



BACKGROUND PAPER ON APA FLORIDA’S OPPOSITION TO AMENDMENT 4 TO THE FLORIDA CONSTITUTION

Introduction

Amendment 4 is a proposed amendment to the Florida Constitution that voters will consider in the general election to be held on November 2, 2010. The proposed amendment, sometimes known as “Hometown Democracy,” will be listed as the fourth constitutional amendment on the ballot and will bear the title: “*Referenda Required for Adoption and Amendment of Local Government Comprehensive Land Use Plans.*” If Amendment 4 is approved, local government comprehensive plans and comprehensive plan amendments will be subject to approval by both the governing body and the voters of the local government having jurisdiction. The Florida Chapter of the American Planning Association (APA Florida) strongly supports enhancing public participation in the comprehensive planning process, but opposes Amendment 4. APA Florida believes that Amendment 4 will not enhance public participation or result in better land use decisions. APA Florida opposes Amendment 4 and its Executive Committee has adopted the following position statement:

APA Florida strongly supports citizen access and public input to the comprehensive planning process and is committed to improving citizen involvement through local planning initiatives and legislative changes to Florida’s growth management framework. APA Florida strongly opposes Amendment 4 which would require referenda for comprehensive plan amendments for every community. APA Florida believes that approval of comprehensive plans by referenda will be counterproductive to quality community planning initiatives and will not produce better land use decisions.

The proposed Amendment reads as follows:

Title: Referenda Required For Adoption And Amendment of Local Government Comprehensive Land Use Plans.

Summary: Establishes that before a local government may adopt a new comprehensive land use plan, or amend a comprehensive land use plan, the proposed plan or amendment shall be subject to vote of the electors of the local government by referendum, following preparation by the local planning agency, consideration by the governing body and notice. Provides definitions.

It should be noted that Amendment 4 is by its terms limited to “comprehensive land use plans” and amendments thereto, but what qualifies as a comprehensive land use plan under the Amendment has yet to be clarified by what many see as inevitable litigation. Amendment 4 will not directly require that zoning codes or land development regulations related to design standards, such as building height, bulk, etc. be subject to referendum. However, these codes and regulations may be affected by Amendment 4, as Florida law requires that they be consistent with the comprehensive plan. Furthermore, given that so few new comprehensive plans are being adopted, this paper primarily refers to the impact of the proposed constitutional amendment on comprehensive plan amendments, even though Amendment 4 would govern both new plans and plan amendments, and the implications would be the same.

As described in more detail below, Amendment 4 is a single, expensive and unwieldy solution to a complex and important set of issues. APA Florida does not support this proposed ballot measure for the following reasons:

- It takes away the ability of each community to decide whether to require a referendum or not, imposing the same requirements on small towns as large metropolitan areas.
- It creates a statewide mandate with unknown fiscal costs, with devastating impacts on local jurisdiction budgets.
- It does not belong in the Constitution.
- It does nothing to protect Florida’s scenic beauty or sensitive natural areas, despite its proposed placement in Article 11, Section 7 of the Florida Constitution.
- It creates an added level of bureaucracy and will delay the responsiveness of local government.
- It will lead to an over-simplification of otherwise complex land use planning issues as they will necessarily be reduced to short statements on a ballot and thus take away the ability of a community to plan for its future.
- It will make the public pay to go to the podium, and increase the influence of special interests and other well funded outside interests through the encouragement of aggressive public relations and media campaigns to sway the electorate.
- It will reduce the accountability of elected officials.
- It will not protect a community’s economic growth. Referenda address growth on a piecemeal basis, without consideration of the number of factors that go to supporting sustainable economies which conserve and enrich property values in the long term.
- It will inhibit a local government’s ability to provide essential services and facilities through the addition of expense, delay and uncertainty associated with requiring a referendum.
- It may actually dismantle successful participation processes, as the use of referenda will not produce meaningful public participation in the comprehensive planning process, and low voter turnout may turn decisions over to a nonrepresentative minority.

Myths versus Reality - the Unintended Consequences of Amendment 4

It appears that Amendment 4 is a punitive reaction to rapid, statewide growth and a loss of trust in local government's ability to manage that growth. Our population is aging, capital costs of infrastructure are increasing, and communities have expanded and grown together into continuous regions that are intrinsically connected. Amendment 4 will encourage parochial and potentially short-sighted decisions. Decisions should be made within the context of regional realities to best protect the environment and provide for the community's quality of life.

APA Florida recognizes that Amendment 4 is a reaction to the shortcomings of the current growth management planning process and a mistrust of local government. However, public referenda are not the best or proper solution to those problems. APA Florida believes that the proposed amendment will: (1) lead to decisions that impede the implementation of policies that were adopted by local governments to achieve the vision set forth in their comprehensive plans; (2) lead to plans that over-allocate development rights; (3) lead to an over-simplification of otherwise complex land use planning issues; and (4) result in the inability of a local government to provide essential community services. In other words, the proposed amendment would hinder good planning and increase community costs.

Proponents may argue that APA Florida's concerns are self-serving – that maintaining the status quo will merely keep planners employed and maintain their significant influence over long range planning decisions to the detriment of the public. In fact, there is nothing farther from the truth. As clearly stated in the American Institute of Certified Planners Code of Ethics, a planner's "primary obligation is to serve the public interest." One of the overriding principles of the Code is to give people "the opportunity to have a meaningful impact on the development of plans and programs that may affect them. Participation should be broad enough to include those who lack formal organization or influence." APA Florida is not against Amendment 4 because it proposes public involvement. Rather, our opposition to Amendment 4 is based on the fundamental belief that the amendment will not result in decisions that are truly in the public interest.

When considering the validity of Amendment 4, it is important to look beyond its adoption to the consequences of its actual implementation. The following is a discussion of the misperceptions or myths surrounding the perceived benefits of Amendment 4 and the real and unintended results that can stem from its adoption.

Myth: Amendment 4 will lead to better land use decisions.

Reality: Amendment 4 will not result in better land use decisions for a number of reasons. The push to adopt the proposed amendment is fueled in part by a concern over the heavy influence of developers and campaign contributions in the political process. Unfortunately, these concerns will be exacerbated if Amendment 4 is

approved. Those with power and money, including outside interests, are best able to pay for advertisements on radio, TV, newspapers, billboards, and other media. Experience in communities which have undergone such referenda demonstrates that the influence of media campaigns by well funded special interests can have a far greater impact than their influence exerted under the current political process. Coupled with low voter turnout, the potential is significant that important decisions for the community will be turned over to a nonrepresentative minority.

The “big picture” viewpoint is also likely to be lost. The current review and approval process under the growth management law involves managers, staff and elected officials who are responsible for the long term well-being of the entire community. The process allows well-informed officials to consider important regional influences and constraints on growth and development. While some politicians may be elected to serve specific areas, many local governments also have at-large officials, elected to represent the entire community. In contrast, as historically shown in many communities, citizens typically do not get involved in the comprehensive plan amendment process until a proposed amendment affects them directly. They tend to focus on amendments that have a direct personal impact, rather than amendments that have community-wide implications.

Furthermore, under the current system, staff planners and citizen boards present their analyses and findings to the local government at advertised public hearings. The full staff analysis is often many pages long and may include visual information as well. This information is made available to the public and to the elected body. Both have the opportunity to consider all available information and ask questions of staff. In contrast, under Amendment 4, it would be logistically impossible for staff to respond to questions from the entirety of the voting public prior to a referendum.

While not often mentioned, it is important to note that Amendment 4 would not allow the public to vote on all comprehensive plan amendments. The public would only have the opportunity to vote on amendments that were already approved by the local government. If elected officials vote to deny a comprehensive plan amendment in response to strong opposition from the residents of a directly affected neighborhood, the amendment would not proceed to referendum, even if approval would benefit the majority of the community.

Myth: Local officials will be held more accountable for their decisions.

Reality: In our representative form of government, citizens expect their public officials to make land use decisions after considering the decision’s impact on the overall health, safety and general welfare of the community as a whole. Making the best and most appropriate decision, based upon the best available information, does not always lead to the most popular decision. Difficult, controversial decisions, even when they are in the best interest of the community, may not be politically popular at

the time. However, a referendum is not the solution to accountability and is certainly not the means to reliable, consistent protection of the community health, safety and general welfare. Rather than making local officials more accountable to the public on planning issues, referenda will allow local officials to absolve themselves from accountability because the final decision-making role will be passed on to the so-called collective wisdom of the public.

When local officials realize that controversial comprehensive plan amendments will be subject to another vote by the public, some may likely approve the amendment so the final decision can be deferred to the next vote. This adds another level of bureaucracy to government, and delays the responsiveness of government. Deferring decisions concerning comprehensive plan amendments to the electorate also will produce inconsistent, incompatible and unpredictable land use planning heavily influenced by land use “election” campaigns. These campaigns are as, if not more, likely to be won by the developer with deep pockets as by the concerned community citizen.

The better solution to local official accountability is to mandate accountability through transparent public hearing and public record processes. Local elected officials should be held publicly accountable to justify any land use decisions that are contrary to publicly documented, professional research and recommendations. When voters are not satisfied with an elected official’s representation, decisions, performance or accountability, they can remove that representative from office at next general election. The responsibility of sound governance should not be assigned to a referendum process that can be influenced by anyone, with accountability to no one.

Myth: Property values will be protected.

Reality: The results of the process mandated by Amendment 4 are far from predictable. While proponents may hope that Amendment 4 will protect property values, it could actually hurt property values. Based on experience in other states, referenda are sometimes well financed and successfully conducted by the very industries and commercial ventures that residents might want to limit. More importantly, referenda address growth on a piecemeal basis, without consideration of the number of factors that go to supporting sustainable economies which will conserve and enrich property values in the long term.

If proponents believe that Amendment 4 will prevent nonresidential development and therefore preserve residential values, they are sadly mistaken. Without the wide range of uses needed to produce a balanced local economy, residential uses will be forced to carry a disproportionate share of the tax burden and thereby limit the potential value of residential properties. Every community needs a balance of uses, although that balance may vary in some measure from one community to the next. This balance is particularly important to funding public services and infrastructure

needed to protect community health. APA Florida is concerned that Amendment 4 will have devastating impacts on already overstretched local budgets and create significant financial burdens on taxpayers.

APA Florida firmly believes that community economic value is preserved through a comprehensive and managed approach to growth that is responsive to community concerns and needs. Referenda, being focused on single issues without the context of the larger picture, are unlikely to support such a managed approach. Referenda that require “up or down” votes do not foster the discussion and consideration of creative options and alternatives that can produce community-based solutions and appropriate mitigation for impacts. Referenda will not guarantee increased property values for residential properties or for the entire community.

Myth: Amendment 4 will protect natural and scenic beauty and preserve beaches and wetlands.

Reality: Amendment 4 does not designate new conservation lands and its approval will not necessarily lead to the preservation or protection of Florida’s natural resources. The placement of the amendment within Article II, Section 7 of the Florida Constitution is misleading. Its proponents are feeding on citizens’ emotions and desires for preservation without explaining the true implications of the amendment.

Amendment 4 also does not affect existing development rights, and therefore, does nothing to protect beaches, wetlands and natural areas. Furthermore, in order to designate additional lands as conservation, oceanfront, open space or scenic corridors, a comprehensive plan amendment is required. These amendments would not be exempt from the referenda requirement. As a result, the Amendment could actually delay or prevent the protection of additional (undesignated) natural and cultural resources by subjecting them to a referendum.

Myth: Existing neighborhoods will be protected.

Reality: Most properties are not developed to the maximum density or intensity allowed by the adopted future land use designation. Due to the additional time and costs resulting from the proposed referenda requirement, developers will be attracted to easier options - lands that are underdeveloped or lands that can be developed without a comprehensive plan amendment. Redevelopment and infill projects will be proposed at the maximum intensity allowed under the adopted land use category. When high intensity land use designations are located adjacent to existing low-intensity neighborhoods, the result may be incompatible building types (i.e. 5-story condos next to single-family homes) on the same city block without appropriate design standards.

Further, decision-making through referenda may pit one neighborhood against another in cross-city rivalries. Voters may actually support a comprehensive plan amendment proposed in one neighborhood to prevent the proposed use from locating in their own neighborhood. Underrepresented neighborhoods (characterized by a high percentage of non-voters or unregistered but eligible residents) will be targeted for new development when developers' campaigns focus on high-voter-turnout neighborhoods to gain support for a project across town. In this way, the Amendment 4 may encourage those who do not live in your neighborhood to adversely affect the neighborhood's interests.

Myth: Existing comprehensive plans are fine and do not need be amended.

Reality: Florida law recognizes that planning is a “continuous and on-going process.” Local governments are required to plan for 5 and 10 year periods and to reevaluate their plans at least once every 7 years. To be meaningful and effective, the basic principles of the plan should remain constant for an extended period of time – say 10 years or more – but the policies and strategies included in the plan must be continuously updated to address new technologies, natural disasters, actions of surrounding jurisdictions, new state regulations and previously unforeseen opportunities.

Comprehensive plan amendments may be used to change the future use and intensity of land, but they are also needed to address community-wide issues, including urban design, historic preservation, transportation, environmental protection, public services and intergovernmental coordination. Comprehensive plan amendments may also be needed to accommodate new public services and facilities, like fire stations, schools, transportation improvements and water treatment plants, as well as attainable or elderly housing or social service facilities. Furthermore, comprehensive plan amendments can be an effective growth management technique. For example, some communities adopt interim future land use designations to delay the timing, location and intensity of urban development until public services and facilities are available and financially feasible.

No community has a crystal ball to fully and accurately predict all the events that will transpire over an extended period of time. Just like the business plan adopted by a private company, a local government comprehensive plan must be continuously amended to incorporate new strategies, reduce environmental impacts and respond to emerging markets. Amendment 4 will severely constrain the ability of communities to improve their existing comprehensive plans or to adapt to change.

Myth: Amendment 4 will not impact local government's ability to provide essential services and facilities.

Reality: Elected officials balance diverse, competing and sometimes antagonistic interests to arrive at decisions that reflect the best interest of the community as a whole. Some decisions may be unpopular in the short term, but necessary to accommodate critical public services or to achieve the community's long range vision.

Essential uses, such as affordable housing, nursing homes, churches and social service facilities already face opposition as LULUs (locally unwanted land uses) or NIMBYs (not in my back yard). The referendum requirement would add expense, delay and uncertainty to these and other comprehensive plan amendments that must approved by local elected officials through the already lengthy and expensive comprehensive plan amendment process.

To require a referendum on comprehensive plan amendments that were already approved by elected officials after expert testimony and public debate would reduce the amendment decision from a thoughtful, deliberative process based on a balanced consideration of interrelated issues to a simple yes or no popularity contest. The referendum requirement could jeopardize essential public services and facilities such as sewer, water, roads and schools by allowing voters to decide the fate of the improvements without a full understanding of the need or long term implications of each improvement on the health, safety, efficiency, economy and function of the community. Voters may have to rely on partial information or misinformation derived from sound bites, rumors and special interest advertising campaigns when casting their votes, because they simply do not have the time or the inclination to research and understand the intricacies of each specific amendment. Conceivably, residents of a community could approve one referendum to fund a specific improvement or initiative, then unwittingly vote to deny a second referendum on the comprehensive plan amendments needed to implement that improvement.

Myth: Sprawl will be prevented.

Reality: Sprawl is generally defined as the proliferation of auto-oriented strip shopping centers and low density residential development spread out over large areas of land. Sprawl is considered bad for the environment because it consumes large amounts of land for inefficient, low density development. Comprehensive planning in the State of Florida creates mid-range plans, not "build out" plans. To the extent that a community has adopted a vision, it is usually limited to a 20 year timeframe. Comprehensive plan amendments are necessary (and required at specific intervals) to address unforeseen opportunities and extend out the plan's timeframe. At the start of a mid-range planning effort, local governments often assign low density residential or agricultural designations to areas where growth is not anticipated. As development

pressure builds in these areas, maintaining the status quo will neither stop growth, nor will it lead to orderly growth. Not planning will simply lead to unplanned growth, the inefficient and costly use of public services and facilities, and sprawl.

Sprawling development does not occur simply because comprehensive plans are being amended. Sprawl often occurs because our comprehensive plans currently dictate that pattern inadvertently. Many of the mid-range plans that currently exist were created in an era when many believed that low density was synonymous with environmental sensitivity and land uses had to be segregated to protect community character. Over time, however, we have learned that low density residential development and the strict segregation of uses simply consumes more land, increases our time in cars and makes the cost of infrastructure overly burdensome.

The suburban strip malls that are commonly referred to in describing sprawl are rarely even addressed in comprehensive plans. Amendment 4 would do little or nothing to change the nature and character of development where communities already exist. Strip malls will continue without the vote of the electorate. Amendment 4 would simply make it more difficult to plan for the unplanned areas. It will not give the electorate a voice in development.

Denying a comprehensive plan amendment will simply lock in the pattern of development that is currently occurring in the state, a pattern which, ironically, the sponsors of the Amendment 4 do not like. As the field of planning has matured, the need for comprehensive plan amendments has become more pressing. Planning is not an exact science where there is always an immediate and correct answer. Plans will continue to need revisions as we learn from our successes and failures. By limiting the ability of planners to continually monitor and correct policies that are counter to environmental protection and the public welfare, sprawling development patterns will simply be solidified, not prevented.

Myth: Referenda are the only solution to better reflect the wishes of the community.

Reality: The vast majority of comprehensive plans in the state were adopted without significant public input. The goal of any proposed change to the current system should be to make it easier for comprehensive plans to be created and amended through enhanced, meaningful public participation, not simply to make it difficult to change plans that were created without much public input. The idea that the electoral process reflects the views of the public is also inaccurate, especially in a Florida where only approximately 27% of the state population (47% of all registered voters) participated in the 2006 mid-term election and only 45% (75% of all registered voters) participated in the 2008 Presidential election. Statisticians will be the first to criticize the use of the electoral process as a means of evaluating community opinions.

There are better ways than referenda to understand and reflect a community's vision in a comprehensive planning process, using better models that have been created in Florida. A successful planning process must include all stakeholders so all sides can understand the many perspectives on planning issues and to expand the base of knowledge that is gathered during a planning process to the greatest extent possible. Successful planning must seek out all stakeholder groups and resources, and not rely on individuals to vote.

Amendment 4 would create a state-wide referenda requirement when referenda may only be appropriate in certain areas. Small towns have different public participation dynamics than larger cities and metropolitan areas. Even in larger communities in Florida, several counties have adopted community planning processes where civic organizations effectively lead multi-stakeholder efforts to create community visions and plans. In areas where there is significant, meaningful public participation in the planning process, Amendment 4 would actually dismantle successful public participation processes. It would create another layer and barrier for community groups to enhance their comprehensive plans. Where grassroots planning efforts do exist, under Amendment 4 the vision or plan fully supported by the residents of one area would need the blessing of all voters throughout the entire county. Most community organizations simply do not have the resources to conduct campaigns on such a county- wide level.

Myth: The influence of special interests on local land use decisions will be reduced.

Reality: While Amendment 4 seeks to remove the advantages of wealth and influence from the decision-making process, it likely will actually have the opposite effect -- encouraging aggressive public relations and media campaigns to sway the electorate on planning issues. Each amendment could morph into a political campaign, where dollars dictate success. Ballots will be longer and more expensive because complex planning issues can be difficult or impossible to accurately reduce to a few lines. The expense of holding the referendum and the legal notices, ballot printing, and other associated election costs would need to be borne either by the government or by the plan amendment petitioner. In any case, one can expect that the cost of plan amendments would go up, favoring the better-financed petitioner. The underprivileged and less wealthy would be at an extreme disadvantage.

Myth: Only large development projects will be affected by this amendment.

Reality: All comprehensive plan amendments will be subject to a referendum under Amendment 4. The Amendment does not provide exceptions for small scale amendments (10 acres or less), text amendments (including correction of scrivener's

errors) or amendments that may be required by action of the Florida Legislature. This means that even unquestionably desirable amendments, such as changing the land use designation on a piece of property to allow development of a community park or preservation area, will be delayed until a referendum can be held.

Small businesses and property owners who desire comprehensive plan amendments will also be subject to the referenda requirement and will have to manage the time delays and significant costs to participate in a local election campaign. These time and cost delays will discourage construction of needed facilities. Housing costs are likely to increase as the cost of time delays and project uncertainty are factored into the ultimate purchase prices of housing. The potential to slow the recovery of the economy by creation of new jobs and business expansions is real, making it almost impossible for Florida to compete against other states in its effort to bring new jobs to the state. Amendment 4 will make it difficult for local communities, particularly rural ones in need of economic development, to react quickly to unexpected opportunities.

Recommendations for Action

Citizens have the right and the responsibility to participate in their government. Florida's current laws allow and encourage citizen participation in the comprehensive planning process, including requirements for public notice and opportunities to speak at public hearings. Can public participation opportunities be improved? Of course -- no system is perfect and despite Florida's reputation for having some of the strongest open government and citizen participation laws in the U.S., there is always room for improvement.

APA Florida supports efforts to educate the public concerning the planning process and opportunities to participate in that process. APA Florida also supports developing more meaningful ways to ensure citizen participation and improve citizen involvement in the comprehensive planning process through local planning initiatives and legislative changes to Florida's growth management framework. APA recognizes that the growth management process is in many ways a "work in progress" that needs continual monitoring and adjustment for better effectiveness.

As proposed, Amendment 4 will not address these issues in a meaningful way. It proposes only a single, expensive and unwieldy solution to a complex and important set of issues -- a "one size fits all" approach-- and in the process creates serious unintended negative consequences. Therefore, for the reasons identified in this paper, APA Florida encourages you to vote against Amendment 4.

Actions to Ensure Citizen Participation and Improve Citizen Involvement in the Comprehensive Planning Process

To address the concerns that led to the Amendment 4 proposal, APA Florida recommends the following actions be taken by state and local government agencies:

- Public involvement processes should be strengthened through legislation and practice at the state and local levels.
- The State should appropriately fund the implementation and administration of Florida's growth management system.
- Since comprehensive plan amendments often have larger than local impacts, meaningful public participation opportunities should be ensured at all levels of government review.
- A more aggressive approach to community workshops should be required as a way of educating citizens and gathering citizen input earlier in the project development process, making it easier to meaningfully respond to citizen concerns and suggestions.
- Where the local elected body has designated itself as the local planning agency, an additional and independent citizen's advisory board should be required, tasked with reviewing proposed plan amendments making recommendations to the local Commission or Council.
- Local governments should establish a process for notifying neighborhood groups, community councils, neighborhood zoning boards, etc. that an amendment has been filed.
- The Department of Community Affairs should create a model "neighborhood or citizens bill of rights."
- Local governments should be required to hold a neighborhood meeting before an amendment goes before the decision-making body.
- The state or local government should develop a citizen participation guide and make it readily available.
- The Department of Community Affairs should provide training for local government staff in public participation techniques.
- A Governor's Citizen Advisory Committee should be established to develop minimum public participation requirements and recommend a best practices process.
- The use of new technologies, such as internet techniques, should be fully explored to enable citizens to easily obtain information and provide input in multiple ways.
- The Department of Community Affairs should compile existing success stories in citizen participation and market their use to local governments.

Actions to Help Citizens Understand Unintended Consequences of the Amendment

APA Florida believes that Florida's citizens should be informed of the issues related to the unintended consequences described herein in order to make an informed decision in the election booth next year. As planners, we have a responsibility to add to the public knowledge. Below are several actions that APA Florida members can undertake at the community level:

- Distribute the “Myths and Reality” portion of this paper to community-wide organizations, neighborhood associations or service groups, and offer to come to a meeting to discuss them.
- Contact major employers in your area and provide copies of this paper for distribution.
- Educate and advise employees at local businesses by giving “employee briefings.”
- Meet with local editorial boards and provide copies of the “Myths and Reality” portion of this paper.
- Collaborate with other organizations or entities on appropriate strategies and venues for getting information about Amendment 4 out to the community.