

Concurrency

I. Nature of the Tool

Florida law requires every comprehensive plan to contain a capital improvements element addressing the need for and the location of public facilities, principles for their construction, extension or increase in capacity of public facilities, as well as standards to ensure availability of facilities and acceptable levels of service for them.¹ The concurrency provisions of Florida's Growth Management Act require adequate public facilities before new development may occur.² All comprehensive plans across the state must include concurrency for roads, sanitary sewer, solid waste, drainage, potable water, parks and recreation, and mass transit, where applicable.³ However, local governments may extend concurrency requirements to additional public facilities within its jurisdiction.⁴ The basis for adequate public facilities, the concurrency requirement, is level of service standards. Levels of service are indicators of the extent of service provided by facilities and must indicate the "capacity per unit of demand" for each facility.⁵ Local governments must establish regulatory mechanisms to assure concurrency at the established level of service.⁶

II. Relationship to Waterfronts

The concurrency requirement under Florida law mandates certain elements but leaves all other public facilities to the discretion of the local government.⁷ Therefore, waterfront communities can establish concurrency requirements and levels of service for public facilities located on the waterfront and within recreational and commercial working waterfront zones.⁸ Such facilities could include, among others, public boat ramps, public marinas, fishing piers, or waterfront boardwalks.

III. Legal Issues / Pros and Cons

The landmark case *Golden v. Planning Bd. of Town of Ramapo* established that phased growth, or concurrency, is within the scope of zoning authority as a method of promoting the health and welfare of the community.⁹ In *Associated Home Builders of Greater Eastbay v. City of Livermore*, through the initiative process, voters in the city of Livermore enacted an adequate

¹ FLA. STAT. § 163.3177(3)(a) (2005)

² FLA. STAT. § 163.3180(1)(a) (2005).

³ *Id.*

⁴ *Id.*

⁵ FLA. ADMIN. CODE T. 9J-5.003(62).

⁶ FLA. STAT. § 163.3180.

⁷ FLA. STAT. §163.3180(1)(a) (2006).

⁸ For a discussion of zoning for working waterfronts, please refer to the zoning policy menu item.

⁹ 30 N.Y. 2d 359, 376 (N.Y. 1972).

public facilities ordinance prohibiting issuance of residential building permits until educational, wastewater, and water supply facilities complied with specified standards.¹⁰ The construction industry brought suit claiming that the ordinance unconstitutionally barred immigration to Livermore and therefore impacted not only the welfare of the city but also of the surrounding region.¹¹ The court found that concurrency ordinances “are constitutional if they are reasonably related to the welfare of the region affected by the ordinance.”¹² Thus, courts have begun to rule favorably on the use of capital improvement controls as tools for controlling land development, especially if they are linked to a planning process.

IV. Best Policy Practices

Martin County, Florida, includes a recommended level of service provision for waterfront recreational facilities. These levels of service include: full service beaches and beach access; fishing access; and boat ramps.¹³ New Smyrna Beach, Florida also contains a boat ramp level of service requirement in its comprehensive plan.

Putnam County, Florida, has included concurrency requirements in the Recreation and Open Space Element of its comprehensive plan. These requirements include determining accurate levels of service for public access to waterfronts, including parking spaces and boat ramps.¹⁴

Brevard County, Florida, includes provisions in its comprehensive plan designed to maximize water-dependent uses in its coastal areas. Monitoring existing public access points, including boat ramps and marinas, and increasing the level of service with increased demand are policies under the county’s objective.

¹⁰ 557 P.2d 473, 475 (Cal. 1976).

¹¹ *Id.* at 476.

¹² *Id.*

¹³ Martin County, Florida, Comprehensive Plan, Recreation Element, section 7.7.

¹⁴ Putnam County, Florida, Comprehensive Plan, Recreation and Open Space Element.