The Florida Senate

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Committee on Community Affairs Senator Michael Bennett, Chair

ANTIQUATED SUBDIVISIONS

SUMMARY

The term "antiquated subdivisions" refers to those subdivisions of land that were recorded or otherwise approved prior to the enactment of land development regulations and Florida's Growth Management Act, and that are not suitable for development as originally platted. In most instances, development of these subdivisions as originally platted could have negative environmental and fiscal impacts on a local government. Conversely, the lack of development in some antiquated subdivisions has resulted in poorly planned communities. It is important to realize that these lots are undeveloped because of their size, applicable land development regulations, zoning, and lack of infrastructure.

A local government that wishes to acquire properties within an antiquated subdivision has a formidable task in contacting numerous absentee owners. Often there are many parcel owners because the lots are so small and those owners are often located worldwide due to the marketing techniques employed when these parcels were sold. Also, there may be little incentive for the property owner to sell based on low property taxes and their expectation of a higher appraised value.

Several governmental entities have examined the issue of platted lands or antiquated subdivisions. In general, the proposed solutions offered include addressing the issue as part of the comprehensive planning process, the use of eminent domain, lot merger, replatting or plat vacation, acquisition of parcels from willing sellers, imposition of impact fees, creating a transfer of development rights program, incorporation of the area, consolidation or readjustment of the area, and the use of community redevelopment agencies. Through these studies, legislative proposals were developed to address the issues associated with antiquated subdivisions.

It is staff's recommendation that local governments be required to identify any antiquated subdivisions in which it seeks to consolidate parcels in its comprehensive plan. Also, the committee may wish to consider providing statutory authority for a local government to vacate a plat on its own motion in antiquated subdivisions under certain circumstances.

BACKGROUND

As Florida's population continues to grow, so does the need for developable land. Some developers and local governments are struggling with large areas that are appropriate for development, but not able to be developed, because the original plat renders the property inadequate for a project that complies with existing regulations and incorporates modern planning concepts. These areas with plats that were created prior to land development regulations and Florida's Growth Management Act are sometimes called antiquated subdivisions.

The practice of speculating on land values began early in Florida's history. Speculators bought large tracts of land and sold thousands of small parcels to investors worldwide. It has been estimated that more than 2.1 million vacant lots were sold in some 2,600 antiquated subdivisions in Florida.[1] Although antiquated subdivisions occur throughout the state, they are concentrated primarily in southwest Florida.

The lack of development of parcels within some antiquated subdivisions may be problematic for a local government. For example, the local government may experience a lack of revenue from tax delinquent properties. Also, where large tracts are not able to be developed because of the existing plat, leap frog development will occur that results in poorly planned communities.

Optimally, parcels within antiquated subdivisions could be consolidated for development by individual property

[1] Platted Lands (February 2003), Legislative Committee on Intergovernmental Relations.

owners, developers, or purchased for a public purpose such as parks, schools, etc. However, the development of an antiquated subdivision, as originally platted, may create any number of difficulties for the local government. Such development may result in a negative fiscal impact for the local government that must provide services to such a community. Those services include fire, police, EMS, recreation, and schools. Also, this built-out antiquated subdivision could have negative consequences as the result of development in an environmentally sensitive area (i.e., the development may occur in a high water recharge area).

For property owners, there is an issue over the applicability of current environmental and planning regulations to parcels located in antiquated subdivisions. Property owners may not be able to realize the development potential of their lots because of problems with the original platting and existing regulations.

Legislation Addressing Antiquated Subdivisions

There have been several legislative attempts to address antiquated subdivisions. At one time, the optional planning authority of a local government included the ability to vacate subdivision plats under certain circumstances. Section 163.280, F.S., enacted in 1969,[2] provided for the reversion of subdivided land to acreage. On its own motion, the governing body of a local government could order the vacation and reversion to acreage of all or part of a subdivision located within its jurisdiction if the plat of the subdivision was recorded more than 5 years before the date of such action and not more than 10 percent of the area had been sold by the original subdivider or his or her successor. Such vacation included streets and any other parcels of land dedicated for a public purpose. Reasonable access was preserved for property owners within the subdivided area. Also, the vacation required a public hearing. This provision was repealed in 1985.[3]

Since 1985, several proposals have been submitted to the Legislature to address antiquated subdivisions, but nothing has passed into law. In 1986, the Department of Community Affairs issued a report on platted lands, including proposed legislation to address the problem statewide. This legislation would have included the regulation of platted lands within the powers and duties of a county government. It defined the term "land assembly or adjustment" as the consolidation of platted lands and the vacation of the plat to allow for more appropriate development or land use.

In addition, the bill included the ability to assemble platted lands within the additional powers granted to local governments. It included an intent statement that the public health, safety, and general welfare require the orderly and progressive development of land. The legislation specified that the regulation of platting and land assembly would aid in the coordination of land development with an orderly pattern; discourage premature, poorly-planned development; encourage the development of economically stable communities; and ensure the provision of adequate services and infrastructure to lands that are developed.

This proposed legislation amended ch. 177, F.S., to allow a local government, on its own motion, to order the assembly or adjustment of platted lands within its jurisdiction to satisfy the objectives of the applicable local comprehensive plan. This assembly or adjustment included the ability to replat or vacate the existing plat on all or a portion of a subdivision, including the vacation of streets and or parcels dedicated for a public purpose, provided certain conditions are met. Basically, in order for this provision to apply, the subdivision must have been recorded in the subdivision plat not less than 10 years prior to the local government's order to replat and have less than 10 percent of its area built into the subdivision's zoned or land use purpose.

It also required that provisions be made for the compensation of any fee simple owner who refuses to participate in the application for the vacation of the plat. It required a local government to make a finding that the proposed assemblage of parcels or vacation of the plat was consistent with the local comprehensive plan. Also, any entity pursuing replatting or vacation of the plat would have been required to own fee simple title to 60 percent of the whole or part of the tract covered by the plat sought to be vacated. The legislation would have included the assembly or adjustment of platted or subdivided lands in the definition of "land development regulations."

This legislation included contracts for deed or installment land contracts in the list of documents to be recorded by the clerk of circuit court upon payment of a service fee. It required the clerk to record all approved plats of subdivided lands in the public records of each county where the property is located. Finally, under this legislation, any subdivider or purchaser of subdivided lands or a portion of such lands, that are subject to an agreement for deed, was required to record the agreement after the refund

[2] § 25, ch. 69-139, L.O.F.
[3] § 19, ch. 85-55, L.O.F.

provisions expired and the legislation also provided for other conveyances to be recorded.

In the 2003 Regular Session, Senate Bill 2736 attempted to address problems with antiquated subdivisions using several approaches. This bill expanded the powers of the county to include preparation and enforcement of the local comprehensive plan to regulate the development of platted lands. It also defined "land assembly or adjustment" as the consolidation of contiguous and noncontiguous undeveloped platted or subdivided lots and the vacation of all or a portion of the original plat to allow for more appropriate development. The bill reinstated the authority of a local government to vacate a plat on its own motion if the plat was recorded or otherwise approved at least 10 years prior to such action and not more than 10 percent of the subdivision had been built into its zoned or land use purpose. Finally, it required the recordation of certain deeds and conveyances and that information regarding those documents be provided to county and municipal planning departments.

In the 2004 Regular Session, the engrossed Senate Bill 2548 authorized local governments to reassemble antiquated subdivisions for the purpose of encouraging appropriate planning and more efficient development patterns. Specifically, it required a local government's future land use plan to include provisions that address antiquated subdivisions, including the identification of any area where the local government seeks to consolidate platted or subdivided lots. It required local land development regulations to address the assembly, reassembly, or adjustment of land. The bill also amended the definition of "community redevelopment area" to include a pattern of platted or subdivided lots in an area that make it unsuitable for economically viable development or use. It also included antiquated subdivisions as an indicator of distress as it relates to the role of a community redevelopment agency.

Initially, this bill contained several provisions that were deleted from the bill before it passed the Senate. Those provisions that were deleted included language that expanded the eminent domain authority of local governments to consolidate subdivided lots and replat for more appropriate development that fulfills the jurisdiction's public policies or for public use. The bill required that every approved subdivision plat be recorded in the public records of each county where the property is located.

Also, initially, this bill reinstated the authority of counties to reassemble or adjust all or part of a subdivision within its jurisdiction to meet the objectives of its revised local comprehensive plan under certain circumstances. Specifically, the plat had to be recorded or otherwise approved 25 years prior to such action and not more than 20 percent of the subdivision was developed into its zoned or land use purposes. It contained language allowing persons or entities other than the local government, who own at least 60 percent of an area in fee simple, to request replatting. The local government could then order the vacation of the plat based on certain findings.

METHODOLOGY

Staff reviewed earlier reports and prior legislation relating to antiquated subdivisions. Staff also discussed the issue with local government staff and other interested parties. Also, staff visited the proposed site of Murdock Village in Charlotte County, Florida on August 18, 2004.

It should be noted that one persistent problem with any project on antiquated subdivisions is the lack of accurate information on the number of lots within those subdivisions. In part, this results because the need for local governments to develop a database of antiquated subdivisions within their jurisdiction is often in response to development pressure. Also, the staff time needed to compile this information is a consideration. Multiple plats may have been filed for a subdivision or plats may overlap and it requires staff time to rectify any differences.

FINDINGS

Several governmental agencies have examined the problems associated with antiquated subdivisions. The Legislative Committee on Intergovernmental Relations (LCIR) completed an in-depth study of platted lands or antiquated subdivisions in February 2003. As part of this study, the LCIR conducted a survey of Florida's counties to determine the extent of the problem and receive input on approaches supported by local governments to resolve problems with platted lands. This report recommended several legislative changes:

- requiring local governments to identify any area where it intends to consolidate platted or subdivided lots for more appropriate development;
- clarifying a local government's eminent domain powers with respect to platted lands;
- including platted lands within those issues that may be addressed through the establishment of a community redevelopment agency;

- addressing recordation and administrative issues with respect to platted lands; and
- reinstating the authority of a local government to vacate a plat on its own motion.

In response to LCIR's survey, the following local governments reported problems with antiquated subdivisions in their jurisdiction and provided details that were discussed in LCIR's report: Brevard County, City of Jacksonville, Escambia County, Highlands County, Marion County, Monroe County, Palm Beach County, Putnam County, and Seminole County. Given the estimates of antiquated subdivisions in Florida, there are likely many other communities struggling with this issue that may not have responded to the survey or provided details. However, they may be experiencing many of the same problems.

Putnam County reported in 2002 that antiquated subdivisions pose a significant problem within its jurisdiction. Staff estimated more than 40,000 vacant residential lots in the county. To address this issue, Putnam County amended its comprehensive plan to include policies and objectives directed at antiquated subdivisions. Those policies included establishing a transfer of development rights program, replatting of all or part of antiquated subdivisions, encouraging the buildout of subdivisions within its jurisdiction that are not antiquated, acquiring platted lands for a public purpose, acquiring platted lands through the tax deed process, and purchasing lots from willing sellers to be returned to private ownership as part of efforts to bring the subdivision into compliance with the applicable local comprehensive plan. Since the LCIR report, Putnam County has created a committee on antiquated subdivisions. The committee has been inactive, but there is some consideration being given to reviving it.[4]

Brevard County contains several antiquated subdivisions that were platted by the General Development Corporation. The City of Palm Bay was formed out of several of these antiquated subdivisions. The General Development Corporation platted 60 square miles into .25 acre lots. Thousands of these lots remain vacant. These are all zoned residential. The northern half of this area has been built out. However, the remaining half of the area is largely undeveloped with approximately 25 percent in vacant lots and the other 25 percent having one residential unit per 5 or 10 acres.[5] These undeveloped areas are characterized as having minimal, undeveloped roads that are overgrown with grass and are without sewer and water service. As in many areas with antiquated subdivisions, the property owners in the above area are widely scattered. Few properties have escheated to the county because most of these property owners still pay their property taxes. However, the lots are undevelopable because of their size, applicable regulations, and lack of infrastructure.

The City of Palm Bay and Brevard County have worked cooperatively to address the issue. At one point, the city and county worked on a joint study with an outside consultant. It was determined that a public-private partnership was the best vehicle for the redevelopment effort. The study focused on defining an area for redevelopment and a market analysis of the highest and best use for a given area if the local government or a developer could consolidate the ownership. Letters were sent to owners of record inquiring whether there was any interest in selling their property. The owners are widely scattered and county staff received very few responses. One possible reason for the poor response or lack of incentive to sell is the low property tax assessed for a lot regardless of the suitability of the property for its zoned use.

In 2002, the Marion County Commission reported to LCIR that it has considered a number of options to deal with lots in its antiquated subdivisions. Marion County has numerous, large-scale antiquated subdivisions within its boundaries. For example, Ocala Springs is platted for 11,000 dwelling units at build out. Most of these lots are .25 acre lots and there is little infrastructure available. The typical problems associated with the development of some antiquated subdivisions is exacerbated within Marion County because many of these lots are located in an area of high recharge. Higher density development and the lack of infrastructure for those developments could have negative impacts on water quality.

Planning staff in Marion County are currently attempting to determine the number of lots within the county's antiquated subdivisions.[6] Thus far, staff has reviewed the recorded plats and unrecorded, registered subdivisions for the county's least populated planning district. Similar data for all six of Marion county's planning districts may be available by the summer of 2005.

[4] Telephone conversation with Mr. Patrick Kennedy, Planning Director, Putnam County.

[5] Telephone conversation with Mr. Lee Feldman, City Manager, City of Palm Bay.

[6] Telephone conversation with Mr. Chris Rison, Planning Department, Marion County.

Monroe County also has many antiquated subdivisions within its jurisdiction. In response to a 2002 survey from the LCIR, the county reported there were 53,151 lots in the Keys in 1990. At that time, 22,747 lots were developed, 24,970 lots were vacant and buildable, and 5,434 lots were reported unbuildable. At the department's direction, a report was produced on platted lands in the Keys. The problems associated with the development of platted lands in the Keys include a reduction in hurricane evacuation times, inconsistencies with the county's land use plan, and the high cost of providing infrastructure for any new development in this area. The report recommended the establishment of a land conservancy that would implement land acquisition and transfer of development rights programs.

Some of these vacant lots have been absorbed into newly-incorporated communities. There are an estimated 7,200 remaining undeveloped lots in unincorporated Monroe County, but not all of these lots are developable because of existing regulations.[7] In a recent case, *Monroe County v. Ambrose, et al.*, 866 So. 2d 707 (Fla. 3rd DCA 2003), the plaintiffs argued that new land development regulations adopted after the land was platted had little or no effect on the development of those properties. The county appealed the trial court's granting of summary judgment in favor of property owners, holding that s. 380.05(18), F.S., vested those owners with the right to construct single-family homes on their properties.

The undeveloped land at issue in the *Ambrose* case was platted in 1971. Subsequent to the platting, the state enacted its Growth Management Act and also designated Monroe County as an Area of Critical State Concern. The trial court interpreted Florida Statutes as vesting the owners of the parcels at issue with development rights upon the recording of the parcels. Further, the court did not require the property owners to show any reliance or change of position based on the assumption that they had vested development rights.

The county appealed and the Third District Court of Appeal reversed the trial court, holding that recordation alone is insufficient to vest a property owner with development rights. The appeals court determined that the property owners would have to show steps were taken to begin development of the parcels prior to the enactment of land regulations that limit or modify their right to develop the property. The court recognized the protection afforded Areas of Critical State Concern and described attempts to vest a property owner with development rights based solely on recordation as contrary to the purposes of ch. 380, F.S. The case was remanded to the trial court for a determination on whether, in fact, any steps had been taken in reliance on the recording of the parcel.

Exercising Eminent Domain for Redevelopment

To address the problems associated with one of its antiquated subdivisions, Charlotte County established the West Murdock Village Community Redevelopment Agency (CRA) to undertake the redevelopment of an antiquated subdivision into a centralized urban area with multiple uses including single family residential. The county has reached an agreement with a homebuilder to build single family homes in Murdock Village, a community that would be developed out of the area that is currently an antiquated subdivision. It was determined that a project of this size requires the acquisition of all the parcels within this antiquated subdivision and, therefore, would require the use of eminent domain if there are unwilling sellers.

In *Charlotte County v. McGibbon, et al.*, No. 04-39 (Fla. 20th Cir. Ct. June 7, 2004), the circuit court consolidated several civil actions against property owners filed by the CRA under its eminent domain power in ch. 163, F.S., to declare the subject properties "blighted" and subject to condemnation. The court held these properties met the statutory definition of "blighted" that is required for the redevelopment of an area. As evidence of the "blight", the court noted the following: defective or inadequate street layout without connectivity between key segments, inadequate or faulty platting that lacks accessibility or usefulness, unsanitary or unsafe conditions due to no water and sewer service, lack of proper drainage with cracked streets and standing water, illegal dumping, and outdated building density patterns.

With regard to the applicable burden of proof, the court noted that a county's redevelopment policy of the parcels at issue using eminent domain to acquire title "would arguably invoke 'strict scrutiny'", but the court also relied on recent cases that apply the "patently erroneous" standard to decisions involving legislative findings.[8] Ultimately, the court found that the evidence presented in support of declaring the subject properties "blighted" met both standards.

Lee County has also considered using a CRA to address its problems with antiquated subdivisions.

[7] Telephone conversation with Mr. Tim McGarry, Director, Monroe County Planning Department.

[8] *See McGibbon, et al.*, No. 04-39 at 2.

Approximately 135,000 lots were platted in the 1950s and sold to individual buyers in an area known as Lehigh Acres. Reportedly, as many as 127,000 lots remained undeveloped as late as 1997.[9] Even limited development of this area as originally platted has resulted in inadequate infrastructure, including roads and water and sewer. The remaining undeveloped lots are owned by several large landowners. In the past, some of these property owners suggested a CRA as a vehicle to address the problems associated with the development of an antiquated subdivision, including roads, transportation alternatives, public safety, and the quality of the subdivision itself. Although the CRA was created, it was later dissolved prior to really addressing any of these issues.

The use of eminent domain to acquire property for redevelopment has proven to be controversial in other states as well. In the recent case of *Kelo v. City of New London, et al.*, 843 A.2d 500 (Conn. 2004), the issue before the Supreme Court of Connecticut was whether the state and federal constitutions allow the condemnation of property in furtherance of an economic development plan intended to revitalize an economically distressed area.[10] The City of New London created a development corporation in 1978 to assist with economic development. Following the development of a drug research facility, the development corporation began to prepare a plan for redeveloping a 90-acre area adjacent to the facility and a proposed state park.[11] The proposed redevelopment area is divided into 115 parcels and contains both residential and commercial areas. The stated goals of the development plan included job creation, increased tax revenues, public access and use of the waterfront, and encouragement of future revitalization efforts in the area.[12]

The Supreme Court of Connecticut ruled on several issues, holding that property acquired by the City of New London for certain purposes was not required to be vacant; economic development could be considered as a valid public purpose; a local government's delegation of eminent domain power to a private, economic development corporation was constitutional; and, the condemnation of single family residences for office buildings was not impermissibly speculative. As the court stated, the principal issue on appeal is whether the exercise of eminent domain powers for economic development purposes is constitutional.[13] The court held that the use of eminent domain to allow for development that creates a public economic benefit is a valid public use under the Connecticut and federal constitutions.[14] Further, the court held that the transfer of land to private entities, if necessary to involve the private sector in order to achieve the public purpose of economic development, is constitutional.[15] This case is on appeal to the U.S. Supreme Court and the Court has accepted certiorari.

Proposed Solutions

In general, the solutions offered in various reports and assessments, including the LCIR's 2003 report, to address antiquated subdivisions have included the following:

Comprehensive Planning

One proposed solution would require a local government to identify antiquated subdivisions that it wishes to consolidate for development in its comprehensive plan, including methods of revising the plats to make the property developable while protecting property rights. This would allow for greater public input regarding which antiquated subdivisions are appropriate for development and, therefore, should be consolidated. This approach does have some costs associated with it, including staff time to inventory antiquated subdivisions within its jurisdiction and determine the number of developable lots.

Eminent Domain

The use of eminent domain is controversial, but may be the only option to acquire a large enough area to allow for a successful development of an area. The acquisition of lots from willing sellers and through the tax escheatment process most often do not yield a large enough area of contiguous parcels. At least one CRA in Florida has used eminent domain to acquire properties in an antiquated subdivision for redevelopment after declaring the area "blighted" under the statutory definition.

Lot Merger

This approach requires lots to be combined in order to meet the applicable minimum size requirements for development of a parcel within the antiquated subdivision. Merger of the lots ensures that the parcels

[9] Hubert Stroud and William Spikowski, "Planning in the Wake of Florida Land Scams," *Journal of Planning Education and Research* (1998).
[10] *See Kelo*, 843 A.2d at 507.
[11] *See id.* at 508.
[12] *See id.* at 509.
[13] *See id.* at 519.
[14] *See id.* at 533-37.
[15] *See id.* at 537.

developed meet applicable health and environmental regulations. However, the merger of lots is not always possible if the lot at issue is surrounded by unwilling sellers.

Replatting or Plat Vacation
Upon the request of a landowner, the property could be replatted or vacated and the local government may allow such replatting if it does not negatively affect the property rights of other owners within the subdivision. It is not clear that replatting can be done successfully without the cooperation of all parcel owners within the subdivision or portion thereof for which the plat will be vacated. Absent participation from all owners within the area to be replatted, the local government may be concerned about a takings issue.

Acquisition
Properties within antiquated subdivisions may be acquired from willing sellers or the purchase of delinquent tax deeds. A number of local governments and non-profit entities have purchased thousands of lots within antiquated subdivisions for conservation. Purchasing properties for public use has the same difficulty as development in that the parcels are often not contiguous and it is difficult to assemble an area large enough for its desired purpose.

Impact Fees and Special Districts
The imposition of impact fees can be a useful tool to provide needed infrastructure. However, impact fees do not apply retroactively. Several local governments have attempted to provide needed infrastructure to antiquated subdivisions through assessments. The parcel owners often object to such an assessment. For example, parcel owners may object to paying an assessment for water and sewer because they anticipated being on a well and septic tank. Another example is providing paved roads through an assessment. Some parcel owners may have bought their lot because of its rural character and not wish to have paved road access. Others may desire paved road access for aesthetics and convenience, but it also may be necessary to secure certain types of home loans.

Transfer of Development Rights
This process allows a local government to direct growth to specific areas while protecting certain areas from development. In order for a transfer-of-development rights to work effectively, interested property owners must have lots in both the "sending" and "receiving" areas. The difficulty with this option may be identifying a receiving area that is satisfactory to the property owners. Further, it is unlikely that the property owner will be offered the same or higher density than what was available under the original plat.

Incorporation
Rather than comply with the local government's comprehensive plan, a large antiquated subdivision could incorporate and adopt its own comprehensive plan. However, certain standards for incorporation must be met, s. 165, F.S. In addition, it is unclear whether the newly incorporated area could adopt regulations consistent with the state comprehensive plan and existing health and environmental regulations. The antiquated subdivision that successfully incorporates may, however, be able to provide adequate infrastructure that would allow the subdivision to be developed consistent with existing regulations.

Consolidation or Readjustment
Consolidation occurs when a majority of residents in an area agree to readjust their properties in a way that allows for development and thus giving value to their investment. In some instances, health department standards and other similar regulations require consolidation of lots to allow any development of a parcel. The difficulty with this option is the sheer volume of parcel owners and contacting those individuals or entities. However, if such consolidation can be achieved, it allows for the antiquated subdivision to be developed in a manner more consistent with modern planning concepts.

Community Redevelopment Agencies
The creation of such an agency may allow a local government to address antiquated subdivisions within its jurisdiction if the area can meet the statutory definition of "blight." Proponents of this approach contend it would be better to use this tool prior to the subdivision at issue deteriorating to the point that it becomes a "blighted" area. However, the use of eminent domain by a CRA or the governing body that created the CRA to acquire property for economic development is often controversial. The issue of whether the conditions in an antiquated subdivision meets the statutory definition of "blight" for purposes of redevelopment by a CRA is currently being litigated in Florida's 20th Judicial Circuit. Also, the issue of whether condemnation for economic development is a public purpose under the Connecticut and federal constitutions will be decided by the U.S. Supreme Court as discussed above.

RECOMMENDATIONS

Based on staff research and discussions with local governments, staff recommends amending ch. 163, F.S., to require a local government to identify, in its comprehensive plan, any antiquated subdivisions in which it seeks to consolidate the parcels. The committee may also wish to consider amending ch. 177, F.S., to provide statutory authority for a local government to vacate a plat, or a portion thereof, and replat the area under limited circumstances. This replatting authority should be limited to antiquated subdivisions.