Aggrieved Party Price Presentation

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City of Northport, Fla.

November 1, 2023

Re: Proposed Comprehensive Plan Amendment CPAL-22-247 Toledo Blade 320.

Dear Mayor Langdon and members of the Town Council

I write on behalf of Carolyn Price, a resident of the Agricultural Estates neighborhood, who has asked me to submit for your consideration this brief comment on this issue of private property rights as it might impact the Board's consideration of this proposed land use change. I am copying City Attorney Slayton and welcome her views if she believes any part of my analysis is incorrect.

Having been involved with a multitude of applications for future land use map / comprehensive plan amendments over my 30+ years as a land use lawyer, I know that it is commonly, but mistakenly, understood by some that such applications must be approved due to the owner's private property rights. I do have considerable experience and expertise on the subject and wanted to provide what I hope will be helpful legal citations demonstrating that private property rights do not include the right to be granted an increase in allowable uses and / or density. While the law of private property rights can be the subject of debate, this is actually one of the very clear points on law on the subject.

Local governments are not required to change the law – whether the comprehensive plan or the zoning code – to allow more intensive or economically valuable uses. *Martin County v. Yusem,* 690 So. 2d 1288 (Fla. 1997); *Brevard County v. Snyder*, 627 So. 2d 469 (Fla. 1993); *Lee Cty. v. Sunbelt Equities*, 619 So. 2d 996, 1006 (Fla. 2d DCA 1993).[1]

[1] In fact, while not relevant here, landowners do not have a vested right to the continuation of current zoning, which can be **reduced** for any valid planning reason. *Lee County v Morales*, 557 So.2d 652 (Fla. 2nd DCA 1990); *Glisson v. Alachua County,* 558 So. 2d 1030 (Fla. 1st DCA 1990); *Smith v. City of Clearwater*, 383 So. 2d 681, 688-89 (Fla. 2d DCA 1980). A property owner in

The Florida Supreme Court has made clear that a local government may deny a comprehensive plan amendment for any valid planning reason, including to protect resources that bring economic and environmental value. A comprehensive plan is "legislation", and a local commission is free to decline a request to "change the law" for a landowner to allow uses not currently allowed. *Martin County v. Yusem*, 690 So. 2d 1288 (Fla. 1997) (a local government is not required to amend its comprehensive plan to increase allowable uses or intensities) *Martin County v. Section 28 Partnership Ltd.*, 772 So. 2d 616 (Fla. 4th DCA 2000) (decisions to deny comprehensive plan changes are legislative, to be upheld as long as they are "fairly debatable".). For this reason, **the chances of a successful legal challenge to a decision by the County declining an application to amend its Plan are extremely low, to non-existent**. These are probably the easiest cases for any local government attorney to defend.

Next, while Florida's private property rights statute – the *Harris Act* – is often invoked in support of land use applications, on this issue, the Act is no different than the constitutional "property rights" clause interpreted in thee judicial decisions cited above. The *Harris Act* requires compensation only when a landowner can prove that regulation "has inordinately burdened an existing use of real property or a vested right to a specific use of real property...." §70.001 (2), Fla. Stat. It defines "inordinate burden to mean:

> "an action ...[which] has directly restricted or limited the use of real property such that the property owner is **permanently unable to attain the reasonable, investment-backed expectation for the existing use ... or a vested right to a specific use ... with respect to the real property as a whole**, or that the property owner is **left with existing or vested uses that are unreasonable such that the property owner bears permanently a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large**. "§70.001 (3) (e) (1), Fla. Stat.

This definition borrows from case law interpreting the takings clause, which requires compensation when regulation (1) prevents an owner from attaining "reasonable, investment - backed expectation",[2] (2) limits a vested right,[3] or (3) has such an adverse impact on the

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Florida has no vested right to the continuation of an existing zoning category nor any right to a more advantageous classification. *City of Lauderdale Lakes v. Corn, supra,* 427 So. 2d 239, 243(Fla. 4d DCA 1983); *Pasco County v. Tampa Development Corp.*, 364 So. 2d 850, 853 (Fla. 2d DCA 1978), citing *City of Miami Beach v. 8701 Collins Ave.*, 77 So. 2d 428, 430 (Fla.1954). Because an owner is not guaranteed the most profitable use of his land but simply some use that can be economically carried out, an action which "down-zones" land or increases legitimate restrictions is not invalid simply because it denies the highest and best use of the property. *Penn Cent. Transp. Co. v. New York City*, 438 U.S. 104 (1978); *Goldblatt v. Town of Hempstead*, 369 U.S. 590, 592 (1962).

[2] *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 124 (1978).

[3] *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992); *Monroe County v. Ambrose*, 866 So. 2d 707 (Fla. 3d D.C.A. 2003) (the purchase of land is a subjective expectation and not a vested right to develop property).

landowner that "justness and fairness require the burden to be borne by the public at large."[4] The *Act* protects "reasonable, investment-backed expectations and / vested rights to use of the property. § 70.001(3)(e)(1), Fla. Stat.; Thomas Ruppert, *Reasonable Investment-Backed Expectations: Should Notice of Rising Seas Lead to Falling Expectations for Coastal Property Purchasers?*, 26 J. Land Use & Envtl. L. 239, 246 (2011).

Landowners who buy land subject to existing limitations cannot win a *Harris Act* suit unless something dramatic changed that now precludes any reasonable use of the property under the rules existing when the land was bought. In *Namon v DER*, 558 So. 2d 504 (Fla. 3d DCA 1990), the Court rejected a 'takings' claim where the owner bought land subject to wetland regulations which, in turn, precluded the filling of the property, which was entirely wetland.:

> "A person who purchases land with notice of statutory impediments to the right to develop that land can justify few, if any, legitimate investment-backed expectations of development rights which rise to the level of constitutionally protected property rights." *** One who purchases property while it is in a certain known zoning classification, ordinarily will not be heard to claim as a hardship a factor or factors which existed at the time he acquired the property."[5]

The *Harris Act*'s language tracks this precedent, which has been followed repeatedly over the years by Florida courts. Under the H*arris Act,* a person who bought land subject to an existing comprehensive plan restriction has no claim for an "**investment-backed expectation for the existing use** of the real property **or a vested right to a specific use** of the real property". Neither can they meet the criteria that a decision not to change the law to increase allowable uses is so "**unreasonable such that the property owner bears permanently a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large**...."§70.001 (3) (e) (1), Fla. Stat.

I hope that you find this brief analysis useful and supportive of the Commission's full discretion to simply decline to change existing City law (the Comprehensive Plan) in the interests of community or environmental protection or any other valid land use planning reason.

Respectfully,

Richard Grosso, Esq.

cc: Amber Slayton, City Attorney (aslayton@cityofnorthport.com)
Carolyn Price

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[4] *Penn Central*, 438 U.S. at 124; *see also First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, Cal.*, 482 U.S. 304, 319 (1987); *Dolan v. City of Tigard*, 512 US 374 (1994); *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987).

[5] As a point of disclosure, I represented the state in this case.