

THE CITY'S POWERS IN LANDPLANNING AND PLATTING



Summary of Issues



- The City is the specific and delegated authority as it relates to land planning and platting.
- SID has no authority in land planning and platting within the City.
- SID should not be permitted input on Plat recordation, much less be listed as an Obligee on the guarantee for Developer Performance
- This position is verified and confirmed by:
 - a. State Statutes
 1. Chapter 177, Florida Statutes- which governs platting
 2. The Home Rule Powers Act
 - b. The City's Charter
 - c. The Enabling Act of the Seminole Improvement District ("SID")
 - d. The Interlocal Agreement between the City and SID
 - e. The City's current Uniform Land Development Regulations – The PBC ULDC

Understanding the Structure and Framework of Government



- Our government is based on a hierarchy where the Federal Government is at the top of the pyramid and the local governing body is at the base
- The principals are that the most powerful reserves the powers it wants and those not specifically reserved, flow downward to the next lower level, and the process repeats.
- When it comes to land development regulations, in general terms, this power flows down to the local governing body.

The Hierarchy Visualized



Federal Government

The top of the Pyramid

State Government

Second position

County Government

Third position

City Government

Last position

(This position exists only if there is a municipality. In unincorporated areas, the last position is the County)

The City's Powers Come from the State



- As it relates to Platting, the State has spoken specifically through Statute. Chapter 177, Fla. Stat. vests the platting authority solely to the City. *See* Section 177.071, Fla. Stat.
- The remainder of the City's authority is derived from the Florida Home Rule Powers Act- this legislation essentially confirmed that the State was not reserving these powers, and thus the power passes to the municipality.

The City Exclusively Controls Platting



- The Statute that governs platting is Chapter 177 Fla. Stat.
- Chapter 177- is entitled “Land Boundaries”. Part I- is entitled “Platting”. Platting encompasses Sections 177.011-177.151
- Sections 177.031(4) and 177.071(1)(a) Fla. Stat defines and grants the **platting powers exclusively in the City to be exercised through its Council.**
- In statutory terms, “exclusively” means “exclusively”. It does not mean “including but not limited to”.

Section 177.031(1) (a), Fla. Stat. (verbatim)



177.031 Definitions.—

(4) “Governing body” means the board of county commissioners or the legal governing body of a county, municipality, town, or village of this state.

Section 177.071(1) (a), Fla. Stat. (verbatim)



177.071 Approval of plat by governing bodies.—

(1) Before a plat is offered for recording, it must be approved by the appropriate governing body, and evidence of such approval must be placed on the plat. If not approved, the governing body must return the plat to the professional surveyor and mapper or the legal entity offering the plat for recordation. For the purposes of this part:

(a) When the plat to be submitted for approval is located wholly within the boundaries of a municipality, **the governing body of the municipality has exclusive jurisdiction to approve the plat.**

(Emphasis added)

Additional Support of City's Powers to Require Guarantees for completion of Infrastructure in connection with Platting -177.031(9), Fla. Stat. (Verbatim)



F.S. 177.091(9)

(9) Monuments shall be set at all lot corners, points of intersection, and changes of direction of lines within the subdivision which do not require a “P.R.M.” or a “P.C.P.”; however, a monument need not be set if a monument already exists at such corner, point, or change of direction or when a monument cannot be set due to a physical obstruction. In those counties or municipalities that do not require subdivision improvements and do not accept bonds or escrow accounts to construct improvements, monuments may be set prior to the recording of the plat and must be set at the lot corners before the transfer of the lot. **In those counties or municipalities that require subdivision improvements and have the means of ensuring the construction of those improvements, such as bonding requirements, monuments shall be set prior to the expiration of the bond or other surety.** If the professional surveyor and mapper or legal entity of record is no longer in practice or is not available due to relocation, or when the contractual relationship between the subdivider and professional surveyor and mapper or legal entity has been terminated, the subdivider shall contract with a professional surveyor and mapper or legal entity in good standing who shall be allowed to place the monuments within the time allotted.

Additional Support of City's Powers to Require Guarantees for completion of Infrastructure -177.031(14), Fla. Stat. (Verbatim)



F.S. 177.031(14)

(14) “Plat or replat” means a map or delineated representation of the subdivision of lands, being a complete exact representation of the subdivision and other information in compliance with the requirement of all applicable sections of this part and of any local ordinances.

The Structure of the City's Government



- The City has two branches of government: the Legislative (Council) and the Executive (the City Manager)
- The Council passes ordinances which become the law of the City.
- The Manager executes the directives and laws passed by the Council.
- A Councilperson is the representative elected by the people to represent them in our republic. **Every Councilperson has the duty to protect and represent the citizens who have entrusted them with their vote. This duty is to the citizens as a group and not with an individual citizen or a company. This is the fundamental and bedrock principal in a representative form of government.**

The City's Charter



- How the City exercises these powers is through its Charter.
- The Charter is essentially the “constitution” of the City.
- If the Charter provides that the City has a power, then that power rests with the City.

Charter Summary



- The City's Charter provides that if there is a doubt as to whether the City has a particular power- the Charter should be viewed to give the City the Power as opposed to restricting it. *See Section 4*
- The City Council has all planning functions, duties and authority to administer the Comprehensive Plan. *See Section 12(D)(1)*
- The City Council has the powers and duties of the planning commission, zoning authority and any boards of adjustment. *See Section 12 (D)(2)*

Section 4 of the Charter- (Direct Copy)



Section 4. - Municipal powers

The City shall be a body corporate and politic and shall have all the powers of a municipality under the Constitution and laws of the State of Florida, as fully and completely as though such powers were specifically enumerated in this Charter, unless otherwise prohibited by or contrary to the provisions of this Charter. The City shall have all governmental, corporate, and proprietary powers necessary to enable it to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal services unless expressly prohibited by law. The powers of the City shall be liberally construed in favor of the City.

Section 12 (D)(1) and 12 (D)(2) (Direct Copy)



Section 12. - Transition Schedule

D. *Transitional comprehensive plan and land development regulations.*

1. Until such time as the City adopts a comprehensive plan, the applicable provisions of the Comprehensive Plan of Palm Beach County, as the same exists on the day the City commences corporate existence, shall remain in effect as the City's transitional comprehensive plan. However, all planning functions, duties, and authority to administer shall thereafter be vested in the City Council of Westlake which shall be deemed the local planning agency until the council establishes a separate local

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planning agency. Nothing in this Charter will divest any landowner in the City of development rights under existing zoning and land use approvals

2. All powers and duties of the planning commission, zoning authority, any boards of adjustment, and the County Commission of Palm Beach County, as set forth in these transitional zoning and land use regulations, shall be vested in the City Council until such time as the City council delegates all or a portion thereof to another entity.

Section 13(H) of the Charter



- Section 13 (H) of the Charter does not give or take away any of the City's powers as it relates to Land Planning and Platting.
- Section 13 H of the Charter provides that The City shall not duplicate “functions or services” that are being provided by SID.
- **As will be discussed, if SID is not empowered to provide the service, the City cannot “duplicate it”. With regard to Platting and Land Development Regulations, SID is not empowered, and therefore the service cannot be duplicated.**

Section 13 (H) of the Charter- (Direct Copy)



H. *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. This provision does not impair the ability of the City to contract for fire rescue or law enforcement services as provided in Sections 13.A and 13.B, above.

The Powers of SID



- SID is a Special Improvement District.
- Its powers are derived from a specific act of the State Legislature, called the Enabling Act.
- Once again, if the Enabling Act does not grant SID a power, then SID does not have the power
- SID was enabled in 2000 in House Bill No. 1559

SID's Powers and Limitations




- The first relevant part of SID's powers, is the limitations placed on them. *See* Section 5(2) of the Enabling legislation.

Section 5. Powers of the District; compliance with county plans and regulations.—

(2) Notwithstanding any authority contained within this section, the development, operation, or maintenance of any District facilities or services shall comply with the adopted comprehensive plan for Palm Beach County and any adopted land development regulations or specialized plans adopted thereunder which apply within the geographic boundaries of the District.

SID Falls Under the Appropriate Governing Body, not above it



- The Title of Section 5 of the Enabling Act “Compliance with County Plans and Regulations” clearly shows that the SID must comply with the Land Development Regulations of another entity (i.e. the County). The body of Section 5 confirms this.
- At the time of SID’s creation in 2000 there was no City of Westlake. It was “unincorporated Palm Beach County. Thus, under the governmental structure, the County was the local government.
- Upon the incorporation of the City of Westlake, The City of Westlake became the “Governing Body” and SID must follow the City’s Land Development regulations.

SID's Ability To Construct Roads Is Also Limited



- SID's ability to construct roads are specifically limited to those that are both “necessary **and** convenient”. In interpreting a statute, the use of “and” means “both”. The use of the word “or” means “either”. *See* Section 5 (1)(f) of its Enabling Act.

Section 5. Powers of the District; compliance with county plans and regulations.—

(1) Said District shall have the following powers:

(f) To construct, improve, pave, and maintain roadways and roads necessary and convenient for the exercise of the powers or duties or any of the powers or duties of said District or the supervisors thereof; and to include as a component of roads, parkways, bridges, landscaping, irrigation, bicycle and jogging paths, street lighting, traffic signals, road striping, and all other customary elements of a modern road system;

The Interlocal Agreement (“ILA”) and it’s Limitations



- The City entered into an agreement with SID called an Interlocal Agreement (“ILA”). The ILA is an agreement between two or more governmental agencies that is created to use resources efficiently. It is a “contract” between two governmental entities.
- The ILA references and/or attaches the City Charter and the Enabling Act as an Exhibit, thus they are part of the Agreement
- In the ILA, SID also acknowledges that it does not have any planning or zoning authority; that the City’s powers under home rule and make planning, zoning or other land use decisions are solely the City’s . The parties are also not even permitted to review items or matters to which they do not have jurisdiction. *See* Sections 6, 18(c), 18(f), and 32(a) of the ILA

Section 6 of the ILA (Direct Copy)



Nothing in this Agreement shall be construed to restrict Westlake's home rule powers, police powers, or Westlake's authority to amend its Comprehensive Plan and make planning, zoning, or other land use decisions.

Section 18(f) of the ILA (Direct Copy)



- f. Each Party shall only review those items or matters over which it has jurisdiction, and no party shall deny a permit or authorization on grounds over which it has no jurisdiction.

Section 18(c) of the ILA (Direct Copy)



- c. Westlake has the exclusive authority to set requirements and standards for, approve, and issue permits or authorizations for all comprehensive planning, zoning and land development activities not falling within SID's area of authority as set forth above.

Applicants applying for permits or authorizations under Westlake shall file with the City of Westlake...

Section 32(a) of the ILA (Direct Copy)



32. Miscellaneous

- a. **SID Powers.** SID acknowledges that it does not have planning or zoning authority, home rule or general police powers, and nothing in this Agreement shall be read or interpreted to mean otherwise.

Section 14(a) of the ILA (Direct Copy)



- This section is almost a verbatim copy of Section of SID's Enabling Act and contains the same “**necessary and convenient**” language.

14. Roadways and Transportation Infrastructure

- a. SID shall have the ability, within the Service Area, to construct, improve, pave, and maintain roads necessary and convenient for the exercise of the powers or duties of SID as provided for in the Water Control Plan; and to include as a component of roads, parkways, bridges, landscaping, irrigation, bicycle and jogging paths, street lighting, traffic signals, road striping, and all other customary elements of modern

road systems. Westlake may own any roads within the Service Area and SID may transfer ownership of roads within the Service Area to Westlake.

The PBC ULDC



- The City has adopted the PBC ULDC as its current land development regulations. ULDC actually stands for the Uniform Land Development Code. These powers now rest solely in the City.
- The PBC ULDC is a maze of regulations that consistently refer to other sections of the ULDC within sections, making quotations and understandings more difficult to cut and paste.
- With that being said; the summary is that in order to get a plat recorded: 1. The infrastructure must already exist. *See Sections 11. A.8. F.1*
- If the infrastructure does not yet exist: 1. It can be built by the **Developer** prior to plat recordation; or 2. Absent completing the infrastructure, it must be guaranteed by the **Developer**. *See Section 11.E.1.A.*
- The **Developer's** guarantee may be by 1. Cash Bond; 2. Letter of Credit; or 3. Performance Bond. *See Section 11.B.2.A.6*
- The amount of the is determined by the Developer's Engineer, or by the City Engineer who may use the contract amount for the work. *See Section 11.B.1.B.4.*

Section 11.B.2.A.6 PBC ULDC



6. Guarantees

All guarantees required pursuant to [Art. 11.E.1.A, Minimum Required Improvements for All Subdivisions](#), shall be in one of the forms prescribed in the Land Development Forms Manual or in an alternate form approved by the County Attorney. The initial guarantee shall be in an amount equal to 110 percent of the construction cost of the required improvements. The guarantee shall be in one of the following types: [Ord. 2014-025]

a. Cash Bond

Completion of the required improvements may be secured by cash deposited by the developer with PBC or in an account subject to the control of PBC in accordance with an agreement on such deposit or account. The developer shall be entitled to receive any interest earned on such deposit or account.

b. Letter of Credit

Completion of the required improvements may be secured by a clean irrevocable letter of credit issued to PBC in accordance with the PBC Letter of Credit Policy. The expiration date of the letter of credit shall be at least three months after the completion date for construction of required improvements pursuant to the initial Land Development Permit or any subsequent extension thereto.

c. Performance or Surety Bond

Completion of the required improvements may be secured by a performance or surety bond obtained from a company acceptable to PBC in accordance with the PBC policy on performance bonds. It shall guaranty that all work will be completed in full accordance with the approved Land Development Permit.

Section 11.E. 1.A PBC ULDC



CHAPTER E REQUIRED IMPROVEMENTS

Section 1 Required Improvements

A. Minimum Required Improvements for All Subdivisions

Except when waived pursuant to [Art. 11.A.8.F, Exceptions to Installation of Improvements Requirement](#), the improvements set out herein shall be the minimum required improvements for all subdivisions in order to provide the physical improvements necessary to implement certain performance standards, objectives, and policies of the Capital Improvement Element and other Elements of the Plan. These required improvements shall be installed prior to recordation of the corresponding plat or certified boundary survey unless the developer furnishes a guarantee assuring their installation in accordance with the provisions of this Article. Except as provided in this Section, the cost of all required improvements shall be guaranteed.

[Ord. 2011-016] [Ord. 2014-025]

Section 11.A.8.F.1 PBC ULDC



F. Exceptions to Installation of Improvements Requirement

If, after review of the Preliminary Subdivision Plan, the County Engineer determines that certain improvements already existing on the proposed subdivision site are adequate to meet the intent of the required improvements requirement of this Article, the installation of those required improvements may be waived.

1. Application for Required Improvement Installation Waiver

The developer shall submit a Preliminary Subdivision Plan, or when approved a certified abstracted boundary survey, together with a statement demonstrating that the applicable improvement(s) and

associated dedications existing on the land and serving the proposed lot(s) are substantially in accordance with the requirements of this Article. **[Ord. 2014-025]**

Conclusion



- The City is the specific and delegated authority as it relates to land planning and platting.
- SID has no authority in land planning and platting within the City.
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