

**Fundamental Skills for Real
Estate Development
Professionals II (cont'd) -
Project Entitlement**

October 17th, 2012

Fundamental Skills for Real Estate Development Professionals

Project Entitlement:

Objectives:

- What are Entitlements
- Why you should care about Entitlements
- How to manage the Entitlement Process
- The Process: The “Who” and the “How”
- Tips and Techniques: Sustainability to Civic Engagement

Entitlements

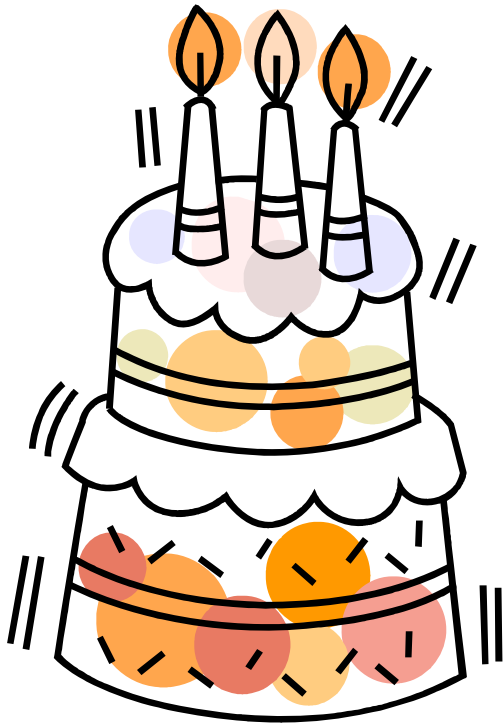
Entitlements are legal rights conveyed by approvals from governmental entities to develop a property for a certain use, intensity, building type or building placement.

Entitlements can be a major factor in the ultimate use, viability, and value of your property.

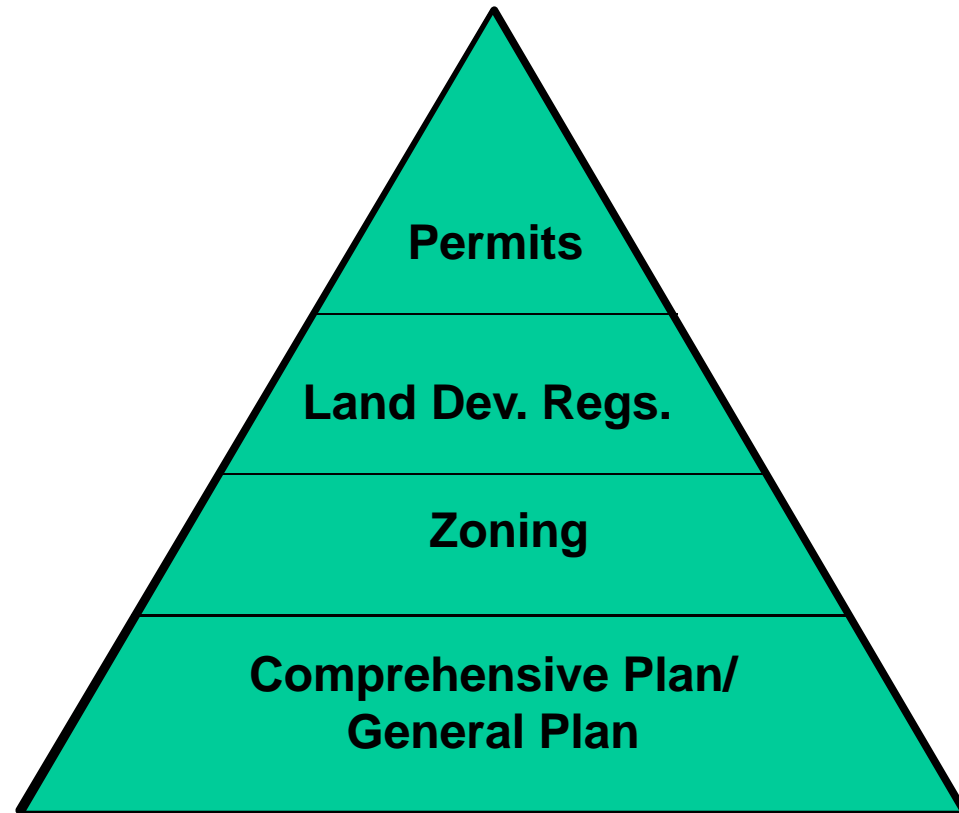
Form of:

Land Use Approvals, Zoning, Site Plan Approval and Permits

The Layers of Regulation



Multi-Layer Cake



Entitlement Process

Why Should I Care About Entitlements?

Home > Land Use and Entitlements, Land Use and Entitlements > Permits and Zoning >

March 1, 2005 | Posted By

PERMITS AND ZONING

Horwitz v. City of Los Angeles (Beglari)

124 Cal. App. 4th 1344 (2d Dist. Dec. 15, 2004) (review filed Jan. 24, 2005)

Trial court properly is residence where permit of resident - which all clearly erroneous because

Home > Land Use and Entitlements, Land Use and Ent

May 3, 2006 | Posted By

CITIES CAN LIMIT BIG BOX RETAIL BUT THEY HAVE TO BE FAIR TO THE LITTLE GUY

Wal-Mart Stores, Inc., et al. v. City of Turlock

By *Michael Wilmar* and *Michael Leake*

In *Wal-Mart Stores, Inc., et al. v. City of Turlock*, a City of Turlock zoning ordinance which amended grocery departments. Under the ordinance, the City exceed 100,000 square feet of gross floor area and

“...issue and the

“Under the ordinance of “discount superstores that exceed 1

“The lawsuit against the US Fish and Wildlife Service, the corps and the Interior Department asks a judge to revoke a 2006 permit for Mirasol...”

naplesnews.com

Printer-friendly story
Read more at naplesnews.com

New lawsuits filed against Mirasol development

By ERIC STAATS

Originally published 11:13 a.m., April 2, 2008
Updated 09:49 p.m., April 2, 2008

A pile of lawsuits over plans to build new homes and golf courses in the Cocohatchee Slough in northern Collier County got taller Wednesday.

Since 2000, environmental groups and developers have scored victories in their fight over development in wetlands and wood stork habitat northwest of Immokalee Road and Collier Boulevard — and neither had given up.

The latest challenge, which landed Wednesday in federal court in Fort Pierce, renews the battle over a U.S. Army Corps of Engineers permit for Mirasol, which is planned for up to 799 homes and 36 golf holes.

Why Should I Care About Entitlements?

“Despite governmental approval, the 136 occupied apartments violated the county’s comprehensive plan....”

m.naplesnews.com

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LEGAL

FLORIDA COURTS AGREE: IF BUILDINGS VIOLATE LAWS, THEY MUST BE RAZED

By AISLING SWIFT

Published Tuesday, September 5, 2006

Four years ago, a Florida appeal court affirmed a ruling ordering a developer to raze a \$3.3 million, five-building apartment complex that towered over neighboring homes, despite its approval by the Martin County Commission.

The District Court of Appeal's 2001 ruling conceded the issue raised in a lawsuit by a neighboring property owner was unprecedented in Florida. But the court ruled that the law required demolition of The Villas at Pinecrest Lakes in Jensen Beach, a beach town north of Palm Beach County.

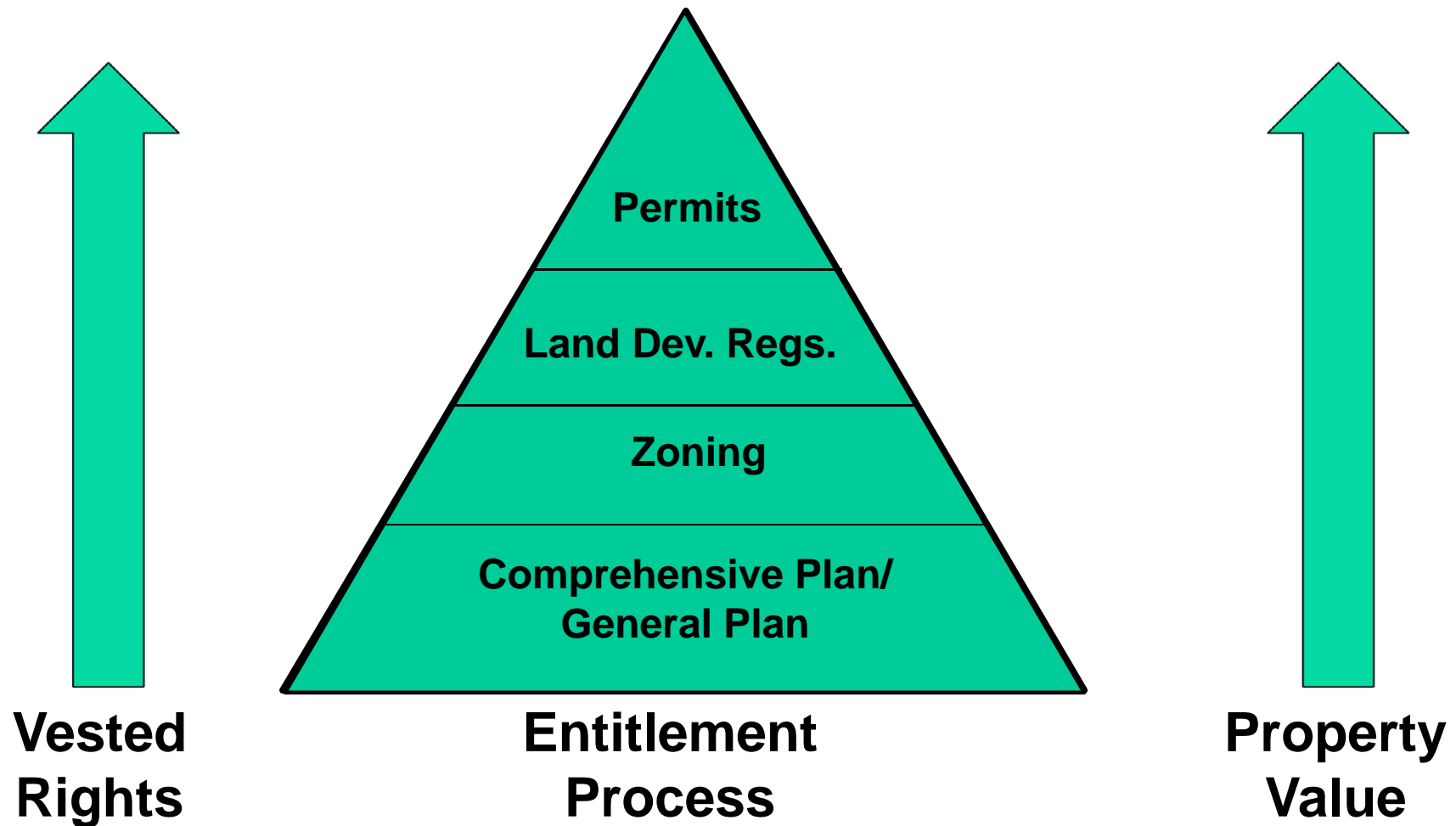
Despite governmental approval, the 136 occupied apartments violated the county's comprehensive plan and were built closer to neighboring homes than the law allowed.

“...the court ruled that the law required demolition....”

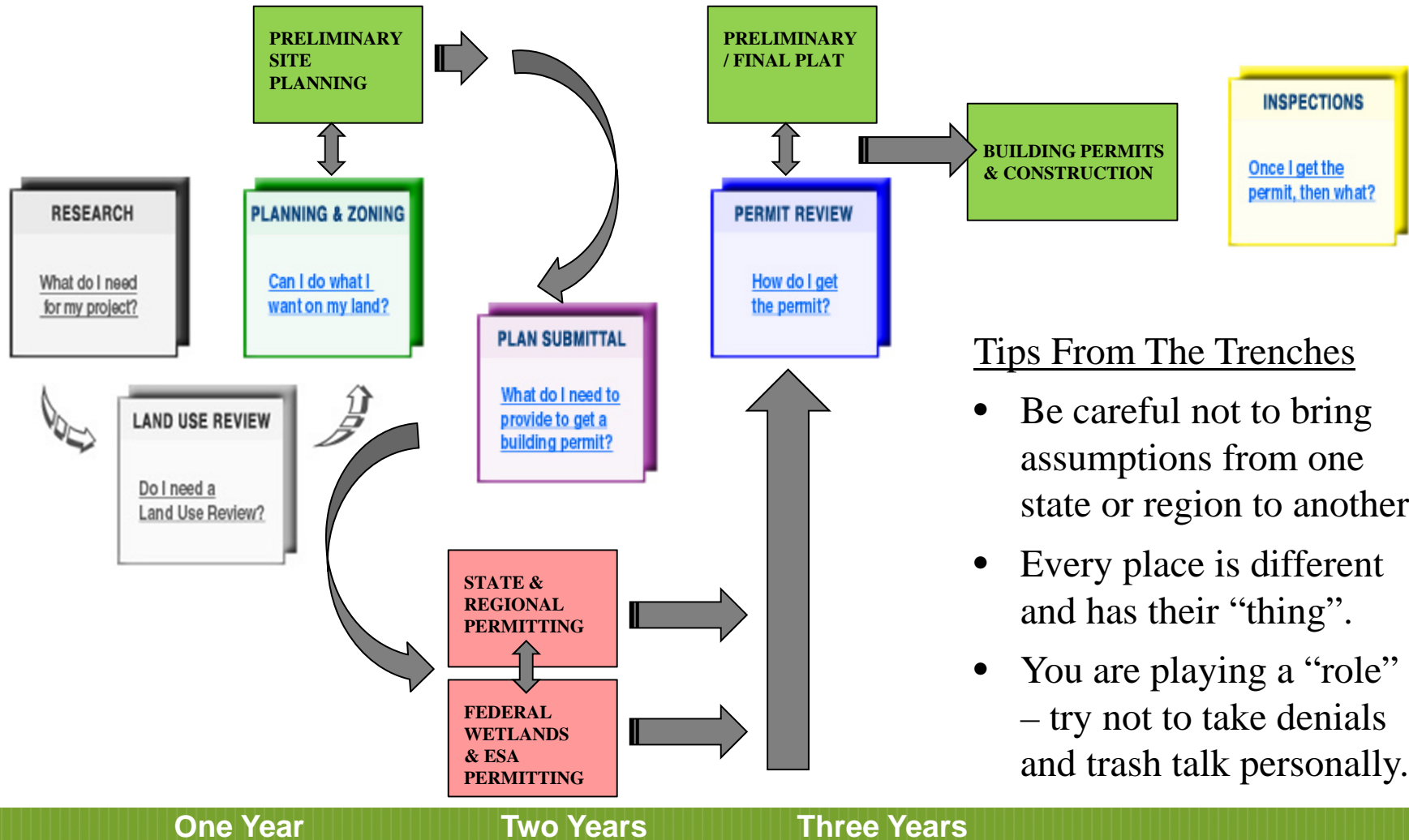
Bad “Entitlements” Day:



Layers of Regulation



Approval Process - OVERVIEW:



Tips From The Trenches

- Be careful not to bring assumptions from one state or region to another.
- Every place is different and has their “thing”.
- You are playing a “role” – try not to take denials and trash talk personally.

The Process: Key Terms



Concurrency:

Roads, Utilities and Government Services in place when they are needed.

Exaction:

A condition for development imposed on a parcel of land requiring land or funds to gain approval.

See: assessment, blackmail, charge, claim, coercion, compulsion ...

Mitigation:

Compensation for an impact to the environment or offsite infrastructure.

Sunsetting:

A government approval/permit expires due to lack of use.

Vesting:

Point at which certain approvals can no longer be taken away or modified.



The Process: Engaging Consultants



Typical Consultants for Entitlement Work

- Planner (zoning and land use)
- Engineer (technical reports and plans)
- Land Use Attorney (zoning and legal agreements)
- Ecologist/Biologist (endangered species and wetland studies)
- Architect (building design and site layout)

The Process: Managing Consultants



Consultant Management

- Be Specific about scope and deliverables – zoning, permits, approvals etc.
- Carefully check invoices monthly and report discrepancies quickly
- Be prepared for “unforeseen” costs and delays – budget for these but do not share with consultant
- Request proposals in “menu” format to account for potential problems/tasks
- Professionals are not equally qualified
- Know the personality of each consultant
- Document milestones and missed milestones keep your emails

The Process: Jurisdictional Interaction



- **Tiered Entitlement System**
 - More detailed permits must be consistent with more general permits
- **Interdependent**
 - Each level can prevent a project from going forward
 - Not all reviewing agencies share the same perspective on approval criteria – resulting in a disjointed, non-linear and sometimes conflicting process

The Process: Permitting Agencies



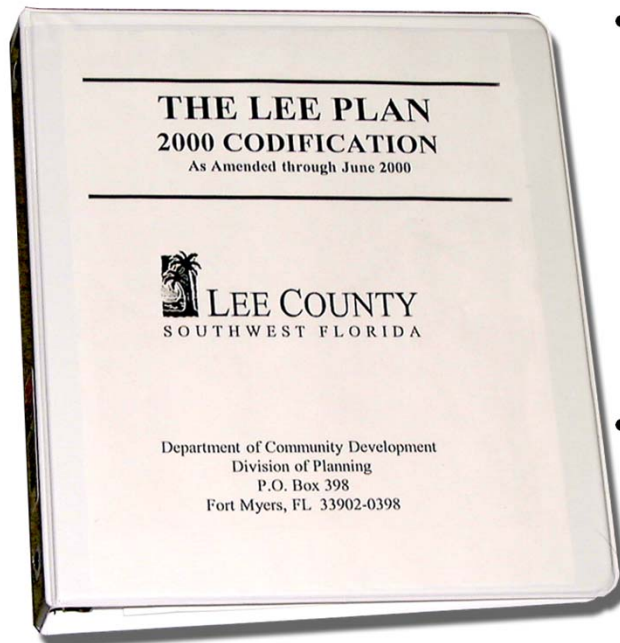
Federal Commenting Agencies

- US Fish and Wildlife (FWS)
- Environmental Protection Agency (EPA)
- Army Corps of Engineering (ACOE)
- Housing and Urban Development (HUD)
- Department of Energy (DOE)

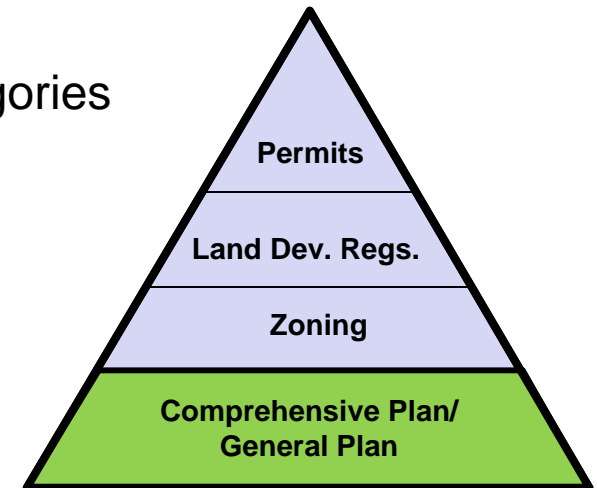
State & Regional Commenting Agencies

- Local Government (Planning, Zoning, Building)
- Regional or State Planning Agencies
- Department of Transportation (DOT)
- Dept. of Environmental Protection (DEP/DNR)
- Department of Agriculture or Forestry
- Fish and Wildlife Commission (FFWCC or FWC)
- Water Management District

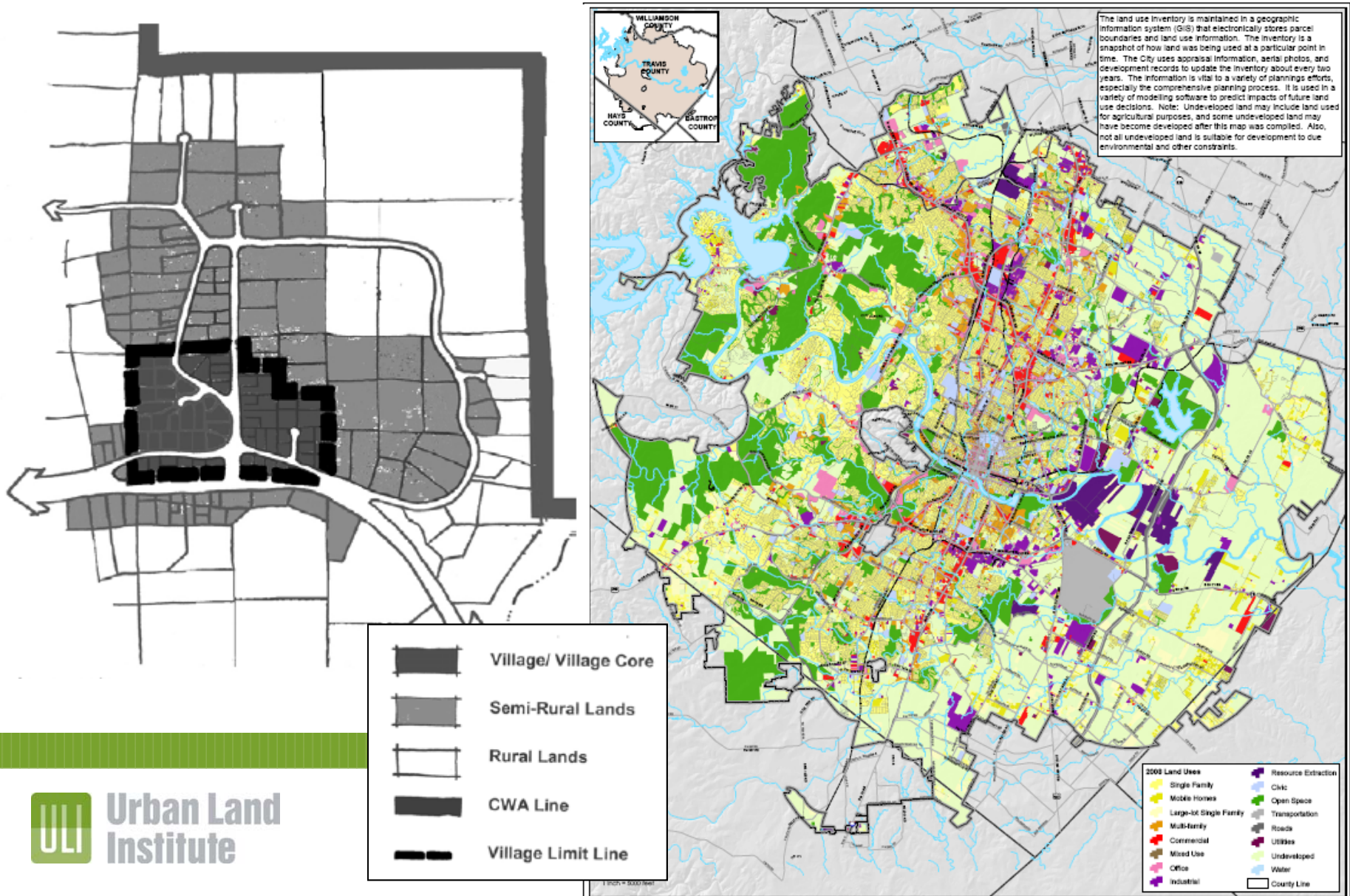
Entitlements – Comprehensive Plan (General Plan)



- **Comprehensive Plan Amendments**
 - Statement of Community Vision (Values)
 - Blueprint for future (long range) growth
 - Protects natural resources
 - Focuses infrastructure investment
 - Usually includes both map and text
- **Key elements**
 - General land use categories
 - Goals and objectives

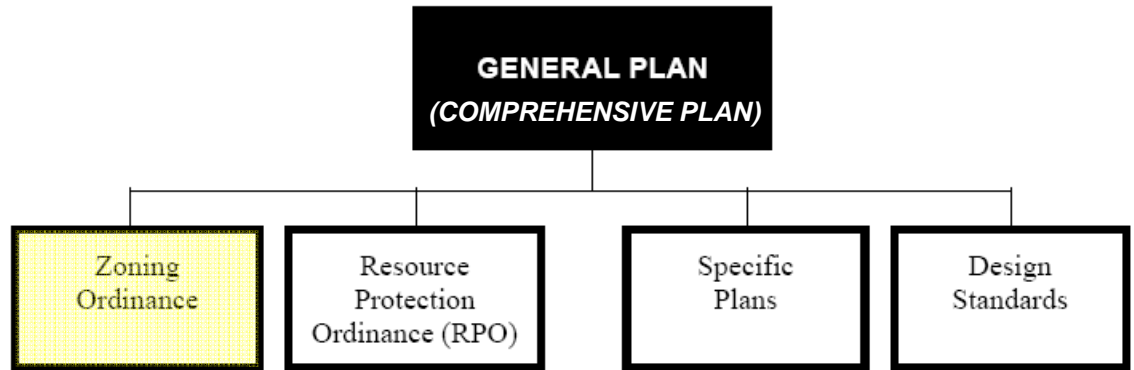
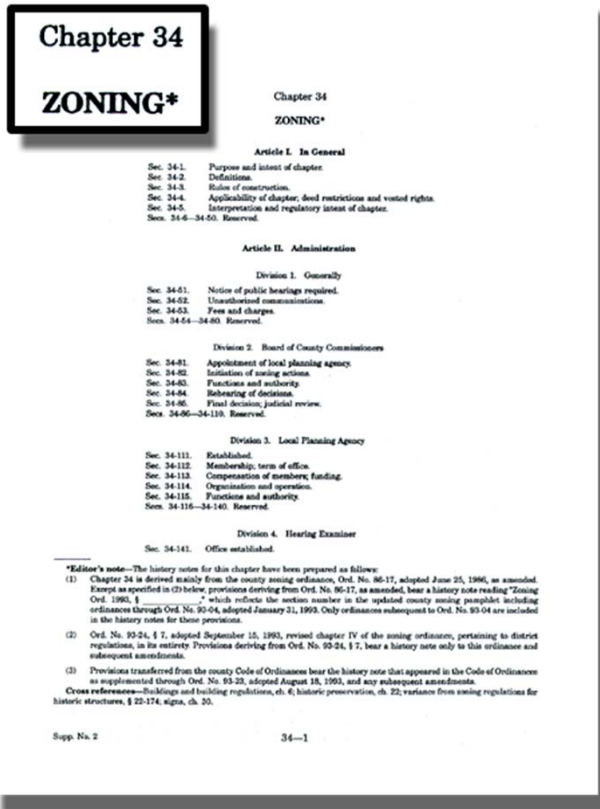


Entitlements – Future Land Use Map

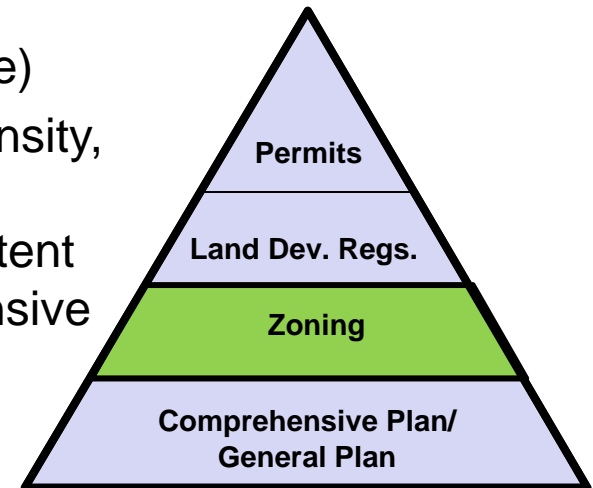


Entitlements – Land Development Codes

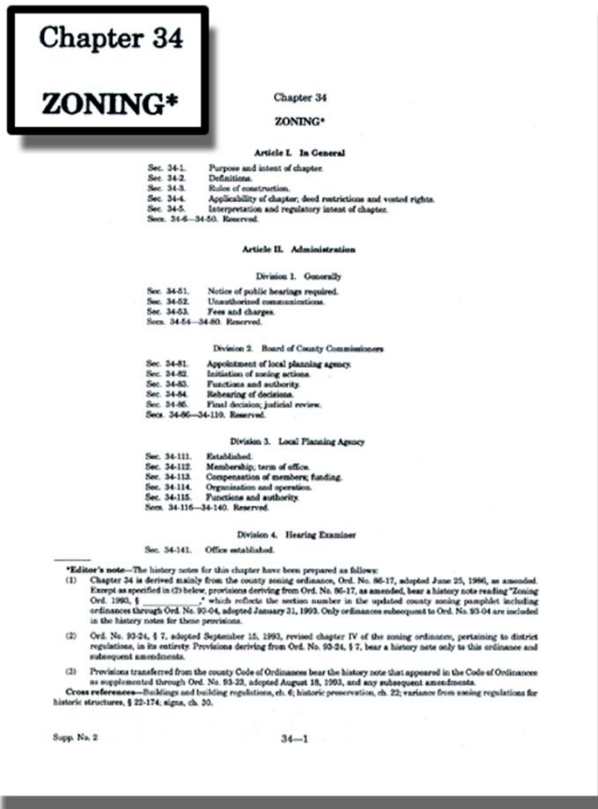
Relationship of General Plan to Implementing Ordinances



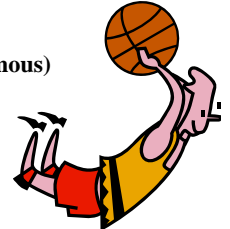
- Zoning (Right-to-Use)
 - Specific use, density, intensity, height, setbacks consistent with Comprehensive Plan



Entitlements – Types of Zoning

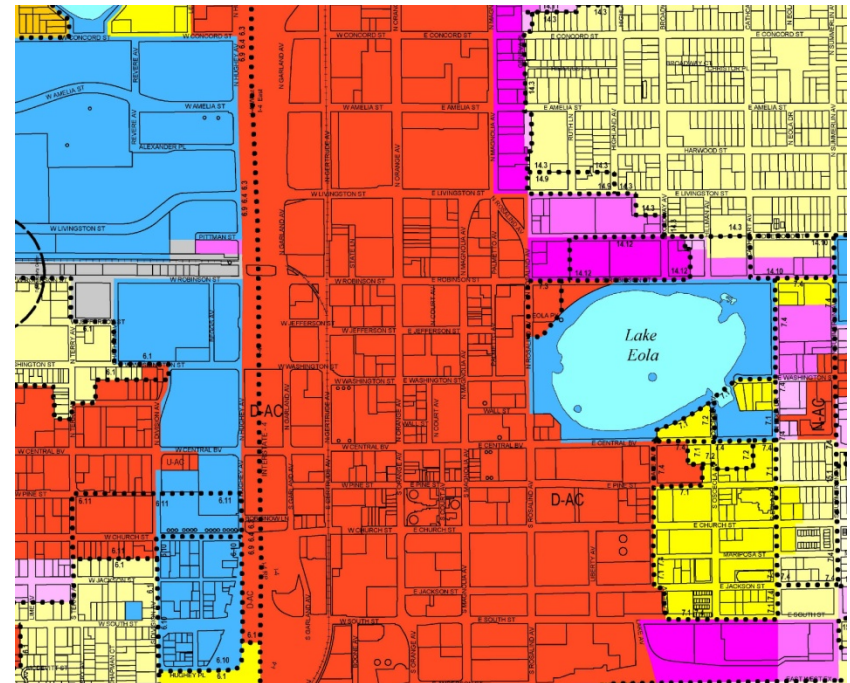
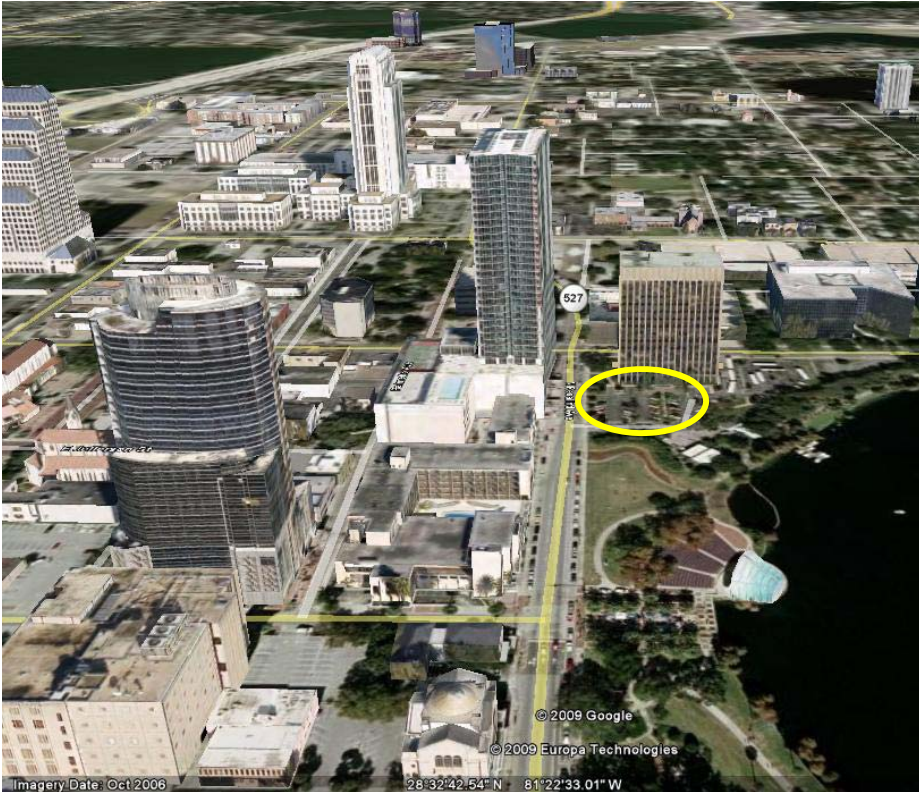


“Zoning, that’s a slam-dunk...right?” (anonymous)



- ✓ Conventional Zoning Districts
 - Commercial ,C1
 - Residential, R1
 - Industrial, I
 - Mixed Use, MU
- ✓ Site Specific Zoning
 - Planned Unit Development – PUD
 - Residential Planned Development – RPD
 - Commercial Planned Development – CPD

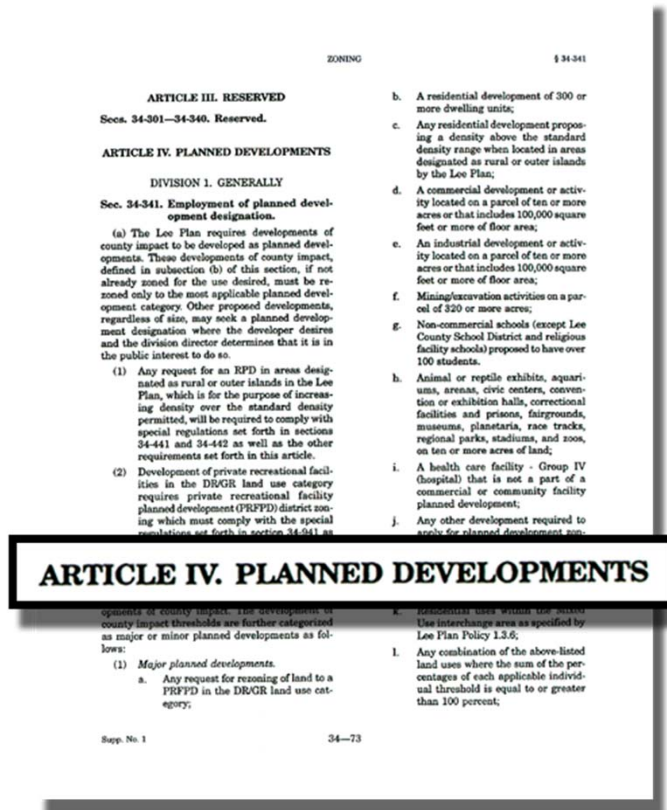
Entitlements – Conventional Zoning



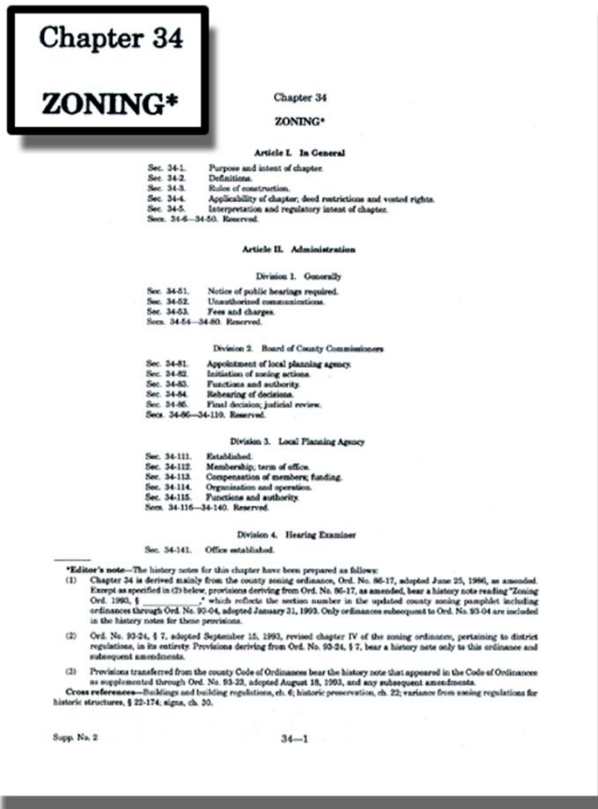
- Right to the use
- Right to the density
- Government may still regulate “how” the use is built

Entitlements – Planned Developments

- **Planned Development Approvals**
 - More flexible, but usually requires Master Plan to tie down details
 - Negotiated site-specific zoning category
 - Creates more certainty for local government and public



Entitlements – Review of Zoning



Review Zoning use limitations

- What tenants/uses can occupy the property?
- How much demand is there for the allowable uses?
- How much of the land is useable due to shape or preservation requirements?

Some (older) zoning is irreplaceable and cannot be replicated today

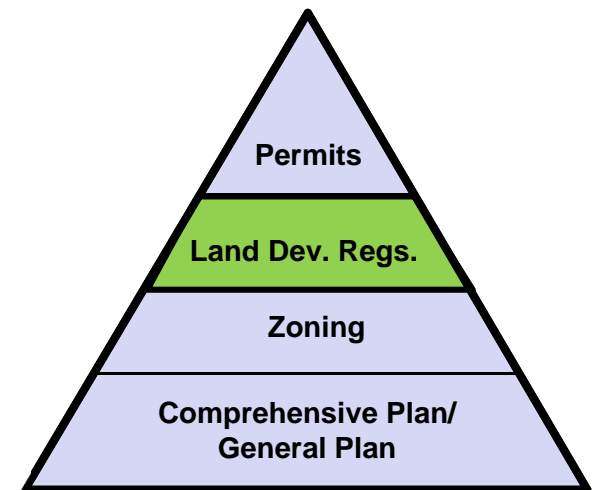
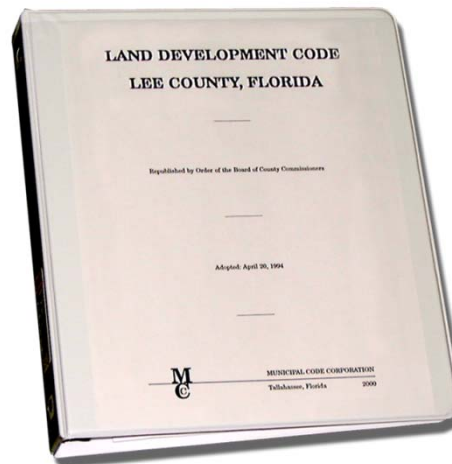
Avoid “sunsetting” (loss of site specific zoning due to inactivity on the site)

Pros and Cons of Conventional versus Site Specific

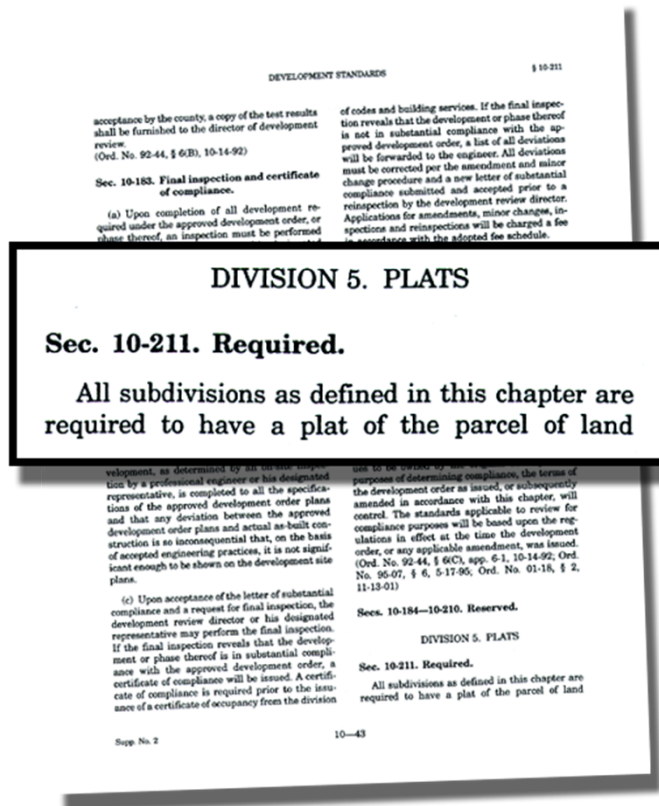
Entitlements – Land Development Codes



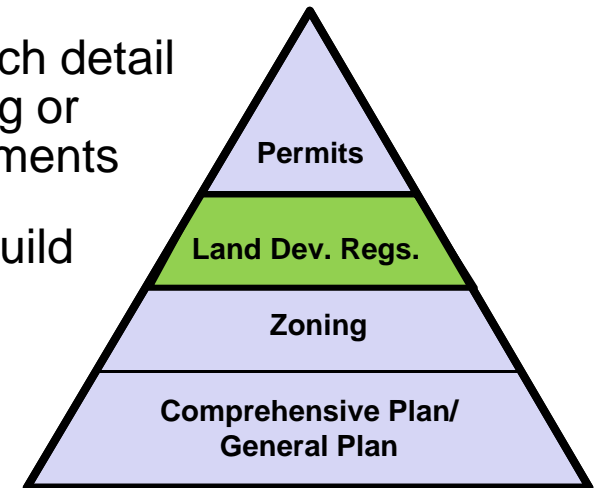
- **Land Development Codes & Regulations**
 - Detailed regulations implementing the Comprehensive Plan
 - Typically include height, setback and lot dimension regulations, etc.
 - Establish rules for Construction permits



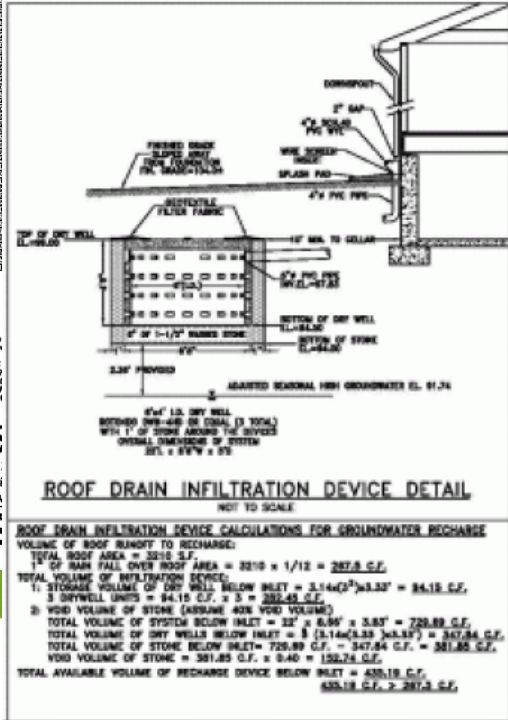
Entitlements – Plats and Development Approvals



- **Subdivision / Plat Approvals**
 - Requirements of dividing land
 - Impact fees, exactions and other government requirements are imposed here
- **Site Plan & Engineering Approvals**
 - Final plans which detail civil engineering or related requirements
 - Necessary to build horizontal improvements



Entitlements – Plats and Development Approvals:



Entitlements – Permitting (Environmental):

Wetlands/Unique and Sensitive Lands

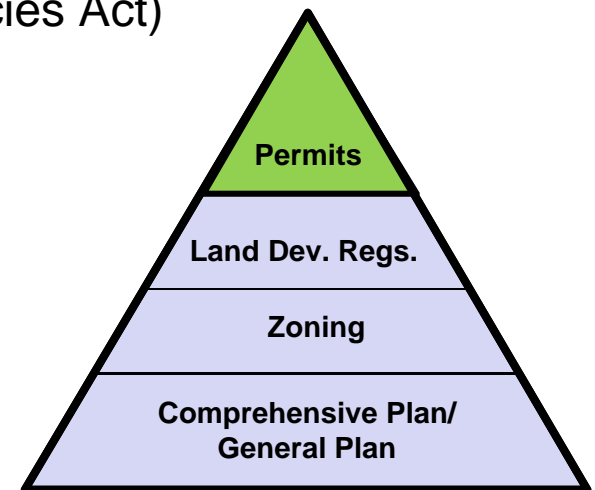
- Determine if property is “Jurisdictional”
- Must demonstrate avoidance and minimization of impacts – the mitigation

Endangered Species

- State or Federally regulated species (Endangered Species Act)
- Impacts and Mitigation (Take Permits)

Water Quality

- TMDLs & Numeric Nutrient Standards
- Must demonstrate minimization of adverse impacts



Entitlements – State and Federal Environmental Permitting:

- Federal Wetland Jurisdictional Determination
 - Wetlands – complex
 - Uplands and other types – not as complex
- Dredge and Fill Permit
- Federal Commenting Agencies
 - Often more onerous than the primary agency



State and Federal Environmental Permitting:



SOUTH FLORIDA WATER MANAGEMENT DISTRICT
ENVIRONMENTAL RESOURCE PERMIT NO. 11-01761-P
DATE ISSUED: NOVEMBER 10, 1999

PERMITTEE: LONG BAY PARTNERS L L C
(MEDITERRA)
3451 BONITA BAY BLVD, SUITE 202
BONITA SPRINGS, FL 34134

PROJECT DESCRIPTION: AUTHORIZATION FOR A CONCEPTUAL ENVIRONMENTAL RESOURCE PERMIT TO SERVE 1419.8 ACRES OF GOLF COURSE AND RESIDENTIAL DEVELOPMENT, WITH A CONSTRUCTION AND OPERATION PERMIT FOR PHASE 1 TO SERVE 695.8 ACRES OF GOLF COURSE AND RESIDENTIAL DEVELOPMENT DISCHARGING TO THE COCOHATCHEE RIVER, OAK CREEK, AND THE IMPERIAL RIVER.

PROJECT LOCATION: COLLIER COUNTY, SECTION 11.12.13 TWP 48S RGE 25E
PROJECT LOCATION: LEE COUNTY, SECTION 1.2 TWP 48S RGE 25E

PERMIT DURATION: Five years to complete construction of the surface water management system from the date issued. Conceptual Approval is valid for two years from the date issued. See attached Rule 40E-4.321, Florida Administrative Code.

This Permit is issued pursuant to Application No. 990128-K, dated January 6, 1999. Permittee agrees to hold and save the South Florida Water Management District and its successors harmless from any and all damages, claims or liabilities which may arise by reason of the construction, operation, maintenance or use of facilities authorized by this Permit. This Permit is issued under the provisions of Chapter 373, Part IV, Florida Statutes (F.S.), and the Operating Agreement Concerning Regulation Under Part IV, Chapter 373 F.S., between South Florida Water Management District and the Department of Environmental Protection. Issuance of this Permit constitutes certification of compliance with state water quality standards where necessary pursuant to Section 401, Public Law 92-500, 33 USC Section 1341, unless this Permit is issued pursuant to the net improvement provisions of Subsection 373.414(1)(b), F.S., or as otherwise stated herein.

This Permit may be transferred pursuant to the appropriate provisions of Chapter 373, F.S. and Sections 40E-1.6107(1) and (2), and 40E-4.351(1), (2), and (4), Florida Administrative Code (F.A.C.). This Permit may be revoked, suspended, or modified at any time pursuant to the appropriate provisions of Chapter 373, F.S. and Sections 40E-4.351(1), (2), and (4), F.A.C.



SOUTH FLORIDA WATER MANAGEMENT DISTRICT
ENVIRONMENTAL RESOURCE PERMIT NO. 11-01761-P
DATE ISSUED: NOVEMBER 10, 1999

WHILE SUBJECT IS APPROVED BY THE DISTRICT PURSUANT TO RULE 40E-1.6107, F.A.C.

SPECIAL AND GENERAL CONDITIONS ARE AS FOLLOWS:
SEE PAGES 2-6 OF 10 (28 SPECIAL CONDITIONS).
SEE PAGES 7-10 OF 10 (19 GENERAL CONDITIONS).

FILED WITH THE CLERK OF THE SOUTH
FLORIDA WATER MANAGEMENT DISTRICT

SOUTH FLORIDA WATER MANAGEMENT
DISTRICT, BY ITS GOVERNING BOARD

ON 11-19-99
BY [Signature] DEPUTY CLERK

By [Signature] ASSISTANT SECRETARY

PAGE 1 OF 10

- **General 404**

- Clean Water Act
- Permits designed for predetermined impact
- Usually easier to obtain due to their standardized nature

- **Individual ERP**

- Permits that are unique and require specialized evaluation
- Require Public Notice



Urban Land
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Understanding Entitlement Negotiation – What are the tools?

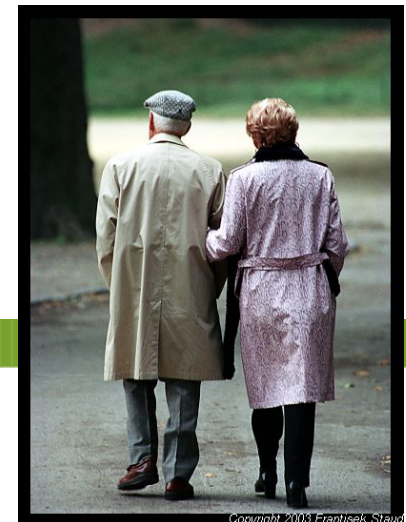


- **Understand Community Values:**
- **Design - Density and Appearance**
 - Basic changes to density and intensity need to be carefully evaluated
 - Good design components may convince local governments to allow higher density/intensity
- **Exactions/Impact Fees**
 - Need to negotiate and understand
- **Strategic and Tactical Initiatives**
 - Utilizing “appropriate” tools and programs to enhance the acceptance of your project in your local community

Strategic and Tactical Initiatives – Community Values:

Decision Drivers:

- Density/Context
- Environment
- Economic Development
- Retirees – Families – or Worker Bees
- Community Aesthetic
- Rental versus Condo
- Open Space
- Community Icons
- Community Involvement



Strategic Initiatives - Sustainability:

“Sustainable development is a pattern of resource use that aims to meet human needs while preserving the environment so that these needs can be met not only in the present, but also for generations to come.....” – The Brundtland Commission

- **Environmental Sustainability**
 - Carrying Capacity
 - Protection of Natural Systems
 - Material Selection
 - Efficiency
- **Economic Sustainability**
- **Sociopolitical Sustainability**
- **ME green versus WE green**



“I’m starting to get concerned about global warming.”

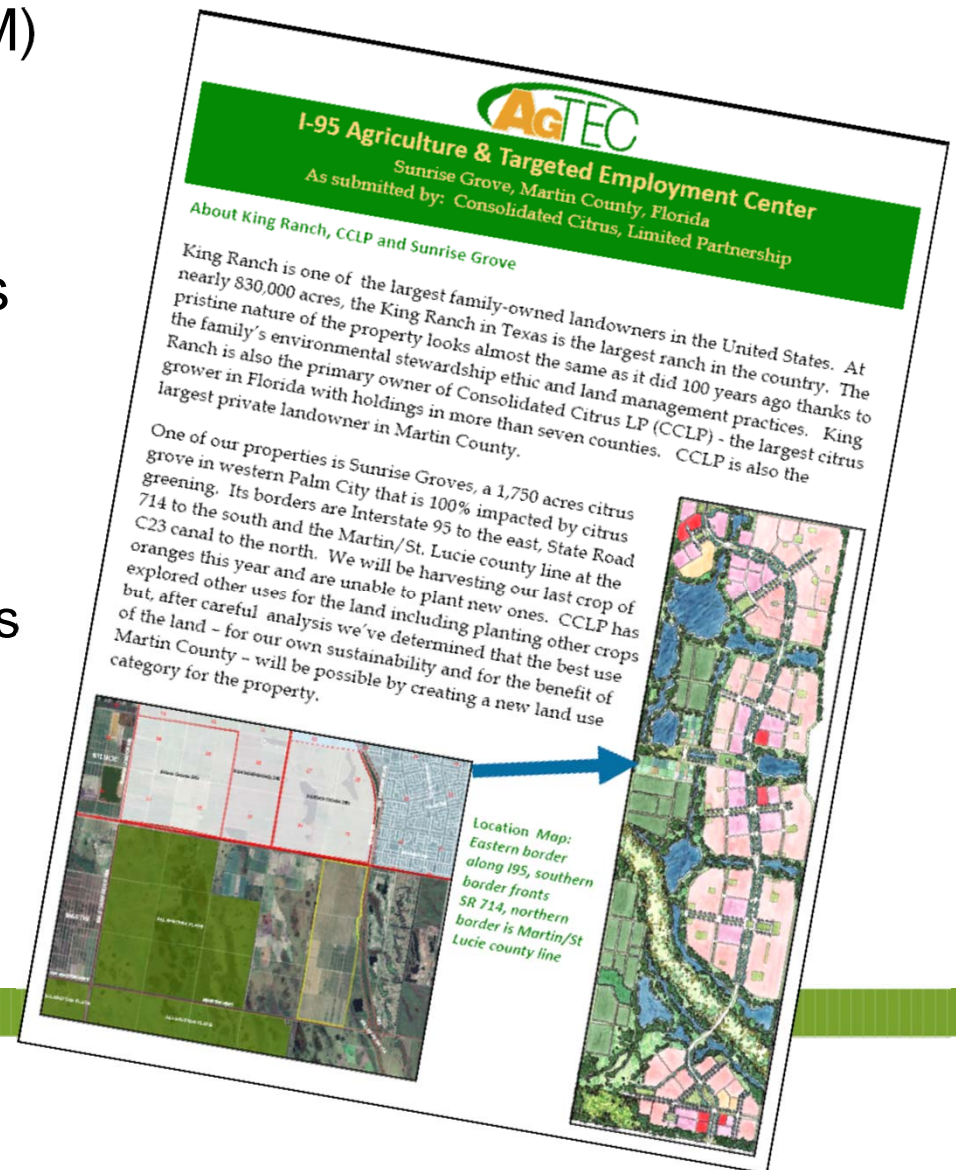
Strategic Initiatives - Smart Growth:

“Smart Growth generally refers to development that supports the economy, the community, and public health.” – EPA Definition

- Compact Development
- Create Strong Local and Regional Economies
- Concentrated Infrastructure and Public Services
- Conservation of Resources
- Mix of Uses – Integrated Communities
- Walkable Neighborhoods – Transportation Choices
- Integrated Open Space, Recreation and Water Management
- Large areas reserved for farm and forest

Strategic Initiatives - Civic Engagement:

- Information Harvesting (WIIFM)
- Value of Establishing a Brand
- Identify Potential Opposition
- Identify Community Advocates
- Intentional Communication
 - Internet Site
 - Small Group Meetings
 - Presentations to Civic Groups
 - One on One with Opposition
- Accept Feedback
- Incorporate Tactical and Strategic Refinements



Case Studies – The Good, The Bad and the Ugly



Case Study – Horse Creek Estates and Compatibility:



- Last 86 acre parcel of established subdivision
- Used as a “public” area for last 30 years
- Conventional RSF-3 zoning allows up to 249 units/lots
- All utilities (water, sewer, power and phone) available at property boundaries.
- Easy access from at least 2 existing roads

Case Study – Horse Creek Estates – Community Issues:



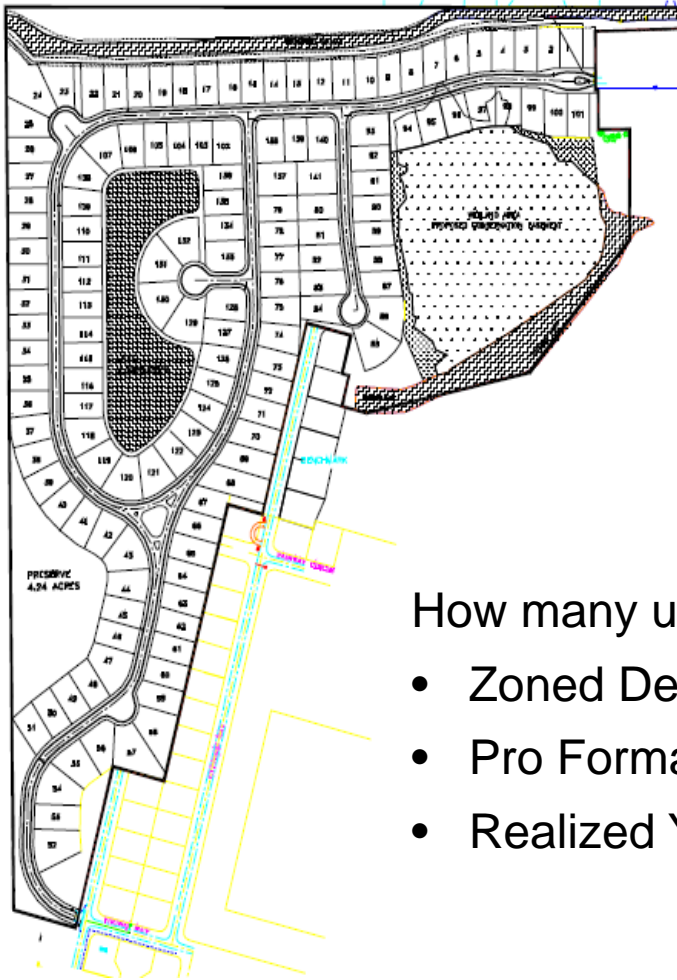
- Significant environmental issues with wetlands and endangered species
- Subject County has history of stiff “anti-growth” opposition
- Proposed “new” development in an established neighborhood
- “Externalized” impacts
- Children “not welcome” by wealthy development to the west
- New development not considered compatible with older development

Horse Creek – The Process



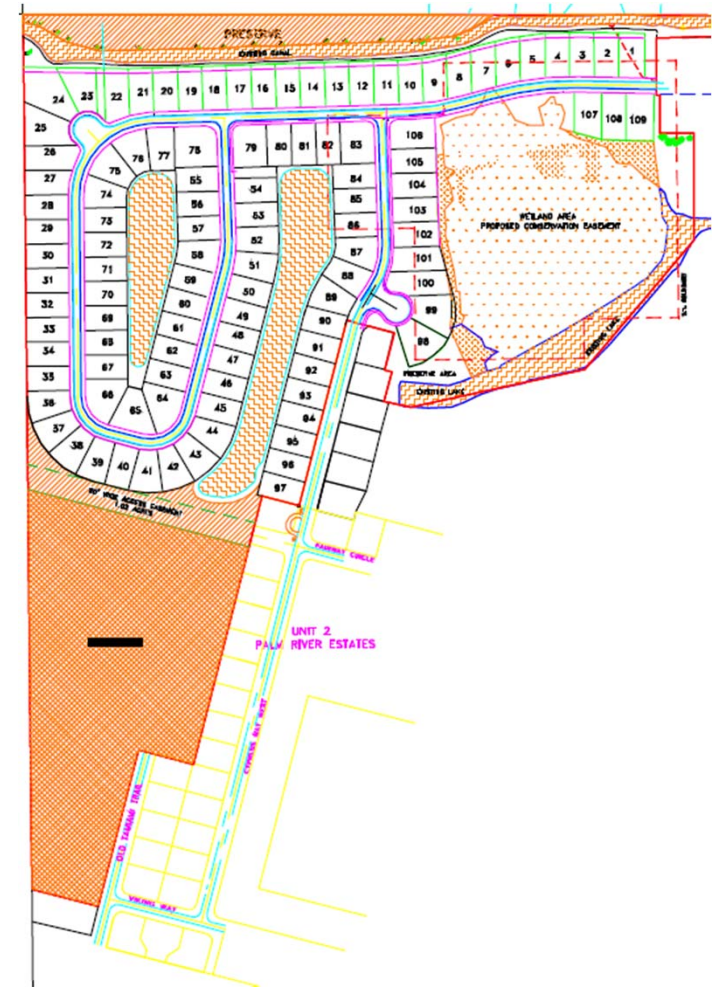
- Used land use attorney to represent developer at public hearings
- Neighbors also hired an attorney
- Neighbors organized and protested project approval at hearings
- Other adjacent developments joined in opposition
- After 10th hearing land use attorney fired
- Public meetings with upset neighbors
- Many one-on-one meetings with most vocal neighbors
- Many cups of coffee and iced tea with neighbors learning about concerns and fears.
- Made friends with neighbors

Case Study – Horse Creek Estates

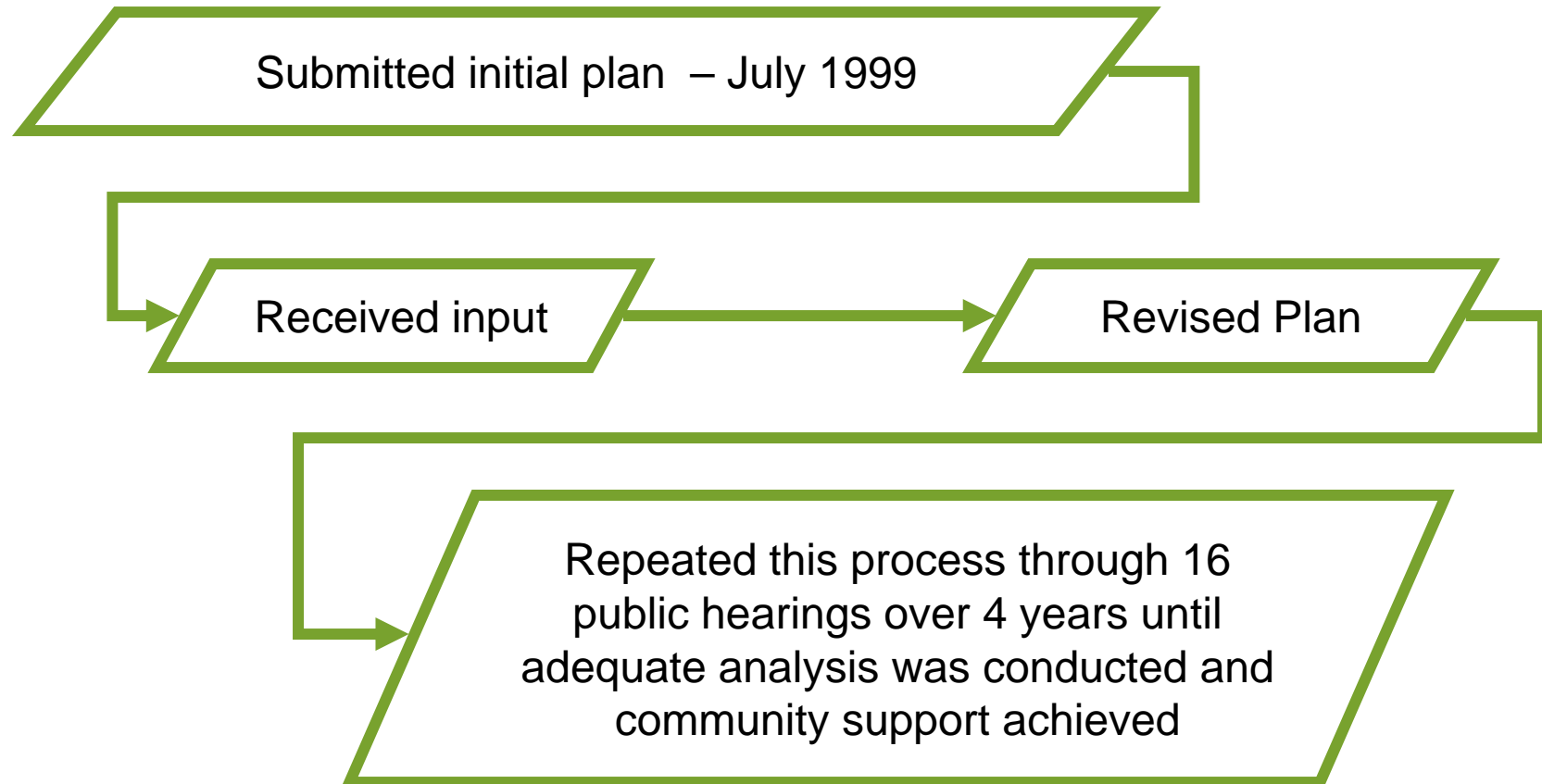


How many units will I end up with?

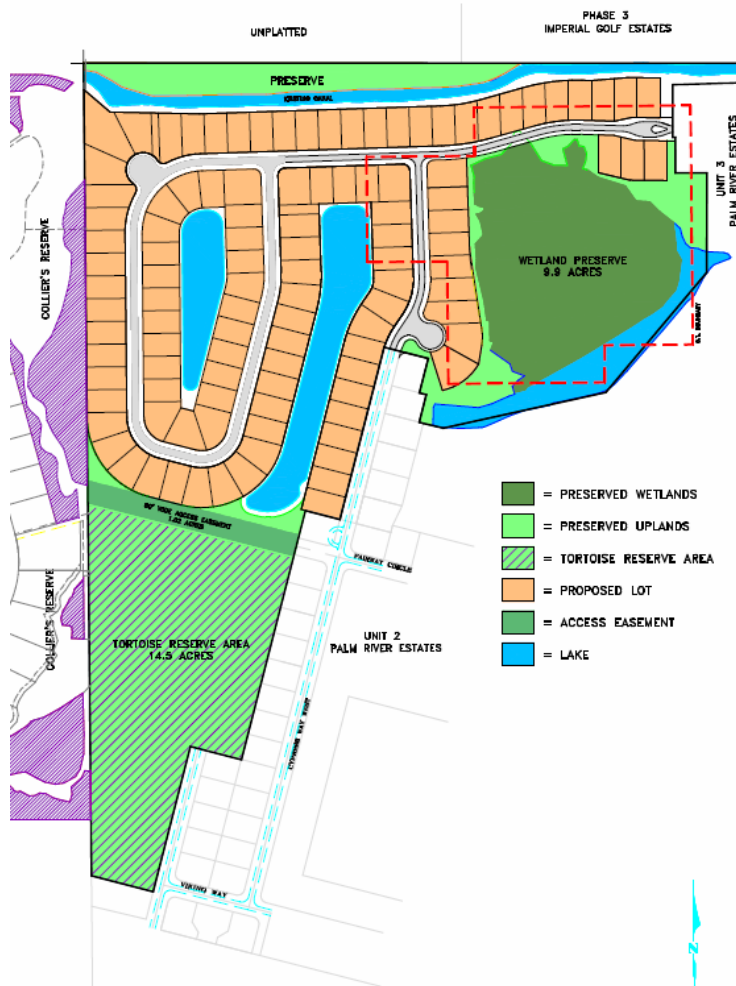
- Zoned Density = 249
- Pro Forma Yield = 141
- Realized Yield = 109



Horse Creek – The Process



Case Study – Horse Creek Estates Final Plan



- Approved for 109 lots
- Created onsite 16 acre Gopher Tortoise preserve
- Paid for offsite speed humps to reduce speeding by cars and construction traffic
- Paid for plaque in GT preserve to educate public about historic road that once traversed property
- Paid for \$130k for offsite improvements to landscaping on west side of project
- Agreed to limited construction hours to build project from 9am-2:30pm on weekdays
- Internalized project “impacts”

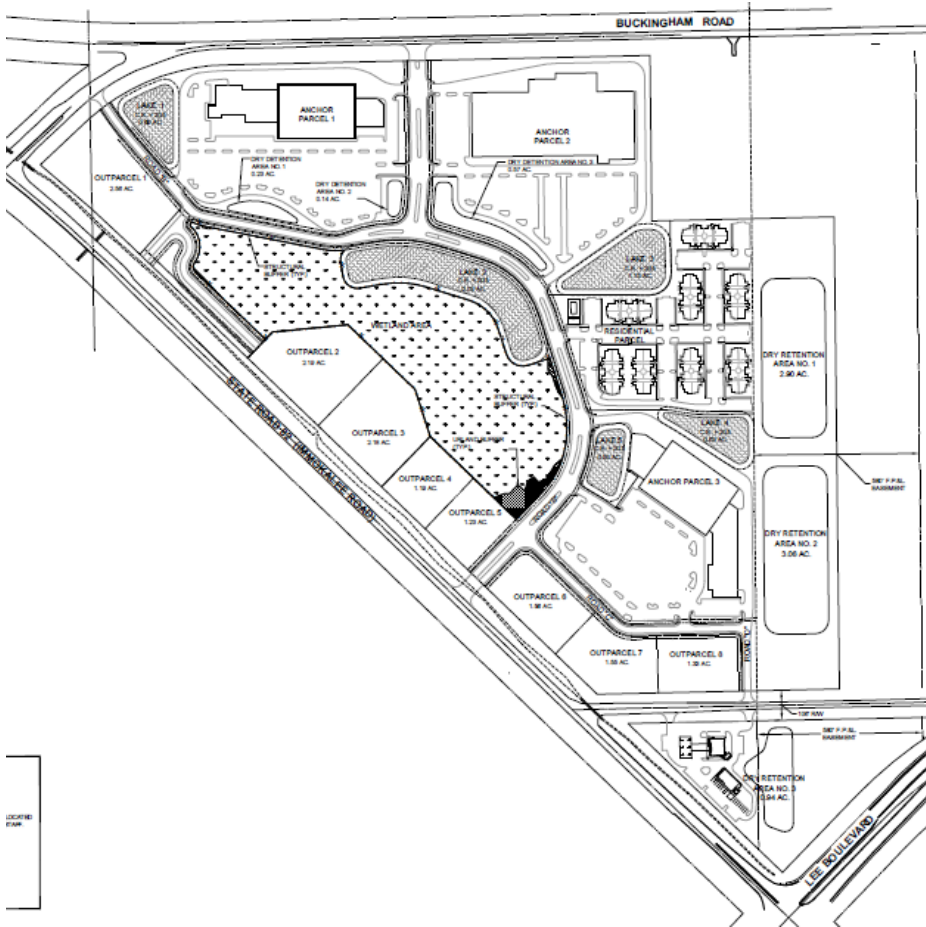
Case Study – WalMart



Landscape Plan

- Local Government did not want to have a big box store in the area.
- Neighbors objected to having a Wal-Mart in their back yard.
- Had to prove/demonstrate to government and neighbors that use would be compatible with existing uses
- Had to make significant concessions regarding store hours, delivery hours and architecture to win approval (2003).

Case Study – Colonial Plaza



- Local Government desperately wanted quality development in general area. Government allowed flexible swaps of land uses within project.
- No objections from neighbors.
- Had to prove/demonstrate to government site development would be themed and have internal compatibility with planned uses
- Significant road capacity issues and had to agree to pay a “proportionate share” of the cost to widen the roads at a total cost of \$7.5 million.
- Significant endangered species issues costing \$1.1 million for mitigation

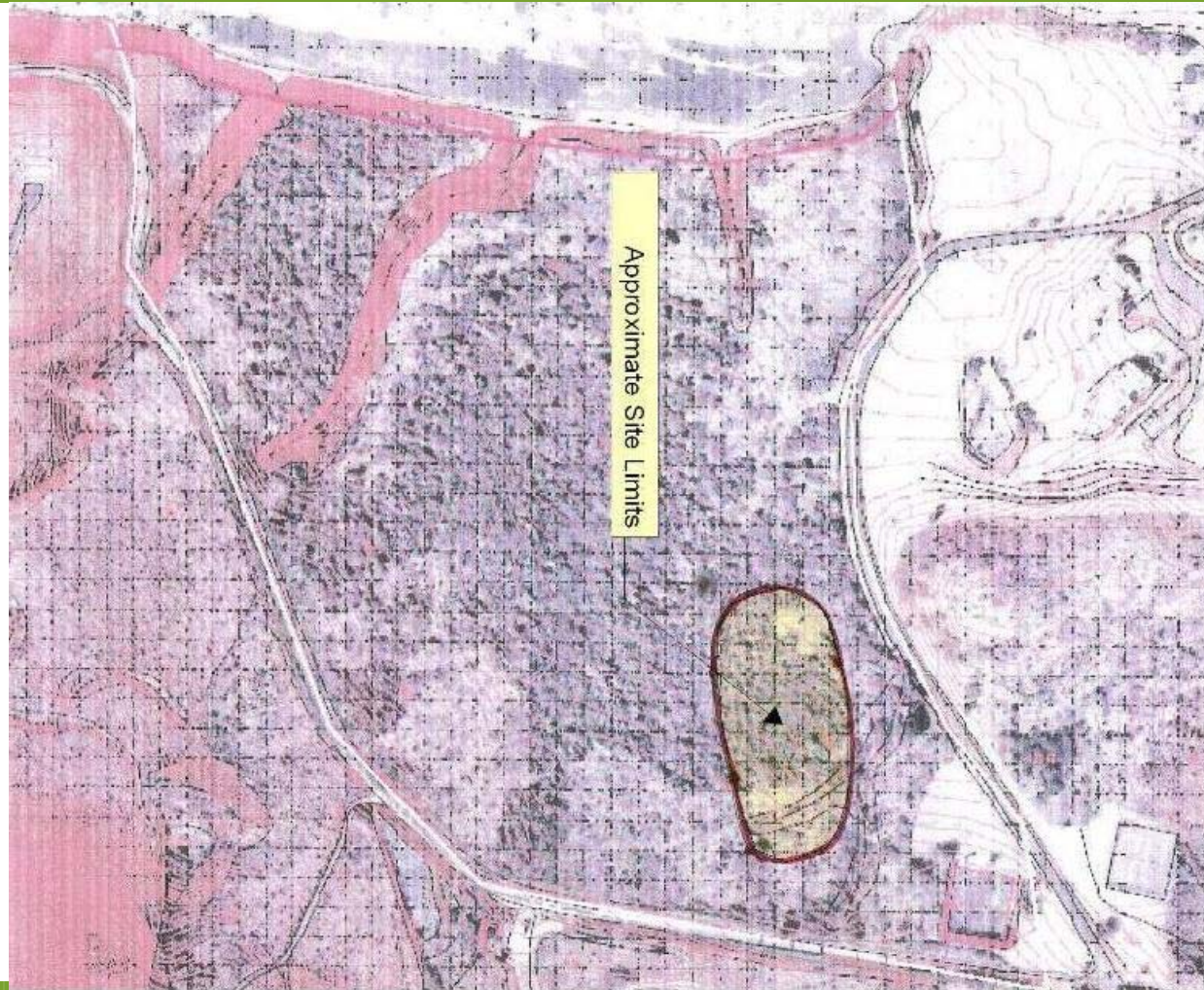
Case Study – St Croix



- 43 acres on St Croix north shore
- Near the “Salt” River
- Adjacent land use is commercial and multifamily
- Potable Water available
- No wetlands
- Significant topography



Case Study – St Croix



Case Study – St Croix



Entitlements – Take Away Value

1. Understand Time and Cost involved
2. Develop and Implement a Sound Entitlement Strategy
3. Proactively think about Interactivity between permitting entities
4. Understand “Community Values”
5. Frame Justification in a Larger Local/Regional Planning Context
6. Think Long Term About the Project/Property and Long Term About Setting Precedent in the Entitlement Process

Questions or Comments:

David Farmer
Capital Four Advisors
October 17th, 2012

12355 Collier Boulevard
Suite C
Naples, FL 34116
(239) 292-6081

dave@keystonellc.net



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