



# PRESENTATION TO WESTLAKE CITY COUNCIL

November 30, 2020

By Seminole Improvement District



# The City Attorney's November 6, 2020 memorandum asks the wrong questions.

- The City Attorney asks: “whether the City has sole and exclusive authority regarding the comprehensive plan and land development regulations.”
  - *SID has never stated otherwise; the City has sole and exclusive land use authority over its comprehensive plan and LDRs.*
  - *SID does not wish to issue land development permits.*
- So, again, this is the wrong question.

# The City Attorney's November 6, 2020 memorandum asks the wrong questions.

- The City attorney asks if the City Council wants to “give away” its oversight, review, comment, approval of land development permit and regulatory authority.
- This questions sets up a false narrative for two reasons:
  - It assumes the City currently has the power to do so.
    - In other words, it asks, “Assuming the City has the power, does the City have the power?” This is improper circular reasoning.
  - It implies that by incorporating SID standards and allowing SID to certify compliance, it would remove the City's authority to approve, deny, or enforce its LDRs.
    - This is flatly wrong. Municipalities may enforce standards incorporated by reference.

# So what is the right question?

- What does the Charter limitation in Section 13.F mean?
  - *The City Attorney's memo defines the issue away and renders Section 13.F meaningless*

Section 13.F of the Charter is straightforward: *Non-Duplication of Services*. The City shall not exercise any function or provide any service being performed by or provided by Seminole Improvement District at any time prior to the Transition Date.

- You do not have to be a lawyer to read the words and know what they mean.
  - *Non-duplication* of services
  - *Shall not*
  - *Any service*
  - *Any function*

# The Charter language prohibits duplication of services and functions.

- The City Attorney's memo says that if you define something the City wants to do as an exercise of land development power then, magically, the Charter language is of no effect and you can provide the service or perform the function if you but only call it 'land development' authority.
- The Charter language does not speak to the nature of a power being exercised – it applies to any service or function.

# What does the law say?

- Two sources of law:
  - State Law: Case law, statutes, constitution
  - Local Law: Charter, Ordinances

# Charters are local laws akin to a constitution.

- “The paramount law of a municipality is its charter, (just as the State Constitution is the charter of the State of Florida,) and gives the municipality all the powers it possesses...
- ...the powers of a municipality are to be interpreted and construed in reference to the purposes of the municipality and if reasonable doubt should arise as to whether the municipality possesses a specific power, such doubt will be resolved against the City...
- ...Municipal corporations are established for purposes of local government, and, in the absence of specific delegation of power, cannot engage in any undertakings not directed immediately to the accomplishment of those purposes.”
- “Local governments have not been given omnipotence by home rule provisions by Article VIII, Section 2 of the 1968 Florida Constitution.”
- The City’s powers are restricted by its Charter.

**FLORIDA SUPREME COURT**  
*City of Miami Beach v. Fleetwood Hotel, Inc.*,  
261 So.2d 801 (Fla. 1972)



# A Charter may limit a City's home rule powers.

- Attorney General Opinion 82-101 (Mr. Donald C. Roberge)

## SUMMARY:

“A municipal charter may be amended ...so as to add provisions thereto which would serve to limit or restrict the exercise of specific corporate, legislative and governmental powers...which the municipality or its legislative and governing body would otherwise be empowered to exercise pursuant to s. 2(b), Art. VIII, State Const., and the Municipal Home Rule Powers Act, Ch. 166, F.S.”

# And all parts must be read as a whole, with meaning ascribed to every part.

- It is axiomatic that all parts of a statute must be read *together* in order to achieve a consistent whole.
- Where possible, courts must give full effect to *all* statutory provisions and construe related statutory provisions in harmony with one another.
- Every statute must be read as a whole with meaning ascribed to every portion and due regard given to the semantic and contextual interrelationship between its parts.

FLORIDA SUPREME COURT  
*Forsythe v. Longboat Key Beach Erosion Control District,*  
604 So.2d 452 (Fla. 1992)  
(Further Citations Omitted)

# Every part of a law must have meaning.

- As fundamental rule of statutory interpretation, courts should avoid readings that would render part of statute meaningless, and whenever possible must give full effect to all statutory provisions and construe related statutory provisions in harmony with one another.
  - *Florida Supreme Court in Unruh v. State, 669 So.2d 242 (Fla. 1996)*
- ‘Shall’ means ‘shall.’ See *Florida Supreme Court case Sanders v. City of Orlando, 997 So.2d 1089 (Fla. 2008)* (The word “shall” is mandatory in nature.)

Laws, including charters and ordinances, are interpreted using ordinary rules of statutory construction.

- The rules of statutory construction are applicable to the interpretation of municipal charters. - *Martinez v. Hernandez*, 227 So.3d 1257 (Fla. 3d DCA 2017)
- Municipal ordinances are subject to the same rules of construction as are state statutes. *Rinker Materials Corp. v. City of North Miami*, 286 So.2d 552 (Supreme Court Fla. 1973)

# Ordinances are local laws.

- § 166.041, *Florida Statutes*:

- (a) “Ordinance” means an official legislative action of a governing body, which action is a regulation of a general and permanent nature and enforceable as a local law.

- “A statute is a form of positive law enacted by the legislative branch of government. Similarly, an ordinance is a form of statutory law enacted by a local governmental body, such as a county commission or city council.” – *Snow v. Ruden, McClosky, Smith, Schuster, & Russel, P.A.*, 896 So.2d 787 (Fla. 2d DCA 2005)

# So what does the Charter limitation in Section 13.F mean?

## Let's use drainage as an example.

- A Charter may limit the exercise of home rule power.
- The City Charter limits the services and functions that the City may provide to only those not provided by SID.
- SID provides drainage functions and services.
- Therefore, the City shall not duplicate those functions or services.
- It is that simple.
- The City Attorney's memo answered the wrong question - one that nobody asked.

# The other right questions are:

- Is the City prohibited from using SID-developed standards?
  - *No.*
- Could the City incorporate SID standards, either by incorporating the same text or by reference?
  - *Yes.*
- Can the City accept SID certification that drainage standards have been met?
  - *Of course.*

# LDRs must comply with the Comprehensive Plan.

- 163.3194 Legal status of comprehensive plan.—

(1) (a) After a comprehensive plan, or element or portion thereof, has been adopted in conformity with this act, all development undertaken by, and all actions taken in regard to development orders by, governmental agencies in regard to land covered by such plan or element shall be consistent with such plan or element as adopted.

(b) All land development regulations enacted or amended shall be consistent with the adopted comprehensive plan...During the interim period when the provisions of the most recently adopted comprehensive plan, or element or portion thereof, and the land development regulations are inconsistent, the provisions of the most recently adopted comprehensive plan, or element or portion thereof, shall govern any action taken in regard to an application for a development order.

- See Also AGO 85-158 (Mr. Michael E. Watkins); AGO 079-88 (R. Stephen Miles, Jr.)



# The Florida Constitution and Statutes expressly permit transfer of powers.

- Article VIII, § 4. Transfer of powers – Florida Constitution

- *By law or by resolution of the governing bodies of each of the governments affected, any function or power of a county, municipality or special district may be transferred to or contracted to be performed by another county, municipality or special district, after approval by vote of the electors of the transferor and approval by vote of the electors of the transferee, or as otherwise provided by law.*

- 163.01 (Florida Interlocal Cooperation Act) -

- *(2) It is the purpose of this section to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.*
- *(4) A public agency of this state may exercise jointly with any other public agency of the state, of any other state, or of the United States Government any power, privilege, or authority which such agencies share in common and which each might exercise separately.*

# And the LDRs must be consistent with all parts of the Comprehensive Plan.

- All parts of the comprehensive plan, not just the land use element, are used to determine consistency of land use decisions. *Southwest Ranches Homeowner Ass'n, Inc. v. Broward County*, 502 So.2d 931 (Fla. 1987).

# City liability is not at risk.

- Courts have found that when a municipality had transferred all of its responsibilities and duties to another local government, it could not be liable if that other government failed to perform its duty.
  - *Conran v. Young*, 458 So.2d 870 (1984)
- 163.01(9)(a)(b) (Florida Interlocal Cooperation Act) - An interlocal agreement does not relieve a public agency of any obligation or responsibility imposed upon it by law except to the extent of actual and timely performance thereof by one or more of the parties to the agreement or any legal or administrative entity created by the agreement, in which case the performance may be offered in satisfaction of the obligation or responsibility.

# So what happens next?

- Let SID be SID, and perform the infrastructure functions.
- Abide by the Charter, Interlocal, and Comprehensive Plan
- Under SID Interlocal, SID has sent Section 27 letter; respond that SID should perform that function.