Florida Association of County Attorneys
2016 Midyear CLE Seminar Program
December 1, 2016
Buena Vista Palace Orlando
Orange County
(4 CLE Hours)

10:00 a.m. to 12:30 p.m.	**Meeting of the Florida Association of County Attorneys Board of Directors – Working Lunch**
1:00 p.m.	**Opening Remarks and Welcome** Anne Brown, Levy County FACA President
1:00 p.m. to 1:50 p.m.	**The Dirty Business of Solid Waste Flow Control** Heather Encinosa, Esq. Nabors, Giblin & Nickerson, Tallahassee
1:50 p.m. to 2:45 p.m.	**A Panel Presentation: Form Based Land Development Codes** Andrew Mai, Moderator, County Attorney, Osceola County Susan L. Trevarthen, Esq. Weiss Serota Helfman Cole & Bierman, Ft. Lauderdale Marsha Segal-George, Esq. Fowler, O'Quinn, Feeney & Sneed, P.A., Orlando Jeff Jones Planning Department, Osceola County
2:45 p.m. to 3:00 p.m.	**Refreshment Break**
3:00 p.m. to 3:15 p.m.	**A Look Ahead 2017 Legislative Session** Virginia “Ginger” Delegal, Esq., General Counsel Florida Association of County Attorneys Tallahassee, Florida
3:15 p.m. to 4:15 p.m.	**Staying Secure: Unruly Citizens, Security Planning and Violence in the Workplace** Herbert W. A. Thiele County Attorney, Leon County Patrick McCormack County Attorney, St. Johns County Tim Warner, Esq. Bill Warner, Esq. The Warner Law Firm, Panama City, Florida

The Dirty Business of Solid Waste Flow Control

Heather J. Encinosa

Nabors, Giblin & Nickerson P.A.
www.ngnlaw.com
December 1, 2016

Nabors Giblin & Nickerson P.A.

Discussion Topics

- Definition of Flow Control
- Types of Flow Control
- Federal Commerce Clause Jurisprudence
- Florida Law on Flow Control

What is Flow Control?

Nabors Giblin & Nickerson P.A.

Section 403.706, Florida Statutes

"The governing body of a county has the responsibility and power to provide for the operation of solid waste disposal facilities to meet the needs of all incorporated and unincorporated areas of the county."

Flow Control

The ability of a county or city to direct solid waste generated within its borders to a disposal facility of its choice.

Types of Flow Control

- Legislative Flow Control
- Market Participant Flow Control
- Economic Flow Control

Legislative Flow Control

- Flow control through legislative enactment that prevents waste from being transported out of a particular locality and requires disposal at a designated facility.
- Until 2007 was legally prohibited as a violation of the dormant Commerce Clause per C&A Carbone, Inc. v. Town of Clarkstown, 511 U.S. 383 (1994) because such laws burden interstate commerce and impeded its free flow.
- Carbone case involved a privately owned transfer station under contract with the Town and a part of the contract required a certain waste flow from the town that the town chose to guarantee with a flow control ordinance.

United Haulers Ass'n v. Oneida

550 U.S. 330 (2007)

- Ordinance at issue required all solid waste to be delivered to a government owned processing facility.
- Is a publicly owned facility controlled by the Carbone decision?
- Does an ordinance requiring delivery of all solid waste to a publicly owned facility impose a substantial burden on interstate commerce and thereby violate the dormant Commerce Clause?

United Haulers Ass'n v. Oneida

- Answer: "No."
- Flow control laws directing solid waste to publicly owned and operated facilities that otherwise treat all in- and out-of-state haulers equally do not discriminate against interstate commerce for purposes of the Commerce Clause.
- Local benefits (economic viability, health and environmental benefits) outweighed interstate burdens.

Market Participant Flow Control

- Flow Control by competitively procured franchise for collection and disposal.
- Developed in hiatus between Carbone and United Haulers decisions.
- Local government's actions are outside the reach of the Commerce Clause when it contracts as a private party in the marketplace.

Market Participant Flow Control

- Bennett Electric Co. v. Village of Miami Shores, 11 F. Supp. 2d 1348 (S.D. Fla. 1998)
- BFI Waste Systems of North America, Inc. v. Broward County, 265 F.Supp. 2d 1332 (S.D. Fla. 2003)
- Southern Waste Systems, LLC v. City of Delray Beach, 420 F.3d 1288 (11th Cir. 2005)

Economic Flow Control

- Flow Control through the imposition of special assessments to fund a solid waste disposal facility.
- Special assessment revenues serve to lower or eliminate the tipping fees and thereby attract the solid waste flow due to economic advantages.
- Harris v. Wilson, 693 So.2d 945 (Fla. 1997)

Florida Law on Flow Control

Section 403.713(1), Florida Statutes

Ownership and control of solid waste and recovered materials.

(1) Nothing in this act or in any local act or ordinance shall be construed to limit the free flow of solid waste across municipal or county boundaries provided such solid waste is transported or disposed of pursuant to the provisions of this part. However, any local government that undertakes resource recovery from solid waste pursuant to general law or special act may control the collection and disposal of solid waste, as defined by general law or such special act, which is generated within the territorial boundaries of such local government and other local governments which enter into interlocal agreements for the disposal of solid waste with the local government sponsoring the resource recovery facility.

Section 403.713(2), Florida Statutes

(2) Any local government which undertakes resource recovery from solid waste pursuant to general law or special act may institute a flow control ordinance for the purpose of ensuring that the resource recovery facility receives an adequate quantity of solid waste from solid waste generated within its jurisdiction. Such authority shall not extend to recovered materials, whether separated at the point of generation or after collection, that are intended to be held for purposes of recycling pursuant to requirements of this part; however, the handling of such materials shall be subject to applicable state and local public health and safety laws.

“Resource Recovery Facility”

- Not defined in current state law.
- “Resource Recovery” is broadly defined to mean “the process of recovering materials or energy from solid waste.” §403.703(28), Fla. Stat.
- “Recovered materials” not included in the purview of flow control.

“Resource Recovery Facility”

- Prior to 1988, §403.703, Fla. Stat. defined “Resource recovery and management facility” as “any solid waste disposal area, volume reduction plant, or other facility, the purpose of which is resource recovery or the disposal, recycling, processing, or storage of solid waste.”

- “Any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.” 42 U.S.C. §6903 (24)

Good Fella's v. Citrus County

- Challenge to Citrus County's Flow Control Ordinance as violating section 403.713, Fla Stat.
- What qualifies as a "resource recovery facility?"
- Narrow – only waste-to-energy plants
- Broad – incinerators, recycling facilities, methane gas capture, and other similar management facilities.

Citrus County v. Good Fella's

- Code enforcement action on cert. review
- Narrow question of whether School Board is subject to a County's Flow Control Ordinance.
- Answer per Fifth District Court of Appeal: "No."

Questions?

Please direct questions to

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Nabors Giblin & Nickerson P.A.

FORM-BASED CODES

SUSAN L. TREVARTHEN, ESQ., FAICP

Florida Association of County Attorneys

Orlando, FL

Dec. 1, 2016

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AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW

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ORIGINS OF TRADITIONAL ZONING

- Established by Standard State Zoning Enabling Act and upheld by US Supreme Court in *Euclid v. Ambler* in 1920s (segregation by income: apartments separated from single family)
- Dominant approach to zoning regulation since Mid-20th Century
- Part of a public health movement to separate the pastoral residence from the big, smelly, dangerous, noisy factory/workplace
- Uses separated by zoning district . . . but people interact with multiple uses all the time
- Requires many large roads to connect the far-flung separate uses
- Often neglects to provide public gathering spaces and civic uses.
- Separating truly incompatible uses makes sense. But many diverse uses are compatible, and unnatural separation can harm communities. Every step of every day requires driving, in heavy traffic because the distances make walking and biking unrealistic and mass transit costly and inefficient.

Post-war transportation theory conceives of three types of streets: collector streets (red) which feed vehicles from slow local streets (yellow) to high-speed arterials (purple) for distance travel. For new streets, this has become the norm across the United States.

http://formbasedcodes.org/

Arterial street





Collector street



But this results in fragmented street systems. Little Mary might see her playmate's house a short distance away, but if she wishes to bicycle there, she may have to go surprising distances, including on fast collectors and arterials. For pedestrians, distances are tiring and streets don't connect as you expect.

Arterial street





Collector street



http://formbasedcodes.org/

Public Space Standards regulate not just individual streets, but also how streets interconnect and function as systems.

Contemporary auto-oriented street system





Walkable interconnected street system

http://formbasedcodes.org/

ORIGINS OF FORM-BASED CODES

- Arose from dissatisfaction with the buildings and cities that resulted from traditional zoning
- Regulates by building form, regardless of use, and driven by design
- Focusing on integration of uses, not separation
- A return to the historical approach to creating cities that have character and are sensitive to context. Efficient organization of uses leading to sense of place, social vitality and walkability.
- Modern concept dates back to Seaside, Florida, 1987, designed by Duany and Plater-Zyberk
- Accelerated implementation since mid-2000s
- Emphasis on higher quality public realm and sense of place, focusing on relationship between the building and the street, on public space, and on quality of transitions where different intensities of development meet

FORM-BASED CODES INSTITUTE
HTTP://FORMBASEDCODES.ORG/

A form-based code:

- Starts with a vision and community input.
- Is a land development regulation that fosters predictable built results and a high-quality **public realm** by using physical form (rather than separation of uses) as the organizing principle for the code.
- Is a regulation, not a mere guideline or statement of policy, and is adopted into law.
- Regulates the relationship between building facades and the public realm, the form and mass of buildings in relation to one another, and the scale and types of streets and blocks.
- Uses words, charts, tables, and drawings/photos to fully explain and model the desired outcome, which is usually a compact physical form. Focus on achieving a relationship between buildings and streets and encourages walking, transit and a tighter neighborhood fabric rather than a specific architectural style.
- Is keyed to a **regulating plan** that designates the appropriate form and scale (and therefore, character) of development, rather than zoning districts that only distinguish land-use types.

HOW TO TELL IF IT'S A FORM-BASED CODE

Form-Based Codes Institute Criteria

- Is the code's focus primarily on regulating urban form and less on land use?
- Is the code regulatory rather than advisory?
- Does the code emphasize standards and parameters for form with predictable physical outcomes (build-to lines, frontage type requirements, etc.) rather than relying on numerical parameters (FAR, density, etc.) whose outcomes are impossible to predict?
- Does the code require private buildings to shape public space through the use of building form standards with specific requirements for building placement?
- Does the code promote and/or conserve an interconnected street network and pedestrian-scaled blocks?
- Are regulations and standards keyed to specific locations on a regulating plan?
- Are the diagrams in the code unambiguous, clearly labeled, and accurate in their presentation of spatial configurations?

EXPERIENCE WITH FORM-BASED CODES

As of May 2013:

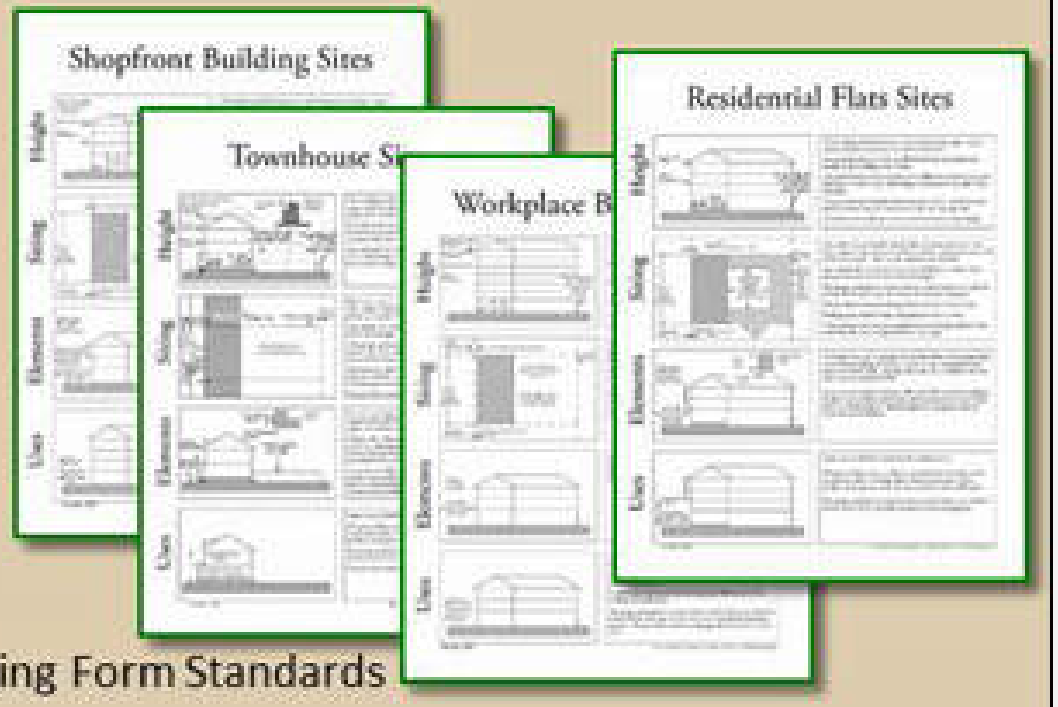
- 480 form-based codes meet Form-Based Codes Institute criteria, and 14 form-based sets of guidelines
- 279 adopted, with 84% adopted since 2003 and others in process
- Communities representing 39 million acres and 42 million people
- Can be implemented at the scale of an entire city or a single neighborhood or project

(Source: http://www.placemakers.com/how-we-teach/codes-study/)

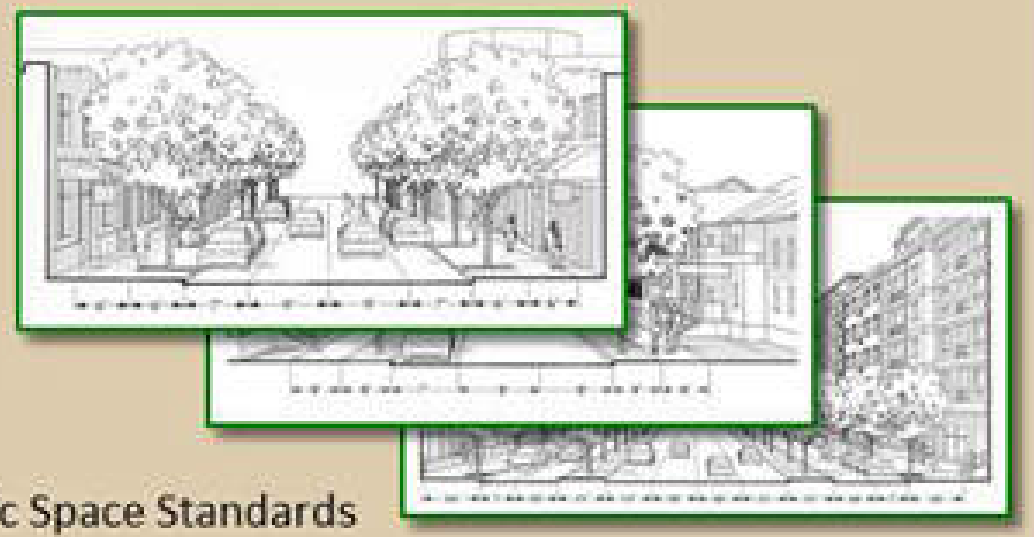
Form-Based Codes are composed of *Building Form Standards* and *Public Space Standards* mapped to a *Regulating Plan*.



Regulating plan



Building Form Standards



Public Space Standards

Building Form Standards regulate simple things like: how far buildings are from sidewalks, how much window area at minimum a building must have, how tall it is in relation to the width of the street, how accessible and welcoming front entrances are, and where a building's parking goes.



http://formbasedcodes.org/

Building Form Standards can profoundly affect how public spaces like streets, squares, and parks are experienced and used. Building orientation is key.





http://formbasedcodes.org/

Building Form Standards can require buildings to have windows and welcoming entries. They should contribute to life on the sidewalk.





http://formbasedcodes.org/

Building Form Standards designate where parking should go. For example, the standards can require the placement of parking to the rear of buildings to ensure that it doesn't get between buildings and pedestrians.





http://formbasedcodes.org/

Building Form Standards control the use of land in a more indirect way than standard zoning. They don't give the long and ever expanding lists of acceptable uses that zoning codes typically contain. Rather, they describe general uses. And they try to guide land use through building type. For example, if a community wants a pedestrian-friendly main street, its standards would prescribe shopfront or mixed-use buildings.



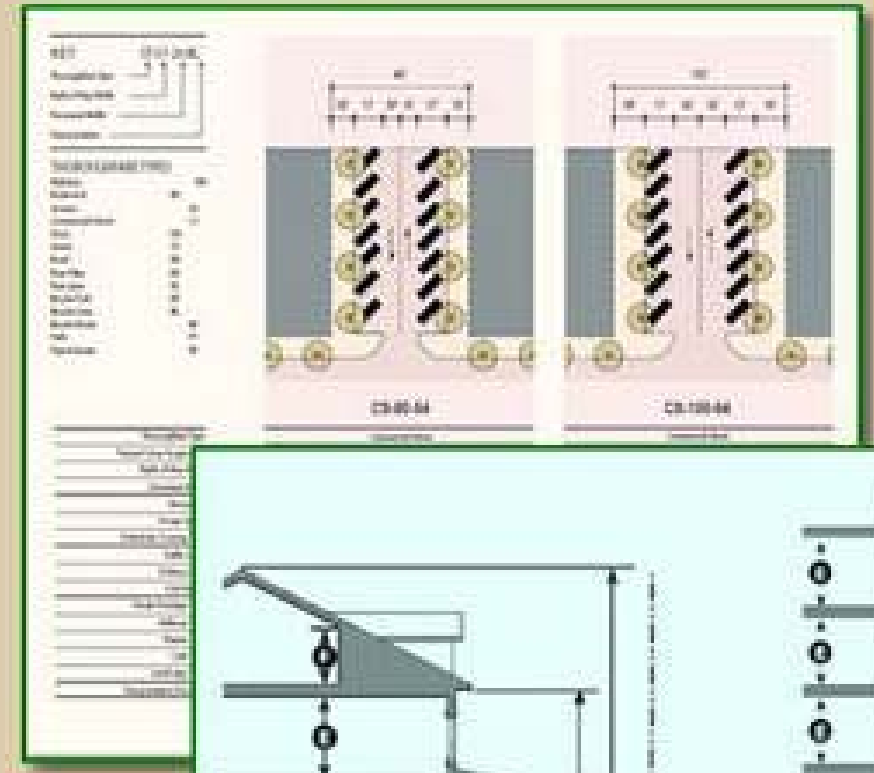
Require this building type . . .

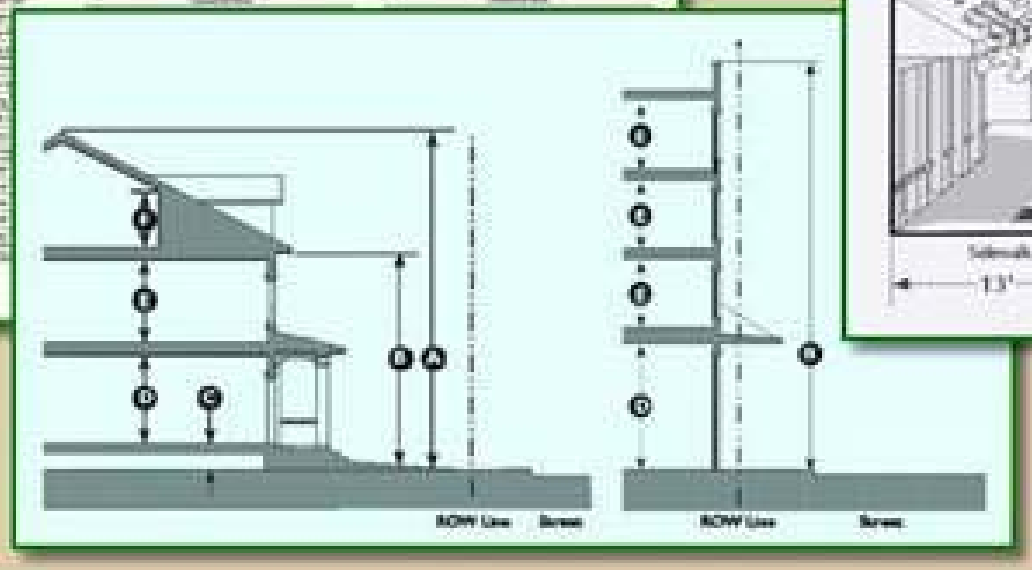


. . . to avoid this

http://formbasedcodes.org/

Form-based codes, with their generous illustrations and simple diagrams, clearly convey a community's intentions for an area. FBCs are designed for quick and convenient understanding.







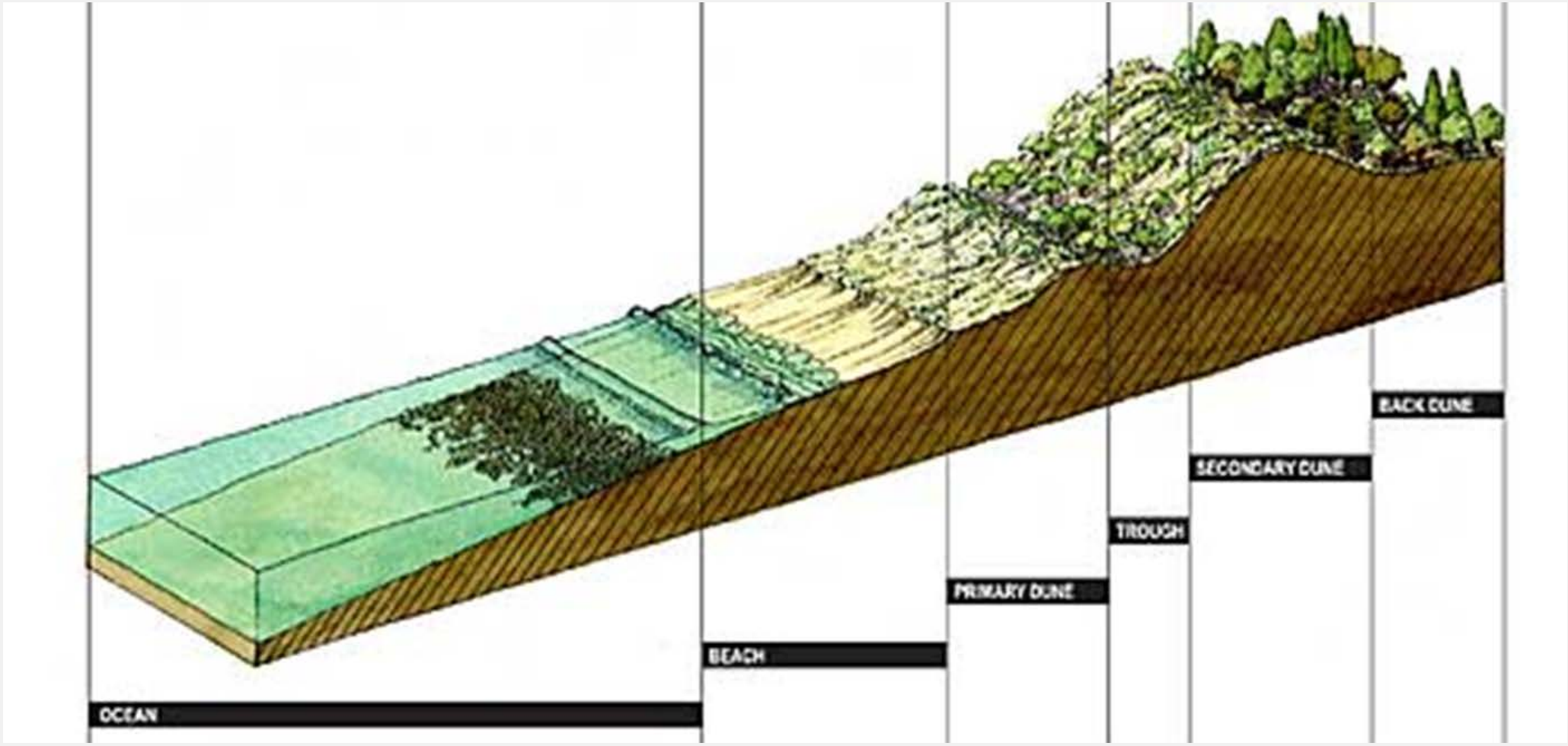


http://formbasedcodes.org/

ORGANIZING ELEMENT: THE TRANSECT

- Not the same as architectural style standards – the same building form can be expressed in any architectural style
- Organizing principle – the continuum of idealized urban forms, ranging from completely rural to the most intense urban places
- Most cities do not have the full continuum of forms
- Referred to as the "**transect**", which must be calibrated to local character and form

INSPIRED BY THE TRANSECT OF HABITATS



Source: Center for Applied Transect Studies at http://www.transect.org/transect.html

RURAL TO URBAN TRANSECT ZONES



Source: Center for Applied Transect Studies at http://www.transect.org/transect.html

DPZ'S MAUI TRANSECT



Source: Center for Applied Transect Studies at http://www.transect.org/cities_img.html

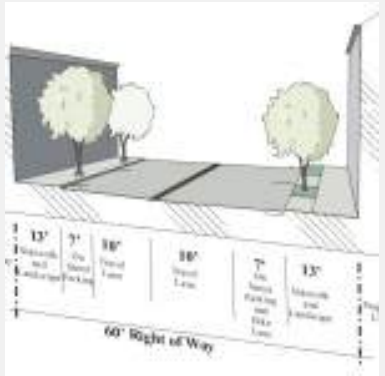
FIVE MAIN ELEMENTS OF FORM-BASED CODES





Building Elements	
Encroachments	
Front, Areas II, III, IV	To ROW
Front, Areas V, VI	10' beyond
Front, recessed	3'
Side	3'
Notes	
Bay windows, balconies, stoops and the encroachment areas.	

- **Regulating Plan**: A plan or map of the regulated area designating the locations where different building form standards apply. Can be by street type or by transect.
  - **Public Standards**: Specifies elements in the public realm: sidewalk, travel lanes, on-street parking, street trees and furniture, etc.
- **Building Standards**: Regulations controlling the features, configurations, and functions of buildings that define and shape the public realm.
  - **Administration**: A clearly defined and streamlined application and project review process
- **Definitions:** A glossary to ensure the precise use of technical terms

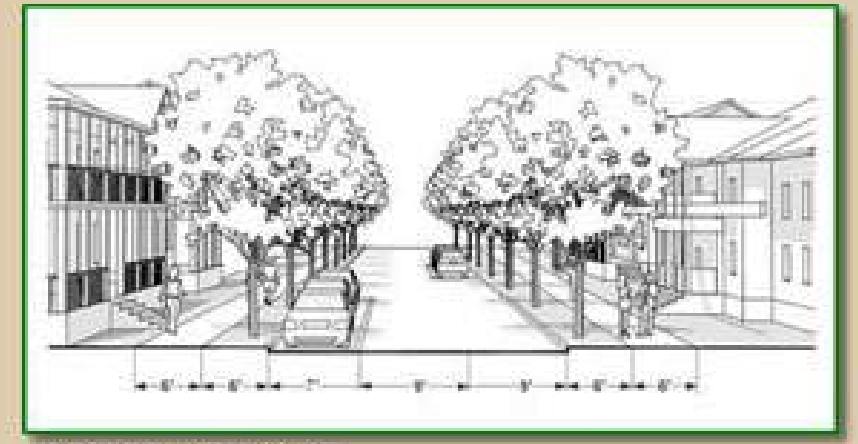




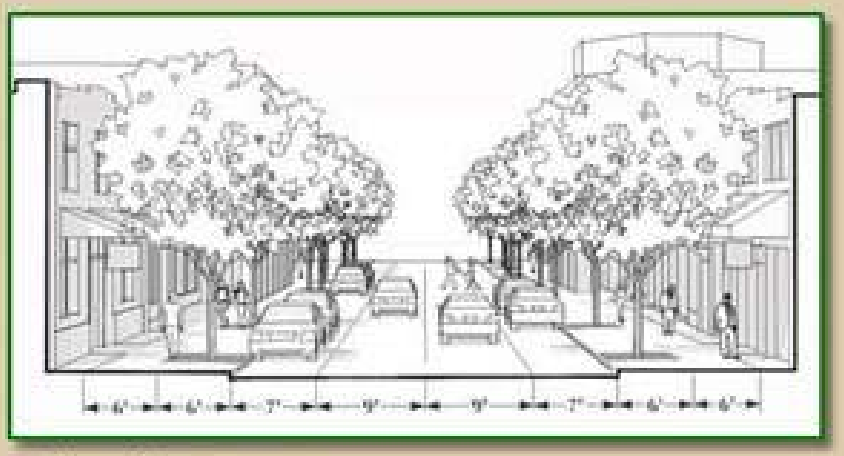
Source: Form Based Codes Institute

ORGANIZING ELEMENT: STREET TYPE

A shopping street is a different kind of street than a boulevard, which is different from a residential street, which is different from a rear alley. There are several different types of streets. For this presentation we're only showing three.



Residential street



Shopping street

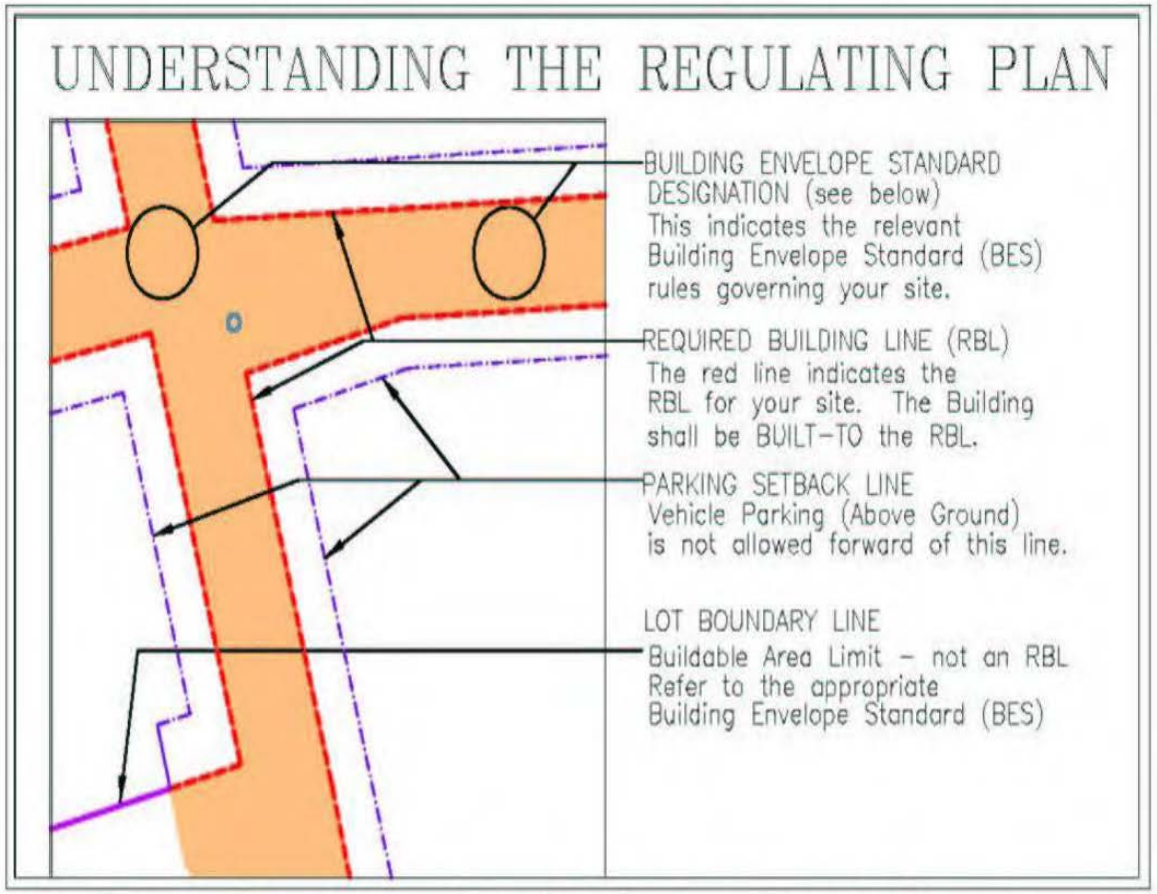


Multi-way boulevard

http://formbasedcodes.org/

Dover, Kohl and Partners

EXAMPLE



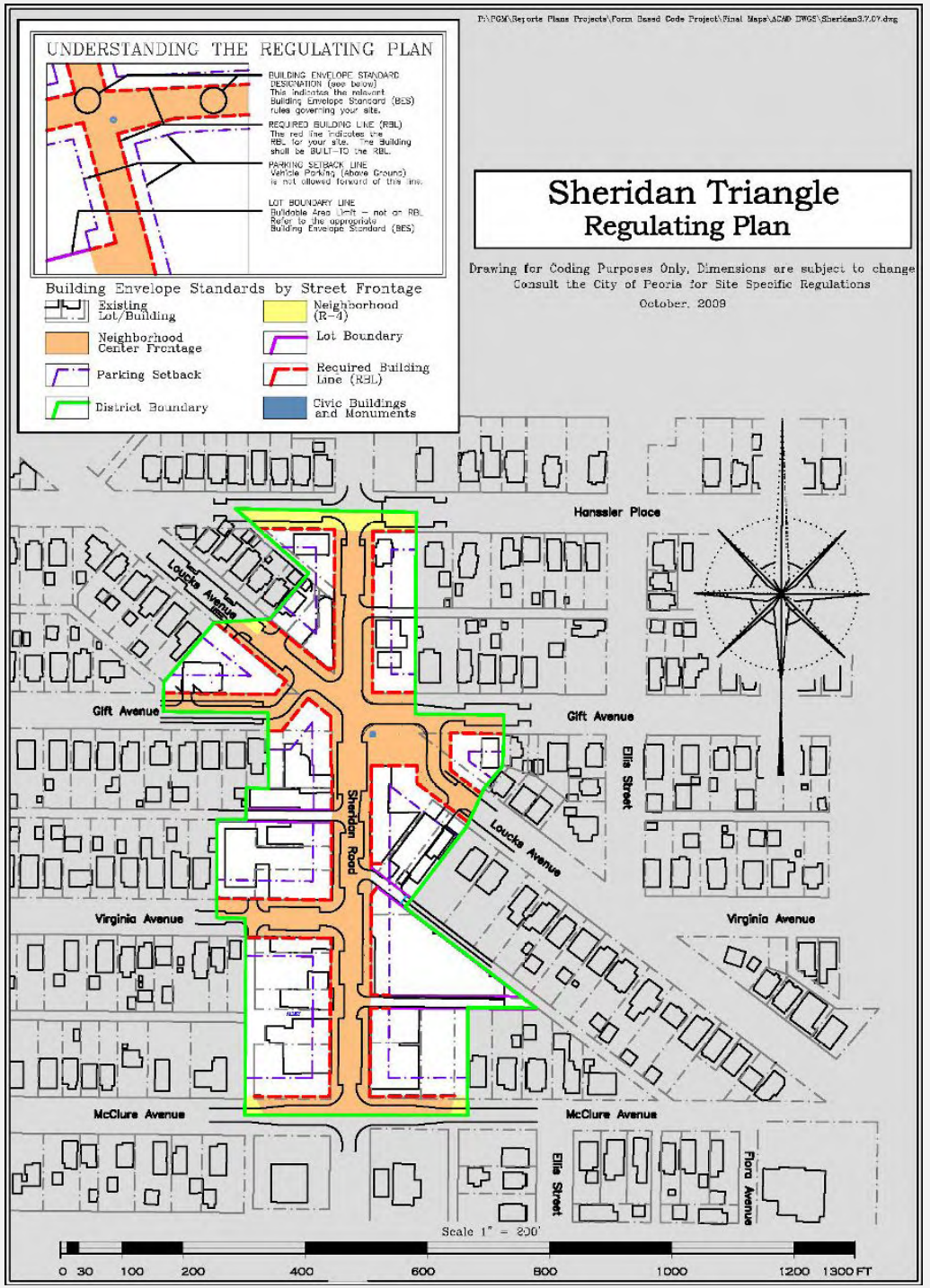
Building Envelope Standards by Street Frontage

- Existing Lot/Building
- Neighborhood (R-4)
- Neighborhood Center Frontage
- Local Frontage
- Parking Setback
- Required Building Line (RBL)
- Lot Boundary Line
- Civic Buildings and Monuments

DRAFT

Source: Form Based Codes Institute

EXAMPLE



Source: Form Based Codes Institute

OPTIONAL ELEMENTS

- Architectural Standards: Regulations controlling external architectural materials and quality.
- Landscaping Standards: Regulations controlling landscape design and plant materials on private property as they impact public spaces.
- Signage Standards: Regulations controlling allowable signage sizes, materials, illumination, and placement.
- Environment Resource Standards: Regulations controlling issues such as storm water drainage and infiltration, development on slopes, tree protection, solar access, etc.
- Annotation: Text illustrations explaining the intentions of specific code provisions.

TRADITIONAL CODES VS. FORM-BASED CODES

- Use based, Euclidean. Reinforces suburban-style segregation of uses and hinders mixed use redevelopment. Wasteful of resources. Larger lots with large buffers, separate parking lots, uncoordinated infrastructure, private open space. Car-centric; minimum parking
- Usually paired with opaque intensity and density limitations that can lead to surprising outcomes – e.g., maximum du/acre and impervious surface ratio, and minimum parking ratios and setbacks, etc.
- Prescriptive in nature – can stifle creativity. Overlays and Planned Developments proliferate to provide needed flexibility but are discretionary and increase uncertainty
- Development standards such as Floor Area Ratios (FARs) have re-introduced flexibility, but at the cost of predictability
  - Not intuitive to administer or use
  - Not transparent to the public
  - Must calculate to understand what can be done
- More easily financed and developed

- Design based, but agnostic as to architectural style
- Mixed uses are welcomed and integrated into the DNA of the Code. Minimum intensities. Smaller lots. Maximum block size and minimum intersection density. Pedestrian and alternative mode-centric; maximum parking
- Follows the time-tested pattern of urban development in many of what are considered to be the world's greatest cities
- More efficient and inter-connected pattern of development, that focuses on the public realm
- High value walkable mixed use communities. A form of development favored in visual preference studies. Market research shows it is greatly preferred both by empty-nesters and millennials. Outperforms suburban sprawl.
- More predictable outcomes, enhancing public trust in the quality of the regulations and reducing cost/time of obtaining development approvals
- More challenging to develop and to finance

FLEXIBILITY AND A DESIGN/FORM-BASED CODE

In March of 2016, the City of Cocoa Beach, Florida, adopted a new Land Development Code that allowed for the adoption, enabling and insertion of a Design Based Code to provide new standards for new buildings and building modifications within the boundaries of the Downtown Area, including the City's Community Redevelopment District and to create/implement the Gateway Master Plan which would assist in creating an entrance feature with commercial and tourist-related development and re-development.

The following goals to be used in the creation of a design-based code were as follows:

Goal 1: Remove internal conflicts that are hindering the Downtown overlay. The Downtown Overlay was created with eight (8) multiple sub-districts causing numerous internal conflicts.

Goal 2: Make the new code more visual, compact, and user-friendly. The use of diagrams, photos, and use of matrixes provide a more user-friendly tool.

Goal 3: Components of a complete design code will include:

a. **A brief description of the rationale for creating a design code;**
b. **Descriptions of each District to be featured;**
c. **Discussion of Public Spaces;**
d. **Regulatory code as to buildings and facades;**
e. **Regulatory code as to site planning and building placement;**
f. **Terms and Definitions;**
g. **Regulatory code in matrix form presenting guideline applicability.**

Goal 4: Encourage new buildings if they further the City's adopted District and Redevelopment plans.

Goal 5: Creation of a new Redevelopment Zoning District to upgrade the City's Downtown Overlay/CRA District and to implement a Gateway Master Plan within the City's general zoning chapter.

Goal 6: Flexibility. Creation of two (2) sets of standards in the new Redevelopment Zoning District. One set of standards is created for existing buildings and minor expansion and one is created for new buildings and major expansions. A separate table or matrix is used for each.

Goal 7: Make sure that the process for the new Redevelopment Zoning District mirrors the process for the rest of the Land Development Code. The same criteria for approval as to large projects, small projects and design modification are used.

Goal 8: The most difficult goal is to be aware of and to build flexibility into this process providing opportunities and leeway for projects, construction etc., to adapt to the new redevelopment district:

a. **Provisions need to be made for commercial retro-fits;**
b. **Provisions relevant to a built-out community;**
c. **Provisions relevant to certain Florida communities and the constant opportunity for re-build or new build due to hurricane, wind and flood damage;**
d. **Provisions for change in FEMA and other Federal and State Regulations;**
e. **Keeping your comprehensive plan in sync with the design-based code;**
f. **In communities with waterfront opportunities, to provide flexibility and opportunity for commercial uses of waterfront property;**
g. **To be particularly mindful of the use of design modifications which may be requested during a site plan approval process and offering specific criteria to use in any approval process complete with written findings as to decisions.**

Goal 9: Bringing the Community with you. This includes the business, development and residential communities. It also must take into account how a design based code is crafted. It must be a collaborative process that starts with the vision from the government's leaders that travels to staff, consultants, attorneys and then community meetings. Each component of the community brings much to the table. A design based code is a code of the future for all

cities and counties. However this code is only as good as the input and adaption that is infused into the process and finally placed into a complete document for adoption. As the process proceeds, there needs to be a "devil's advocate" asking the tough questions concerning whether this code fits the community, whether it provides sufficient flexibility to meet the realities of a particular community and always important -- whether certain desired provisions can be legally defended in Florida.

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Form-Based Planning and Regulation in Osceola County

Florida Association of County Attorneys
2016 Midyear CLE Seminar Program
December 1, 2016

Jeff Jones, Director
Strategic Initiatives
Osceola County, FL

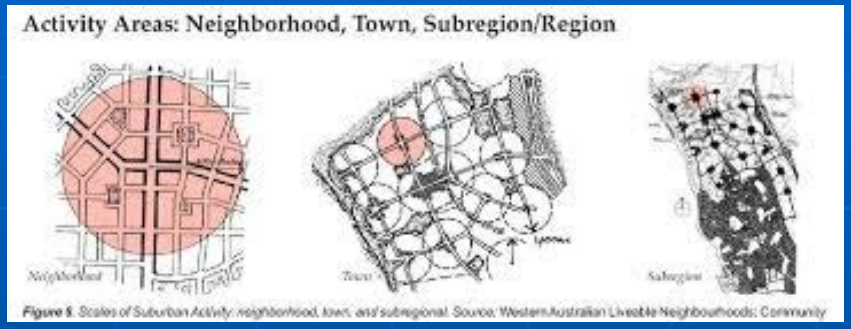
Suburban → Urban

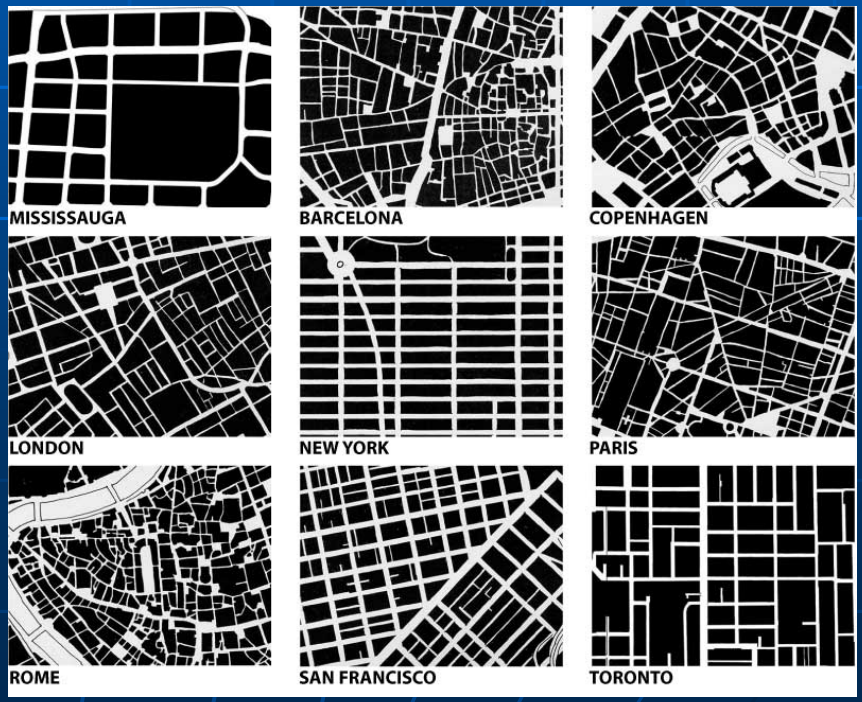
- Low density, dispersed activities
- Single use, segregated land uses
- Automobile oriented
- Separation between uses
- Emphasis on private spaces

- Compact development
- Mixed land use
- Human scale
- Multi-modal oriented
- High connectivity
- Emphasis on public spaces

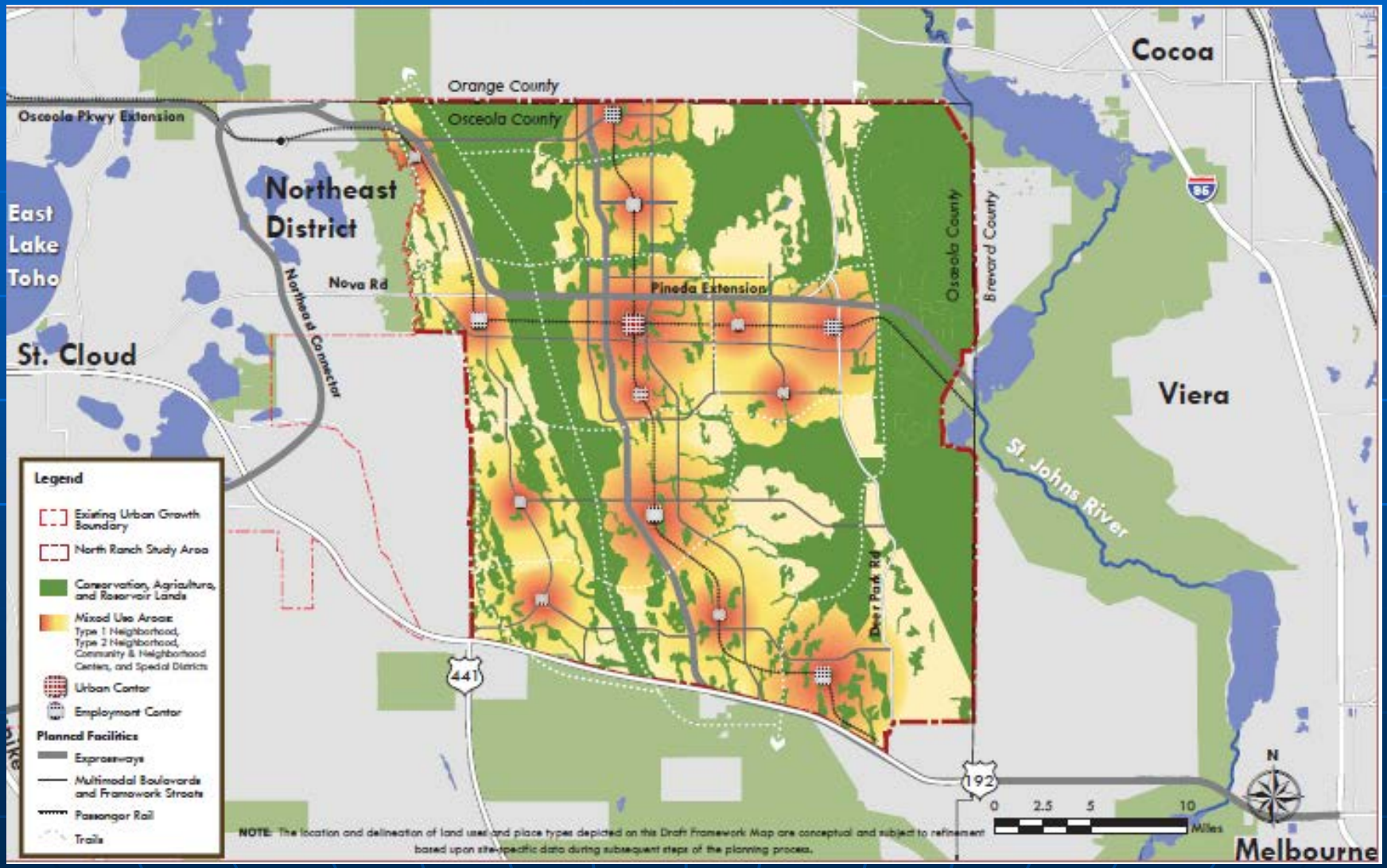
Urban Form Defined

- Urban form addresses the physical layout and design of the built environment.
- It occurs at many different scales and is critical to how an area functions.
- The focus may be on a community's spatial structure, street pattern, streets-blocks, lots, or individual buildings.





North Ranch Sector Plan



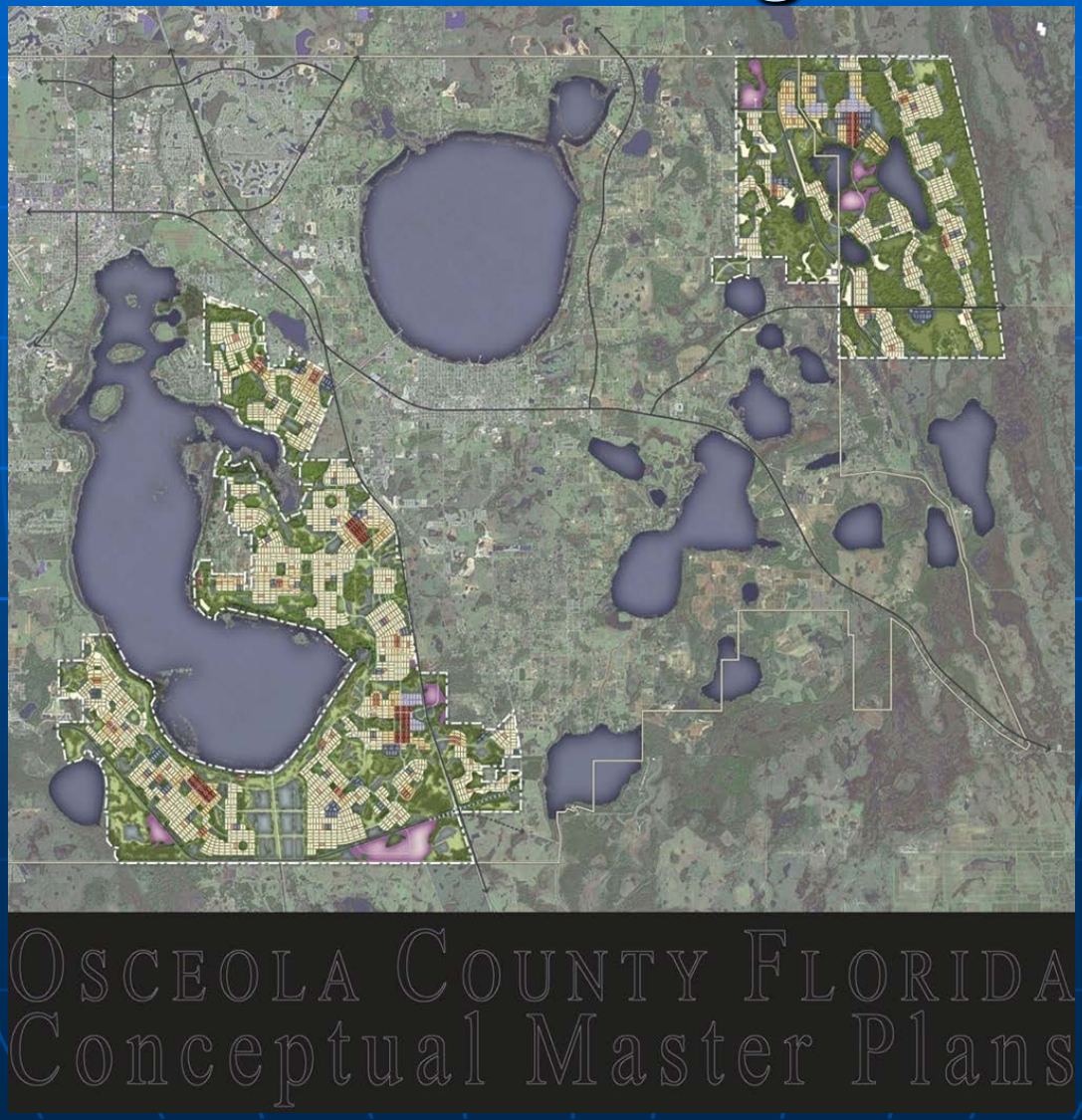
Mixed-use place types establish urban form



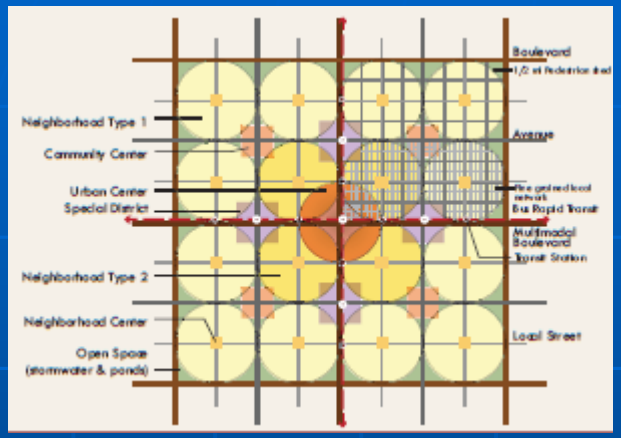
North Ranch Master Plan's urban design is defined by place types already approved for Osceola County's Mixed Use Districts

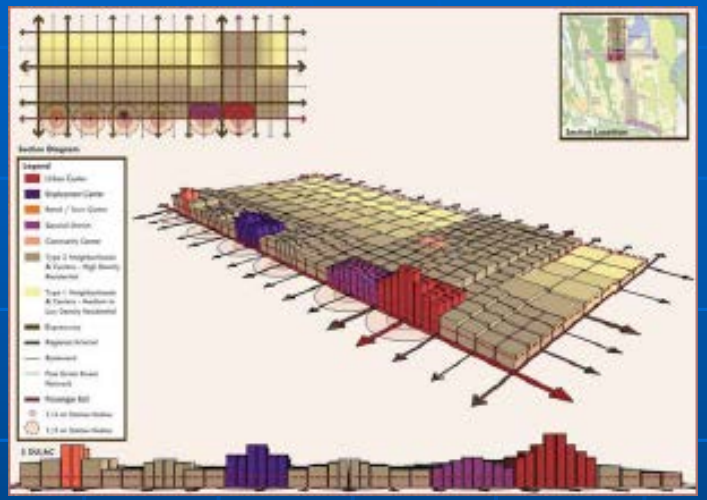
Transit and transit-oriented development are integrated into the urban fabric

Mixed Use Districts Master Planning



Urban Form Analysis

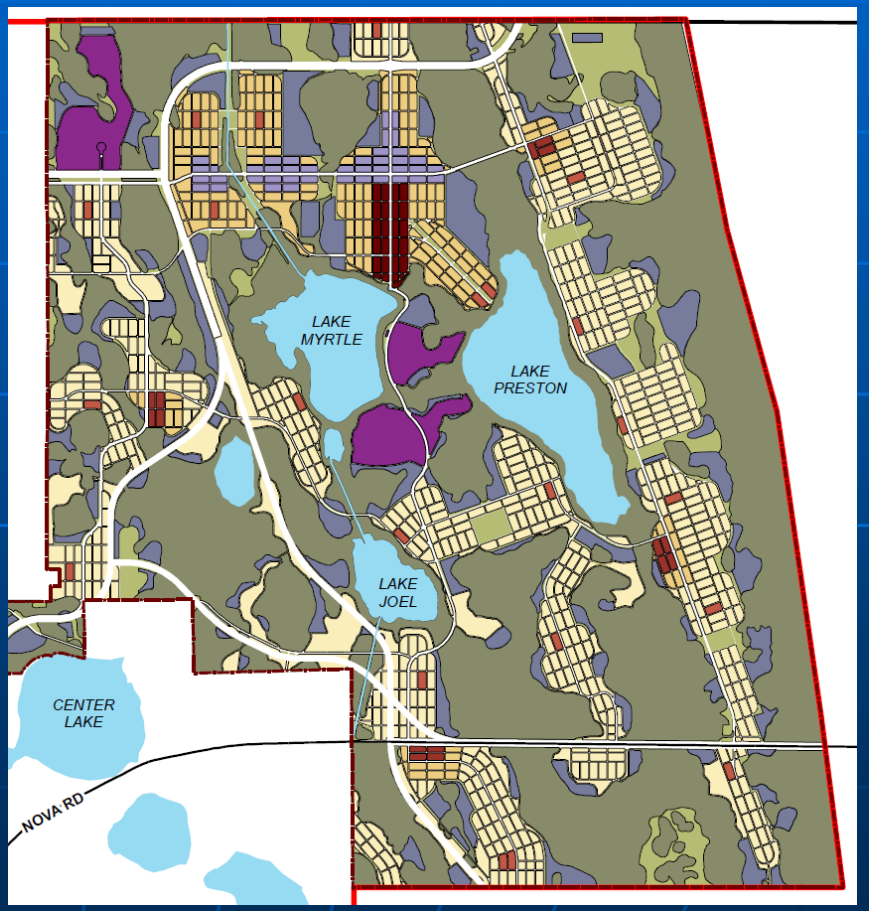






Northeast District

- 20,000 acre greenfield site
- Designated as mixed use in County's Comp Plan
- Master planned by the County
- One property owner – Deseret Ranch
- Proximate to OIA, Medical City and Innovation Way

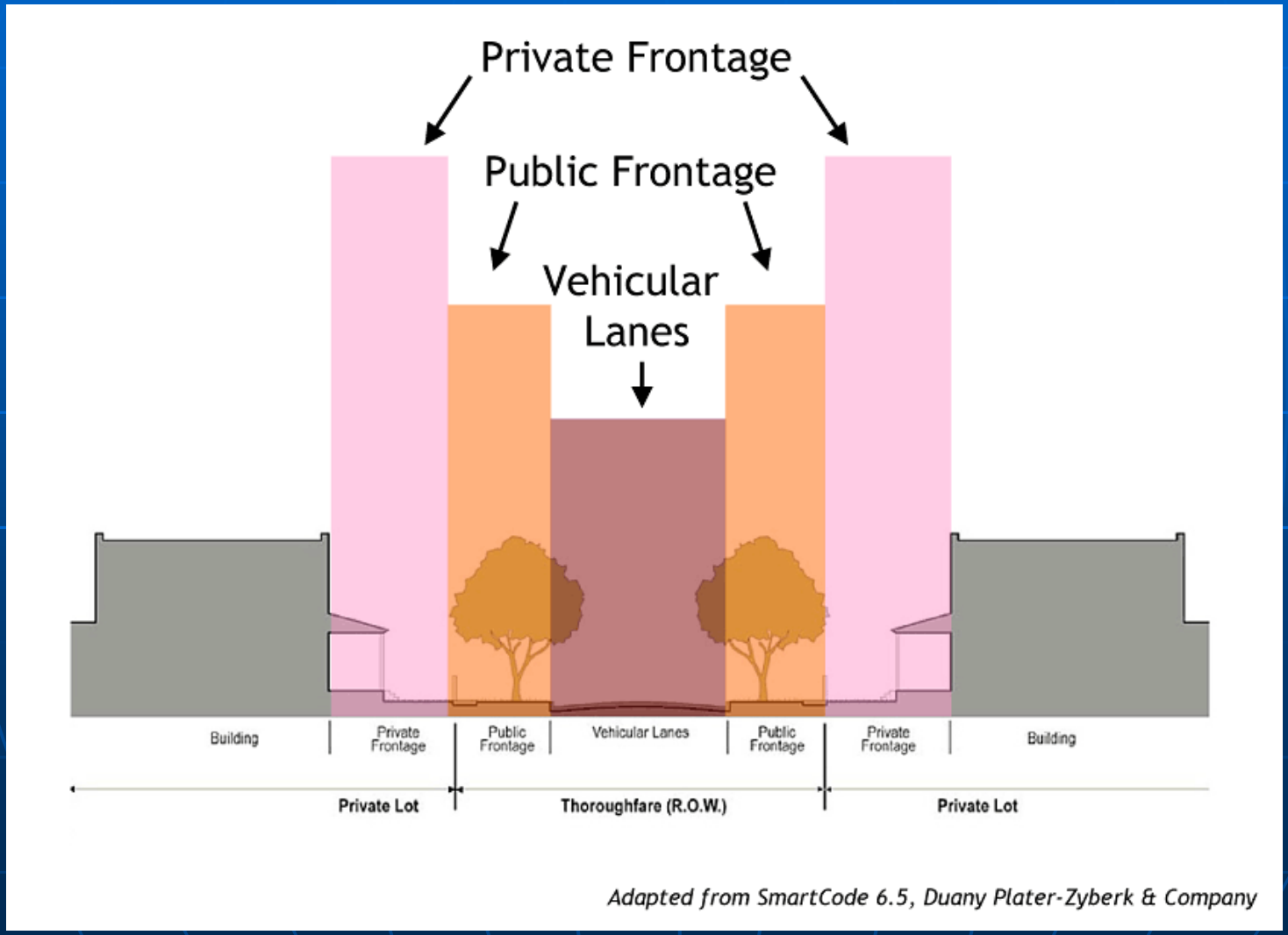


Mixed Use District Land Development Code



- Adopted a new form based code for Mixed Use Districts
- Focus on the Public Realm at a lot and building scale

Public Realm



Adapted from SmartCode 6.5, Duany Plater-Zyberk & Company

Arterial Development



Existing conditions: high speed center road with local serving side roads

Arterial Development



New sidewalks, one-way local access lane, parking lane, street lamps

Arterial Development



New infill development at sidewalks

UrbanAdvantage

Arterial Development



Palmetto trees in median

UrbanAdvantage

Arterial Development



Street trees on far side

Arterial Development



Street trees on near medians

Arterial Development



Street trees on near side

Arterial Development



Increased street life

Arterial Development



Light rail in median

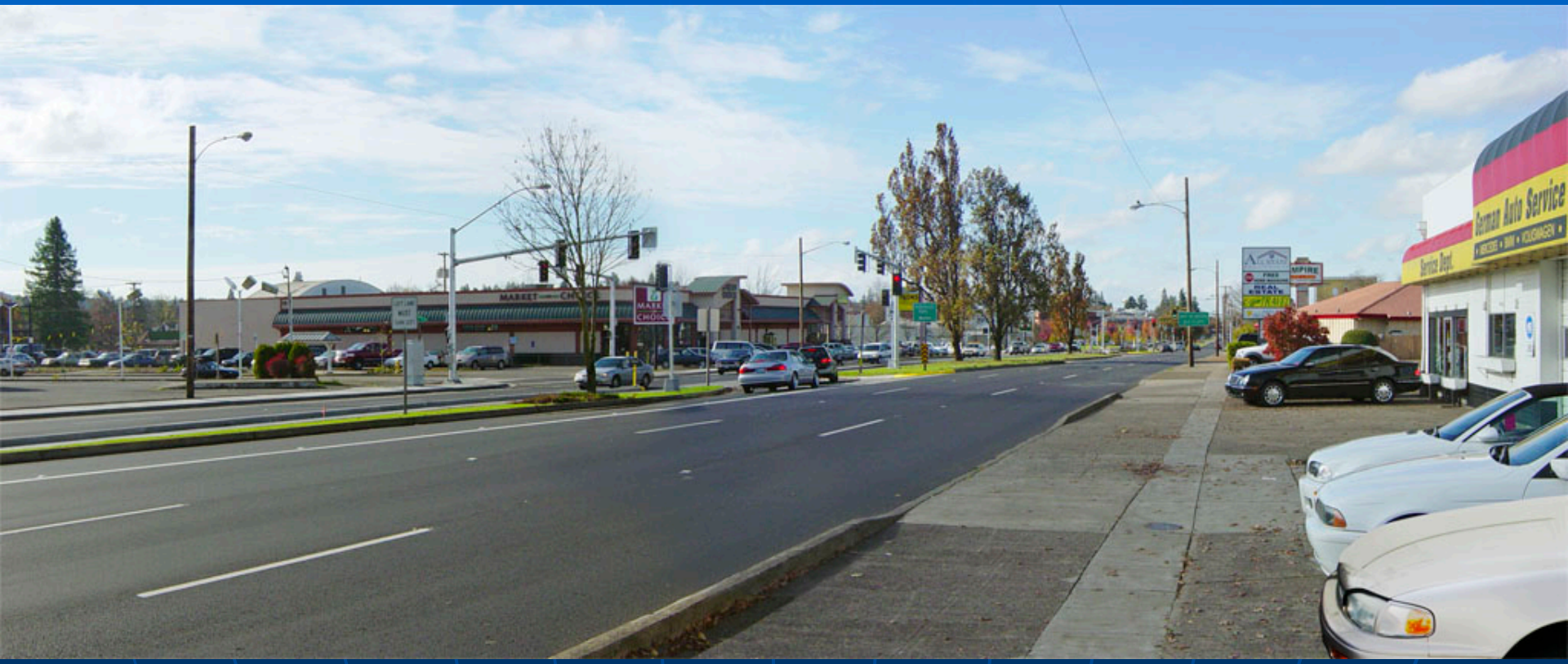
Arterial Development



Residential development alternative

Commissioned by City of Mt Pleasant, SC; Dover Kohl & Partners

Urban Boulevard and BRT



Existing conditions

Urban Boulevard and BRT



New sidewalks, boulevard street layout, street lamps, bus rapid transit

Urban Boulevard and BRT



Street trees

Urban Boulevard and BRT



Mixed-use buildings

Urban Boulevard and BRT



Additional mixed-use densification, second BRT lane

2017 Legislative Preview

FACA Mid Year CLE Seminar

December 1, 2016

Legislative Preview

- Florida
  - Finance, Transportation, Admin
  - Growth, Environmental, Ag
  - HHS
  - Public Safety and Courts
- Federal
  - Nat'l Flood Insurance Program Reform
  - Disaster Recovery
  - General Public Safety
  - Zika/Mosquito Control

2016 Florida Legislature

- 120 House Members
  - Speaker Richard Cororan (Pasco, R)
- 40 Senators
  - Sen Joe Negron, President (Martin, R)
- Party split
  - House: 79 R; 41 D
  - Senate: 25 R; 15 D

2017 Legislative Schedule

- Start committee weeks in December
- Session begins, Tuesday, March 7, 2017
- Sine die on Friday, May 5, 2017

Watching for ….

- Preemptions
  - Debt recovery
  - Cell tower placement
  - Fracking
- Possible Medical Marijuana Implementation

Finance and Tax

- Communications Services Tax
- Sales Tax Exemption on Commercial Leases
- Property Taxes– Eliminate Recapture Provision
- Aviation Fuel Taxes
- 10% Non-Homestead Assessment Limitation
- Local Discretionary Revenue Flexibility

General Governmental (Administrative)

- Payment in Lieu of Taxes
- Local Option Tax Referenda
- Workers' Compensation
- Regulation of Transportation Network Companies

Growth, Economic Development

- Regional Planning Councils
- Cell Towers
- Local Option Fuel Tax (Indexing)
- Flood Risk Mapping

Environmental, Ag, Utilities

- Amendment 1 Implementation
- Beach Renourishment
- Reclaimed Water
- Zika
- Public Notice of Pollution

Health & Human Services

- Emergency Medical Services
- Low Income Pool/Intergovt'l Transfers
- Zika

Public Safety, Courts, Emerg Mgmt

- Clerks of Court
- Human Trafficking
- Opioid Abuse
- Medical Marijuana
- Disaster Funding

Federal Watch

- 115th Congress; will begin in January 2017
- Senate: R=52/D=48
- House: R=241/D=194

Federal Watch

- National Flood Insurance Program (NFIP) Program
- Disaster Recovery
- Opioid Funding
- Zika Funding

Federal Watch

- Waters of the United States (WOTUS)
- Truck Weights/Size
- Oil Pollution Act of 1990
- Offshore Energy Production
- Numeric Nutrient Criteria
- Tax Exempt Status of Muni Bonds
- Marketplace Fairness Act
- Immigration
- Health Care
- Veterans' Health

Questions?

Violence in the Workplace: Active Shooter Awareness and Preparation

Presenters:

Bill Warner, Tim Warner, and Alicia Carothers

Warner Law Firm, PA

Panama City

Prevention

- Occupational Safety and Health Administration regulations
  - OSHA ACT OF 1970 GENERAL DUTY CLAUSE (Updated by Presidential Executive Order), § 5 Duties
    - Each employer:
      - Shall furnish to each of his employees employment and a place of employment, which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;
      - Shall comply with occupational safety and health standards promulgated under this Act.
      - Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act, which are applicable to his own actions and conduct.

Prevention

- Four types of workplace violence
  1. Criminal Intent
  2. Customer/Clients/Patients
  3. Co-Worker
  4. Personal
- High-Risk Industries
  - Healthcare and social services
  - Late-night retail settings

Prevention

- OSHA's suggested program for Violence Prevention
  - Management commitment and employee participation
  - Worksite analysis
  - Hazard prevention and control
  - Safety and health training
  - Recordkeeping and program evaluation

Prevention

- Department of Homeland Security
  - Run, Hide, Fight
  - Resource Materials and Preparedness Video
  - Active Shooter Course through FEMA
  - Steps for creating an Emergency Action Plan (EAP)
  - Violence Indicators from within and outside the office

Prevention

- Emergency Action Plan
  - Plan should be created by a team of individuals from within your office from various departments, including local law enforcement
  - Should include
    - A notification system for an emergency
    - Contact information for employees
    - Escape routes and procedures
    - System of reporting events to outside agencies
    - Emergency responder information

Prevention

- Violence Indicators
  - Within the Office
    - Increased use of alcohol/drugs
    - Increased absences
    - Marked mood changes or overreaction to changes within the office
    - Suicidal comments, paranoia, unstable and/or extreme emotional responses
    - Comments regarding violence or problems at home
  - Outside the Office
    - Increased loitering
    - Increased complaints or threats of violence by phone or other electronic communication
    - Suspicious bags, packages, unseasonably heavy clothing

Prevention

- Inter-Agency Policies and Guidelines
  - Training
  - Employment Screening
  - Vigilance with Visitors and Walk-Ins
  - Employee responsibility
  - Alert systems

Cases

- McLean v. Pine Eagle School District, 3:15-cv-00654-SI, 2016 WL 3574017
- An teacher filed a federal lawsuit over an active shooter drill at an elementary school in the Pine Eagle School District in Halfway, Oregon.
- Four federal violations were alleged:
  - Violation of Substantive Due Process
  - Violation of Procedural Due Process
  - Unreasonable Seizure
  - Failure to Train
- Two state law violations were alleged:
  - Intentional Infliction of Emotional Distress
  - Assault

Cases

- DeLorenzo v. U.S., 8:13-cv-3048-RAL-EAJ
  - In 2013, Aaron Alexis opened fire at a Navy Shipyard, killing twelve and wounding several others.
  - One of the victims' family brought suit in federal court, making several claims against the Department of the Navy, Veteran's Affairs, and two government contractors the shooter worked for.
  - The family sued under two theories: negligence (4 counts) and violation of due process
    - Negligence—Duty to Keep Safe, Duty to Warn, Duty to Hire/Supervise/Train
      - Duty to Maintain a safe workplace
      - Foreseeable risk of violence in general
      - Foreseeable risk of violence by shooter Alexis
    - Due Process/Deprivation of Constitutional Rights
      - Individual constitutional right to life and liberty
      - Government proximately caused the victim's death due to their negligence

Cases

- White v. LeMacks, 1:98-cv-02063-CAM, 183 F.3d 1253
  - The estates of two jail nurses brought federal and state claims against a Georgia county, and its Sheriff and Deputy Sheriff, over injuries they sustained during an attack by an inmate.
  - The estates asserted several federal claims: Due Process under the 5th Amendment and Equal Protection under the 14th Amendment, along with various Georgia state claims.
  - After a motion to dismiss, the final amended complaint contained only Equal Protection violations:
    - Duty to protect from third-party known workplace violence
    - Duty to provide a safe workplace

Cases

- Broaders v. Polk County School Board, 8:10-cv-02411-JDW-EAJ, 2011 WL 2604793
  - Mother of a 7th-grade, learning disabled, minority student brought a federal lawsuit on behalf of her son against a Florida School Board.
  - The child had been bullied and ended up with an injury the mother claimed was avoidable had the school board properly protected her special needs child.
  - Three federal claims:
    - Violations of the child's Due Process and Equal Protection rights through inadequate training of employees, inadequate investigation of complaints, failing to protect minority and disabled students, and allowing discrimination against those students.
    - Negligent training and supervision of employees and well as negligent supervision/disciple/control of students
    - Negligent infliction of emotional distress

Resources

- Options
  - Local Sheriff's Office/Police Department
  - Nationwide Companies (suggestions *only*)
    - TacOne Consulting
    - CGPGMG, LLC
    - Disasters, Strategies & Ideas Group, LLC
- Why?
  - Cost effective
  - Trained staff
  - Approved curriculum
  - Opt-out/observation options

Running An Effective Meeting

Rules

- Rules for Conducting a Meeting
  - Written Rules should be adopted
    - Robert's
    - Model Rules from state associations
    - An IMLA Draft – be part of building it
    - Your own
- Rules provide order and professionalism and promote civility

Importance of rules of procedure

- Setting the Agenda and amending it
- Proper use of the Consent Agenda
- Using the Committee system
- Dealing with disruptive behavior
  - Removing disruptive audience members
  - Removing disruptive board members

The meeting process

- The Role of the Chair
  - Act as facilitator.
  - Help guide the discussion.
  - Assure equal time for the opposing views.
  - Ask for clarification of comments where appropriate.
  - Show your interest and understanding of their positions.
  - Summarize points of agreement and disagreement.
  - Don’t claim consensus where there isn’t any.
  - Be respectful.
  - Be in charge.

- The Role of all Members - Respect
  - Start on time
  - Listen to all viewpoints
  - No personal attacks
  - Don’t interrupt
  - Do you need to respond to an attack?

The 3 D's

- Depersonalize
  - It's not about the people, it's about the issues. Keep it that way.
- Detach
  - It's not about you. Don't be defensive.
- Defuse
  - While you must remember the issues are serious, use humor or light conversation to calm people's emotions. I stress *appropriate* humor.

Recognize and Manage Resistance

- Study body language
- Determine source of resistance
  - Is it lack of understanding of the rules or the specific issues and the course to the resolution of those issues?
  - Do they feel stifled by the rules? The lack of opportunity to express their views or your understanding of their position?
  - What's their motivation? Can you motivate them to participate as opposed to resist?

Dealing with resistance

- Self appraise.
  - Are your rules to rigid?
  - Are you following a script that isn't working?
  - Are you reacting to people, not issues or the situation?
- Let them be heard
  - Often a feeling of having been listened to goes a long way to salving hard feelings

Know thyself!

- Understand how different types of people push your buttons and learn to diffuse those negative reactions.
  - Naysayers – Paraphrase issues to show your understanding.
  - Ramblers – Give them time, but cut in and summarize their comments and move on.
  - Hecklers – Ask them to identify themselves by name and employer/interest.
  - Poor Losers – Don't back them into a corner. Let them save face. Recognize the right to agree to disagree.

Importance of determining function

- The function impacts:
  - the nature and extent of non-member participation (due process rights),
  - fact finding obligations (requirement of evidence vs. legislative fact finding), and
  - impact on open meetings requirements

Quasi-judicial meetings

- Types of Quasi-judicial proceedings:
  - Zoning issues; issuing permits; Subdivision Plats; issuing of licenses; etc
- Issues to consider:
  - Protecting the record
  - Due process

Telephone conferences and email

- State law governing open meetings applies
- Public/Open Records laws apply
- Can the public participate?
- Virtual meetings – the future is now.

Public participation

- Distinction between public "meeting" and public "hearing". State laws vary.
- Public Comment period.
- Controlling disorderly conduct—importance of defining the "rules of engagement" for the forum.
- Security – protecting yourselves and the public.

The Society of Unruly Citizens

I. Before Section 286.0114 (pre 2013)

- Case Citations

1. Keesler v. Community Maritime Park Associates, Inc.
   32 So.3d 659 (Fla. 1st DCA 2010)
   Review denied - 47 So.3d 1289 (2010)

2. Grapski v. City of Alachua
   31 So. 3d 193 (Fla. 1st DCA 2010)
   Review denied - 47 So.3d 1288 (2010)

3. Herrin v. City of Deltona
   121 So.3d 1094 (Fla. 1st DCA 2013)
   Review denied - (Fla. 5th DCA 2013)

- Alright to attend, but no right to speak except for public hearings

II. After Section 286.0114 - Has Anything Really Changed?

Section 286.0114, Florida Statutes

- Time limits? Still permitted?

- Consent agendas –

  Larson, et al. v. Palm Beach County
  Case No. 502016 CA 001706XXXXMB AH (attached)

- Physical threats; boisterous; repetitious; "loaning time" to others; vulgarities

  Jones v. A Heyman
  888 F. 2d 1328
  (11th Cir.1989) – Not 1st Amendment violation to remove speaker who became disruptive.

III. How to Handle Unruly Meetings

- St. Johns County Policies – attached
- Running an Effective Meeting PowerPoint - attached

IV. Examples of Unruly Meetings

Denton - Mic Check Against Fracking

Sunbury City Council - Disruptive Resident and a Bad Way to Handle It

Detroit - How Not to Work Together on the Council

Santa Clarita - Dealing with Interesting Citizen Comment Period

Oshawa Mayor Has Residents Arrested for Clapping

Bloomington, IL - Citizen's Hilarious Rant at City Council Meeting

Filing # 37930386 E-Filed 02/17/2016 03:14:51 PM

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

ALEX LARSON,
FANE LOZMAN

Plaintiffs,

CASE NO.:

v.

PALM BEACH COUNTY,

Defendant.
_____/

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

The Plaintiffs, ALEX LARSON and FANE LOZMAN, ("Plaintiffs"), by and through the undersigned counsel, hereby sues PALM BEACH COUNTY, ("Defendant"), and as grounds therefore alleges the following:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Alex Larson is a citizen of Florida

2. Plaintiff Fane Lozman is a citizen of Florida.

3. This Court has jurisdiction pursuant to Art. I, Sec. 24(b), Fla. Const.; Art. V, Sec. 20(c)(3), Fla. Const.; § 26.012(3), Fla. Stat.; § 86.011; § 286.0114, Fla. Stat.; and Rule 1.610, Fla. R. Civ. P.

4. Venue lies in Palm Beach County, Florida, because the acts for which suit is brought have occurred or are occurring in Palm Beach County, Florida.

5. Defendant is a public agency subject to the Sunshine Laws of Florida and Plaintiffs have general citizen standing to remedy violations of the Sunshine Laws of Florida.

FACTS

6. Mrs. Larson has frequently attended Palm Beach County Commission Meetings on a regular basis since 2004. She attends numerous public meetings for various public agencies/governing bodies and frequently speaks during public comment and/or whenever the governing body allows her.

7. On December 15, 2015, she attended a meeting of the Board of County Commissioners for Palm Beach.

8. Per the agenda of the meeting, the Board discussed nine Consent Agenda Items, 3H3, 3H4, 3H6, 3H7, 3H9, 3L3, 3M2, 3M3 and 3AA5.

9. Plaintiff Larson was only given three minutes to discuss ALL Consent Agenda items but should have been given three minutes to speak on each of the individual propositions before the Board.

10. Plaintiff Lozman was only allowed three minutes to discuss agenda items 3L2 and 3L3 and should have been allowed three minutes to speak on each item.

11. Although the December 15, 2015 meeting is an anecdotal example, Mrs. Larson complains that Defendant has used and continues to use the Consent Agenda mechanism to lump numerous propositions before the Board into a single item for the purposes of public comment.

12. The Consent Agenda is usually a single item that encompasses all the things the Board would normally approve with little comment, such as the minutes, financials, or other non-controversial items (non-controversial depending on viewpoint). The point of a Consent Agenda is to save time by allowing the Commission to approve numerous propositions in one fell swoop *pro forma*.

13. The Consent Agenda process, while efficient, is pernicious because it affords the Board or its staff the ability to bury (intentionally or unintentionally) numerous controversial items in that Consent Agenda. If controversial items are in the Consent Agenda, public boards will not discuss those items or bring those issues to the forefront.

14. The only immediate safety valve to the problems inherent in the design of the Consent Agenda is public comment on the individual items contained therein. Thus, if a Board or its Staff underestimates the controversial nature of a proposition or knowingly attempts to hide a controversial item in the Consent Agenda, then the public – the body politic – will be able to bring said controversial items to the limelight to rehabilitate the error or transgression.

15. Defendant is a Board subject to the Sunshine Law that has used Consent Agendas for over a decade. Those Consent Agendas are a matter of public record and frequently contain non-ministerial propositions such as appointments of officers, public contract commitments and public contract change orders that result in significant public expenditures.

16. Defendant affords members of the public access to speak on agenda items at public meetings. They afford three minutes (or a certain amount of time) for members of the public to speak on each agenda item. There is no restriction on the amount of items an individual member of the public may comment upon. Defendant, however, treats the Consent Agenda as a single item. Defendant places numerous propositions in the Consent Agenda yet allows the public only a few minutes to speak on the full panoply of propositions contained in the Consent Agenda. If Defendant willfully wanted to thwart public comment on controversial items, Defendant would place those items in the Consent Agenda and treat the Consent Agenda as a single Agenda Item, thereby forcing members of the public to dilute their speaking time to cover numerous

controversial items, relegating comments from minutes to seconds or forcing members of the public to forego comments on particular propositions altogether.

COUNT I SUNSHINE LAW VIOLATION, PLAINTIFF LARSON

17. Paragraphs 1 through 16 are re-alleged in this count as if set out fully herein.

18. Florida requires governmental entities to conduct their business at open, public meetings, "in the sunshine."

19. The sunshine law, enacted for the public benefit, should be liberally construed to give effect to its public purpose while exemptions should be narrowly construed.

20. Defendant has a mandatory legal duty to comply with the provisions of the Florida Sunshine Law, F.S. 286.0114.

21. For a little over a decade, Mrs. Larson has attended Defendant's meetings and has elected to speak on numerous Consent Agenda items and Regular Agenda items. Her attendance and comments on items should be contained within the minutes of Defendant's meetings.

22. Mrs. Larson has been afforded a certain amount of time (usually 3 minutes) to speak on each Regular Agenda item but is not afforded that same amount of time to speak on each proposition contained within Consent Agenda.

23. On December 15, 2015, the Palm Beach County Board of Commissioners convened for a Regular Meeting.

24. Plaintiff Larson was not afforded an adequate amount of time to discuss items on the Consent Agenda that were individual propositions as defined by Section 286.0114, Florida Statutes.

25. If the items were placed on the Regular Agenda, Mrs. Larson would have had a time to

speak on each item. However, since the items were placed on the Consent Agenda, she was only allowed to speak on all items at once in that certain time allotment (3 minutes).

26. This violation constitutes an irreparable public injury; once the violation is established, prejudice is presumed.

27. Plaintiff is entitled to the rights afforded by Section 286.0114, Florida Statutes and suffered injury in that it was harmed by the Defendant's violation of this state's open government laws, as described above.

28. All pre-conditions for filing this lawsuit and the relief requested have been completed or waived.

WHEREFORE, Plaintiff Larson prays for an order enjoining the Defendant from further practices at public meetings that violate the Sunshine Law and for an award of attorney's fees and costs and such other relief as the Court deems just in light of the Defendant's knowing and willful violation of the Sunshine Law. Specifically, Plaintiff Larson asks that the Court declare and order that the Defendant either place all propositions covered by Section 286.0114, Florida Statutes as items on the Regular Agenda or mandate that the public be given equal opportunity to speak on covered propositions in the Consent Agenda as they would with regard to the Regular Agenda.

COUNT II SUNSHINE LAW VIOLATION, PLAINTIFF LOZMAN

29. Paragraphs 1 through 16 re-alleged in this count as if set out fully herein.

30. Florida requires governmental entities to conduct their business at open, public meetings, "in the sunshine."

31. The Sunshine Law, enacted for the public benefit, should be liberally construed to give

effect to its public purpose while exemptions should be narrowly construed.

32. Defendant has a mandatory legal duty to comply with the provisions of the Florida Sunshine Law, F.S. 286.0114.

33. On December 15, 2015, the Palm Beach County Board of Commissioners convened for a regular meeting.

34. Plaintiff Lozman was not afforded an adequate amount of time to discuss items on the Consent Agenda in violation of by Section 286.0114, Florida Statutes.

35. This violation constitutes an irreparable public injury; once the violation is established, prejudice is presumed.

36. Plaintiff is entitled to the rights afforded by Section 286.0114, Florida Statutes and suffered injury in that it was harmed by the Defendant's violation of this state's open government laws, as described above.

37. All pre-suit preconditions affecting any relief or cause of action have been met or waived.

WHEREFORE, Plaintiff Lozman prays for an order enjoining the Defendant from further practices at public meetings that violate the Sunshine Law and for an award of attorney's fees and costs and such other relief as the Court deems just in light of the Defendant's knowing and willful violation of the Sunshine Law. Specifically, Plaintiff Lozman asks that the Court declare and order that the Defendant either place all propositions covered by Section 286.0114, Florida Statutes as items on the Regular Agenda or mandate that the public be given equal opportunity to speak on covered propositions in the Consent Agenda as they would with regard to the Regular Agenda.

COUNT III INJUNCTIVE RELIEF

38. Paragraphs 1 through 37 are re-alleged in this court as if fully set out herein.

39. The Plaintiffs and the citizens of Florida are irreparably harmed by the actions set forth in the proceeding counts and an injunction must be granted by this court to effectuate any favorable rulings for the Plaintiff in Counts, I, and II.

40. The mere showing that the Sunshine Law has been violated is, per se, irreparable harm entitling the Plaintiff to the injunctive relief it seeks.

41. Florida Statute F.S. 286.011(2) gives the Circuit Courts of this state jurisdiction and the power to issue injunctions for Sunshine Law violations upon application of any citizen of this state.

42. The irreparable harm is, but not limited to, the fact that the public were not given the opportunity to comment on, discuss and/or object to more than one individual proposition contained within the "consent agenda."

43. The actions of the Defendant in the two counts set forth above deprive the people of Florida the right to speak on <u>all</u> propositions put for the before the board.

44. Plaintiffs are entitled to injunctive relief prohibiting Defendant from again violating Florida's Sunshine Law in the manner in which it has done so in this case because there is no adequate remedy at law and the right to speak on a proposition and if denied, inflict irreparable harm upon the Plaintiffs and citizenry of Florida. The public will benefit and the Defendant will not be harmed if citizens are allowed to speak on individual propositions equally regardless of whether they are contained in a Consent Agenda or Regular Agenda. The Board will not be forced to engage in deliberations, rather, they will merely be forced to listen to the public's input on those propositions pursuant to Section 286.0114, Florida Statutes.

WHEREFORE, Plaintiff prays for an order enjoining Defendant from disallowing the public equal and discrete allotments of time to speak on propositions before the Board regardless of whether they are located in a Consent Agenda or Regular Agenda and for an award of attorney's fees and costs and such other relief as the Court deems just.

Respectfully submitted,

Dated: February 17, 2016

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By:

Jonathan O'Boyle
Florida Bar No. 117547
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Filing # 42098493 E-Filed 05/28/2016 04:46:46 PM

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

ALEX LARSON;
FANE LOZMAN,

Plaintiffs,

CASE NO.: 502016CA001706 **AH**

v.

PALM BEACH COUNTY,

Defendant.
_____/

Plaintiff's Amended Complaint

The Plaintiffs, ALEX LARSON and FANE LOZMAN, ("Plaintiffs"), by and through the undersigned counsel, hereby sues PALM BEACH COUNTY, ("Defendant"), and as grounds therefore alleges the following:

Parties Jurisdiction and Venue

1. Plaintiffs are citizens of Florida.

2. This Court has jurisdiction pursuant to Art. I, Sec. 24(b), Fla. Const.; Art. V, Sec. 20(c)(3), Fla. Const.; § 26.012(3), Fla. Stat.; § 86.011; § 286.0114, Fla. Stat.; and Rule 1.610, Fla. R. Civ. P.

3. Venue lies in Palm Beach County, Florida, because the acts for which suit is brought have occurred or are occurring in Palm Beach County, Florida.

4. Defendant is a public agency subject to the Sunshine Laws of Florida and Plaintiffs have specific and general citizen standing to remedy violations of the Sunshine Laws of Florida.[1]

[1]Sunshine Laws hereinafter refers to (1) Art. I, Sec. 24, Fla. Const.; (2) § 286.011, Fla. Stat.; (3) § 286.0114, Fla. Stat.; and (4) Chapter 119 of the Florida Statutes.

5. In 2013, the Florida Legislature enacted groundbreaking legislation known as the "anti-shush law" or § 286.0114, Fla. Stat. to ensure that local government was no longer a spectator sport. Rather, the Florida Legislature determined that the local governing would improve if local boards and commissions were obligated to entertain public input on *each* non-ministerial proposition to be acted upon.

General Allegations

6. On December 15, 2015, the Board of County Commissioners for Palm Beach held a regular commission meeting. That meeting contained an agenda attached hereto as **Exhibit A**. The agenda contained numerous propositions or line items issues before the Board which required board action under the Sunshine Laws of Florida.

7. At that December 15, 2015 meeting, the Defendant afforded (3) minutes to of public comment per/person for each regular agenda item. However, the vast majority of items were contained in the consent agenda and the Board afforded only (3) minutes of public comment to speak on the entirety of items or propositions contained in the consent agenda.

8. Defendant's Board of Commissioner's voted on each regular agenda item. However for the consent agenda, Defendant cast one vote to approve all items simultaneously.

9. Plaintiffs complain that Defendant did not afford the public a reasonable opportunity to speak and be heard on individual consent agenda items when Defendant only afforded (3) minutes of public comment to address every single item or proposition contained within the consent agenda. Plaintiffs contend that the reasonableness requirement regarding public input under § 286.0114(2), Fla. Stat. requires at least (3) minutes in order to satisfy the statutory requirements.

10. Plaintiffs complain that Defendant violated § 286.0114, Fla. Stat. by failing to afford (3) minutes of public comment for each item or proposition before the Board – regardless of whether that item or proposition was listed in the consent agenda or regular agenda.

11. Plaintiffs contends the right to be heard or speak under § 286.0114, Fla. Stat. is a political right designed to facilitate more perfect government by affording public comment and debate for non-ministerial legislative actions. Plaintiffs contend that Defendant has deliberately diluted that right in violation of § 286.0114, Fla. Stat. when Defendant failed to afford equal speaking time for each non-ministerial item before the Board.

12. Plaintiffs further feel that Defendant has caused irreparable harm to a political right that is designed solely to benefit the public at-large because Defendant has a mandatory legal duty to comply with the provisions of the Florida Sunshine Law, (§ 286.0114, Fla. Stat.).

Count I – Anti-Shush Sunshine Violation, PLAINTIFF LARSON

13. Paragraphs 1 through 12 are re-alleged in this count as if set out fully herein.

14. Mrs. Larson has frequently attended Palm Beach County Commission Meetings on a regular basis since 2004. She attends numerous public meetings for various public agencies/governing bodies and frequently speaks during public comment and/or whenever the governing body allows her and her conscience so dictates.

15. At the December 2015 meeting, Mrs. Larson spoke on regular agenda items and was afforded only (3) minutes to speak on each regular agenda item.

16. Mrs. Larson was only afforded (3) minutes to speak on (9) consent agenda items 3H3, 3H4, 3H6, 3H7, 3H9, 3L3, 3M2, 3M3 and 3AA5. Mrs. Larson had an average of 20 seconds to be heard or speak on each consent item. The aforementioned consent items were non-ministerial item under § 286.0114, Fla. Stat.

17. At the May 17, 2016 meeting, Mrs. Larson was only afforded (3) minutes to speak on (17) consent agenda items 3A1, 3A3, 3B3, 3B4, 3C3, 3C10, 3C11, 3C12, 3C13, 3C14, 3G1, 3H1, 3H3, 3L2, 3L3, 3M2, and 3X5. Mrs. Larson had an average of 10 seconds to be heard or speak on each consent item. The aforementioned consent items were non-ministerial item under § 286.0114, Fla. Stat. Mrs. Larson was afforded (3) minutes to speak on each regular agenda item and did in fact exercise that right for select items. The May 17 Agenda is appended as **Exhibit B**.

18. Defendant was required to afford Mrs. Larson (3) minutes of comment for each of the aforementioned consent agenda items on December 15, 2015 and May 17, 2016, in order to comply with § 286.0114, Fla. Stat. Defendant therefore violated § 286.0114, Fla. Stat.

19. All pre-suit preconditions affecting any relief or cause of action have been met or waived.

WHEREFORE, Plaintiff Larson prays for an order enjoining the Defendant from further practices at public meetings that violate the sunshine law and for an award of attorney's fees and costs and such other relief as the Court deems just in light of the Defendant's deliberate violation of § 286.0114, Fla. Stat.. Specifically, Plaintiff Larson asks that the Court declare that Defendant afford equal opportunity to speak on all non-ministerial items or propositions before Defendant's Board of Commissioner regardless of location in the Agenda.

COUNT II SUNSHINE LAW VIOLATION, PLAINTIFF LOZMAN

20. Paragraphs 1 through 12 are re-alleged in this count as if set out fully herein.

21. Mr. Lozman was afforded (3) minutes to speak on each regular agenda item.

22. Mr. Lozman was afforded only (3) minutes to address every single consent agenda item or proposition before the Board of Commissioners like Mrs. Larson in Count I of this Amended Complaint.

23. He was not afforded not afforded an adequate amount of time to discuss items on the

consent agenda in violation of § 286.0114, Fla. Stat. because he was only afforded (3) minutes to address consent agenda items 3L2 and 3L3. Those items were non-ministerial items under § 286.0114, Fla. Stat.

24. Defendant was required to afford Mr. Lozman (3) minutes of comment for each of the aforementioned consent agenda items in order to comply with § 286.0114, Fla. Stat. Defendant therefore violated § 286.0114, Fla. Stat.

25. All pre-suit preconditions affecting any relief or cause of action have been met or waived.

WHEREFORE, Plaintiff Lozman prays for an order enjoining the Defendant from further practices at public meetings that violate the sunshine law and for an award of attorney's fees and costs and such other relief as the Court deems just in light of the Defendant's deliberate violation of § 286.0114, Fla. Stat. Specifically, Plaintiff Lozman asks that the Court declare that Defendant afford equal opportunity to speak on all non-ministerial items or propositions before Defendant's Board of Commissioner regardless of location in the Agenda.

COUNT III INJUNCTIVE RELIEF

26. Paragraphs 1 through 25 are re-alleged in this court as if fully set out herein.

27. The Plaintiffs and the citizens of Florida are irreparably harmed by the actions set forth in the proceeding counts and an injunction must be granted by this court to effectuate any favorable rulings for the Plaintiff in Counts, I, and II. The Legislature specifically afforded injunctive relief as a statutory remedy under § 286.0114, Fla. Stat.

28. Since the initiation of this litigation, Defendant represented that they will continue their policy of affording (3) minutes per/person to address the entire lot of non-ministerial items before the Board in the consent agenda – even if that policy results in affording citizens mere seconds to address each non-ministerial item before the Board. This policy of dilution violates the letter and spirit of § 286.0114, Fla. Stat.

29. Under § 286.0114(6), Fla. Stat., the Legislature has expressly afforded a statutory

injunction to enforce the rights contained in § 286.0114, Fla. Stat.

30. There is no adequate remedy at-law to compensate Plaintiffs for Defendant's violation of their political rights. By virtue of § 286.0114(6), Fla. Stat., the equities are statutorily mandated to lie in Plaintiffs favor. The Plaintiffs have a clear right to speak and be heard on each proposition before the Board.

31. Defendant's actions are specifically referenced on December 2015 to May 2016 however the dilution of the right to be heard or speak has occurred at every meeting in between those dates and continues to occur.

32. If the Court grants injunctive relief sought by Plaintiffs, the public will benefit. The Defendant will not be harmed if citizens are allowed to speak on individual propositions equally with reasonable time and without regard to the location of the non-ministerial line-item or proposition on the Board's Agenda. The Board will not be forced to engage in any legislative act or deliberation, rather, the Board will merely be required to listen to the wisdom adduced by public input on propositions before that Board.

WHEREFORE, Plaintiff prays for an order under § 286.0114(6), Fla. Stat. which enjoins the Defendant from disallowing the public equal and discrete allotments of time to speak on propositions before the Board regardless of whether they are located in a Consent Agenda or Regular Agenda and for an award of attorney's fees and costs and such other relief as the Court deems just.

Respectfully submitted,

Dated: 5/28/2016

THE O'BOYLE LAW FIRM, P.C.
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By: /s/ Jonathan R. O'Boyle

Filing # 44945952 E-Filed 08/08/2016 02:54:09 PM

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL
CIRCUIT IN AND FOR PALM BEACH COUNTY

CASE NO.: 502016CA001706XXXXMB AH

ALEX LARSON,
FANE LOZMAN,
Plaintiff,

v.
PALM BEACH COUNTY,
Defendant.
_____/

ANSWER AND AFFIRMATIVE DEFENSES TO AMENDED COMPLAINT

Defendant, Palm Beach County (the "County"), by and through undersigned counsel, serves its answer and affirmative defenses to the amended complaint and states:

Parties, Jurisdiction, and Venue

1. Admitted.

2. Admitted that the Court has jurisdiction. Admitted that the laws cited in paragraph 2 speak for themselves. The remaining allegations in paragraph 2 are denied.

3. Admitted that venue is appropriate in Palm Beach County. The remaining allegations in paragraph 3 are denied.

4. Admitted that the County is a political subdivision of the state of Florida and was created pursuant to Article VIII, Section 1 of the Florida Constitution. Admitted that the County is subject to the Sunshine Laws of Florida. Admitted that the laws cited in footnote 1 of paragraph 4 speak for themselves. The remaining allegations in paragraph 4 are denied.

5. Admitted that section 286.0114, Florida Statutes, is a law that speaks for itself. The remaining allegations in paragraph 5 are denied.

General Allegations

6. Admitted that the Palm Beach County Board of County Commissioners ("the Board") held a public meeting in accordance with the Sunshine Law on December 15, 2015. Admitted that the meeting contained an agenda. Admitted that Exhibit A to the amended complaint is a true and correct copy of the agenda for the December 15, 2015 meeting. The remaining allegations in paragraph 6 are denied.

7. Admitted that in accordance with the Sunshine Law and its Rules of Procedure that the Board affords members of the public three minutes to speak per item contained on the regular agenda, and three minutes for all items contained on the consent agenda, and that such time may be extended at the discretion of the Chair. Exhibit A is a true and correct copy of the agenda for the December 15, 2015 meeting. The remaining allegations in paragraph 7 are denied.

8. Admitted that the Board votes on each item contained on the regular agenda. There are times when a Commissioner pulls an item off of the consent agenda for discussion and a separate vote; however, the Board typically votes on items contained on the consent agenda as a group. The remaining allegations in paragraph 8 are denied.

9. Denied.

10. Denied.

11. Admitted that section 286.0114, Florida Statute, speaks for itself. The remaining allegations in paragraph 11 are denied.

12. Admitted that section 286.0114, Florida Statute, speaks for itself. The remaining allegations in paragraph 12 are denied.

Count I – Anti-Shush Sunshine Violation, Plaintiff Larson

13. The County realleges its responses to paragraphs 1 through 12 as if fully set forth

herein.

14. Admitted that Mrs. Larson has attended Board meetings for several years and requests to speak at Board meetings. The remaining allegations in paragraph 14 are denied.

15. Admitted that the Board affords members of the public three minutes to speak per item contained on the regular agenda, and that such time may be extended at the discretion of the Chair. Admitted that the video of the December 15, 2015 Board meeting documents what regular agenda items Mrs. Larson requested to speak on and for how long she spoke. The remaining allegations contained in paragraph 15 are denied.

16. Admitted that the Board affords members of the public three minutes to speak for all items contained on the consent agenda, and that such time may be extended at the discretion of the Chair. Admitted that the video of the December 15, 2015 Board meeting documents what consent agenda items Mrs. Larson requested to speak on and for how long she spoke. The remaining allegations contained in paragraph 16 are denied.

17. Admitted that the Board affords members of the public three minutes to speak per item contained on the regular agenda, and that such time may be extended at the discretion of the Chair. Admitted that the video of the May 17, 2016 Board meeting documents what regular agenda items Mrs. Larson requested to speak on and for how long she spoke. Admitted that the Board affords members of the public three minutes to speak for all items contained on the consent agenda, and that such time may be extended at the discretion of the Chair. Admitted that the video of the May 17, 2016 Board meeting documents what consent agenda items Mrs. Larson requested to speak on and for how long she spoke. Admitted that Exhibit B attached to the amended complaint is a true and correct copy of the agenda for the May 17, 2016 Board meeting. The remaining allegations contained in paragraph 17 are denied.

18. Denied.

19. Denied.

WHEREFORE, the County denies liability, causation, and damages, and denies that Plaintiff Larson is entitled to any of the relief she requested in count I of the amended complaint. The County requests attorney's fees pursuant to section 286.0114(7)(a), taxable costs, and any and all other relief the Court deems just and proper. The County demands trial by jury on all issues so triable.

Count II Sunshine Law Violation, Plaintiff Lozman

20. The County realleges its responses to paragraphs 1 through 12 as if fully set forth herein.

21. Admitted that the Board affords members of the public three minutes to speak per item contained on the regular agenda, and that such time may be extended at the discretion of the Chair. Admitted that the video of the December 15, 2015 Board meeting documents what regular agenda items Mr. Lozman requested to speak on and for how long he spoke. The remaining allegations contained in paragraph 21 are denied.

22. Admitted that the Board affords members of the public three minutes to speak for all items contained on the consent agenda, and that such time may be extended at the discretion of the Chair. Admitted that the video of the December 15, 2015 Board meeting documents what consent agenda items Mr. Lozman requested to speak on and for how long he spoke. The remaining allegations contained in paragraph 22 are denied.

23. Denied.

24. Denied.

25. Denied.

WHEREFORE, the County denies liability, causation, and damages, and denies that Plaintiff Lozman is entitled to any of the relief he requested in count II of the amended complaint. The County requests attorney's fees pursuant to section 286.0114(7)(a), taxable costs, and any and all other relief the Court deems just and proper. The County demands trial by jury on all issues so triable.

Count III Injunctive Relief

26. The County realleges its responses to paragraphs 1 through 25 as if fully set forth herein.

27. Admitted that section 286.0114, Florida Statute, speaks for itself. The remaining allegations contained in paragraph 27 are denied.

28. Admitted that in accordance with the Sunshine Law and its Rules of Procedure that the Board affords members of the public three minutes to speak per item contained on the regular agenda, and three minutes for all items contained on the consent agenda, and that such time may be extended at the discretion of the Chair. The remaining allegations in paragraph 28 are denied.

29. Admitted that section 286.0114(6), Florida Statute, speaks for itself. The remaining allegations contained in paragraph 29 are denied.

30. Denied.

31. Denied.

32. Denied.

WHEREFORE, the County denies liability, causation, and damages, and denies that Plaintiffs are entitled to any of the relief they request in count III of the amended complaint. The County requests attorney's fees pursuant to section 286.0114(7)(a), taxable costs, and any and all

other relief the Court deems just and proper. The County demands trial by jury on all issues so triable.

Affirmative Defenses

1. Counts I through III of the amended complaint are barred for failure to state a cause of action for which relief can be granted.

2. Counts I through III of the amended complaint are barred because the County adopted rules or policies in compliance with section 286.0114 and followed its rules or polices when providing Plaintiffs with an opportunity to be heard at the times alleged in the amended complaint.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished this 8th day of August, 2016, via the E-Filing Portal to Jonathan O'Boyle, Esquire, 1286 West Newport Center Drive, Deerfield Beach, Florida 33442, at oboylecourtdocs@oboylelawfirm.com.

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At this time, the Board will hear public comment on matters that are not on the regular agenda. Regular agenda items will have their own public comment period.

Any person wishing to address the Board should come to the podium and state his or her name and address. Each person will be provided three minutes to speak and shall comply with the Board's Rules of Decorum:

- **Comments should be addressed to the Board as a whole and not to any individual Commissioner and may not include a demand for an immediate response from the Board.**

- **No person may address the Board with personal, impertinent, or slanderous remarks or with boisterous behavior.**

- **Members of the audience should refrain from any disruptive demonstration of approval or disapproval of any comments.**

Finally, I would ask that any speaker that presents any overhead material please present that material to the staff of the Clerk of Court to be entered into public record.

Thank you.

PART 7 RULES OF DEBATE

RULE 4.701 CHAIR MAY PARTICIPATE IN PROCEEDINGS

The Chair may make motions, second motions and debate, subject only to such limitations of debate as are enforced by these rules on all Commissioners, and shall not be deprived of any of the rights and privileges as Commissioner by reason of being Chair.

RULE 4.702 OBTAINING FLOOR OR RECOGNIZED BY CHAIR

In order to obtain the floor, any Commissioner desiring to speak in debate on a subject open to debate must address the Chair, and, when recognized by the Chair, may speak only on matters germane to the business or question under debate.

RULE 4.703 INTERRUPTION OF SPEAKERS

A Commissioner or official, once recognized, shall not be interrupted while speaking unless calling the Commissioner or speaker to order for transgressing any rule of the Board or failing to maintain proper decorum. Any Commissioner called to order while speaking shall cease speaking until the question of order is determined by the Chair without debate, and if in order, may proceed.

RULE 4.704 PRIVILEGE OF FLOOR AND PUBLIC COMMENT

A. **Recognition by the Chair**. Except for Commissioners and County officials/employees, no person shall approach or address the Board until the Chair permits the person to approach or address the Board.

B. **Entitlement to Public Comment on propositions before the Board**:

1. Members of the public shall be given a reasonable opportunity to be heard on a proposition before a Board. The opportunity to be heard need not occur at the same meeting at which the Board takes official action on the proposition if the opportunity occurs at a meeting that is during the decision making process and is within reasonable proximity in time before the meeting at which the Board takes the official action; however, unless otherwise provided by law, members of the public are not entitled to a reasonable opportunity to be heard in public meetings of the Board in the following circumstances:

(a) The Board is making an official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, if compliance with the requirements would cause unreasonable delay in the ability of the Board to act.

(b) The Board is making an official act involving no more than a ministerial act, including, but not limited to, approval of minutes and ceremonial proclamations.

(c) The meeting is exempt from Florida Statute § 286.011.

(d) The meeting is one in which the Board is acting in a quasi-judicial capacity. (In hearings in which the Board is acting in a quasi-judicial capacity, each person addressing the Board shall limit comments to three (3) minutes, unless extended by the Chair for good cause. For parties to the matter, participation is as provided by LDC Article IX and Florida law. The Board may utilize more specific hearing criteria as may be recommended by the County Attorney).

2. **Designation of Representative**. Groups of members of the public who wish to communicate the same message (e.g., support or opposition to a proposition) to the Board may designate a representative to speak for the group at a public meeting of the Board by filling out a form and submitting it to the designated Staff member present at the meeting, which form indicates the general message of the group and the name and address of each person in the group and which may include a signature from each person in the group in support of the group's message.

3. **Time Limit for Comments and Extension of Time for Comment**. Each person addressing the Board shall limit comments to three (3) minutes. Members of the public and designated representatives of groups of twenty (20) or fewer persons present shall limit their comments to the Board to five (5) minutes. Designated representatives of groups of more than twenty (20) persons present shall limit their comments to the Board to ten (10) minutes. The Chair may elect to extend the time available to individual members of the public or designated representatives for comment for an additional time for good cause. A member of the public or designated representative may not assign his or her time or any part of his or her time to another speaker.

C. For public comment on items that are not a proposition being considered by the Board, a general public comment period shall be provided for persons to address the Board on matters which reasonably may need attention of the Board. Each person addressing the Board shall limit comments to three (3) minutes, unless extended by the Chair for good cause.

RULE 4.705 DECORUM

A. **Manner of Addressing the Board**. Members of the public and designated representatives shall address their comments to the Board as a whole and not to any Commissioner individually or any group of Commissioners. Imposing a demand for an immediate response from the Board

or any member thereof during public comment shall be considered out of order. Persons shall not address the Board with personal, impertinent or slanderous remarks, or become boisterous. A Commissioner shall not engage in dialogue with persons making public comment unless the question or comment is directed through the Chair or made with the permission of the Chair.

Security Plan – Got One?

Patrick F. McCormack
FACA CLE
December 1, 2016

Security Plan

F.S. 119.071(3) Security.--

(a) 1. As used in this paragraph, the term “security system plan” includes all:

a. Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;

b. Threat assessments conducted by any agency or any private entity;

c. Threat response plans;

d. Emergency evacuation plans;

e. Sheltering arrangements; or

f. Manuals for security personnel, emergency equipment, or security training.

2. A security system plan or portion thereof for:

a. Any property owned by or leased to the state or any of its political subdivisions; or

b. Any privately owned or leased property

held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption is remedial in nature, and it is the intent of the Legislature that this exemption apply to security system plans held by an agency before, on, or after the effective date of this paragraph.

Security Plan

F.S. 281.301. Security systems; records and meetings exempt from public access or disclosure

(1) Information relating to the security systems for any property owned by or leased to the state or any of its political subdivisions, and information relating to the security systems for any privately owned or leased property which is in the possession of any agency as defined in s. 119.011(2), including all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to or revealing such systems or information, and all meetings relating directly to or that would reveal such systems or information are confidential and exempt from ss. 119.07(1) and 286.011 and other laws and rules requiring public access or disclosure.

(2) Information made confidential and exempt by this section may be disclosed:

(a) To the property owner or leaseholder;

(b) In furtherance of the official duties and responsibilities of the agency holding the information;

(c) To another local, state, or federal agency in furtherance of that agency's official duties and responsibilities; or

(d) Upon a showing of good cause before a court of competent jurisdiction.

Security Plan

- AGO 2015-06

- Central Florida Regional Transp. Authority v. Post-Newsweek Stations, Orlando, Inc., 157 So. 3d 401 (Fla. 5th DCA 2015)

Security Plan

F.S. 125.74 County administrator; powers and duties.

(1) The administrator may be responsible for the administration of all departments responsible to the board of county commissioners and for the proper administration of all affairs under the jurisdiction of the board. To that end, the administrator may, by way of enumeration and not by way of limitation, have the following specific powers and duties to:

(g) Supervise the care and custody of all county property.

Security Plan

SECURITY PLAN – OUTLINE

Pursuant to Section 119.071(3)(a), Florida Statutes, this document is confidential and exempt from Section 119.07(1), Florida Statutes, and Article I, Section 24(a) of the Florida Constitution.

I. PURPOSE

This ABC County Security Plan (the Plan) outlines the procedures and measures employed by ABC County (the County) to address security needs at various risk levels and respond effectively during instances when undesirable events occur.

Security Plan

II. FACILITY PROFILES

Provide descriptions of all County facilities, including their physical address. Identify the function of each facility. Describe the physical construction of each facility, and either attach floor plans or identify where floor plans can be accessed. Identify all utilities used at each facility, including the name and contact information of the provider. Identify and describe security level categories for County facilities (basic/intermediate/advanced/maximum), and assign each facility to the appropriate category. Provide the number of employees and visitors who access the facility on a typical day. Provide a point of contact for each facility. If all or a portion of any facility is leased to third-party tenants, identify and provide a point of contact for each tenant.

The Department of Homeland Security Interagency Security Guide contains a sample description spreadsheet (page XX) that may be useful as a template for creating profiles of the County's facilities.

Security Plan

III. ROLES AND RESPONSIBILITIES

Identify all persons responsible for executing this Plan, including contact information.

IV. RISK MANAGEMENT

Identify and prioritize threats to County facilities and provide an overview of strategies to mitigate them. Explain any related risks and their potential consequences.

Security Plan

V. **SECURITY COUNTERMEASURES** – Include criteria for access, barriers to access, prohibited items/materials, items/materials that are not prohibited but may warrant a heightened level of security, and any related procedures.

- **A. Security of Exterior Areas**
  1. **Pedestrian Entrances**
  2. **Vehicle Entrances**
  3. **Physical Building Security**
- **B. Security of Public Interior Areas**
  1. **Level of Security**
  2. **Access Controls**
  3. **Mail Handling Procedures**
- **C. Security of Restricted Interior Areas**
  1. **How Designated/Identified**
  2. **Level of Security**
  3. **Access Controls**
- **D. Maintenance of Countermeasures**

Provide requirements for testing, maintenance, and repair of security countermeasures (metal detectors, door locks, etc.).

Security Plan

VI. CONTINGENCY PLANS

Provide plan of action for various emergency situations (active shooter, bomb threat, fire, hazardous materials, natural disaster, etc.).

VII. INCIDENT RESPONSE

A. Reporting Incidents

B. Notification of First Responders and Occupants of Facility

C. Response

Identify who is responsible for coordinating response to incidents, including chain of command. This may vary depending on the nature of the incident.

D. Process to Resume Normal Operations

E. Incident Documentation

Security Plan

IX. FACILITY-SPECIFIC POLICIES

Address any unique requirements a facility may have here.

X. INFORMATION SECURITY

- **A. Protection of Confidential Information**
- **B. Protection of Information Technology Systems**

XI. TRAINING

XII. PLAN REVIEW

This Plan shall be reviewed [annually?] or as needed in response to threats received or significant changes to County facilities, including mission, population, or site composition.

Security Plan

VIII. SPECIAL EVENTS

A. Meetings

1. Board of County Commissioners
2. Other County Boards/Committees
3. Third-Party Meetings

B. County-Sponsored Events

C. Third-Party Events



Short-term Rental Platforms:

Unique Challenges for Florida's Local Governments

Transient rental platforms explained

- Transient (*i.e.*, short-term) rental platforms:
  - use modern information technology, including web sites and mobile apps,
  - to allow hosts and renters to transact with each other,
  - without costly intermediaries.[1]

- These platforms typically provide:
  - information about the properties,
  - online payment facilities,
  - reputation mechanisms to help insure quality, and
  - assistance with dispute resolution.[2]

The Sharing Economy

- This business model is part of the "sharing economy,"[3] which is premised on:
  - access to, rather than ownership of, resources; and
  - connecting customers and service providers outside of traditional industries.[4]
- Some "hosts" rent out a room in their home (or their entire home when they are out of town).
- But it has also developed into a large industry of professional hosts.

The Sharing Economy

- Penn State University study of 12 U.S. cities revealed:
  - approx. 40% of Airbnb's revenue for 2014-15 was derived from multi-unit operators (renting 2 or more units), and
  - 26% was derived from full-time hosts (*i.e.*, those renting 360+ days/year).[5]
- This business model is not going away, and is growing rapidly.
  - Airbnb, the leading platform, is worth approximately $30 billion.[6]
  - In the Miami metropolitan area, there were 5,044 hosts on Airbnb, accounting for $122 million in revenue in 2014 - 2015.[7]

Common Local Government Concerns

- Tensions with existing regulatory frameworks, which typically require licensing, certification, and insurance;[8]
- Complaints about noise, traffic, and parking impacts from neighbors;[9]
- Code enforcement issues, such as fire and health codes, hurricane evacuation procedures, etc;[10]
- Taxation issues, such as: who should be collecting and remitting transient rental taxes?;

Common Local Government Concerns

- Complaints from traditional lodging providers about unfair competition;
- Reports of discrimination based on race, sexual orientation, etc.; and
- Effects on access to affordable housing when inventory is removed from long-term markets.[11]

Legislation and Regulation of Short-Term Rentals

Florida's Public Lodging Statute

- Preempts any local laws that *prohibit* vacation rentals or that *regulate the duration or frequency* of vacation rentals.[12]

- Covers most properties which are rented more than 3 times/year for periods of less than 30 days, or which are advertised to the public as a place regularly rented.[13]

- Limits to the Statute's preemption:
  - Doesn't apply to local laws adopted on or before June 1, 2011.[14]
  - Local governments can still regulate vacation rentals consistent with the Statute – *i.e.*, in respects not relating to duration, frequency, or direct prohibition.[15]

Florida's Public Lodging Statute

- Division of Hotels & Restaurants of the Department of Business & Professional Regulation regulates vacation rentals.[16]
- Operation without a license is a second-degree misdemeanor.[17]
- Vacation rentals are subject to certain sanitary regulations.[18]
- Vacation rentals must be made available for inspection by the Division upon request.[19]
- Local law enforcement may provide immediate assistance in pursuing an illegally operating facility, but the Statute doesn't otherwise authorize a local government to prohibit the operation of an unlicensed vacation rental.[20]

Examples of 2016 State Legislative Efforts

Bill	Sponsor(s)		Description	Status
HB 1287	George Moraitis (R) Debbie Mayfield (R) Hazel Rogers (D)	01/08/2016	• specifies disciplinary guidelines; • prohibits group licensing; • requires display of license number on rental advertising; • provides that it is an unlicensed practice to advertise without license.	03/11/2016 Died in Business and Professions Subcommittee
SB 348	Thad Altman (R)	09/24/2015	• revises the permitted scope of local laws; • provides exemption for subsequent amendments of certain existing local laws adopted on or before a specified date.	03/11/2016 Died in Regulated Industries
HB 1295	Jay Trumbull (R)	01/08/2016	• requires person leasing, renting, letting, or granting licenses for use of vacation rentals to display valid registration number in each rental listing; • provides penalties.	03/11/2016 Died in Business and Professions Subcommittee

Examples of Florida Local Government Regulations on Short-Term Rentals

- City of Miami Beach:
  - Allows for short-term rentals in certain zoning districts.
  - Bans short-term rentals in single-family homes and in other zoning districts.
  - Penalties include fines, ranging from $500 - $7,500, and eviction of the tenants.[21]
- Flagler County:
  - Permits short-term rentals if the owner :
    - obtains registration certificates and business tax receipts from appropriate County and State regulatory bodies,
    - meets minimum life/safety requirements,
    - meets maximum occupancy requirements, and
    - makes commitments to solid waste handling and parking standards.[22]
- City of Kissimmee:
  - Requires many operators of short-term rentals to obtain conditional use permits.
  - Enforces regulations specifying minimum construction, design, and maintenance standards for buildings used as short-term rentals.[23]

Other Regulatory Landscapes

- Some local governments limit the number of days short-term rentals are allowed.
  - New Orleans: Prohibits unlicensed rentals for less than 60 days in the French Quarter, and less than 30 days elsewhere.[24]
- Others limit the number of such rentals in a given area.
  - San Luis Obispo County, C.A.: A short-term rental may not be located within 200 feet of another vacation rental on the same block.[25]
- Others limit the number of people/occupancy.
  - Isle of Palms, S.C.: Has an occupancy limit of 2 people/bed, plus an additional 2 people, for short-term rentals.[26]
- Some have broad *de minimis* carve outs.
  - Jersey City: Affirmatively permits short-term rentals without even a license so long as the landlord offers 5 or fewer units for short-term use.[27]

Regulating the Platform Companies Directly

Clashes between Regulators and Hosting Platforms

- As just discussed, rentals advertised on online platforms sometimes run afoul of local laws.
- As a result, some local governments have begun regulating the hosting platforms *directly*.
- Airbnb and others have been going on the offensive with lawsuits challenging those local laws.[28]

San Francisco's Ordinance

- In San Francisco, short-term rental hosts must register.
  - Includes making an in-person appointment, completing an application, paying a $50 fee, and obtaining $500,000 in liability insurance.

- Under their new Ordinance, it is illegal to<u>advertise</u> an unregistered rental.

- Penalties can include a fine of $1,000/offense and up to 6 months in jail.[29]

Airbnb and HomeAway Sue San Francisco

- Airbnb and HomeAway argue that the Ordinance:
  - impermissibly treats them as the "publisher or speaker of third-party content" in violation of the federal Communications Decency Act.
  - violates the First Amendment.[30]

- The court recently denied their requested injunction on those grounds, holding that the Ordinance:
  - does not treat them as the "publisher or speaker of third-party content," because it "regulates [P]laintiffs' own conduct as Booking Service providers and cares not a whit about what is or is not featured on their websites."[31]
  - does not violate the First Amendment because it "is directed at specific business transactions and practices, and 'not to any message the businesses express.'"[32]

Airbnb Sues NYC and NY State

- 55% of NYC Airbnb listings are estimated to be illegal because state law bars rental of most urban apartments for less than 30 days if the owners isn't living on the property. [33]
- New state law also now bars *advertising* unlawful rentals.[34]
- On October 21, Airbnb sued the State AG and the NYC Mayor arguing the law "is a content-based restriction on advertisements … protected under the First Amendment."
  - The lawsuit also claims the law could make Airbnb liable, without due process, for the advertisements of hosts who do not know they are breaking laws.[35]
  - The parties are in settlement talks.

Bed Tax Collection and Remittance

Short-Term Rental Taxes in Florida

- Florida law allows local governments to enact ordinances imposing tourist development taxes ("TDTs") of 2-5% of the listing price.[36]
- The tax is on the "renting, leasing, or letting for consideration" of accommodations for 6 months or less.[37]
- There is also a State Transient Rental Tax (6%) and a Discretionary Sales Surtax (0.5%-1.5%).[38]
  - Florida Dept. of Revenue administers those taxes (as well as the TDT for 22 counties that don't administer it themselves).[39]
- Historically, online rental platforms have not collected and remitted these taxes, leaving it to hosts.

TDT - Statutory and Regulatory Language

- "Shall be charged by the person receiving the consideration."[40]
- "Shall be collected from the lessee, tenant, or customer at the time of payment of the consideration."[41]
- Person receiving the consideration "shall receive, account for, and remit the tax."[42]
- Agents that "collect and receive rent" as the owner's representative are required to register as a dealer and collect and remit the tax.[43]
- If the agent has no role in collecting or receiving the rent, "the person receiving such rent" must register as a dealer and collect and remit the tax.[44]

Airbnb agreements to collect bed taxes

- Airbnb has reached agreements with 9 counties, plus the Fla. Dept. of Revenue, to eliminate its liability for past unpaid taxes (including TDTs), while agreeing to voluntarily collect and remit taxes on a prospective basis.[45]
- Some concerns about these agreements, voiced by those counties not yet agreeing:
  - Waives back taxes (and penalties and interest) as to Airbnb,
  - Limits audit abilities against hosts, and
  - Contains confidentiality requirements.[46]

Palm Beach County Tax Collector v. Airbnb Inc., et al.

- Palm Beach County has brought suit against Airbnb, HomeAway, and TripAdvisor, for failure to register as a dealer and to collect and remit TDTs.[47]
- Key questions:
  - Who "receives the consideration"?
  - Even if the platforms receive the consideration, can they be held responsible?
- Circuit Court Judge Catherine Brunson has denied the Defendants' two dispositive motions to-date.
- Discovery is under way.

Moving Forward

Working Together

- The leaders in this new industry have shown a willingness to collaborate with local governments, but have also not hesitated to sue in other instances.
- Going forward, local governments in Florida can encourage market entry while ensuring that entrants compete fairly and appropriately with existing industry players.
- In other words, short-term rental platforms require a regulatory framework that balances the efficiencies and opportunities these platforms offer and the rights of consumers and third parties.[48]

Questions?

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Florida Association of County Attorneys' 2016 Mid-Year -CLE Seminar

RESOLUTION TO THE RIDESHARE FLAP



Cynthia S. Oster, Esq.
Senior Assistant County Attorney
Hillsborough County Attorney's Office

FOR TRAINING PURPOSES ONLY

`Ruth: Hillsborough ride-sharing battle resolved



Daniel Ruth, Times Columnist

Thursday, November 17, 2016 4:04pm

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It seems more than fair -- although this deal could have been worked out long ago.

Legal or not, both Uber and Lyft carved out a nice market niche for themselves, much to the consternation of the county's taxi and limo services. The rideshare companies offer a quick, reasonably priced service. They created a better mousetrap and the established tax/limo monopolies were royally peeved somebody had moved a huge chuck of their cheese.

That's life. It's how capitalism is supposed to work, too. Competition. It's a pip.

The die was cast after reports surfaced PTC Executive Director Kyle Cockream conspired with the taxi and limo companies to participate in sting operations against Uber and Lyft drivers, resulting in hefty fines.

How could Uber and Lyft conclude they were receiving a fair hearing before the PTC if the head of the agency was cavalierly conspiring against them with the help of their competitors? After the PTC vote, Cockream announced he planned to move up his previously announced resignation date to the end of the year. Ba-bye. Maybe Uber or Lyft can give him a ride out of town.

There is still some pouting going on. One dissenting PTC board member, Tampa City Council member Frank Reddick, announced after the vote he was resigning because he simply couldn't continue serving an agency that was rewarding the rideshare companies for breaking the law.

While you could make an argument Uber and Lyft were skirting the law, all this evil-doing could have ended sooner had not the PTC been so obstructionist and duplicitous in its treatment of the ridesharing businesses. It's not as if Uber and Lyft were involved in a vast criminal enterprise. They weren't colluding to overthrow the government. They were merely driving people from A to B.

And you also have to suspect the resolution to the rideshare flap was hastened once Uber entered into a partnership with the Tampa Bay Lightning to provide rides to hockey fans leaving Amalie Arena.

Uber and Lyft are the products of entrepreneurship that challenged the existing order and have shaken up the established system. How is this not a good thing?

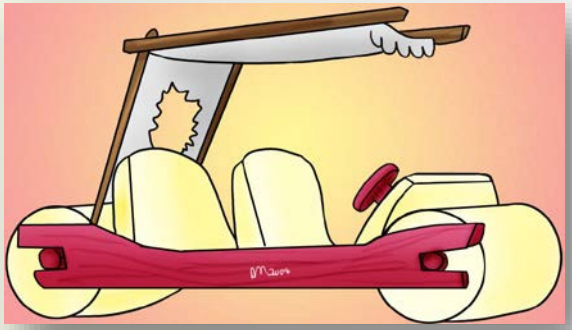
There is nothing preventing the taxi and limo industries from competing with Uber and Lyft on their own turf. That's what competition is all about.

And that challenge is already facing Uber and Lyft.

A locally based rideshare company, DriveSociety, is preparing to enter the marketplace. In theory, DriveSociety will endeavor to provide a better, quicker and perhaps cheaper customer experience. And that's a good thing, too.

The Advent of Transportation Network Companies ("TNC's")

"At the border between the old world and the new."*







* Order Denying Motion for Temporary Injunction in Hillsborough County Public Transportation Commission v. Uber Technologies, Inc., No. 15-CA-003097 (Fla. 13th Cir. Ct. Oct. 12, 2015).






UBER
2937-2999 Harvard Court North...
SET PICKUP LOCATION
uberX
BLACK CAR
TAXI
ESSENTIALS

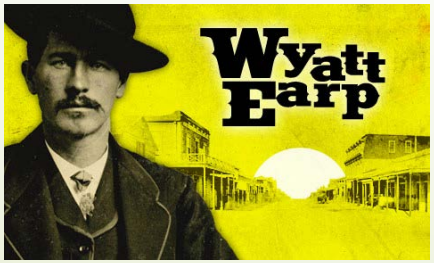


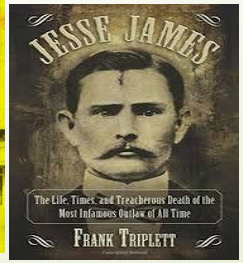
Uber & Lyft Enter the Market Explosively

Uber & Lyft enter the market with the mind set of asking for forgiveness rather than permission.

In a sense, it's the James Gang riding into town and telling Wyatt Earp how to act.*

*Order Denying Motion for Temporary Injunction in Hillsborough County Public Transportation Commission v. Uber Technologies, Inc., No. 15-CA-003097 (Fla. 13th Cir. Ct. Oct. 12, 2015)





Impact on Traditional World of Taxicabs

"Indeed when new technologies, or new business methods, appear, a common result is the decline or even disappearance of the old. Were the old deemed to have constitutional right to preclude the entry of the new into the markets of the old, economic progress might grind to a halt. Instead of taxis we might have horse and buggies; instead of the telephone, the telegraph; instead of computers, slide rules."

Illinois Transp. Trade Ass'n v. City of Chicago, 839 F.3d 594 (7th Cir. 2016).

Reality – Consumers want TNC services. Regulators want safety. Taxicabs and limousines want an even playing field.

Creates – Conflict between competing interests.

Results in – Incredible challenges for the regulator: politically and legally.

The Hillsborough Experience

THE ONE AND ONLY

The Hillsborough County Public Transportation Commission ("PTC")

Independent special district created by Special Act for the purpose of regulating the operation of public vehicles upon the public highways of Hillsborough County and its municipalities. Public vehicles are narrowly defined by the Special Act as taxicabs, vans, limousines, handicabs, basic life support ambulances and wrecker.

Governed by a seven member board comprised of elected officials from each jurisdiction represented in Hillsborough County.

The Hillsborough Experience

THE ONE AND ONLY

The Hillsborough County Public Transportation Commission ("PTC")

The PTC Special Act and Rules require anyone who wishes to engage in the business of operating a public vehicle on the public highways of Hillsborough County to obtain a certificate. In addition, all persons who wish to operate a public vehicle must obtain a public vehicle driver's license and all public vehicles must be permitted.

How is it different than other jurisdictions? Rules must be adopted in accordance with Florida's Administrative Procedure Act, whose requirements are much more extensive than those for ordinance adoption.

History of Uber and Lyft in Hillsborough County from a Regulatory Standpoint

1. March 2014 - Entered the Market
2. March 20, 2014 - Warning Letter issued by PTC
3. July 2014 - Citations issued by PTC
4. November 2014 - Administrative Appeal of Citations to the PTC Board
5. December 2014 - Appeal of Citations to the Second District Court of Appeal
6. April 2015 - PTC files lawsuit against Uber Technologies, Inc.
7. October 2015 - Abatement of Litigation Pending Legislative Solution
8. March 2016 - Resume Litigation absent Legislative Solution
9. November 2016 - Settlement Agreement with Uber and Lyft and Emergency Rules adopted for TNC's
10. November 2016 - Lawsuit filed by Another Transportation Network Company Challenging the Settlement Agreements

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From the Tampa Bay Business Journal:
http://www.bizjournals.com/tampabay/news/2016/11/15/ptc-named-in-another-lawsuit-this-one-challenging.html

PTC named in another lawsuit, this one challenging agreement with Uber, Lyft

Nov 15, 2016, 1:55pm EST **Updated: Nov 15, 2016, 3:45pm EST**

Several public transportation providers have filed a lawsuit against the Hillsborough County Public Transportation Commission seeking to overthrow an agreement with competitors Uber and Lyft.

On Nov. 9, the PTC approved a Temporary Operating Agreement with the two transportation network companies that allows them to operate in Hillsborough County legally, something the companies have not been doing for years. The agreements don't require fingerprint-based background checks for drivers or that drivers obtain a Public Vehicle Drivers License.

During that same meeting, a set of rules for other TNCs were also passed that do require fingerprints and PVDLs.



ANDREW HARRER | BLOOMBERG

The Uber Technologies Inc. application runs on an Apple Inc. iPhone during an Uber ride in Washington, D.C.

In a suit filed in the Circuit Court of the Thirteenth Judicial Circuit last week, DriveSociety, Gulf Coast Transportation, Advantage Limousine, Ambassador Group of North America and Luxury Transportation of Tampa Bay joined forces in challenging the two rules.

The first argument alleges the PTC's agreement with Uber and Lyft violates the Special Act under which the agency was created. That Act created by the Florida Legislature states that public transportation, for-hire drivers must undergo fingerprint-based background checks and obtain a PVDL.

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The plaintiffs in the lawsuit are each seeking licensure with the PTC to operate as TNCs like Uber and Lyft. But the Temporary Operating Agreements stand in direct contradiction to the rules approved for any TNC that isn't Uber or Lyft.

"Essentially, the Agreements create one set of significantly different and relaxed contractual requirements for Uber and Lyft, while the TNC rules create an entirely different set of regulations for the Plaintiffs and any other company seeking to operate as a transportation network company in Hillsborough County," the complaint alleges.

The complaint also alleges the FTC is violating both the Florida and U.S. Constitutions by violating equal protection clauses. The disparity in rules for smaller companies looking to break into the TNC market creates an unlevel playing field by allowing Uber and Lyft to have fewer regulations.

The complaint further argues that the FTC contradicted itself in approving two different set of rules. When approving the rules for TNCs other than Uber and Lyft, the board did so on an "emergency" basis and ascertained that such a move was prudent in order to protect the "health, safety and welfare" of the traveling public. The board agreed that drivers operating outside a set of rules were an immediate danger to Hillsborough citizens in order to protect its decision to approve the rules.

However, the Temporary Operating Agreement, according to the complaint, discarded that concern by approving exemptions for Uber and Lyft.

The lawsuit seeks an injunction against the FTC against the Temporary Operating Agreement and assumes a court can grant such a decision because Uber and Lyft have not yet paid applicable fees to make the agreements effective.

The lawsuit comes as the agency appears to be preparing for dissolution. During the Nov. 9 meeting, board members discussed ways to potentially self-dissolve the agency and acknowledged the State Legislature is likely to take steps to abolish the agency.

The PTC declined to comment because the matter involves pending litigation.

Janelle Irwin
Reporter
Tampa Bay Business Journal



Regulatory Issues

Are existing ordinances/laws adequate and/or appropriate to address regulation of transportation network companies?

Should local government/municipalities adopt an ordinance to specifically regulate transportation network companies?

If so, what policy considerations should be included in such an ordinance?



Legal issues regarding Drafting Ordinances



Definitional issues:

* Are TNC's taxicabs?
* Are TNC's considered for-hire transportation?

Insurance

Preemption issues

Legal Challenges

By providing for specific regulations of transportation network companies, existing industries may raise the following arguments:





Legal Challenges

Governmental taking of property, the taxicab “medallions”, without compensation.

“‘Property’ does not include a right to be free from competition. A license to operate a coffee shop doesn’t authorize the licensee to enjoin a tea shop from opening. When property consists of a license to operate in a market in a particular way, it does not carry with it a right to be free from competition in that market.”

Illinois Transp. Trade Ass'n v. City of Chicago, 839 F.3d 594 (7th Cir. 2016).





Legal Challenges

Equal Protection Claims

"There are enough differences between taxi service and TNP service to justify different regulatory schemes, and the existence of such justification dissolves the plaintiffs' equal protection claim. Different products or services do not as a matter of constitutional law, and indeed of common sense, always require identical regulatory rules. The fallacy in the district judge's equal protection analysis in her equating her personal belief that there no significant differences between taxi and TNP service with the perception of many consumer that there are such differences – a perception based on commonplace concerns with convenience, rather than on discriminatory or otherwise invidious hostility to taxicabs or their drivers. If all consumers thought the services were identical and that there was therefore no advantage to having a choice between them, TNPs could never have gotten established in Chicago."

Illinois Transp. Trade Ass'n v. City of Chicago, 839 F.3d 594 (7th Cir. 2016).

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Political Issues - Casualties

“Uber and Lyft exodus thwarted by PTC agreement approval”

November 9, 2016 , Tampa Bay Times Business Journal,
Reporter Janelle Irwin

The Hillsborough County Public Transportation meeting sounded like a giant farewell Wednesday as the board accomplished more in one meeting than it has in two years.

A board increasingly at odds with one another managed to approve a temporary operating agreement that allows rideshare giants Uber and Lyft to operate legally in the county, resolve two lawsuits, approve rules for other transportation network companies, chose new leadership and established a budget for investigating its executive director.

Hillsborough County Public Transportation Commission Executive Director Kyle Cockream discusses Uber and Lyft after a commission meeting May 13, 2015.
Enlarge
Hillsborough County Public Transportation Commission Executive Director Kyle Cockream… more

During the meeting, Executive Director Kyle Cockream announced he is not seeking a contract renewal, which means he’ll leave the PTC at the end of next month. Board member Frank Reddick also announced at the very last moment that he too is checking out. Wednesday was his final meeting. It was also former chair Victor Crist’s last day.

That’s a lot in one meeting, so here’s how it all went down.

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Political Issues - Casualties

Cockream resigns
Sort of.

Cockream found himself in hot water last month after a trove of emails uncovered he had partnered with taxi industry leaders in sting operations ticketing Uber and Lyft drivers.

Further evaluation of those emails uncovered additional evidence he had gotten too cozy with the taxi industry including a request to show an anti-Uber commercial in the PTC's lobby.

As a result, State Sen.-elect Dana Young (R-Tampa) called on the Florida Department of Law Enforcement to investigate Cockream and the PTC board voted to move forward with another internal investigation. During Wednesday's meeting, the board approved a $75,000 budget to hire an outside firm to conduct that investigation.

The scandal led to calls for his resignation – something he rejected for weeks. However during discussion about renewing his contract, Cockream said he wasn't interested in renewing and will serve out the remainder of his term, which ends Dec. 31.
Cockream welcomed the investigation and said he would be available to answer questions even if he no longer worked there.

The board is moving forward with identifying an interim director.

Reddick and Crist out
Victor Crist said he was stepping down from the board after a new chair was selected back in September, but Reddick was a surprise.

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Political Issues - Casualties

Reddick announced after the meeting was adjourned that he would not be returning.

The two will be replaced by someone from their respective boards, which are Tampa City Council and the Hillsborough County Commission.

Why it sounded like a series finale

There were a number of things that happened at the PTC meeting that gave it a farewell feel, including a whole lot of thanking.

David Pogorilich, a board member from Temple Terrace City Commission, gave Crist a farewell "memory box" and thanked him for his service. Crist thanked attorney Cindy Oster for her hard work.

The county attorney's office is assisting the PTC in finding new counsel but is staying on until a firm is identified and assisting with the transition.

Further, there were several points at which the PTC's demise was actively discussed including the notion that the board could vote to self-dissolve rather than waiting for legislative action in March, which is expected.

Political Issues – Casualties



The Director

The Chairman

One member of the Board

Legal staff

Possibly the Agency

Options for Resolution

1) Adopt Ordinances/Rules Specifically Regulating Transportation Network Companies:

What should be addressed:



Definitions



Insurance





Background Checks -
(Level 1, Level 1 Enhanced,
Level 2 Fingerprint)

Vehicle Inspections



Enforcement
(Self Reporting vs. Regulatory Enforcement)

Options for Resolution (cont'd)

2) Temporary Operating Agreements ("TOA's") until Ordinance Adoption/Legislative Solution – same considerations as described above should be addressed.

3) Settlement Agreements, which incorporate TOA's, if litigation is pending.

"As an obvious aside, the Court encourages the parties to come to an understanding. The PTC is a political entity and the politicians that comprise its governing board need to come forward to address the very visible interests of their constituents. Multiple court battles are an inefficient way to meet the reality of TNCs."*

* Order Denying Motion for Temporary Injunction in Hillsborough County Public Transportation Commission v. Uber Technologies, Inc., No. 15-CA-003097 (Fla. 13th Cir. Ct. Oct. 12, 2015).

Options for Resolution (cont'd)

4) Propose or support legislation.

5) Do nothing.

6) Remove all regulation of the existing industry.

PUBLIC TRANSPORTATION COMMISSION COMPARISON MATRIX
SETTLEMENT AGREEMENTS WITH UBER & LYFT AND PROPOSED RULES

POLICY CONSIDERATIONS	PROPOSED SETTLEMENT AGREEMENT TERMS	PROPOSED RULES*
Certificate	Yes Uber $250,000 Operating Fee Lyft $125,000 Operating Fee	Yes, Initial Application Fee $1,000.00 Annual Renewal Fee $300.00
Permits	No	Yes, for each vehicle. The annual costs for the TNC Non-Luxury Limousine Permits shall be as follows: 1. The first 100 TNC Limousine Permits issued to a Certificate holder shall cost $160.00 each; 2. For each additional TNC Limousine Permit issued to the same Certificate holder for Permits 101 through Permit number 250, that Certificate holder shall pay the sum of $125.00 per additional TNC Limousine Permit; 3. For each additional TNC Limousine Permit issued to the same Certificate holder for Permits issued to the same Certificate holder for Permits 251-500 that Certificate holder shall pay the sum of $100.00 per additional TNC Limousine Permit; and 4. For each additional TNC Limousine Permit issued to the same Certificate holder for Permits over 500, that Certificate holder shall pay the sum of $80.00 per additional TNC Limousine Permit.

* Sub-classification of Limousine referred to as Transportation Network Provider Non-Luxury Limousine. However, for purposes of simplicity, the acronym "TNC" is used interchangeably.

PUBLIC TRANSPORTATION COMMISSION COMPARISON MATRIX
SETTLEMENT AGREEMENTS WITH UBER & LYFT AND PROPOSED RULES

POLICY CONSIDERATIONS	PROPOSED SETTLEMENT AGREEMENT TERMS	PROPOSED RULES
Insurance	Applicable insurance required by state law/First Dollar Coverage.	Same
Background Checks	Completed prior to permitting driver to operate on the Digital Platform. **Level 1 + 6** A Multi-State/Multi-Jurisdiction Criminal Records Locator; request of all criminal records throughout the U.S. where the background check reveals a criminal record and where individual has lived within the last 7 years. Plus the following additional 6 enhanced searches: • Federal Court Records Search • State and National Sex Offender Database Search • FBI Most Wanted List • Interpol Most Wanted List • DEA Most Wanted List • OPAC Most Wanted List Annually	Level 2 Completed by the PTC – Fingerprints required
PVDL	No	Yes
Vehicle Model Age Limit	10 Years for New Drivers Grandfather provision of 12 Years for existing drivers.	10 Years
Mechanical Inspections	Yes 21 Point Inspection including mechanical, exhaust, oil & fuel leaks and air conditioning.	Initial and Annual Inspection by PTC Staff PTC Staff accepts proof from a certified mechanic regarding mechanical inspections.

PUBLIC TRANSPORTATION COMMISSION COMPARISON MATRIX
SETTLEMENT AGREEMENTS WITH UBER & LYFT AND PROPOSED RULES

POLICY CONSIDERATIONS	PROPOSED SETTLEMENT AGREEMENT TERMS	PROPOSED RULES
Cash Payment	No	Same
Minimum Fare	None	Same
Minimum Wait Time	None	None specified except must be Pre-Arranged
Accessibility	May not refuse to accept passengers who are disabled or charge a higher fare for persons with disabilities, based on the person's disability. Will comply with Americans with Disabilities Act of 1990, as amended.	Special Act authorizes PTC to adopt rules ensuring available public vehicles that meet requirements for transporting persons with limited mobility.
Hotline	Hotline which a representative may be reached 24 hours a day, 7-days per week, to respond to law enforcement emergency requests. The PTC Staff shall have access to this number.	Telephone numbers on file at the Certificate Holder's office where they may be reached after hours.
Surge Pricing	Notice provided in advance; passenger must confirm affirmatively an understanding that price surging applies prior to acceptance of the ride or provide a fare. No price surging upon state of emergency, as declared by a National, State or local governmental entity with authority to declare an emergency, which emergency would affect transportation, and through immediate aftermath of emergency, unless such surge pricing is necessary to incentivize ride request acceptance of drivers to ensure availability of services. Uber/Lyft shall be required to submit, upon the request of the PTC, written proof verifying that it has not breached this provision. Uber and Lyft shall make such information available to the PTC within 2 business days of the PTC's request.	Shall file rates with and obtain approval from PTC in advance of Surge Pricing. No Surge Pricing during times of Declared Emergency, which affects Transportation. Limited to 10 times the normal rate.

PUBLIC TRANSPORTATION COMMISSION COMPARISON MATRIX
SETTLEMENT AGREEMENTS WITH UBER & LYFT AND PROPOSED RULES

POLICY CONSIDERATIONS	PROPOSED SETTLEMENT AGREEMENT TERMS	PROPOSED RULES
Audit Provision	Semi-Annual Audit - not redacted (computer)	Subject to inspection at any time by PTC
Enforcement Remedies	1. Alternative Dispute Resolution 2. $2,500 Civil Penalty (First Offense) 3. $5, 000 Civil Penalty (Repeat and Subsequent Violations) 4. Terminate Agreement 5. Civil Action – Prevailing Party Attorney Fees and Costs and liquidated damages to include forfeiture of fee.	Civil Penalties up to $200.00 per violation. Probation, Suspension and Revocation of Certificates, Permits and PVDL – except revocation of Taxicab certificate(s) is prohibited by existing rules.
Vehicle Onboarding	21 Day Grace Period for new drivers. Once vehicle becomes registered with Uber/Lyft, and the 21 Day grace period is satisfied, vehicle must be inspected before transporting passengers. 42 Day Grace Period for existing drivers. Inspection to be conducted by a registered or licensed mechanic.	No Grace Period. Must be inspected prior to Operating as a TNC.

PUBLIC TRANSPORTATION COMMISSION COMPARISON MATRIX
SETTLEMENT AGREEMENTS WITH UBER & LYFT AND PROPOSED RULES

POLICY CONSIDERATIONS	PROPOSED SETTLEMENT AGREEMENT TERMS	PROPOSED RULES
Conversion Between Taxicabs	N/A	TNC's may not operate as a Taxicab without first obtaining a Taxicab Certificate Permit. Taxicabs who have a Taxicab Certificate and Permits may operate as a TNC without additional cost.

Legislative Attempts to Regulate have failed thus far



"The Court acknowledges that the Florida Legislature was seriously grappling with the issue until strange things happened in Tallahassee in May 2015."*

* Order Denying Motion for Temporary Injunction in Hillsborough County Public Transportation Commission v. Uber Technologies, Inc., No. 15-CA-003097 (Fla. 13th Cir. Ct. Oct. 12, 2015).

Will the Florida Legislature be Successful this year in adopting legislation? We hope so.

Why? To establish a consistent regulatory framework throughout the state.


Thank you...