommendation as to the relationship of such proposal to the adopted comprehensive plan, or element or portion thereof. Said recommendation shall be made within a reasonable time, but no later than within 2 months after the time of reference. If a recommendation is not made within the time provided, then the governing body may act on the adoption.

(3)(a) A development order or land development regulation shall be consistent with the comprehensive plan if the land uses, densities or intensities, and other aspects of development permitted by such order or regulation are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government.

(b) A development approved or undertaken by a local government shall be consistent with the comprehensive plan if the land uses, densities or intensities, capacity or size, timing, and other aspects of the development are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government.

(4)(a) A court, in reviewing local governmental action or development regulations under this act, may consider, among other things, the reasonableness of the comprehensive plan, or element or elements thereof, relating to the issue justiciably raised or the appropriateness and completeness of the comprehensive plan, or element or elements thereof, in relation to the governmental action or development regulation under consideration. The court may consider the relationship of the comprehensive plan, or element or elements thereof, to the governmental action taken or the development regulation involved in litigation, but private property shall not be taken without due process of law and the payment of just compensation.

(b) It is the intent of this act that the comprehensive plan set general guidelines and principles concerning its purposes and contents and that this act shall be construed broadly to accomplish its stated purposes and objectives.

(5) The tax-exempt status of lands classified as agricultural under s. 193.461 shall not be affected by any comprehensive plan adopted under this act as long as the land meets the criteria set forth in s. 193.461.

(6) If a proposed solid waste management facility is permitted by the Department of Environmental Protection to receive materials from the construction or demolition of a road or other transportation facility, a local government may not deny an application for a development approval for a requested land use that would accommodate such a facility, provided the local government previously approved a land use classification change to a local comprehensive plan or approved a rezoning to a category allowing such land use on the parcel, and the requested land use was disclosed during the previous comprehensive plan or rezoning hearing as being an express purpose of the land use changes.

History.—s. 12, ch. 75-257; s. 1, ch. 77-174; s. 2, ch. 77-223; s. 12, ch. 80-358; s. 69, ch. 81-259; s. 11, ch. 85-55; s. 33, ch. 2002-296.

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Title XI	Chapter 163	SECTION 3202
COUNTY ORGANIZATION AND INTERGOVERNMENTAL RELATIONS	INTERGOVERNMENTAL PROGRAMS Entire Chapter	**Land development regulations.**

163.3202 Land development regulations.—

(1) Within 1 year after submission of its comprehensive plan or revised comprehensive plan for review pursuant to s. 163.3191, each county and each municipality shall adopt or amend and enforce land development regulations that are consistent with and implement their adopted comprehensive plan.

(2) Local land development regulations shall contain specific and detailed provisions necessary or desirable to implement the adopted comprehensive plan and shall at a minimum:

(a) Regulate the subdivision of land.

(b) Regulate the use of land and water for those land use categories included in the land use element and ensure the compatibility of adjacent uses and provide for open space.

(c) Provide for protection of potable water wellfields.

(d) Regulate areas subject to seasonal and periodic flooding and provide for drainage and stormwater management.

(e) Ensure the protection of environmentally sensitive lands designated in the comprehensive plan.

(f) Regulate signage.

(g) Provide that public facilities and services meet or exceed the standards established in the capital improvements element required by s. 163.3177 and are available when needed for the development, or that development orders and permits are conditioned on the availability of these public facilities and services necessary to serve the proposed development. A local government may not issue a development order or permit that results in a reduction in the level of services for the affected public facilities below the level of services provided in the local government's comprehensive plan.

(h) Ensure safe and convenient onsite traffic flow, considering needed vehicle parking.

(i) Maintain the existing density of residential properties or recreational vehicle parks if the properties are intended for residential use and are located in the unincorporated areas that have sufficient infrastructure, as determined by a local governing authority, and are not located within a coastal high-hazard area under s. 163.3178.

(3) This section shall be construed to encourage the use of innovative land development regulations which include provisions such as transfer of development rights, incentive and inclusionary zoning, planned-unit development, impact fees, and performance zoning. These and all other such regulations shall be combined and compiled into a single land development code for the jurisdiction. A general zoning code shall not be required if a local government's adopted land development regulations meet the requirements of this section.

(4) The state land planning agency may require a local government to submit one or more land development regulations if it has reasonable grounds to believe that a local government has totally failed to adopt any one or more of the land development regulations required by this section. Once the state land planning agency determines after review and consultation with local government whether the local government has adopted regulations required by this section, the state land planning agency shall notify the local government in writing within 30 calendar days after receipt of the regulations from the local government. If the state land planning agency determines that the local government has failed to adopt regulations required by this section, it may institute an action in circuit court to require adoption of these regulations. This action shall not review compliance of adopted regulations with this section or consistency with locally adopted plans.

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Title XII MUNICIPALITIES	Chapter 166 MUNICIPALITIES Entire Chapter	SECTION 041 **Procedures for adoption of ordinances and resolutions.**

166.041 Procedures for adoption of ordinances and resolutions.—

(1) As used in this section, the following words and terms shall have the following meanings unless some other meaning is plainly indicated:

(a) "Ordinance" means an official legislative action of a governing body, which action is a regulation of a general and permanent nature and enforceable as a local law.

(b) "Resolution" means an expression of a governing body concerning matters of administration, an expression of a temporary character, or a provision for the disposition of a particular item of the administrative business of the governing body.

(2) Each ordinance or resolution shall be introduced in writing and shall embrace but one subject and matters properly connected therewith. The subject shall be clearly stated in the title. No ordinance shall be revised or amended by reference to its title only. Ordinances to revise or amend shall set out in full the revised or amended act or section or subsection or paragraph of a section or subsection.

(3)(a) Except as provided in paragraph (c), a proposed ordinance may be read by title, or in full, on at least 2 separate days and shall, at least 10 days prior to adoption, be noticed once in a newspaper of general circulation in the municipality. The notice of proposed enactment shall state the date, time, and place of the meeting; the title or titles of proposed ordinances; and the place or places within the municipality where such proposed ordinances may be inspected by the public. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

(b) The governing body of a municipality may, by a two-thirds vote, enact an emergency ordinance without complying with the requirements of paragraph (a) of this subsection. However, no emergency ordinance or resolution shall be enacted which establishes or amends the actual zoning map designation of a parcel or parcels of land or that changes the actual list of permitted, conditional, or prohibited uses within a zoning category. Emergency enactment procedures for land use plans adopted pursuant to part II of chapter 163 shall be pursuant to that part.

(c) Ordinances initiated by other than the municipality that change the actual zoning map designation of a parcel or parcels of land shall be enacted pursuant to paragraph (a). Ordinances that change the actual list of permitted, conditional, or prohibited uses within a zoning category, or ordinances initiated by the municipality that change the actual zoning map designation of a parcel or parcels of land shall be enacted pursuant to the following procedure:

1. In cases in which the proposed ordinance changes the actual zoning map designation for a parcel or parcels of land involving less than 10 contiguous acres, the governing body shall direct the clerk of the governing body to notify by mail each real property owner whose land the municipality will redesignate by enactment of the ordinance and whose address is known by reference to the latest ad valorem tax records. The notice shall state the substance of the proposed ordinance as it affects that property owner and shall set a time and place for one or more public hearings on such ordinance. Such notice shall be given at least 30 days prior to the date set for the public hearing, and a copy of the notice shall be kept available for public inspection during the regular business hours of the office of the clerk of the governing body. The governing body shall hold a public hearing on the proposed ordinance and may, upon the conclusion of the hearing, immediately adopt the ordinance.

2. In cases in which the proposed ordinance changes the actual list of permitted, conditional, or prohibited uses within a zoning category, or changes the actual zoning map designation of a parcel or parcels of land involving 10 contiguous acres or more, the governing body shall provide for public notice and hearings as follows:

a. The local governing body shall hold two advertised public hearings on the proposed ordinance. At least one hearing shall be held after 5 p.m. on a weekday, unless the local governing body, by a majority plus one vote, elects to conduct that hearing at another time of day. The first public hearing shall be held at least 7 days after the day that the first advertisement is published. The second hearing shall be held at least 10 days after the first hearing and shall be advertised at least 5 days prior to the public hearing.

b. The required advertisements shall be no less than 2 columns wide by 10 inches long in a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be placed in a newspaper of general paid circulation in the municipality and of general interest and readership in the municipality, not one of limited subject matter, pursuant to chapter 50. It is the legislative intent that, whenever possible, the advertisement appear in a newspaper that is published at least 5 days a week unless the only newspaper in the municipality is published less than 5 days a week. The advertisement shall be in substantially the following form:

NOTICE OF (TYPE OF) CHANGE

The (name of local governmental unit) proposes to adopt the following ordinance: (title of the ordinance).

A public hearing on the ordinance will be held on (date and time) at (meeting place).

Except for amendments which change the actual list of permitted, conditional, or prohibited uses within a zoning category, the advertisement shall contain a geographic location map which clearly indicates the area covered by the proposed ordinance. The map shall include major street names as a means of identification of the general area. In addition to being published in the newspaper, the map must be part of the online notice required pursuant to s. 50.0211.

c. In lieu of publishing the advertisement set out in this paragraph, the municipality may mail a notice to each person owning real property within the area covered by the ordinance. Such notice shall clearly explain the proposed ordinance and shall notify the person of the time, place, and location of any public hearing on the proposed ordinance.

(4) A majority of the members of the governing body shall constitute a quorum. An affirmative vote of a majority of a quorum present is necessary to enact any ordinance or adopt any resolution; except that two-thirds of the membership of the board is required to enact an emergency ordinance. On final passage, the vote of each member of the governing body voting shall be entered on the official record of the meeting. All ordinances or resolutions passed by the governing body shall become effective 10 days after passage or as otherwise provided therein.

(5) Every ordinance or resolution shall, upon its final passage, be recorded in a book kept for that purpose and shall be signed by the presiding officer and the clerk of the governing body.

(6) The procedure as set forth herein shall constitute a uniform method for the adoption and enactment of municipal ordinances and resolutions and shall be taken as cumulative to other methods now provided by law for adoption and enactment of municipal ordinances and resolutions. By future ordinance or charter amendment, a municipality may specify additional requirements for the adoption or enactment of ordinances or resolutions or prescribe procedures in greater detail than contained herein. However, a municipality shall not have the power or authority to lessen or reduce the requirements of this section or other requirements as provided by general law.

(7) Five years after the adoption of any ordinance or resolution adopted after the effective date of this act, no cause of action shall be commenced as to the validity of an ordinance or resolution based on the failure to strictly adhere to the provisions contained in this section. After 5 years, substantial compliance with the provisions contained in this section shall be a defense to an action to invalidate an ordinance or resolution for failure to comply with the provisions contained in this section. Without limitation, the common law doctrines of laches and waiver are valid defenses to any action challenging the validity of an ordinance or resolution based on failure to strictly adhere to the provisions contained in this section. Standing to initiate a challenge to the adoption of an ordinance or resolution based on a

failure to strictly adhere to the provisions contained in this section shall be limited to a person who was entitled to actual or constructive notice at the time the ordinance or resolution was adopted. Nothing herein shall be construed to affect the standing requirements under part II of chapter 163.

(8) The notice procedures required by this section are established as minimum notice procedures.

History.—s. 1, ch. 73-129; s. 2, ch. 76-155; s. 2, ch. 77-331; s. 1, ch. 83-240; s. 1, ch. 83-301; s. 2, ch. 95-198; s. 5, ch. 95-310; s. 5, ch. 2012-212.

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Title XI COUNTY ORGANIZATION AND INTERGOVERNMENTAL RELATIONS	Chapter 163 INTERGOVERNMENTAL PROGRAMS **Entire Chapter**	**SECTION 3161** **Short title; intent and purpose.**

163.3161 Short title; intent and purpose.—

(1) This part shall be known and may be cited as the "Community Planning Act."

(2) It is the purpose of this act to utilize and strengthen the existing role, processes, and powers of local governments in the establishment and implementation of comprehensive planning programs to guide and manage future development consistent with the proper role of local government.

(3) It is the intent of this act to focus the state role in managing growth under this act to protecting the functions of important state resources and facilities.

(4) It is the intent of this act that local governments have the ability to preserve and enhance present advantages; encourage the most appropriate use of land, water, and resources, consistent with the public interest; overcome present handicaps; and deal effectively with future problems that may result from the use and development of land within their jurisdictions. Through the process of comprehensive planning, it is intended that units of local government can preserve, promote, protect, and improve the public health, safety, comfort, good order, appearance, convenience, law enforcement and fire prevention, and general welfare; facilitate the adequate and efficient provision of transportation, water, sewerage, schools, parks, recreational facilities, housing, and other requirements and services; and conserve, develop, utilize, and protect natural resources within their jurisdictions.

(5) It is the intent of this act to encourage and ensure cooperation between and among municipalities and counties and to encourage and ensure coordination of planning and development activities of units of local government with the planning activities of regional agencies and state government in accord with applicable provisions of law.

(6) It is the intent of this act that adopted comprehensive plans shall have the legal status set out in this act and that no public or private development shall be permitted except in conformity with comprehensive plans, or elements or portions thereof, prepared and adopted in conformity with this act.

(7) It is the intent of this act that the activities of units of local government in the preparation and adoption of comprehensive plans, or elements or portions therefor, shall be conducted in conformity with this act.

(8) The provisions of this act in their interpretation and application are declared to be the minimum requirements necessary to accomplish the stated intent, purposes, and objectives of this act; to protect human, environmental, social, and economic resources; and to maintain, through orderly growth and development, the character and stability of present and future land use and development in this state.

(9) It is the intent of the Legislature that the repeal of ss. 163.160 through 163.315 by s. 19 of chapter 85-55, Laws of Florida, and amendments to this part by this chapter law, not be interpreted to limit or restrict the powers of municipal or county officials, but be interpreted as a recognition of their broad statutory and constitutional powers to plan for and regulate the use of land. It is, further, the intent of the Legislature to reconfirm that ss. 163.3161-163.3248 have provided and do provide the necessary statutory direction and basis for municipal and county officials to carry out their comprehensive planning and land development regulation powers, duties, and responsibilities.

(10) It is the intent of the Legislature that all governmental entities in this state recognize and respect judicially acknowledged or constitutionally protected private property rights. It is the intent of the Legislature that all rules, ordinances, regulations, comprehensive plans and amendments thereto, and programs adopted under the authority of this act must be developed, promulgated, implemented, and applied with sensitivity for private property rights and not be unduly restrictive, and property owners must be free from actions by others which would harm their property

or which would constitute an inordinate burden on property rights as those terms are defined in s. 70.001(3)(e) and (f). Full and just compensation or other appropriate relief must be provided to any property owner for a governmental action that is determined to be an invalid exercise of the police power which constitutes a taking, as provided by law. Any such relief must ultimately be determined in a judicial action.

(11) It is the intent of this part that the traditional economic base of this state, agriculture, tourism, and military presence, be recognized and protected. Further, it is the intent of this part to encourage economic diversification, workforce development, and community planning.

(12) It is the intent of this part that new statutory requirements created by the Legislature will not require a local government whose plan has been found to be in compliance with this part to adopt amendments implementing the new statutory requirements until the evaluation and appraisal period provided in s. 163.3191, unless otherwise specified in law. However, any new amendments must comply with the requirements of this part.

History.—ss. 1, 2, ch. 75-257; ss. 1, 20, ch. 85-55; s. 1, ch. 93-206; s. 4, ch. 2011-139.