

## WORKSHOP SUMMARY

In late May and early June, 1986, the Department of Community Affairs held six workshops to investigate the types and extent of Platted Lands problems throughout the state. These workshops were designed to give the Department detailed information on the problems occurring at the local level and the methods being used to resolve the problems. Each workshop was conducted as an open discussion, with attendees having the opportunity to discuss the problems they have encountered and the solutions they desire. Notes were taken at each workshop and compiled into the attached outline. The following is a summary of the most frequently discussed problems and solutions. Problems that appeared to be specifically related to one area rather than state wide have not been discussed herein but have been included in the outline attached. This summary does not include an evaluation of the feasibility of the proposed solutions. That evaluation will be prepared by a consultant prior to the drafting of proposed legislation.

### I. Problem

The problems discussed at the workshops fell into five major categories. These were: 1) access to/from platted lots; 2) economic concerns; 3) legal and political issues; 4) proposed development issues; and 5) statutory inadequacies and regulatory constraints.

#### A. Access to/from platted lots

Access to and from platted lots was one of the major complaints voiced by the workshop participants. The problems have been categorized as no access or substandard access. In many instances, the developer or sales corporation was not required to construct roadways into or within the platted subdivision prior to selling the lots. Thus, many platted subdivisions are held in multiple ownership with no access to the individual lots. Frequently lot owners have created an access by driving repeatedly to and from their lot. Generally, the resulting access has been dirt roads, too narrow to meet current standards, inaccurately placed when compared to the plat, and/or containing trees. If paved roads have been provided by the developer, they have been so poorly maintained that the roads are almost impassable. These are illustrations of substandard access.

Many times when paved access has been provided, questions have arisen regarding ownership and maintenance responsibility. Many plats have dedicated the roads or rights-of-way, but have failed to show the local government's acceptance or refusal of the dedication. Where roads have been dedicated and accepted, the local government has assumed the responsibility for maintenance and upkeep. If the roads have been dedicated but not accepted, the local governments have denied ownership and maintenance responsibility. Maintenance of these roadways frequently requires upgrading the existing roadbeds to current

standards. Local governments have attempted to control development of platted lots by refusing to permit the development if there is no access to the applicant's lot. However, if there is any physical access to the applicant's lot, whether paved or dirt, it will generally issue a development permit.

## B. Economic Concerns

One of the greatest problems facing the local governments with undeveloped antiquated platted lands is the provision of the necessary infrastructure and emergency and public services. In many areas, the local governments do not have the financial capability to supply the infrastructure and public services necessary for build-out of all the platted lots in their community. Local government representatives expressed their concern that buyers of the platted lots are not informed by the sellers of the lack of infrastructure or lack of provision for infrastructure and services. Generally, the buyers assume that the necessary services and infrastructure will be provided by the local government and fully expect the local government to be responsive to their demands for these services. Many local governments have difficulty in planning for and providing the capital improvements necessary for the development of those lots as required in the revised comprehensive plan. The participants also indicated that the large lot subdivision sales have caused an adverse impact on their communities. Many of these lots have been platted and sold without regard to current market conditions or planned future growth in the area. When development of these lots has begun, it has placed a financial strain on the local government and residents of the community to provide the necessary services and infrastructure.

## C. Legal and Political Issues

### 1. Legal Issues

The legal issues involved in the purposed development of antiquated platted lands fall within two major categories: 1) property owners rights and 2) the police power of the state and local government. One of the major issues identified by participants in the workshops was the land owners "vested rights". "Vested rights" is the term applied to the owner's right to develop the land as platted, without regard to current development standards or planned growth. Whether this right is granted by statute or by common law, many of the local governments are hesitant to deny proposed development when "vested rights" are involved.

Another problem confronting the local government is the land owners "perceived right to develop". Many land owners purchased their property with a particular goal in mind and become very hostile when told that their goal does not conform to current zoning regulations and planned future growth. Many of the lots were purchased without adequate

disclosure by the seller or his representative of the existing conditions on the property, its zoning or planned use. Land owners have resorted to legal action when prohibited from developing their property as they want.

State and local governments have, under police power, the authority to zone and to control development and growth. However, local government representatives indicated they felt this authority was not extensive enough to meet the needs of the actions required to resolve platted lands problems. They feel they have no statutory authority to require:

- a. Mandatory platting prior to the subdivision and sale of lots;
- b. Replat of antiquated subdivisions, whether in unitary or multiple ownership;
- c. Vacation of existing plats when the lots are reassembled for sale as large parcels;
- d. Recording of contract for deed sales and requiring a copy of the plat be attached to the deed;
- e. Land owners to comply with local development codes.

Because of the various interpretations of Chapter 177, F.S., many local governments do not require the recording of any subdivision plats. Local government representatives indicated that their elected officials would be more responsive to the planning departments' need for plat recordation if the statute mandated the recordation of all subdivided parcels. With the repeal of Section 163.280 F.S., local governments no longer have the authority to initiate the deplat of (antiquated) subdivisions. Local government representatives agreed that this was a necessary power and would be very useful to them in the resolution of some of their platted lands problems.

## 2. Political Issues

During the course of the workshops, it became quite apparent that the staff of many local governments are having to deal with elected officials who do not want to be upset or alienate their constituencies by recognizing and trying to resolve the platted lands problems. In many areas of extensive platting but little development, the taxes on these undeveloped platted lots bring in a certain amount of revenue without the requirement of capital improvements or public services. Many elected officials realize that limiting the development of the platted lots through downzoning will result in a decrease in the revenue generated by those lots. Their attitude appears to be, "it's not an immediate problem, so why rock the boat?"

## D. Purposed Development Issues

The purposed development issues identified were virtually identical in each one of the workshops. Lack of infrastructure or inadequate infrastructure was one major complaint. Plat design conflicts with current standards was another, i.e., substandard lot size, no drainage or water management plans, no parks, recreation, or open areas, and platted lots in environmentally sensitive areas. Unrecorded subdivisions was another problem identified by the workshop participants. Unrecorded subdivisions generate such problems as: 1) no survey or review prior to development; 2) non-existent plat information; 3) no infrastructure or plans for infrastructure; 4) possible conflict with purposed use and future growth plans; and 5) no ownership information. Unrecorded subdivisions are generally discovered after the sale has been accomplished and the title has been transferred.

Subdividing without compliance with local subdivision regulations was another problem being experienced. In this situation, the property is generally conveyed by a metes and bounds legal description, with no provision for infrastructure or developmental review by the local government. These development issues cause difficulties for the local governments in that they cannot always plan for and provide the necessary infrastructure, capital improvements, or public services when those platted lots begin to develop.

A minor problem revealed by the local governments was inaccurate or non-existent survey information on old plats and maps. The lack of, or inaccuracy of, survey information causes an overlapping of plats and placement of structures and/or rights-of-way in the wrong location.

#### E. Statutory Inadequacies and Regulatory Constraints

Throughout the entire series of workshops, the majority of the complaints voiced by the attendees cited a lack of authority under the Florida Statutes to take certain actions and steps toward resolving their platted lands problems. Specifically, the statutes dealing with platting and subdividing, recording of deeds and plats, growth management and DRIs, and local government authority were pointed out as deficient in some manner.

They also indicated that it was extremely difficult for them to place stricter requirements on a permitting process, i.e. septic tanks, when the more lenient state regulations were the determining factor in the permitting process. The participants argued for more authority at their level to control the development requirements, particularly when their requirements were stricter than the state requirements.

## II. Solutions

A. The solution most frequently requested by the participants was state-wide legislation giving local governments the authority to handle the platted lands problems. They specifically requested that this enabling legislation contain:

1. Threshold requirement for identifying "antiquated" subdivisions and platted lands and a means of deplatting old undeveloped lands after a specified period of time. The legislation would have to include new and better:

- a. Definition of "vested rights"
- b. Definition of subdividing
- c. Definition of legal access

2. Administrative and procedural guidelines for addressing and resolving the problems

3. An appeal process where the local government can be forced to address the platted lands problems by the landowner or developer appealing to the state for action

4. Authority for the local governments to establish stricter standards in the development and permitting processes and requiring the state agencies to recognize those stricter standards and to defer to them

5. Subdivision regulations - establish statewide (standardized) minimum requirements for development where antiquated platted lands are concerned

They also requested that the state review and revise the following statutes:

1. Florida Statutes 177 - mandatory platting and recording of plats

2. Eminent domain statutes - standardize procedure to avoid multiple processes at the local level

3. Permitting requirements - (DCA, DNR, DER, HRS, Water Management Districts, etc.) to correlate and coordinate permitting requirements and to end conflicts between agencies' regulations

4. Florida Statutes 163.280 - reinstate the local government's authority to initiate a deplat on antiquated platted lands and make the 10% lot sales requirements effective 14 days before, rather than on the date of, the public hearing

5. Florida Statute 380.06 - allow the local governments to

negotiate acceptable changes to plats and provide more flexibility in BLIMs (Binding Letter of Modification) and BLIVRS (Binding Letter of Interpretation of Vested Rights)

6. D.O.T. Statutes - particularly the access provisions which conflict with the definition and limitations of access and traffic with regard to planning and growth management regulations

7. Lot splits/land sales - set minimum standards for information contained in the closing documents, i.e., provision of infrastructure, require full disclosure to buyer of physical condition of the property, including zoning, planned future growth, environmental conditions and presence of infrastructure, and requiring the registration of non-contiguous lots in large land sales

8. Recording - establish a minimum criteria for language and information to be contained in a contract for deed, requiring the recording of all contracts for deed, and requiring that a copy of the plat and/or survey be attached to all deeds when recorded

B. Other solutions suggested by participants of the workshops included such things as mandatory reassembly or merger of contiguous lots in unitary ownership for development; the creation of certain mechanisms to induce the land owner and developer to develop the property in accordance with current standards, i.e. tax incentives, simplify replat or permitting processes, etc.; establish a centralized clearinghouse for coordination of permitting requirements and records, processing of new regulations and cataloging of unrecorded plat information; and the use of the comp plan to identify the plats, planning goals, and development potential and to educate the community on growth objectives.

### III. Recommendations

A. It is recommended that:

1. A study and legal analysis be conducted of the various statutory deficiencies cited by the workshop participants. The study and analysis should include documentation on the language contained in the statutes, legal interpretations, in any, of the language, explanations of the deficiency or inadequacy and suggested language or solutions to the deficiencies. The legal analysis should serve as the foundation for the drafting of legislation.

2. A second series of workshops be held in October or November, 1986 to inform the interested persons of the proposed legislation. The draft legislation should be included in the workshop announcements to give the attendees an opportunity to evaluate it and recommend changes at the workshops. Because of her interest in and familiarity with

land use and platted lands problems and her many contacts within the communities, Marilyn Crotty of the Institute for Community Leadership at Valencia Community College would be an excellent co-sponsor of these statewide workshops.

3. A study be made of the feasibility of establishing a centralized clearinghouse for the distribution of all state agencies' development related regulations. The study should be conducted by a small task force comprised of at least one employee from each of the pertinent state agencies (DCA, DNR, DER, and HRS particularly.) It should include consideration of each agency's minimum permitting requirements, projected initial and future operating costs, personnel needs, future funding and a time frame.

## PROBLEMS

### I. Access To/From Lots

- A. Onto Canopy Roads and/or Major Arterials
  - 1. Curbcuts for commercial lots
  - 2. Driveways for residential units
- B. Non-connecting/non-matching roads within subdivisions
- C. Roads and Rights-of-Way generally
  - 1. Substandard dirt roads, too narrow, trees in roadway, poor maintenance
- D. Dedication of Rights-of-Way
  - 1. Maintenance of roads - whose responsibility?
  - 2. Substandard
  - 3. Accepted by local government - Ownership questions
- E. Landlocked non-platted lands between platted subdivisions
- F. No access to lots
- G. Requires redesign of highways
- H. Committed access and rights-of-way cause problems in partially developed subdivisions especially where it occupies the wrong site
- I. Safety Issues - paved streets in undeveloped & partially developed subdivisions
  - 1. no traffic control devices
  - 2. no ease of entry for emergency services
  - 3. dumping sites
- J. Vacated streets in undeveloped subdivisions - done by local government initiative.
  - 1. possible future need for streets
  - 2. no notice required before vacation
- K. Encroachment by buildings on easements and rights-of-way



## II. Economics

- A. Whose responsibility to supply infrastructure and public services.
- B. Exactions for build-out of old lots - not like new platted lands in DRI
- C. Economic Retardation
  - 1. caused by plat/market/development
  - 2. no incentives to developer to replat subdivisions
    - time/costs/multiple agencies and regulations involved
- D. Market - affected by
  - 1. Growth Management & Planned Use
  - 2. Development of plat as originally designed
  - 3. Proper land use
  - 4. Investment-type sales (caused by degree of platting)
  - 5. allowing too many variances to build on small lots
- E. Capital improvements must be provided to committed lands which generally have:
  - 1. no sewer
  - 2. no water
  - 3. no roads
- F. Consumer Protection
  - 1. No disclosure by realtor/seller to buyer of adverse developmental problems and conditions
  - 2. Buyers purchase undeveloped property expecting the local government to provide all services and infrastructure without regard to whether it is the government's responsibility or within it's resources to provide them.
  - 3. No prevention of sales by owner without disclosure
  - 4. No testing and licensing of realtors re: growth management goals and platted lands problems
- G. No County policy or staff to address issues or supply services or safety devices (Ft. Myers)
- H. No authority by local governments to sell lands contained in vacated rights-of-way to adjoining land owners.
- I. Sometimes lots registered with Land Sales exceeds number of platted lots (i.e. Golden Gate Estates)
- J. Land Sales
  - No Legislation:
    - 1. Requiring registration of less than 49 lots
    - 2. Requiring registration of all sales of non-contiguous lots (Large Land Sales Only)

### III. Legal Questions and Political Questions

- A. Property owners rights
  - 1. Vested rights
    - a. Statutory
    - b. Common law -Grandfather Clauses, equitable estoppel
  - 2. Perceived right to develop
  - 3. Waterfront property - boundary line extending beyond water line
- B. Local Government attitude toward undeveloped platted lots
  - 1. Money Machine - why disturb status quo
  - 2. Elected officials "Don't rock boat"
  - 3. Conflict between zoning ordinance and state laws
- C. Can state curtail platting of subdivisions with large number of lots or phases?
- D. Require Replat? No laws setting out deplat criteria
- E. Prevent current platting/commitment of environmentally sensitive lands?
- F. New LGCP - set density and provide for future growth
- G. F. S. 163.280 repealed - No local government initiated deplats now
- H. No local government or quasi-public agency with authority to purchase and dispose of platted lots
- I. No enabling legislation for TDRs and/or model ordinances
- J. No legislation or ordinance requiring vacation of old plat when lots reassembled for sale in larger parcels
- K. No laws requiring landowners to comply with local codes
- L. No enabling legislation to give local governments authority to address platted lands issues
- M. Definition of "subdivide" and minimum criteria for compliance too weak or uncertain
- N. No laws re: contract for deed sales which
  - 1. require recording
  - 2. require platting and subdivision approval
  - 3. designate responsible party in interest for deplat/replat
- O. Plat laws - F.S. 177 - No guidelines on when and how to plat

P. No definition of "Antiquated" subdivisions  
or minimum criteria

## F. Regulation Enforcement

1. too much vacillation by state agencies in enforcing legislation
2. Permitting of septic tank use by HRS (Orlando)
  - HRS regulations allows buildup of property to install septic tank if property too low but this causes drainage and runoff problems to adjoining properties

## SOLUTIONS

### I. Legislative

- A. Septic tank permitting requirements - minimum criteria should be stricter because of the high water table in Florida and the possibility of endangering our groundwater supplies
- B. Minimum criteria for recordings - Clerk of Court office
  1. deed must have copy of plat or survey attached and minimum standards on clauses re: lack of infrastructure
  2. old plats must have survey information attached
  3. require Clerk to notify planning department of all metes and bounds sales (lot splits)
  4. require recording of all contract for deed sales
- C. Enabling legislation giving local governments the authority to handle platted lands problems
  1. threshold requirements including definition of "antiquated"
  2. guidelines for proceeding
  3. appeal process to state
- D. Need:
  1. definition of "Legal Access"
  2. definition and minimum criteria of "Vested Rights"
  3. definition and minimum criteria of "Subdividing"
  4. legislation requiring registration of all sales of non-contiguous lots in large land sales and registrations of lot sales in any subdivision of less than 49 lots
  5. legislation for moratorium-type ordinance to stop developer until services can be provided
- E. Ordinances which establish:
  1. the disclosure by all sales people of the lack of services and infrastructure problems to prospective buyers
  2. strong local subdivision ordinances
  3. a means to consolidate lots
  4. a means of public acquisition
  5. requiring access to side streets for highway fronted lots. (\* question - flexibility of ordinances)
  6. establish conservation designation - allowing only partial development of subdivisions falling in wetlands.
  7. grandfather clauses for developable lots

### F. Review/Revise

1. statutory review requirements for permits - all pertinent state agencies
  2. land sales statutes (see E-4 above)
  3. subdivision regulations - platting - recording
  4. F.S. 177 to standardize and broaden vacation of plats and mandate platting
  5. eminent domain statutes
    - a. standardize procedures to avoid multiple processes at local level
  6. D.O.T. statutes, access provisions especially toward better planning and growth management goals
  7. give local governments authority to set stricter regulation of septic tank use or other regulatory permitting requirements and state to defer to them.
  8. F.S. 380.06 to allow local governments to negotiate acceptable changes to existing plats
  9. F.S.163.280 change constraints on public hearings and 10% sales to require 10% sales before public hearing date and notification to local government of sales.
  10. DRI legislation to give more flexibility and thresholds for BLIM & BLIVRS
- G. Land arbitration court - administrative
- H. Establish contract for deed sales regulations - requiring recording and proper platting.
- I. More cooperation and interaction between state and local governments:
1. for statutory review, proposed solutions and data gathering
  2. establish minimum state standards for building permits when antiquated plats involved
- J. Simplify Sales
1. simplify closings and documentation
  2. require full disclosure to buyers of condition of land; zoning; availability of infrastructure and services and responsibility of local government to provide them; and future growth plans
- K. Sunset provisions for undeveloped old plats
1. problems - force development as platted?
    - lots in multiple ownership?
    - constitutional?
    - definition of "undeveloped"?

## II. OTHER

- A. Educate local government officials and landowners to available alternative reassembly methods to achieve goals without infringing on others rights or dodging problems
1. ombudsman committee
  2. local programs
- B. Create special taxing district to help pay for platted lands costs

1. tax impact fee structure to provide capital improvements
  2. tax increment financing
  3. 1% sales tax to raise funds for acquisition
- C. Create market demand at buildout as inducement for proper development (problem - county views undeveloped lots as money machine which create revenue without need of services or facilities)
- D. Inducements
1. landowner - tax break - equity sharing in landowner association
  2. simplify replat process and permitting process
- E. Mandatory reassembly
1. merger of contiguous lots
- F. Access
1. driveway sharing, frontage roads, replatting
- G. Economics
1. government buy-out - prioritize by market/location/problem type/etc.
  2. see "B" above
  3. redesign old subdivisions to conform to current standards
  4. Refuse to issue building permits
- H. Governmental interaction
1. computerize/coordinate services between agencies
    - a. permitting
    - b. records keeping - centralized clearinghouse
    - c. hotline on - new regulations
      - personnel
      - unrecorded plat information (per county)
    - d. catalogue unrecorded plats
  2. give regional personnel authority to make binding decisions
  3. develop system to stop permitting, i.e. moratoriums, community development
  4. Participate in test cases resolving Platted lands problems
  5. address TDR mechanisms
- I. Comprehensive Plans
1. use to - identify plats
    - identify planning goals
    - identify development potential
    - educate community on growth objectives (Problem- needs detailed information and state encouragement and support)
  2. Amend requirements to include mandatory water hook-up (Problem - legality?)
- J. Analyze plats on individual basis for solutions

case they are needed later.

C. No information or regulation sharing between state agencies, state and local government and local government and developer/owner

D. Replat of existing plats

1. lots of paperwork
2. length of time processing paperwork
3. delay in platting and recording process
4. no coordination between agencies to streamline method governing revisions of old plats

E. "Developer City" (Palm Bay, Port St. Lucie, etc)

1. some old plats cannot be regulated by comprehensive plan or growth management
2. no legislation directed at developer cities
3. no funding to regulate growth
4. agreements between developer, HRS and health department allow septic tanks on smaller lots than regulations require
5. sprawl-type development leads to efficiency and service problems
6. need stricter ordinances requiring:
  - a. water hook-up

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