Platted Lands

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Florida
Legislative Committee on Intergovernmental Relations

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WHAT IS THE LCIR?

The Legislative Committee on Intergovernmental Relations is a legislative entity that facilitates the development of intergovernmental policies and practices. The Florida LCIR strives to improve coordination and cooperation among state agencies, local governments, and the federal government.

WHAT ISSUES HAVE BEEN ADDRESSED BY THE LCIR?

The LCIR completes several projects annually, including the Local Government Financial Information Handbook (prepared with the assistance of the Florida Department of Revenue, salaries of county constitutional officers and elected school district officials, and a report on state mandates affecting municipal and county governments. In addition, the LCIR has addressed the following issues:

- Municipal Incorporations and Annexation
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Executive Summary

The Legislative Committee on Intergovernmental Relations (LCIR) determined to conduct an interim project to address various issues arising out of antiquated subdivisions.

Florida's ever increasing population places constant demands on the state's limited land areas to accommodate such growth. For a variety of reasons, certain tracts of land known as platted lands, cannot be developed or put to other uses. Platted lands (also referred to as antiquated subdivisions) refer to those areas which, although platted, recorded and sold, are not suitable for development or other appropriate use due to non-compliance with applicable land use regulations or other factors such as environmental issues. Many of the subdivisions are removed from the pool of land available for development or other appropriate use. The majority of the areas affected by platted lands sites are located in the southwest quadrant of the state, However, other parts of the state are experiencing platted lands problems in varying degrees.

Background Starting in the 1920's, and carrying through the 1970's, enterprising businessmen sold land in Florida to people around the globe. While many sales were legitimate, some sales strategies called for twenty-three lots to an acre or sold land described as "waterfront" that was miles and miles away from any coast. In other areas, only paper plats were sold, and were never recorded and never experienced any development. Large-scale marketing land sale ventures were conducted by companies that owned enormous tracts of land. With only a dip in action during the Depression, rapid land sales transactions were completed with little or no governmental regulation.

A mix of factors to include lack of governmental regulation of land sales, poor planning by some land sale companies and lack of research by prospective buyers contributed to the creation of millions of acres that now stagnate as undevelopable or useable. It is estimated that Florida has more than 2,600 antiquated subdivisions, covering over 2.1 million lots.

In the 1980s, as the state and local governments became more involved in land use regulations, the problems caused by antiquated subdivisions became more apparent. Developers, private lot owners, and service providers also became aware of the obstacles caused by antiquated subdivisions as their own plans were stymied.

The Platted Lands Problem Although what constitutes optimal neighborhood design is constantly being reevaluated by planners, architects and residents, there appears to be consensus that antiquated subdivisions do not carry traits that are conducive to providing a high quality of life.

Platted lands are often characterized by one or more of the following traits: fiscally unsound, or lack of, service delivery; housing developments with no lands set aside for parks, schools or commercial sites; lack of cohesive character in an area with no ability to ensure sound planning; lack of

environmental sensitivity; inadequate planning for emergency management and evacuation, and; serious infrastructure deficits, such as water and wastewater systems.

Historical Initiatives A significant amount of scholarly literature on platted lands was published in the 1970s and 1980s. The last few years have witnessed some renewed interest in those areas where orderly growth is a priority and population continues to increase.

One of the difficulties in addressing the platted lands situation is that no vacant lot inventory exists. No single repository of data exists that contains specific information identifying lots as being located in an antiquated subdivision.

In 1985, the Florida Legislature directed the Florida Department of Community Affairs (DCA) to address the issue in a comprehensive manner and offer legislative solutions. DCA issued a report in the summer of 1986 which addressed platted lands on a statewide basis and included proposed legislation. The draft legislation proposed amendments to several state laws. To date, none of these specific proposals have been adopted. DCA also funded a study that focused on Monroe County and its unique platted lands problems. Alternatives for dealing with platted lands were included in that study, although specific legislative language was not.

More studies followed, including a report issued in 1997 by the Southwest Florida Regional Planning Council (SWFRPC), incorporating and updating the draft legislation in the DCA 1986 report. In 2001, the SWFRPC revised the proposed legislation by adding more specificity.

LCIR Survey The LCIR sent to each county planning department and Regional Planning Council (RPC) a survey to gather information on the number of platted lots in the state, lot ownership, and tax implications. The survey sought local governments' solutions to the problems, and a list of tools that local governments thought would assist them in resolving platted lands problems.

The response rate was not optimal. Of the twenty-seven respondents, twelve reported few or no problems with antiquated subdivisions. Several counties advised the LCIR of relevant efforts being made at the local level, such as adoption of ordinances, future land use policies, rezoning, and securing buyout dollars from the state or the federal government. One county observed that "the issue of developing antiquated plats must be addressed on an individual county basis rather than on the state level due to the amount of zoning and regulatory differences that exist among various counties and the amount of research that is necessary to develop a truly useful legislative solution". Some counties suggested that the state should fund more land purchases.

The survey sought to put a dollar figure on the ad valorem taxes brought in by these lots that remain undevelopable. However, there was no county planning department that could answer these questions with specificity. A few indicated that with extensive research, or by trying to get the information from the

Tax Appraiser's Office, some of the data might be gathered. Putnam County was able to report that about $3 million of its ad valorem revenue, or 5 to 7 percent of its total ad valorem revenue, comes from platted lands. It also estimated that somewhere around 8 to 9 percent of the lot owners in antiquated subdivisions are delinquent on the ad valorem taxes.

Platted Lands Hotspots The areas reporting platted lands problems were varied in size, population and urban versus rural makeup, but many complained of similar problems. Putnam County reported that antiquated subdivisions account for the "biggest problem as it relates to land use". County staff indicated that its subdivisions suffer the same problems as many others throughout the state: they are located in or near environmentally sensitive areas (wetlands, floodplains, high aquifer recharge, critical wildlife habitat); small lot size, and lack of infrastructure, drainage and water systems.

Additionally, Putnam County, a small, mostly rural county, reported that due to the homestead exemption, one-third of residential property owners do not pay any ad valorem taxes. Of that population, most of them reside in homes located within antiquated subdivisions. County staff also estimates that about 8 to 9 percent of the vacant lot owners who should pay property taxes fail to do so. Further, in those subdivisions located within an MSBU or MSTU, there is an even higher rate of non-payment of property taxes. This analysis by county staff may suggest the inaccuracy of the view held by some that the counties in which undeveloped subdivision are located are reaping in property taxes with little expense on the county's part.

Some counties have met significant success in addressing their platted lands issues through state land acquisition programs such as Preservation 2000 and the Florida Forever Act. Only one county, Brevard, reported working cooperatively with a municipality to address some of its land use problems.

Marion County is home to one of the antiquated subdivisions that has garnered considerable attention in the past. This subdivision, Ocala Springs, has a complicated history. The tract is somewhere between 4,600 and 4,700 acres in size, and is owned by a single large development company. In the mid-1980's, the owner, its planning firm, county regulatory staff, and the DCA were involved in discussions concerning this parcel on a couple of fronts, including its environmental importance (the development is located in an area of high recharge for the Florida Aquifer) as well as some technical concerns regarding the legal status of the property. Although it appeared the issues had been resolved through an exemplary, collaborative process, the project was shelved more than a decade ago, with little action since.

Monroe County has sought to deal with antiquated subdivisions, as well as other land use issues, by limiting and directing growth patterns through adoption of its Rate of Growth Patterns plan. There is pending litigation involving its interpretation of the county's Improved Subdivision Zoning Designation and its effect on vested property rights. The outcome of this litigation will be closely

watched by parties interested in platted subdivisions and land use in general.

Port Charlotte is an unincorporated community located in Charlotte County. This area provides a vivid example of the day to day impact that antiquated subdivisions have on a community. The corporation that owned huge expanses of land in this area went bankrupt in the 1980s. This left the county responsible for maintenance of almost 200 miles of roads in the failed subdivision. The subdivision still has little development.

Despite the scarcity of houses in the subdivision, garbage collectors have to make their rounds. The sanitation company reports that one truck can usually provide trash service for 1,200 homes in a single day. Yet, because a garbage hauler in Port Charlotte has to travel so many blocks between houses, only about 300 houses are serviced. The inefficiencies of this system, and the high cost of providing service to these homes, result in other property owners essentially subsidizing service delivery in the platted subdivisions.

Lehigh Acres in Lee County followed the path to development similar to other antiquated subdivisions. In the mid-1950s, Lehigh Acres was platted and small, single family lots were sold to buyers around the globe. Cheap land was the primary selling point. The development was located in an isolated area, far from infrastructure and services. There are reportedly close to 135,000 lots in the area. As of 1997, slightly over 121,000 lots were still undeveloped. At the time the area was platted and marketed, no thought was given to infrastructure deficits or commercial and public space needs. This shortsightedness has resulted in current homeowners using private wells and septic tanks and traveling substantial distances for shopping and employment.

Despite Lehigh Acres' current condition, efforts have been ongoing to improve its livability, including the establishment of a Community Redevelopment Agency (CRA). The Lehigh Acres Community Redevelopment Planning Committee of the CRA hired a vendor who produced the Lehigh Acres Commercial Land Use Study, designed to improve the quality of the subdivision. There appeared to be support for the proposals offered in the study, but they, too, never came to fruition.

The Golden Gate Area is located in Collier County; it is not incorporated. There are so many lots in Golden Gate, that should the area ever experience rapid development, the need for services and infrastructure could be significant. Based on methodology used by the Charlotte County Planning Department in 1995 as part of its Evaluation and Appraisal Report, Collier County presented the following projections regarding infrastructure needs for the Golden Gate Area. Staff used an average household size for Collier County of 2.49 persons and applied that to the 23,966 lots in the area. Staff then projected a buildout population of 59,675 people with the following projected needs.

- 10,640,830 gallons of potable water per day
- 6,959,678 gallons of wastewater treated per day
- 74 acres of community parks
- 169 acres of regional parks

- $10,295,722 for recreational facilities
- 18,981 square feet of library space with 77,649 volumes
- 138 jail beds plus 50 staff
- 7 new schools for K-12 public education
- 148,397 square feet of government office space

The scenarios described above by local governments reflect genuine dilemmas for cities and counties, developers, and private property owners alike.

Property Rights No discussion of possible strategies for dealing with antiquated subdivisions available to local governments should begin without recognition of the strong public sentiment in support of private property rights. Yet, in the context of antiquated subdivisions, private lot owners' concerns about losing their property values may be unfounded, because unless such an alternative path is taken, the lot owner is forever precluded from *any* use of their property.

The Florida Constitution provides that "No private property shall be taken except for a public purpose and with full compensation therefore paid to each owner or secured by deposit in the registry of the court and available to the owner." In other words, the government can force a private property owner to accept payment for the landowner's property, if the government needs that land for a public purpose. The government's authority to exercise its eminent domain powers is also found in statute.

In 1995, the Florida Legislature enacted the Bert J. Harris, Jr., Private Property Rights Protection Act (Harris Act). The Harris Act provides judicial relief and compensation to private landowners who can show they suffered an "inordinate burden" on their property as a result of government action. This statute was the culmination of many years of debate and serious efforts to amend the state constitution to provide more specific protections for private property owners. The effects of the Act's passage remain the topic of discussion and analysis.

Techniques Available for Addressing Platted Subdivision Problems Several methods are available for use by local governments and other stakeholders to turn platted lands into vibrant communities or conserved land. They all require certain conditions to be present, superior planning, and political resolve.

The problem of platted lands is compounded because in so many instances, the entity wishing to develop or conserve the land cannot locate the lot owner. The ownership status of the millions of lots throughout the state has a significant impact on whether a particular approach can be used to deal with the particular parcel of land.

1. Lot merger Lot merger occurs when the local government's Comprehensive Plan requires lots to be combined in order to meet minimum lot size requirements. Problems can arise if the owner of the lot to be built on is surrounded by lots that the owner cannot acquire. In this situation, the local government can allow for a variance, if appropriate.

2. Plat vacation Plat vacation, where the plat lines are removed and redrawn, is most commonly used when one

landowner owns or acquires multiple lots. Plat vacation also only resolves the initial piece of the problem – once the plats are vacated, the community still needs an entity with a plan and funding to develop the property. If no development has occurred for a certain amount of time, the landowner can request that the antiquated plat be vacated and a new plat is recorded. The government will generally allow such plat vacation provided no injury occurs to any other party who owns land in the subdivision.

Earlier Florida law allowed a local government to initiate plat vacation on its own motion, provided certain conditions were met. These provisions were repealed in 1985. Despite repeal of the state law on plat vacation, local governments are authorized to adopt ordinances through which plat vacation can occur on the local government's initiative.

3. Acquisition Lands can be acquired through outright purchase, voluntary land submissions or by delinquent tax deeds. Regardless of the acquisition technique used, the local government can benefit by increasing its store of lots and then using those lots either to benefit the community (for a park, for example) or as trading chips to move development into a designated area. The lots would be part of any transfer of development rights program the local government might establish.

4. Impact fees In limited circumstances, the local government could impose impact fees on the development. This works best when lot ownership rests in one entity's hands, and there is a willing and able developer who believes that even if required to pay impact fees, the enterprise will be profitable. This approach has its limitations, however, as impact fees cannot be required retroactively on a parcel.

5. Transfer of development rights The theory behind a Transfer of Development Rights (TDR) program is that it allows a landowner, usually through a governmental program, to transfer rights he or she has from one parcel to another parcel. In this way, the government identifies the area which it does not want to see developed, and targets other areas for development. The parcel which is to be preserved is the "sending" parcel. The parcel to which development rights are transferred is the "receiving" parcel. The transfer of rights from one lot to another can be noted in the form of a zoning certificate, notations on the subdivision plate, or some other written means.

This technique will be of limited value where the lot owners do not have at least one lot in each zone. Local governments may also need technical and financial assistance in developing appraisal techniques and incentive based strategies with specific goals, such as natural resources protection. It is used with some frequency in western states.

6. Incorporation Some communities have incorporated, or sought to incorporate, in order to implement their own comprehensive plan, rather than the county's plan. However, in order to incorporate, certain standards and conditions must be met as required under Chapter 165, Florida Statutes. Not all platted subdivisions can avail themselves of this tool. Even areas that have

incorporated continue to experience land use problems.

7. Consolidation or readjustment Land consolidation or readjustment occurs when an area is targeted for reassembly and the majority of owners are persuaded to support the readjustment of the property in a way that will give value to their investment, rather than remove it. The property owners are authorized to create a common enterprise such as a joint venture partnership or a corporation. Local government can also be involved. Dissenting land owners can opt out and be bought out.

Those who pool their lots basically place their ownership in a unified interest, out of which they anticipate receiving a proportional share of the profit. The property is considered as a whole, rather than as a collection of individually owned lots. The whole is then deplatted and replatted into a viable development, with each original owner retaining shares in the development in proportion to their original contribution of land. The replatted land is developed, and the individual owners can either receive a share of the enterprise, or they can sell their share.

8. Community redevelopment agencies The Community Redevelopment Act of 1969 could conceivably be used as a vehicle for development of the antiquated subdivisions. Under Florida law, a city or county can, after making a finding of necessity, create a Community Redevelopment Agency (CRA). The CRA has various enumerated powers with regard to the subject area. The primary purposes of the Act are to rehabilitate, clear and redevelop slum and blighted areas.

It is unknown whether an antiquated subdivision could fall under the "blight" definition without further amendments to the statute. Advocates for wider application of the statute argue that it is advisable to take a pro-active approach and create a CRA to improve the conditions of an antiquated subdivision *before* the area deteriorates into blighted or slum conditions. Local governments may be amenable to revisiting the parameters of the statute, provided any new use is narrowly defined to address platted lands.

Platted Lands Problems Outside of Florida Research for this project indicates that antiquated subdivisions also are problematic in other states and nations.

Not surprisingly, California experienced land marketing and sales schemes similar Florida's. However, California's land laws developed differently than those of Florida, and therefore that state has its own framework of laws within which it must operate.

California employs several techniques to contend with platted lands. Most prominently, the state has a significant TDR program, as well as a very active conservancy trust, through which many properties have been purchased. The California Coastal Conservancy (CCC) is a state agency that partners with local governments, other public agencies, nonprofit organizations, and private entities in performance of its duties. As part of its activities, the CCC states that it has "retired more than 600 inappropriately planned subdivisions."

Local governments in California also utilize the state's "reversion to acreage" act which authorizes local government to initiate plat vacation once a series of required findings have been made.

Some of the techniques described earlier are being experimented with in New Mexico. For example, in a development called Rio Rancho, there are efforts to have the city of Albuquerque declare the area "blighted" and create a CRA (authorized under statute) to redevelop the area. The city can use its eminent domain powers to buy out any lot holders unwilling to sell their property. Local governments and private developers are also attempting to utilize land reassembly strategies in some areas of the state.

Other countries' have also actively sought to modernize antiquated subdivisions to conform to current housing, industrial, economic and agricultural conditions and needs. Japan, Germany, Australia, South Korea and Taiwan all use different variations of land readjustment.

Conclusions and Proposals

By inhibiting the development or other appropriate use of properties, antiquated subdivisions serve as a barrier to sound land use and economic vitality. The phenomenon of antiquated subdivisions is a circular one. They exist in large part due to persuasive marketing strategies of the past, and yet their evolution into lands with more viable uses depends largely on modern marketing strategies. In order for any project to be successful, local governments, private developments, or hybrid entities must take into consideration that they may need to dispel fears some property owners may have that their property is being "taken" from them rather than being turned into a valuable commodity.

While property rights concerns may have a chilling effect on government action, in the context of antiquated subdivisions, there is generally not much the property owner can do with the land without government intervention. Problems associated with antiquated subdivisions cannot be resolved unless all stakeholders work collaboratively, creatively and tailor their techniques to the nuances of the subdivision, while remaining consistent with the community vision.

Lot owners, developers and regulators, by working together, may achieve the highest likelihood of dealing successfully with the local platted lands dilemma. Government officials and policymakers may want to concentrate on establishing incentives that would make it attractive to the private sector to invest in developing the lands. The private sector may wish to focus on providing development projects designed to be well received by the public and government sector. Finally, by being receptive to non-traditional approaches, private landowners may find themselves participating in projects that transform their valueless lots into valuable commodities.

Conclusions Based on research during the course of this project, the following conclusions are made:

(1) The lack of reliable information regarding the fiscal and development related impact of antiquated subdivisions on local communities is significant. Currently, there is no obligation or

incentive for a local government to thoroughly assess the size, tax implications, or future plan for an antiquated subdivision within its jurisdiction. It would be helpful if local governments were required, as part of the comprehensive plan amendment process, to identify antiquated subdivisions and set out any goals, policies and objectives regarding these parcels.

(2) Creative strategies must be implemented at the local level. Each local government has its own platted lands situation. Each community also has its own local ordinances under which growth management is regulated. It would be inappropriate for the state to attempt to formulate a "one size fits all" solution for this particular set of issues.

(3) Among the local governments that responded to the LCIR survey, the primary state action requested was for land acquisition funding. It is unlikely, given the state's current fiscal situation, that state funds will be available for land acquisition. However, the state can assist local governments' efforts to deal with platted lands by providing them other techniques.

(4) The state has an interest in assisting local governments to promote vibrant, fiscally sound communities, which will in turn contribute to the state's vitality.

Proposals Those local governments experiencing problems with antiquated subdivisions are not completely without techniques available to resolve their issues. However, the state has a role and interest in the state's orderly growth and preservation, and can assist local governments in their efforts by modifying existing statutes. As well, the state should continue to explore and consider whether other statutory changes would be useful. Accordingly, the following legislative proposals are offered for consideration to provide property owners and local governments with additional tools to address challenges posed by antiquated subdivisions.

First, local governments already are familiar with the requirements of comprehensive plan amendments. In order to validate any need to deal with an antiquated subdivision within its jurisdiction, through creation of a CRA or the use of any other technique, amend s. 163.3177, F.S., to require local governments to identify in their future land use plans any area where the local government seeks to consolidate undeveloped platted or subdivided lots and the vacation of all or a portion of these lots to allow appropriate development or other use.

Second, amend statutes to clarify that the exercise of eminent domain powers for platted lands development or conservation constitutes a public purpose. Specifically: 1) amend s. 125.01, F.S., to recognize that actions taken by the county government pertinent to antiquated subdivisions constitute a county purpose; and 2) amend s. 166.411, F.S., to enumerate a municipality's authority to exercise its eminent domain powers for certain actions relevant to platted lands.

Third, amend the existing CRA statute to specify that under certain circumstances, antiquated subdivisions can be considered "blight". The definition of blight under s. 163.340, F.S., can be

altered, but narrowly so, to allow CRAs to be established to prevent further decline of an area whose orderly development or economic viability are hampered by platted subdivisions issues.

Finally, state policy makers may wish to evaluate whether Florida statutes should be amended to address recordation and administrative issues relevant to antiquated lands, as well as to reinstate local governments' authority to vacate plats on their own motion, previously provided under Ch. 177, F.S.

Without action, Florida's land use problems may increase significantly as areas plagued with antiquated subdivisions continue to deteriorate, economically and environmentally.

INTRODUCTION

Florida's ever increasing population places constant demands on the state's limited land areas to accommodate such growth. For a variety of reasons, certain tracts of land known as platted lands, cannot be developed or put to other uses. This inability to efficiently use land otherwise available continues to challenge local governments, developers and private property owners in some of Florida's counties. Platted lands refer to those areas which, although platted, recorded and sold, are not suitable for development or other appropriate use due to non-compliance with applicable land use regulations or other factors such as environmental concerns.[1]

Over the last two decades, local governments, private property owners and developers have sought through various means to direct attention to the problems posed by platted lands. As time passes and the affected lands remain stagnant, additional stresses are placed on surrounding lands, as the only alternative areas available for development or other use. The Legislative Committee on Intergovernmental Relations (LCIR) determined to conduct an interim project to address various issues arising out of platted or antiquated subdivisions.

The purposes of this project are to: describe the problem, past and present; determine how local governments are addressing platted lands; examine what other jurisdictions are doing, and; offer recommendations on what action, if any, is appropriate by the state and other entities. This report offers several options that policy makers may choose to implement in order to respond to the state's growth in population and land use needs.

Research efforts in the course of this project included, but were not limited to, issuing surveys to county planning offices and regional planning councils, reviewing prior research, drawing on academic literature, evaluating information from public and private sources, and obtaining information from local and state agencies.

This report is divided into six chapters. Chapter One provides a description of characteristics inherent in antiquated subdivisions, and explains why these characteristics pose challenges for orderly growth and land use.

Chapter Two highlights various studies or initiatives that were performed regarding platted lands. The discussion then moves to a description of the survey instrument used by the LCIR to solicit input from counties and regional planning councils on the topic.

Chapter Three offers an analysis of several areas throughout the state that have identified themselves as having platted lands problems. Local efforts by these communities to deal with the problems is also addressed.

Chapter Four outlines the various options that the state, local governments, developers and individual lot owners can take advantage of to grapple with platted lands. In light of

[1] Throughout this report, "antiquated subdivisions," "obsolete subdivisions," and "platted lands or subdivisions" will be used interchangeably.

Florida's strong public policy regarding private property rights, trends in this area are also provided.

In Chapter Five, platted lands scenarios from other states and countries, including Japan, Germany, Korea and Australia, are presented. Initiatives by these jurisdictions to deal with platted lands, whether successful or otherwise, are also discussed.

The report concludes in Chapter Six with recommended proposals for policy makers and other stakeholders who are interested in resolving platted lands issues to consider in formulating plans for the affected areas.

CHAPTER ONE:
Description of Platted Lands

> *"Antiquated subdivisions, defined as prematurely subdivided lands whose lot sizes or potential development no longer meet current zoning or subdivision standards in their jurisdiction."*[2]

For generations, Florida's natural beauty, warm climate, top beaches,[3] and lack of state income tax,[4] have attracted retirees and newcomers alike. With 65,754 square miles of area, 11,827 square miles of that being water area, Florida has the longest coast line of any state other than Alaska. The rate at which Florida's population has grown over the last half century has been significant. In 1920, Florida had about 970,000 residents. By 1960, that figure rose to almost 5,000,000. Another forty years later, the state's population had swelled to just under 16,000,000. Between 1990 and 2000, Florida experienced the seventh highest percentage increase in population among the states.[5]

Starting in the 1920's, enterprising businessmen, including Charles Ponzi,[6] sold land in Florida to people around the globe. Some sales strategies called for twenty-three lots to an acre or sold land described as "waterfront" that was miles and miles away from any coast. Some of the areas were paper plats only, which were never recorded and never experienced any development.[7]

After a decrease in land sale activity following the Depression, land sales picked up again after World War II and continued enthusiastically through the 1950's. Significant marketing land sale ventures were conducted by companies that owned enormous tracts of land. These marketers lured hundreds of thousands of people to purchase lots by offering small lots for little or no money down, and allowing lots to be purchased through installment plans. Lots were often offered for $10 down with $10 a month payments for a period of ten years.[8] In some cases, lots were sold via a "contract for deed", where the purchaser would not actually have a legal interest in the property until the property was paid for in full. In some instances, well known media figures acted as spokesmen for land companies, making sales pitches for real estate in Florida.[9]

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[2] Jim Schwab, "Zoning News," American Planning Association. May 1997, p.1.
[3] Three of the nation's ten best beaches for 2002 listed by Dr. Stephen P. Leatherman's (also known as "Dr. Beach") are located in Florida. *See* www.topbeaches.com .
[4] Florida is one of seven states that does not have a state income tax. *See* Art. VII, Section 5(a), Florida Constitution.
[5] "Population Change and Distribution: 1990 to 2000." Census 2000 Brief. U.S. Census Bureau, April 2001, p. 2.
[6] Charles Ponzi's unscrupulous dealings have the honor of being the source of the phrase "Ponzi scheme" which refers to "an investment, swindle, with high returns, which are supposedly profits, are made to early investors using funds from later investors." *See* www.encarta.msn.com
[7] "The Platted Lands Challenge: A Report to the Southwest Issues Group of the Sustainable South Florida Commission." Southwest Florida Regional Planning Council, September 10, 1997, p. 3.
[8] Lewis Goodkin, "Florida's Sordid Land Legacy," *Florida Trend*, September, 1996 at p. 33.
[9] *Id.* Reportedly, John Cameron Swayze, Frank Blair and Jack Paar were spokesmen.

From the 1950s through the early 1980s, rapid land sales transactions were completed with little or no governmental regulation. Lots were sold and no concern was given to orderly or sensible growth and development. Profits made by land developers were plowed back into more marketing, rather than actual planning and development costs. Although at the height of the land sale frenzy, there were hundreds of entities selling property, a few major land sale companies withstood economic downturns and regulatory troubles. Some continue to operate today, although under different ownership.

Generally, these large land sale companies bought land, then platted, marketed and sold off lots. In the 1950s through the 1970s, platting and recording subdivisions was a mere formality. This time period predated any state or local government involvement in enacting and enforcing comprehensive land use regulations. A mix of lack of governmental involvement in land sales, poor planning by big land sale companies and lack of research by prospective buyers contributed to the creation of millions of acres that now stagnate as undevelopable or useable.

Through these massive and sophisticated but largely unregulated sales efforts, millions of lots were sold to buyers spread throughout the country, and in fact, around the world. It is estimated that Florida has more than 2,600 antiquated subdivisions, covering over 2.1 million lots.[10] Some of these subdivisions are "paper" subdivisions. In other words, the parcels and the layout in the subdivision have not been designed at all, and are subdivisions in name only.

In the 1980s, as the state and local governments became more involved in land use regulations, the problems caused by platted antiquated subdivisions became more apparent. Developers, private lot owners, and service providers also became aware of the obstacles caused by antiquated subdivisions as their own plans were stymied.

Much of the funds generated by land sales was returned to the developments' marketing budgets, rather than being spent on infrastructure and amenities. The marketing ploys over the years offered deals "too good to be true."

A. PROBLEMS ASSOCIATED WITH PLATTED LANDS

Conventional wisdom on what constitutes optimal neighborhood design is constantly being reevaluated by planners, architects and residents, but there appears to be consensus that these old platted subdivisions do not carry traits that are conducive to providing a high quality of life. Platted lands may have one or more of the characteristics listed below, each of which may degrade or inhibit the use of the property. In Chapter Three, specific problems cited by communities throughout the state are presented.

1. Single Use Structure

Many of the large scale developments were originally platted for single family home use. Little thought was given to the need for commercial space, school sites, parks or other public facilities. The tendency to plan development with only a single use in mind,

[10] Victor Hull, "Plats Pave Way for Problems," *Sarasota Herald-Tribune*, July 7, 1996.

single family homes, could frequently lead to large isolated developments. If a development comprising thousands of acres has only single family houses, with no infrastructure nearby or as part of the community, there can be aggravating problems, such as increased commute time to and from job sites and shopping, attendant air pollution from a rise in the number of cars on the road, the need to bus children to schools out of the neighborhood and so on.

2. Environmental Issues

An oft-cited problem of platted subdivisions is that they were platted on environmentally sensitive lands. Several subdivisions lay on wetlands, in floodplains, atop critical aquifers, or in areas in which important flora or fauna is found. Twenty-five or thirty years ago, building on floodplains or wetlands was not considered ill-advised or illegal. Further, habitat protection did not receive much regulatory attention until the 1970s and 1980s.

3. Abandoned Developments

Some antiquated subdivisions remain in limbo to this day because the original developer who sold the lots went bankrupt, leaving the development tied up in litigation. Alternatively, the subdivision may have been abandoned, leaving the county to figure out what to do with it. The success of large land developers rose and fell and sometimes rose again under a successor entity. Successor companies, however, did not always follow through with the original plans for the subdivisions, leaving lot owners uncertain of what lay in store for them.

4. Water Supply and Wastewater

The rush to sell small lots sometimes overrode any thought given to how the homeowners would get water or rid their homes of waste. A significant number of lots in platted subdivisions cannot be made accessible to supporting infrastructure such as water supplies or centralized wastewater treatment systems due to their location or environmental concerns. Even those lot owners whose homes could be served by some type of water and wastewater systems, sometimes would find such hook ups to be cost prohibitive.

Many local governments are now aware of the environmental problems septic tanks can cause, and will not allow thousands more of them into their already troubled communities. However, generally it is not cost effective for a central utility to provide service to an area that is (usually) far from any urban core, and has disjointed and disorderly development. The lot owners are caught in a bind of how to secure services.

5. Transportation and Roads

Another infrastructure related problem posed by antiquated subdivisions involves transportation. Many communities complain of poor access to these subdivisions, which were not part of any comprehensive or planned road system. Providing public transportation to these isolated areas is very costly, as is trying to adapt road planning to take into consideration these isolated and convoluted subdivisions.

Many of the communities contain roads in substandard conditions. When roads are not used regularly, they are more prone to buckling. Furthermore, the lack of weight on the roads can make them brittle. If the roads crack, rain can seep in, further deteriorating the road. Maintenance can become more difficult and costly. Roads that receive little use add to local governments' already stretched fiscal resources.

Rights of way and easements for roadside maintenance were not routinely secured in some of the older platted subdivisions, as they are now in modern developments. Drainage issues were not considered either. When added to the fact that many of these lots are located in floodplains or wetlands, drainage problems are further exacerbated.

6. Service Delivery

A troubled road network, with houses spaced sporadically, in an obscure part of the county are all conditions conducive to poor service delivery. The expense of providing service, such as garbage pick-up, to these areas can be prohibitive. Garbage haulers may spend an entire day servicing an area platted for thousands of homes, that only has a dozen houses actually built. School bus service suffers, as well. Road conditions in platted subdivisions are often poor, houses are placed sporadically, and few school children reside in these neighborhoods. The local government must provide public transportation to and from school for children attending public schools, regardless of the cost to the government. The cost of providing such services in antiquated subdivisions is disproportionate to the number of persons served.

7. Public Safety and Emergency Management

Poor roads and distance from any urban core are characteristics of antiquated subdivisions that cause serious public safety concerns. Local governments that provide police and fire protection are at a disadvantage when an emergency call requires a trip to an isolated location. When police and fire service must be provided to a community of fifty that is many miles from any other development, the commitment of time necessary to travel diverts safety officers from more densely populated locales with more needs. In central Florida, firefighters have found themselves unable to respond to brush fires, due to the amount of time they must spend in responding to house calls in isolated areas.[11]

8. Rate of Build Out

The "build out rate" refers to the speed at which development is accomplished. In a well planned community, build out will be done in phases, so that the attendant population increases can be handled by existing or funded infrastructure. Because platted subdivisions generally envision large numbers of single family home owners moving in simultaneously, local governments frequently have not been able to provide the infrastructure necessary to keep pace with the population's needs.

9. Non-compliance with Growth Management Laws

Much of the development initially envisioned or marketed for platted subdivisions is not allowed under current growth management laws. Further, it is not viable for some of the subdivisions to attempt to be brought into compliance. Wetlands cannot be built on, and

[11] Hull, "Plats Pave Way for Problems."

concurrency requirements are grounded in law. Not only are there state laws and regulations to contend with, but more and more counties and municipalities are taking an active role in trying to control their destiny as it relates to growth and development. Compliance with land use codes, future land use maps and other ordinances cannot be accomplished by many of the subdivisions unless radical departures from their original plans are taken.

B. SUMMARY

Poorly planned antiquated subdivisions result in counties collecting property taxes with no real ability or strategy for providing services These areas generally do not lend themselves to development because there are no lands set aside for parks, schools or commercial sites. The lack of cohesive character in an area with no ability to ensure sound planning, and serious infrastructure deficits contribute to the unintended result of these areas stagnating. Individual lot owners have watched their investments drop in value, all the while they must continue to pay taxes on the lots. With little or no hope of ever getting to enjoy the use of their lot, some owners have chosen to let the lots escheat to the county. The county is then left holding the lot, without the benefit of collecting ad valorem taxes from the owner. With this scenario, it is understandable that local governments find the task of overcoming the obstacles to development or other use to be so daunting, that attempts at problem solving are sometimes abandoned.

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CHAPTER TWO:
Historical Initiatives Preceding the Legislative Committee on Intergovernmental Relations Survey

Issues raised by the existence of platted lands are not new to Florida, nor other states. A significant amount of scholarly literature has been published on the topic, including several assessments of the scope of the problem. Much of the material was published in the 1970s and 1980s. The last few years have witnessed some renewed interest in those areas where orderly growth is a priority and population continues to increase. It is not believed that any systematic data collection regarding the number of platted lots has been conducted in recent years. This section summarizes some earlier studies and the results of a LCIR survey.

A. EARLIER STUDIES

One of the difficulties in addressing the platted lands situation is that no vacant lot inventory exists at this juncture. No single repository of data exists that contains specific information identifying lots as being located in an antiquated subdivision. However, some information can be gathered from earlier studies and from those jurisdictions that responded to the LCIR's survey.

One of the most comprehensive analyses of platted subdivisions was published in 1976. *Promised Lands,*[12] a three volume tome, followed antiquated subdivisions from their original state through development. The entity through which this series was undertaken, INFORM, describes itself as "a nonprofit, tax exempt organization, established in 1973, which conducts research on the impact of American corporations on the environment, employees, and consumers."[13]

The first volume in the set focuses on subdivisions in deserts and mountains located in the nation's western and southwestern states. Volume 2 is devoted exclusively to subdivisions in Florida's wetlands. Volume 3 offers an analysis of federal and state regulation affecting subdivisions. *Promised Lands*, Volume 2, studied nine subdivisions that were developed between the 1950s through the 1970s.[14] The researchers for the project followed these subdivisions from their inception through completion. They then analyzed and rated the environmental and consumer impact of each of them.

In their study, the researchers found that "newer" was not necessarily better. Rather, the vision and financial health of the developer were relevant factors when assessing whether the researchers considered the projects to be "good," "fair," or "poor." The authors also opined that as regulatory activity regarding environmental sensitivity and consumer

[12] Allan, Leslie, Beryl Kuder and Sarah L. Oakes. *Promised Lands.* Vol. 2, *Subdivisions in Florida's Wetlands*. New York: Inform Inc. 1976.
[13] *Id.* at copyright page.
[14] The subdivisions studied were: Port Charlotte; Cape Coral; Marco Beach; Silver Springs Shores; Palm Coast; Citrus Springs and Pine Ridge; Poinciana, and; Port LaBelle. Some of these subdivisions remain problematic to this day.

awareness and protection increased, so did the subdivisions' scores. In sum, however, the subdivisions received more "poor" ratings than "good," and the quantity and complexity of problems identified in the study were considerable. At the conclusion of the study, the authors offer guidelines on how to improve consumer protections in areas such as sales methods, costs, refunds, exchanges and title protection. Guidelines for environmental concerns such as planning, water resources and land use are also included. It is important to note that this study was completed shortly before various state and federal consumer protection and environmental laws were enacted.[15]

A few jurisdictions in Florida focused attention on platted lands and have issued their own reports. For example, the Southwest Florida Regional Planning Council (SWFRPC)[16] has been studying platted lands for more than twenty years, and continues to seek solutions. As early as 1982, Charlotte, Lee and Sarasota counties were the focus of a study in which various legal issues were analyzed by experts in the field.[17] This study, "Implementing a Plan for Platted Lands: An Examination of Legal Issues Raised by Selected Public Responses to Problems Posed by Lot Sale Subdivisions in Charlotte, Lee and Sarasota Counties, Florida," offered myriad approaches to dealing with platted subdivisions. These solutions included rezoning, outright purchase, reassembly, restoration and government/developer negotiation. Another option, one that seems to be the most commonly embraced, was to do nothing and see what effect, if any, market forces would have on the lots.

Despite the efforts mentioned above, clearly the problems caused by antiquated subdivisions were not going away. In 1985, the Florida Legislature directed the Florida Department of Community Affairs to address the issue in a comprehensive manner:

> There is hereby appropriated from the General Revenue Fund of the state to the Department of Community Affairs the sum of $150,000 to be used for the study of undeveloped platted lands and antiquated subdivisions in the State of Florida. One hundred thousand dollars of the total amount shall be used to retain experts or consultants who shall prepare reports and suggest legislation on methods of deplatting antiquated subdivisions, on providing incentives for voluntary reassembly or replatting platted or subdivided lands, and on maintaining a proper balance between private property rights and the state's interest in the regulation of antiquated subdivisions and promoting well-planned developments and appropriate land usage throughout the state.[18]

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[15] *See*, *i.e.,* "The Florida Environmental Land and Water Management Act of 1972." Ch. 380, F.S.

[16] The Southwest Florida Regional Planning Council consists of Charlotte, Lee, Sarasota, Hendry, Glades and Collier counties.

[17] *See* Frank Schnidman and R. Lisle Baker, "Implementing a Plan for Platted Lands: An Examination of Legal Issues Raised by Selected Public Responses to Problems Posed by Lot Sale Subdivisions in Charlotte, Lee and Sarasota Counties, Florida." August 27, 1982. This study was undertaken with financial assistance provided by the state and federal governments.

[18] Chapter 85-55, s. 50, L.O.F. (1985).

Out of this mandate came a report in the summer of 1986 which addressed platted lands on a statewide basis and included proposed legislation.[19] The draft legislation by the report's author proposed amendments to several state laws. The report recommended that sections found in Chapters 125, 163, 177 and 380 of the Florida Statutes dealing with land use issues be amended to give the state and local governments more authority to deal with platted lands issues. Amendments regarding recording of certain instruments were suggested, as were stricter land sales practices laws. To date, none of these specific proposals have been adopted.

Another study funded in 1986 by the Department of Community Affairs (DCA) focused exclusively on Monroe County and its unique platted lands problems.[20] The bulk of the lots in the Keys are individually owned, with owners living all over the world. This study had a unique feature in that lot-owners were surveyed to gain insight into their motivation for purchasing and holding onto their lots, as well as their plans for their property. Several viable alternatives for dealing with platted lands, preferably through a land conservancy structure, were offered. Specific legislative language was not included, however.

About ten years later, the DCA presented another initiative. Out of the Initial Report issued by the Governor's Commission for a Sustainable South Florida[21] in October 1995, the "Eastward Ho!" project was born. The focus of Eastward Ho! was the revitalization of southeast Florida's urban core. One of the many topics addressed by the group working on this project was land assembly issues. In the southeastern urban core, land assembly issues existed more in the context of moving development away from the environmentally sensitive areas around the Everglades, while also concentrating on urban infill and compact growth.

A comprehensive report was prepared, presenting historical information on platted lands and land reassembly, and also offering enabling legislation.[22] The proposed legislation created a land assembly association, made up of landowners, with enumerated powers. The land assembly association, essentially, would offer a private sector entity through which the landowners control their and their land's destiny. The goal of a land assembly project is for the land to evolve into a more appropriate use, which will result in a higher benefit to the landowners. This proposal was not pursued.

In 1997, the SWFRPC issued a report, incorporating and updating the draft legislation in the DCA 1986 report.[23] In 2001, the SWFRPC further amended the proposed legislation by adding a bit more specificity. To date, SWFRPC's attempts to file the proposed

[19] Diana M. Parker, "Evaluation of Issues Arising from Antiquated Platted Lands Workshops Held by Department of Community Affairs," August 28, 1986.
[20] "Platted Lands in the Florida Keys," Florida Atlantic University/Florida International University Joint Center for Environmental and Urban Problems, May 1986.
[21] The Commission was created under Executive Order of the Governor 94-54.
[22] Frank Schnidman, "Land Assembly: Background Information and Proposed Enabling Legislation," Prepared for *Eastward Ho! Revitalizing Southeast Florida's Urban Core,* May 1997.
[23] "The Platted Lands Challenge: A Report to the Southwest Issues Group of the Sustainable South Florida Commission," Southwest Florida Regional Planning Council, September 10, 1997.

language as a bill with the Legislature have not been successful. However, the city of Cape Coral has determined to pursue efforts to have the same language filed in a bill during the 2003 legislative session.

In 2000, the DCA inquired of local communities for comments on platted lands, as well as numerous other land use topics.[24] The following is a *verbatim* rendition of DCA's summary of written comments and proposals it received from interested groups and citizens in Florida regarding platted lands:

- Consider alternative approaches for local governments to the platted lands challenge. Options include: direct purchase of platted lots; direct acquisition of targeted lands within designated areas for acquisition; direct purchase with assistance from the state to leverage local funds; new land use or zoning categories that require minimum standards for development; establish
- Administrative deplatting processes; use graduated impact fees to encourage infill development; use open space impact fees; receive donated lands; and tax deed acquisitions.
- Evaluate the Harris Act to determine the extent to which land acquisition and assembly activities are subject to its provisions.
- Amend the state's condemnation laws to provide an exemption or relax appraisals practices.
- Include platted lands within the Forever Florida program.
- Florida's land acquisition program is the common ground between the environment and property rights. Rather than purchasing small parcels of environmentally sensitive land all over the state we should focus on Florida's most important ecosystems, and compensate landowners for their losses when these resources are protected.

None of these proposals have been filed as legislation. The content of the studies mentioned above will be more thoroughly presented throughout the body of this paper. The reports are highlighted, however, to bring to the fore a few points. First, platted lands have been analyzed for many years. The problem merited legislative attention in 1985, but no follow-up was performed, at least at the state level. Second, data is difficult to come by. Because some lots were sold several decades ago, it is difficult to ascertain lot ownership in many cases. Original purchasers, from out of state or even out of the country, may have passed away, with the owners' beneficiaries not even knowing they own land in Florida. It would take painstaking research by local authorities, and coordination among multiple departments, to determine precise lot-ownership, the economic impact of lots being held in limbo, or the dollar figure of taxes collected for each lot. Such a task would require considerable fiscal and human resources.

[24] Information retrieved at www.dca.state.fl.us/growth.pdf.summary.pdf , posted August 3, 2000.

B. LEGISLATIVE COMMITTEE ON INTERGOVERNMENTAL RELATIONS SURVEY

In an effort to fill in some of these gaps, the LCIR sent to each county planning department and Regional Planning Council (RPC) a survey. This survey was designed to gather information that would give a current snapshot of the number of platted lots in the state, lot ownership, tax implications, local governments' solutions to the problems, and a list of tools that local governments thought would assist them in resolving platted lands problems. The survey instrument is attached as Appendix A.

C. SURVEY RESPONSES

Of the sixty-seven counties surveyed, twenty-seven responded. Also, two counties informed LCIR staff that they did not have a person on staff in a position to respond to the survey.[25] Of the twenty-seven respondents, twelve reported few or no problems with antiquated subdivisions.[26] Those counties that indicated they were experiencing difficulties with antiquated subdivisions described varying scenarios and efforts in dealing with them.

Of the eleven RPCs surveyed, five responded. These respondents stated that either they were unaware of any significant problem posed by platted lands, or they felt they were not the appropriate body to answer the questions. LCIR staff already had substantial information from the SWFRPC and therefore did not anticipate a full response from them. Jacksonville-Duval provided LCIR staff with a "White Paper" prepared by the Northeast Florida RPC on antiquated subdivisions.[27] Therefore, that the NEFRPC did not submit its own response did not detract from the survey goals.

Some counties, such as Lee, Collier and Charlotte, are known to be "hot-spots" for antiquated subdivision issues, although they did not respond to the survey. However, descriptive information on those areas that has been secured by LCIR staff from other sources is presented in Chapter Three.

Eight counties reported experiencing slight to moderate problems with platted lands. These counties are: Broward, Citrus, Dixie, Franklin, Hendry, Hillsborough, Indian River and St. Johns.

Broward County, for example, stated that platted lands do not pose a "major problem in Broward County because most of the County has been platted or is exempt from re-platting, and the County is rapidly approaching build-out." Although zoning poses a hindrance to development in some areas, Broward uses Land Use Plan designation and

[25] Calhoun and Jefferson counties.

[26] Broward, Dixie, Hamilton, Hardee, Hillsborough, Lake, Liberty, Madison, Osceola, Pinellas, Suwanee, and Union counties. (Although one county did not identify itself in its response, it is believed to have been Liberty county.)

[27] LCIR staff had previously located the document via the Internet. The White Paper can be found at www.nefrpc.org under "Publications."

zoning changes to remove barriers to appropriate development. Hamilton County stated that there are some paper plats within its boundaries, but were usually sold under contracts for deed. As the lots were not fully paid off, title was never transferred, thus precluding any ownership rights from vesting.

Development of antiquated subdivisions does not seem to be a significant issue for Citrus County, although older plats provided for public alleys and easements, which developers have sought to remove through the plat vacation process. Citrus adds that some areas have not been developed due to lack of infrastructure or the fact that land within the Planned Service Area is available for development. Any antiquated subdivisions that may pose problems for Citrus are being addressed in its current Evaluation and Appraisal Report for the Comprehensive Plan.

Dixie, Franklin, Hendry, Indian River and St. Johns counties do not complain of significant antiquated subdivision problems, but mention that some lots are not developable due to environmental and wetlands concerns, inadequate lot size, lack of water sources, drainage, lack of access, lack of central utilities and barriers due to zoning regulations.

Franklin county has fared well in that its inventory of several thousand affected acres has been whittled down considerably as a result of part of the land being bought to add to the state forest. Highlands county, too, has had thousands of lots removed from the antiquated subdivisions under the Preservation 2000 and Florida Forever Act programs for purposes of conservation.[28] In fact, Highlands county reports that out of 24,573 existing lots in a half-dozen sites, 12,637 lots have been acquired or are under contract for purchase. Hendry county has placed a temporary building moratorium on development of lots unless they are "legal, non-conforming lots of record." The county is studying the issue and hopes to draft an ordinance shortly that will focus on permitting, drainage and lot access.

In its survey, the LCIR asked what specific legislative tools, such as state laws, local ordinances, and so forth would be of value in addressing platted lands issues. Interestingly, only one county advocated for a state-wide set of solutions or proposals to contend with platted lands. Even this suggestion was limited in its scope; Putnam county opined that the Department of Health's standards regarding septic tanks and wells need reworking with regard to increasing lot size.

Several counties advised the LCIR of relevant efforts that are being made on the local level, such as adoption of ordinances, future land use policies, rezoning, and securing buyout dollars from the state or the federal government.[29] Seminole County observed that "the issue of developing antiquated plats must be addressed on an individual county basis rather than on the state level due to the amount of zoning and regulatory differences

[28] Section 259.105, F.S.

[29] Highlands County is seeking to have additional lands purchased for conservation with Conservation and Recreation Lands (CARL) funds. The U.S. Department of Interior is purchasing other lands in Highlands County.

that exist among various counties and the amount of research that is necessary to develop a truly useful legislative solution".[30] Quite a few counties expressed a desire for the state to fund land purchases.

As mentioned previously, both the DCA and the SWFRPC, as well as some academicians, have advocated statewide legislation for decades, particularly in the area of eminent domain. These proposals, however, generally broaden local governments' authority to contend with the problems at the local level. They do not represent efforts by the state to mandate, or even advocate, a particular course of action.

D. DEFICITS IN INFORMATION

One of the LCIR's goals in this survey was to attempt to put a dollar figure on the ad valorem taxes brought in by these lots that remain undevelopable. Staff posed the following questions to the counties:

1. What is the approximate amount of revenue received by your local government in ad valorem taxes on the undeveloped lots located in antiquated subdivisions?

2. What percentage of lot-owners in antiquated subdivisions are not current in their ad valorem tax payments and how much is the outstanding liability?

3. Can you discern any pattern of tax certificate acquisition in any of the antiquated subdivisions?

There was no county planning department that could answer these questions with specificity. A few indicated that with extensive research, or by trying to get the information from the Tax Appraiser's Office, some of the data might be gathered. Putnam County was able to report that about $3 million of its ad valorem revenue, or 5 to 7 percent of its total ad valorem revenue, comes from platted lands. It also estimated that somewhere around 8 to 9 percent of the lot owners in antiquated subdivisions are delinquent on the ad valorem taxes. In general, however, the information sought by the LCIR was unavailable. It was pointed out by some of the counties, however, that unimproved land is taxed at fairly low rates.

E. SUMMARY

Although acreage and tax sensitive data can be difficult to come by, information from those local governments responding to the survey, combined with historical, academic and anecdotal sources, yield an adequate basis on which to confirm that Florida does have problems with antiquated subdivisions.

[30] Seminole County survey response. October 7, 2002.

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CHAPTER THREE:
Major Hotspots

The 1950s, 1960s and into the 1970s were a boom time for land sales in Florida, and western states such as California and Arizona. At the peak of the activity, hundreds of companies were involved in selling small lots, sight unseen, on installment plans to purchasers all over the world.

Land sales in Florida began in earnest in the 1950s when the Mackle brothers, through their companies General Development Corporation (GDC) and Deltona, started buying up prime real estate. The Mackle brothers bought land in Ft. Myers, Sarasota, Fort Pierce, Vero Beach, Titusville and St. Petersburg. By 1960, the Mackles' inventory was approximately 200,000 acres.[31] The success of the companies started to wane, however, in the mid-1970s, reportedly as a result of regulatory issues.[32] GDC filed for bankruptcy in the 1980s, as did its successor, Atlantic Gulf Communities, in May, 2001.[33]

In addition to the Mackle companies, several other large land sellers came to prominence during this period. Jack and Leonard Rosen formed the Gulf Guaranty and Acceptance Corporation, which was succeeded by the Gulf American Land Corporation, with holdings in Florida and Arizona. According to media reports, the company experienced legal troubles in 1967 when it acknowledged switching lots without purchasers' knowledge and other unethical sales practices.[34] Its successor, Avatar Holdings, Inc., is still operating out of Coral Gables, and continues to have holdings in Florida, Arizona and California. Avatar Holdings, Inc. owns large antiquated subdivisions in Ocala Springs and Cape Coral.

Contemporaneous with the internal ills experienced by the individual firms mentioned above, the fiscal recession of the mid-1970s slowed the nation's economic activities in general. Less available savings translated into fewer land purchases. Furthermore, the firms had to contend with something relatively new to Florida (and other states), that is, governmental regulation of land sales and land use. A sluggish economy, coupled with invigorated governmental involvement in land use and growth management contributed to significantly diminished land sales activity. As the frenzy slowed, the shortcomings of unrestricted and unregulated land sales began to surface.

A. SPECIFIC CASE STUDIES

Many of the communities in which platted lands are located report problems unique to that jurisdiction. In some counties, the historical background leading to the formation of each scenario is important. Although some characteristics of platted lands are shared by more than one community, it appears that the majority of local governments are seeking creative ways to deal with their specific issues at the local level. Some sentiment exists

[31] Goodkin, "Florida's Sordid Land Legacy," p. 33.
[32] *Id*., p. 34.
[33] Information retrieved at www.rebuz.com/transact/0501transact/atlanticgul50301.htm .
[34] Goodkin, p. 34.

that while state or federal funding for land purchases may be a good thing, it is not necessarily desirable to have the state, via legislation, dictate the methodology by which communities resolve their platted lands challenges.

Local governments were asked by the LCIR to describe their particular set of facts as they relate to antiquated subdivisions, as well as any steps that are being contemplated or implemented at the local level. The vignettes presented below have been gleaned from survey responses as well as other sources.

1. Putnam County

Putnam County reports that antiquated subdivisions account for the "biggest problem as it relates to land use".[35] Staff indicates that subdivisions in Putnam County suffer the same problems as many others throughout the state: they are located in or near environmentally sensitive areas (wetlands, floodplains, high aquifer recharge, critical wildlife habitat); small lot size, and lack of infrastructure, drainage and water systems. Staff estimates there are more than 40,000 vacant residential lots in Putnam County.

Being a small, mostly rural county, Putnam's antiquated subdivisions have some unique characteristics. For example, staff estimate that due to the homestead exemption, one-third of residential property owners do not pay any ad valorem taxes. Of that population, most of them reside in homes located within antiquated subdivisions. The county still has to provide the same level of service to these isolated areas as it does to all other neighborhoods.

Staff also estimates that about 8 to 9 percent of the vacant lot owners who should pay property taxes fail to do so. Further, in those subdivisions located within an MSBU or MSTU,[36] there is an even higher rate of non-payment of property taxes. This analysis by county staff tends to disprove the notion that the counties in which undeveloped subdivision are located are reaping in property taxes with little expense on the county's part.

In order to address the problems discussed above, the county has included objectives and policies in its Comprehensive Plan. Other approaches will be considered, too, such as establishing a Transfer of Development Rights program. The objectives and policies in its Comprehensive Plan are cited below. To date, however, they have not yet been implemented.

Policy A.1.14.1: Putnam County will reduce the number of platted lots through the following measures:

a. Establishing criteria for the purpose of identifying antiquated

[35] Putnam County survey response, November 5, 2002, p. 1.

[36] Municipal Service Benefit Units and Municpal Service Taxing Units are statutory creations through which county governments can fund certain services from either a service charge or special assessment (in an MSBU) or ad valorem taxes levied only within specific boundaries (in an MSTU). *See* s. 125.01(q), F.S.

subdivisions. In instances where antiquated subdivisions are predominantly or entirely under one ownership, the County may assist private owners with assembly, deplatting including the closing of unused or unnecessary public rights of way and replatting for eventual development or other purposes. In instances where antiquated subdivisions are subject to multiple lot ownership the county may assist groups of private lot owners to vacate and replat portions of subdivisions, where practical, including the closing of unused or unnecessary public right of ways.

b. Encourage the build-out of vacant lots in subdivisions determined not to be antiquated subdivisions. The county may encourage construction on such lots by providing additional infrastructure by use of MSBU's or other appropriate means.

c. Public acquisition of platted lots which have been identified as providing a public benefit for the purpose of establishing park and recreational facilities, outdoor education, or environmentally sensitive lands for preservation, using public funds as appropriate and available.

d. Consider selective acquisition of individual lots through use of the tax deed process for tax delinquent land, where the county is the certificate holder, or outright purchase from private owners of lots located in areas determined to be appropriate for redevelopment, for use in property assemblage, lot exchange, establishing deed restrictions, or transfers of Density or development rights, where such action facilitates bringing such land into conformity with the provisions of the comprehensive plan and ultimately returns the property to private ownership.

Policy A.1.14.2: Putnam County will encourage and assist private land owners to work towards solutions to the platted lands problem through participation in applicable state land acquisition programs.

One of the first things that will need to be done is to define antiquated subdivision, identify such subdivisions and prioritize them for redevelopment.

2. Highlands County

As mentioned previously, Highlands county has met significant success primarily through state land acquisition programs such as Preservation 2000 and the Florida Forever Act.[37] Highlands County reports that out of 24,573 existing lots in a half-dozen sites, 12,637 lots have been acquired or are under contract for purchase. In other acquisition efforts through the Nature Conservancy, the county pays part of the salary for an additional employee at the Conservancy to assist in closing on parcels targeted for acquisition. It is unknown whether the current level of funds for acquisition can be maintained. Perhaps anticipating the limits of land acquisition funding, the county is also engaged in ongoing efforts to rezone lands to be more consistent with the land use. Highlands reports that this process is progressing.

[37] Section 259.105, F.S.

3. Brevard County

This county contains a high incidence of platted subdivisions. It also represents one of the few governments that reports working cooperatively with a municipality – Palm Bay – to address some of its land use problems. The area targeted for redevelopment was formerly owned by the GDC. When the company went bankrupt, much of the area was purchased by the county. Improving access for the area and related transportation needs are of primary concern to the local governments.

It is noteworthy that the city and county have determined that a private-public partnership approach to deal with these vast tracts of land may offer the best hope for a comprehensive answer to the problem. To this end, the county issued a Request for Proposals (RFP) for a Community Planning Consultant to perform certain duties. Specifically, the RFP has solicited proposals for a consulting firm to perform the following tasks:

> Create a Community Design and Redevelopment Plan for vacant or sparsely developed platted residential subdivision areas in the southern portions of the City of Palm Bay. The areas for potential redevelopment are composed of approximately 24,000 platted residential lots covering 6,500 acres with approximately 22,000 individual property owners. . . . The overall purpose of the project is to create a financially feasible and marketable redevelopment plan that will minimize impacts of future development on existing residents, public infrastructure, and the environment while providing improved economic development opportunities, a diversified tax base, and enhanced quality of life. The Community Design and Redevelopment Plan will include an identification of specific financial and legal mechanisms, along with the identification of potential amendments to the City's Comprehensive Plan and Land Development Regulations that would be required to facilitate the recommended development form.

The county has selected a vendor although the project itself has not commenced.[38]

4. Escambia County

This panhandle county response to the LCIR survey states that the main adverse effects of its platted lands include drainage, access management and density. Although the county is unable to quantify the number of acres affected, it was able to determine that most lots are owned by developers, rather than individual owners. Most of the lots cannot be developed due to zoning issues, the environmentally sensitive nature of the properties and overall lack of infrastructure. Escambia's approach to these issues was to adopt a vested rights ordinance.[39] This ordinance establishes a process under which the lot owner can seek to have a determination by the county of whether the owner's rights to development are vested, and apply for a variance, if appropriate. County staff deem the ordinance to be an effective means of dealing with platted lands issues.

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[38] LCIR staff was informed on January 27, 2003, that as of that date, work had not yet commenced. Telephone call with James Spalla, Esq., Tallahassee, Florida.

[39] Land Development Code, Escambia Ordinances, 2.11.00, Vested rights for land use.

5. Jacksonville[40]

This city is located in the Northeast Florida Regional Planning Council's (NEFRPC) jurisdiction. The local government reports that it suffers adverse impacts from platted lands, including roads that are unpaved or unmaintained, lack of drainage, residential development that is not located near water and sewer infrastructure, and general access problems for public safety entities and others. At this time, Jacksonville does not have ordinances addressing the topic. However, city staff report that the NEFRPC's "White Paper," issued February, 2002 has raised awareness of the problem. Staff believe the White Paper also offers viable solutions. The proposals outlined in the White Paper are discussed in Chapter Four of this report.

6. Palm Beach County

This south Florida county was able to quantify the number of lots and acres affected by antiquated subdivisions. The figures are 26,943 and 49,511 respectively, most of which are individually owned. Planning staff report that efforts have been made through Urban Form and Sector Plans to "balance land uses," although not yet by ordinance. The county's Managed Growth Tier System, however, does have ordinances reflecting the goal of bringing future land use designations into conformance with existing development. Palm Beach continues to pursue a Sector Plan that would be adopted by ordinance within the coming year. Under Chapter 163, Florida Statutes, an optional sector plan, may be approved through comprehensive plan amendments. It involves a significant amount of intergovernmental coordination, as well as public participation. However, it is a technique that can be used only to areas larger than 5,000 acres. Thus, it is not often a suitable tool when dealing with antiquated subdivisions.

7. Marion County

Marion County reports that the majority of its lots are owned by individuals. Individual ownership makes use of various techniques relevant to platted lands difficult. Marion County, however, is actively collecting data and analyzing the application of various land use tools in a meaningful attempt at addressing its platted lands issues.[41]

Marion County is home to one of the antiquated subdivisions that has garnered considerable attention in the past. This subdivision, Ocala Springs, has a complicated history. The tract is somewhere between 4,600 and 4,700 acres in size, and remains under the ownership by Avatar Holdings, Inc. In the mid-1980's, Avatar, its chosen planning firm (Reynolds, Smith & Hills of Jacksonville), county regulatory staff and the DCA were involved in discussions concerning this parcel on a couple of fronts.

First, there were governmental concerns that development as originally planned would negatively impact environmentally sensitive areas, particularly those that could affect water quality. The development is located in an area of high recharge for the Florida Aquifer, which is critical to the water systems in many Florida communities.

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[40] The city of Jacksonville and Duval County are consolidated into one local government unit. *See* Ar. VII, Section 6(e), Florida Constitution.

[41] Telephone conversation with Dwight Ganoe, Marion County Planning Department. December 4, 2002.

Second, the developmental and legal status of the parcel was the subject of debate. Essentially, questions arose because about 1100 of the original 4,700 acres were not subject to any vested rights provisions in a development plan. This raised the issue as to whether a DRI application would need to be filed, or simply an application for binding letter modification of vested rights could be made. If a binding letter modification was adequate, the stakeholders asked, "will a modification of vested rights encompass the non-vested portions of the property, which have no vested rights to modify?"[42] After much discussion between DCA and Avatar, DCA opined that a binding letter modification could be considered for the whole parcel, even those areas not originally vested. Yet, shortly thereafter, Reynolds, Smith & Hill, the planning firm, determined that it would pursue a new binding letter application rather than a binding letter modification. Interestingly, the planners said that this letter would be only a "simulated" binding letter, and would not be the official binding letter application unless and until Avatar decided to go through with the development plans. That decision was changed yet again when Avatar submitted its Application for a Binding Letter of Modification to DCA in January of 1985. And that seems to be where the process stopped.

Many issues of *The Platted Lands Press* followed the progress of this particular development. The process by which Avatar pursued an inclusive and progressive approach to development, one that would include county and state, public and private input, was heralded as a breakthrough process almost ensuring the project's success. Its visioning and consensus building steps were to be the first part of a two tiered process. The second stage of the program was to create a package that would "create an administrative procedure, to be ultimately codified in legislation, that will enable developers and officials to regularly initiate the type of cooperative negotiations that have taken place during the Ocala Springs simulation exercise."[43] The enthusiasm surrounding this project seems to have subsided, and no further action was taken.

In its 2001 Annual Report, Avatar states, referring to Ocala Springs, that "4,200 acres could accommodate an active adult community of over 10,000 units. The remaining acres could be available for a golf course, recreational facilitates and commercial and industrial facilities."[44] Almost two decades after spirited efforts by the state, local government and the private sector to come up with a comprehensive plan to develop part of Ocala Springs and conserve the rest, the parcel remains in Avatar's control and completely undeveloped.

8. Monroe County

The Florida Keys represent one of the most unique and treasured areas of Florida. Its ecosystem and exquisite landscape are precious commodities to the state. More than thirty years ago, the Florida Keys' value to the state was recognized, and the area was designated in law as an area of critical state concern.[45] By enacting this law, the Florida

[42] *The Platted Lands Press*, Vol. 1, No. 6, September 14, 1984, p. 2.
[43] *The Platted Lands Press*, Vol. 1, No. 11, November 23, 1984, p. 8.
[44] Avatar Holdings, Inc., *2001 Annual Report*, p. 17.
[45] Chapter 79-73, s. 6, L.O.F. (1979).

Legislature made clear its intent to protect the environment, conserve and promote the area's character, ensure orderly growth, provide affordable housing, support a viable economic base, protect the constitutional rights of property owners, and foster intergovernmental coordination.[46]

Unfortunately, Monroe County has its share of antiquated subdivisions, which serve as an impediment to the above legislative goals. The county reports additional factors that further exacerbate its situation. First, any development of the antiquated subdivisions, orderly or otherwise, would impede evacuation clearance time in an area that is susceptible to hurricanes. Second, many of the lots are in areas where the county would like to retire development rights altogether. In order to do so, however, the county must come up with funds to purchase the lots. Third, concurrency requirements for infrastructure that must be adhered to if any development were to occur would add a significant fiscal burden to the county. Lastly, due to the county's Rate of Growth Ordinance, there are only a limited number of residential building permits that it issues each year.[47] Permit denial, when challenged, is a lengthy process that consumes scarce county resources.

Monroe County ascertained that as of 1990, there were 53,151 lots in the Keys. Of those, 22,747 were developed; 24,970 were vacant but buildable, and; 5,434 were vacant but unbuildable. Since 1990, about 3,154 new or replacement residential dwelling permits have been issued.[48]

As part of the DCA's legislatively mandated examination of antiquated subdivisions in 1985 (mentioned in Chapter Two), a report on platted lands in the Florida Keys was prepared. The report performed several tasks.[49] The study's author inquired into lot ownership patterns and owner attitudes, assessed platted lands problem in the context of ownership patterns, and evaluated various options.

The report concluded that establishing a Florida Keys Conservancy, patterned after the California State Coastal Conservancy, would be the most viable and realistic technique to grapple with platted lands issues. The Conservancy could carry out several functions, including land acquisition and implementation of a transfer of development rights programs. This recommendation was not pursued. The county has established the Monroe County Land Authority, however, which, among other functions, coordinates with the state and federal governments regarding land acquisition.[50]

Monroe County has sought to deal with antiquated subdivisions, as well as other land use issues, by limiting and directing growth patterns through adoption of its Rate of Growth Patterns plan. It also has benefited from land acquisition efforts by the state and federal

[46] Section 380.0552(2), F.S.
[47] Section 9.5-120. Residential Rate of Growth Ordinance (ROGO). Monroe County Code of Ordinances.
[48] Monroe County Survey Response, October 10, 2002, p. 2.
[49] "Platted Lands in the Florida Keys," *Florida Atlantic University/Florida International University Joint Center for Environmental and Urban Problems*, May, 1986.
[50] *See* ss. 380.0663-0675, F.S.

governments of environmentally sensitive lands. There is pending litigation involving the county's interpretation of the county's Improved Subdivision Zoning Designation and its effect on vested property rights. The outcome of this litigation will be closely watched by parties interested in platted subdivisions and land use in general.

9. Seminole County

Seminole County reported that it is experiencing antiquated subdivision problems. However, there was no ability to quantify the scope of the problem. Despite not knowing the extent of Seminole's situation, staff there report that the county has adopted a future land use policy that requires combining lots to meet minimum lot size requirements, and allows for replatting, vacating and abandonment procedures for antiquated lots.[51] Staff also pointed out that as Seminole and other counties approach build out, the challenges posed by antiquated subdivisions will become more significant.

10. Holmes County

Even though Holmes County is a small county with fewer than 19,000 residents, it, too, faces land use dilemmas arising out of antiquated subdivisions. Holmes county hired a private vendor, Metro Market Trends, Inc., to provide a Parcel Identification and Reporting System, which enabled staff to identify 14 subdivisions with less than 50% of the lots developed. The subdivisions comprise 742 lots in total, of which 597 remain undeveloped. The majority of lots cannot be developed because of environmental sensitivities, primarily as a result of being in a floodplain of the Choctawhatchee River.

11. Port St. Lucie

This municipality, located in St. Lucie County, has about 89,000 residents. There are close to 40,000 vacant lots on 40 square miles in Port St. Lucie. Most of the lots are individually owned. When the city sought to put in place water and sewer infrastructure, some lot owners simply abandoned their lots rather than pay taxes on them. Since the lots were purchased for so little money, it did not make financial sense for some lot owners to keep the lots.

The city has implemented a series of land use initiatives, but apparently none is directed specifically at antiquated subdivisions. The city reports that it has established "conversion areas" where a land owner can assemble and rezone their lots for more commercially sensible purposes. Rezoning cannot, however, contribute to a plan that would simply isolate other lots. Port St. Lucie, which is experiencing significant growth would like to see a greater role taken on by the state to fund not just acquisition of sensitive lands, but also to provide planning, re-design and purchase of the lots located in antiquated subdivisions.[52]

12. Port Charlotte

Port Charlotte is an unincorporated community located in Charlotte County. This area provides a vivid example of the day to day impact antiquated subdivisions have on a community. As mentioned previously, the GDC, which owned huge expanses of land in

[51] Future Land Use Element, Vision 2020 Comprehensive Plan, Seminole County. Policy FLU 3.2.
[52] Port St. Lucie response to LCIR survey, November 4, 2002.

this area, went bankrupt in the 1980s. This left the county responsible for maintenance of almost 200 miles of roads in the failed subdivision. The subdivision still has little development.

Despite the scarcity of houses in the subdivision, garbage collectors have to make their rounds. The sanitation company reports that one truck can usually provide trash service for 1,200 homes in a single day. Yet, because a garbage hauler in Port Charlotte has to travel so many blocks between houses, only about 300 houses are serviced.[53] The inefficiencies of this system, and the high cost of providing service to these homes, result in other property owners essentially subsidizing service delivery in the platted subdivisions.

13. Lehigh Acres

Lehigh Acres in Lee County followed the path to development similar to other antiquated subdivisions. In the mid-1950s, Lehigh Acres was platted and small, single family lots were sold to buyers around the globe. Cheap land was the primary selling point. The development was located in an isolated area, far from other development or existing infrastructure and services.

There are reportedly close to 135,000 lots in the area. As of 1997, slightly over 121,000 lots were still undeveloped.[54] At the time the area was platted and marketed, it appears thought was not given to infrastructure deficits or commercial and public space needs. This shortsightedness has resulted in current homeowners using private wells and septic tanks and traveling substantial distances for shopping and employment. The road system is inadequate, and its substandard layout and conditions will increase as build out continues. Fifteen large landowners own about 40% of the lots.[55]

Despite Lehigh Acres' current condition, efforts have been ongoing to improve its livability. In 1992, one of the larger landowners, a development company, Minnesota Power, bought about 8,000 lots.[56] Minnesota Power and other stakeholders proposed and realized the creation of a Community Redevelopment Agency (CRA) based on the notion that Lehigh Acres was a "blighted" area under Florida law.[57] The CRA examined and sought to address various problems, such as roads, transportation alternatives, public safety needs, and so forth. The Lehigh Acres Community Redevelopment Planning Committee of the CRA hired a vendor who produced the Lehigh Acres Commercial Land Use Study.[58] Five major proposals were offered that were designed to improve the quality of the subdivision:

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[53] Hull, "Plats Pave Way for Problems."

[54] Hubert Stroud and William Spikowski, "Planning in the Wake of Florida Land Scams," *Journal of Planning Education and Research*, Published for Association of Collegiate Schools of Planning, Planning Department, University of Oregon, Eugene, Oregon, 1998. (retrieved at http://www.spikowski.com/landscam.htm)

[55] Telephone conversation with Jim Fleming, December 4, 2002.

[56] Goodkin, p. 36.

[57] Community Redevelopment Agencies are further discussed in Chapter Five.

[58] Spikowski Planning Associates issued its Lehigh Acres Commercial Land Use Study Implementation Report in April, 2000.

- Modify unnecessary regulatory barriers
- Focus on those parcels under unified ownership
- Reconfigure existing commercial strips
- Provide for commercial enterprises in relation to the development's size
- Assemble as many lots as possible

There appeared to be support for these proposals, but as has been seen with several other initiatives aimed at resolving platted lands problems, they never came to fruition. Lee County chose to discontinue its CRA program for "unrelated fiscal reasons," although at one time, Lee County had 12 CRAs operating.[59] With the demise of the Lehigh Acres CRA, most of the proposals were not implemented, and none of the land acquisition proposals took shape.

14. Cape Coral

The Gulf American Land Corporation began to develop Cape Coral (located in Lee County) in 1957. More than 400 miles of canals were dug in this area of slightly over 100 square miles.[60] Presently, there are about 1,700 miles of paved roads in Cape Coral. Cape Coral has approximately 270,000 lots. However, deed restrictions require that a homesite consist of two adjacent lots before a building permit can be issued, thus resulting in 135,000 buildable parcels. A building site measures a total of 80' by 125'.[61] These sites were originally sold for sums as low as $20 down and $20 per month for thirty years.[62] Unlike some other sizable communities that started as platted subdivisions, Cape Coral incorporated in 1970. Its current population is slightly more than 113,000 residents.[63]

Most development in Cape Coral centered around the south and east areas of the city. Since no lands were set aside for commercial space, schools or other public facilities, the city had to acquire land as best it could. In 1987, the Lee County School Board condemned 21 acres of vacant but buildable land. Government officials estimate that attorney's fees, court costs and appraiser fees constituted almost one-fourth of the total acquisition costs for the intended elementary school.[64]

The city reports that it receives $5,002,380 from ad valorem taxes on the undeveloped lots in its antiquated subdivisions. The city also reports that most of the parcels are individually owned and the owners reside in all parts of the world. This scenario makes land assembly very difficult. City staff cite the landowners' "belief that there is a vested right to build single-family development anywhere within the City"[65] as part of the difficulty in convincing landowners to participate in any of the land use revision

[59] Stroud and Spikowski, "Planning in the Wake of Florida Land Scams."
[60] Information retrieved at http://www.waterfrontwonderland.com/listings/CapeCoral.asp .
[61] Cape Coral response to LCIR survey, November 12, 2002, p. 2.
[62] "The Platted Lands Context," Planning Division, Department of Community Development, Cape Coral. November 29, 1989, p. 1.
[63] "Florida Estimates of Population 2002," *Bureau of Economic and Bursiness Research*, University of Florida, April 1, 2002, p.14.
[64] *See* fn. 67, pp.2-3.
[65] Cape Coral response to LCIR survey, November 12, 2002, p. 1.

techniques discussed in Chapter Four. This suggests that lot-owners would not be amenable to voluntarily participating in land reassembly initiatives.

Cape Coral's efforts to deal with these problems in earnest date back to 1989 when it adopted by ordinance its second Comprehensive Plan.[66] The most significant changes were that the Plan now included a Future Land Use Map and a five year Capital Improvements Element. Policies that would approach the antiquated subdivisions problem by using zoning tools, such as the prohibition of strip commercial developments, were adopted. Other measures were taken to improve the quality of life in the city, such as building a centralized sewer system. This was done at a cost of more than $2,000,000. Some landowners realized that the assessments in support of the sewer system would be in an amount greater than the value of their lot. Subsequently, some lot owners simply abandoned their property.[67]

The city continues to be interested in lending its support to efforts by the SWFRPC to lobby for legislation that would authorize local governments to "exercise the police powers to assemble lots."[68] In fact, the city has directed its own staff to draft a local bill for its local delegation to sponsor. The city would also like for the state to provide grant monies with which to purchase land for a land banking program. Furthermore, the City of Cape Coral Comprehensive Plan includes land assembly strategies such as a Transfer of Development Rights program to attempt to set aside land for the public."[69] Thus far, however, these efforts have not been successful.

15. Golden Gate

The Golden Gate Area is located in Collier County; it is not incorporated. The development was another project of the Rosen Brothers and their Gulf American Corporation (now Avatar Holdings, Inc.). Originally, Golden Gate was divided into three sections: Golden Gate City, North Golden Gate and Golden Gate Estates. Golden Gate Estates was intended to comprise five acre tracts, with little or no infrastructure built into the community plan. Golden Gate City and North Golden Gate had smaller lots, with some infrastructure planned. While some neighborhoods of these areas are almost fully built-out, that is the rare case. Most of the lots in these areas are individually owned.

There are so many lots in Golden Gate, that should the area ever experience rapid development, the need for services and infrastructure likely would be overwhelming. In 1995, as part of its Evaluation and Appraisal Report, the Collier County Planning Department presented the following projections regarding infrastructure needs for the Golden Gate Area, using Charlotte County's methodology. Staff used an average household size for Collier County of 2.49 persons and applied that to the 23,966 lots in

[66] "The Platted Lands Context," p. 6.
[67] Hull, "Plats Pave Way for Problems."
[68] Cape Coral's response to LCIR survey. November 12, 2002, p. 3.
[69] *Id.*

the area. Staff then projected a buildout population of 59,675 people with the following projected needs.[70]

- 10,640,830 gallons of potable water per day
- 6,959,678 gallons of wastewater treated per day
- 74 acres of community parks
- 169 acres of regional parks
- $10,295,722 for recreational facilities
- 18,981 square feet of library space with 77,649 volumes
- 138 jail beds plus 50 staff
- 7 new schools for K-12 public education
- 148,397 square feet of government office space

Considering that Golden Gate Area is only one of many such subdivisions, the service costs and infrastructure needs could be overwhelming. However, southwest Florida has made limited strides in dealing with its platted lands. Lots in Golden Gate Estates South are being purchased by the state under the Save Our Everglades Conservation and Recreation Land Project. This purchase is a critical component in protecting important hydrological connections among Big Cypress National Preserve, Fakahatchee Strand State Preserve and the Everglades National Park.[71]

B. SUMMARY

The scenarios described above by local governments reflect genuine dilemmas for cities and counties, developers, and private property owners alike. Local governments grapple with finding the most advantageous and appropriate use of platted subdivisions while not running astray from notions of property rights and fairness. Developers face trying to plan projects that comply with applicable growth management laws in areas that were platted with no land set aside for commercial areas, schools or public facilities. Private landowners can face a number of unusual circumstances, all affecting their property. Lot owners may end up with lots that cannot be developed in a manner consistent with what notions of good planning. Or, because of restrictions imposed on the lots, the resale value of the lot may be significantly less than what it may cost to get the lot in compliance with current growth management laws. Alternatively, the lots (and the whole development) may be so far from any infrastructure or services envisioned by the lot owner, that the desire to develop the lot is greatly diminished. In sum, as with any investment, the value of the parcel may have lost its luster.

[70] "The Golden Gate Area in the Context of 'Pre-Platted' Communities Prepared for: The Golden Gate Area Master Plan Restudy," Prepared by Collier County Comprehensive Planning Department.
[71] Press release, "Governor, Cabinet Approve Save Our Everglades CARL Project," Department of Environmental Protection, January 23, 2001.

CHAPTER FOUR:
Techniques Available for Addressing Platted Subdivision Problems

Several studies on platted lands have been conducted over the last several decades clearly defined the overall negative impact platted lands generally have on orderly land use. Despite previous legislative efforts to resolve antiquated subdivisions problems (discussed in Chapter Two), no comprehensive approach to dealing with them has been formulated nor carried through to fruition. Individual lot owners, developers, state agencies such as the Department of Environmental Protection and the Department of Community Affairs, and local governments all have a stake in removing obstacles to orderly growth and land use posed by platted subdivisions.

Several observations regarding the problem, and the inaction surrounding the issue can be formulated. First, platted lands are one of those scenarios where truly "one size does not fit all" when it comes to finding a solution. This factor, which makes problem solving more challenging, may act as a disincentive for stakeholders looking for an easy solution. Second, there has not been a consistent forum available to sort out the state's role, if any, in seeking meaningful approaches to the problem. The state has studied the issue, but has not initiated any action to tackle the problems. Third, only those communities that are feeling pressure have the political will to deal with the problem, and such efforts are not always successful.

The observations above suggest that there is room for improved policies to deal with antiquated subdivisions in order to free up land for development or more appropriate use. Depending on the nuances of the specific subdivision, there are many tools which local governments can avail themselves of to address the problem. Local governments have made it clear that the purpose for which the land is sought to be used must be considered and consistent with the community's long term comprehensive plan. Whether the subdivision can rationally be reassembled for further development by a private developer or whether the state is interested in acquiring it in order to protect delicate wetlands, as well as any other number of future uses, must be evaluated so that the desired action is consistent with the intrinsic value of the property and the community vision.

Arguments are sometimes made that local governments do not want to find solutions to the platted lot problem because the lots are "cash cows" for the them.[72] The theory is that no government monies are spent on providing services, yet taxes are collected on the lots. In its research, LCIR staff did not find information supporting this notion. Frequently, areas plagued by antiquated subdivision problems face revenue shortfalls, as the local government must provide services in a non-cost-efficient manner.

Another indication that counties are not reaping revenues on undeveloped antiquated subdivision is the increasing rate of tax delinquencies. For example, when the Lee County Tax Collector issued its Annual Notice of Tax Certificate Sale in 1999, 44.67

[72] Hull.

percent of all delinquent parcels were located in Lehigh Acres.[73] This fact suggests that some counties are not necessarily reaping large ad valorem revenues from lots in antiquated subdivisions. As a result, the local government may need to look for funding sources elsewhere or else cut services. Since some subdivisions offer inexpensive lots to prospective owners, buyers of modest means who purchase the lots, are sometimes caught unaware of the potential hidden costs behind these lots. If assessments are levied to pay for necessary infrastructure, the new homeowner may be unable to make the payments and forced into foreclosure. This pattern benefits no one. Solutions are needed to change antiquated subdivisions from land use limbo into viable communities.

A. PRIVATE PROPERTY RIGHTS

No discussion of possible strategies for dealing with antiquated subdivisions can begin without recognition of the strong public sentiment in support of private property rights. In the context of platted lands, private property rights arguments are somewhat enigmatic. Some lot owners believe that by holding on to their unbuildable lot, that they somehow retain property of value. As one land use expert wrote, "A major problem, however, is that many lot owners have been found to be reluctant to relinquish their property, even when it is economically advantageous to do so. They perceive a swap not as an escape from a hopeless situation, but as a device for pirating away their valuable property."[74]

Yet, private lot owners may have little reason to oppose a creative approach to using their lots because unless such an alternative path is taken, the lot owner is forever precluded from *any* use of their property. The strategies outlined below offer options to lot owners so that they would no longer need to continue to pay property taxes on a parcel that cannot be developed or otherwise used.

1. Florida's Constitutional Protections

The Florida Constitution provides that "No private property shall be taken except for a public purpose and with full compensation therefore paid to each owner or secured by deposit in the registry of the court and available to the owner."[75] In other words, the government can force a private property owner to accept payment for the landowner's property, if the government needs that land for a public purpose. The government's authority to exercise its eminent domain powers is also found in statute.[76] Consistent with the trend of moving away from resolving all disputes in court, the Florida Legislature amended the eminent domain laws in 1999 to require pre-suit negotiations between the property owner and the condemning authority.[77] Other amendments have been made to the eminent domain statutes in recent legislative sessions, as well.

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[73] Letter from Jim Fleming, then Treasurer and Supervisor of the East County Water Control District, to Lee County Commissioner Ray Judah, June 12, 2000, p.2.

[74] Frank Schnidman, *Planning for Platted Lands: Land Use Remedies for Lot Sale Subdivisions,* 11 Fla. St. U. L. Rev. 508, 568 (Fall 1983).

[75] Art. X, Section 6, Florida Constitution.

[76] Chs. 73 and 74, F.S.

[77] Chapter 99-385, s. 57, L.O.F., (1999).

One facet of governmental takings that has been the focus of much discussion and legal action is the definition of "public purpose." Some government functions clearly fall within the ambit of "public purpose." These activities include building roads, establishing utilities, and public buildings. When the public entity enters into a relationship with a private entity to perform an otherwise public function, there is greater disagreement as to whether the action constitutes a "public purpose" or not.

2. Bert J. Harris, Jr., Private Property Rights Protection Act

In 1995, the Florida Legislature enacted the Bert J. Harris, Jr., Private Property Rights Protection Act (Harris Act).[78] The Harris Act provides judicial relief and compensation to private landowners who can show they suffered an "inordinate burden" on their property as a result of government action. This statute was the culmination of many years of debate and serious efforts to amend the state constitution to provide more specific protections for private property owners. The effects of the Act's passage remains the topic of heated discussion and analysis.

In essence, the Harris Act strives to cover the grey area between existing constitutional protections against governmental takings and no protection at all. Specifically, the Harris Act states that it "provides a cause of action for governmental actions that may not rise to the level of a taking under the State Constitution or the United States Constitution."[79]

The Harris Act set forth definitions and the processes by which cases are to be heard and resolved. An interesting facet of the Act is its formula for calculating a property owner's damages. A jury is to be impaneled to calculate:

> The difference in the fair market value of the real property, as it existed at the time of the government action at issue, as though the owner had the ability to attain the reasonable investment-backed expectation or was not left with uses that are unreasonable, which ever the case may be, and the fair market of the real property, as it existed at the time of the governmental action at issue, as inordinately burdened, considering the settlement offer together with the ripeness decision, of the governmental entity or entities.[80]

There are several limitations on the use of the Act. One of the most important limitations relative to platted subdivisions is that no cause of action exists under the Act, "as to the application of any law enacted on or before May 11, 1995, or as to the application of any rule, regulation, or ordinance adopted, or formally noticed for adoption, on or before that date."[81] For actions based on any amendments enacted after that date, a cause of action is cognizable only insofar as the amendment imposes an inordinate burden apart from the original rule, regulation or ordinance.[82]

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[78] Section 70.001, F.S.
[79] Section 70.001(9), F.S.
[80] Section 70.001(6)(b), F.S.
[81] Section 70.001(12), F.S.
[82] *Id*.

The Harris Act, when passed, concerned many government officials who thought the parameters of the Act were too broad and would cause the statute to be abused, at the expense of local governments. Local governments envisioned having to compensate untold numbers of property owners for diminishing the value of their lots. This concern perhaps has had a chilling effect on local governments' efforts to tackle hard land use problems such as antiquated subdivisions. However, little litigation has arisen under the Harris Act.[83] Much of the litigation has occurred in South Florida, and has not involved platted subdivisions. Whether this is due to a lack of offending actions on the government's part, or instead to an abundance of well reasoned actions by officials, is not known. Regardless, local governments may benefit from more clearly defined statutory authority to exercise certain powers, specifically eminent domain.

B. TECHNIQUES

Options available to resolve the platted lands dilemma are complicated by land ownership patterns, among other factors.[84] For example, a local government may choose to exercise its eminent domain power in a private condemnation. If the lots are owned by a single developer, the local government would use its eminent domain power to take a piece of property, so that it could then turn the property over to a private developer. The developer would be responsible for the costs of the transaction, but would nonetheless benefit greatly by acquiring the land for less than it would cost had the government not condemned it. If, on the other hand, the lots are owned by people scattered across the country, such an option becomes less viable.

Approaches to platted lands work better when land ownership is clear. The problem of platted lands is compounded because in so many instances, the entity wishing to develop or conserve the land cannot locate the lot owner. The ownership status of the millions of lots throughout the state has a significant impact on whether a particular approach can be used to deal with the particular parcel of land.

There are several methods that can be used by local governments and other stakeholders to turn platted lands into vibrant communities or conserved land. Some of these techniques are used in other jurisdictions as discussed in Chapter Five. The tools are discussed below.

1. Lot Merger

Lot merger occurs when the local government's Comprehensive Plan requires lots to be combined in order to meet minimum lot size requirements. This tool allows officials to better manage the number of houses that are allowed to be build, thereby having more control over the amount of infrastructure that is needed to accommodate the growth. In

[83] Ronald L. Weaver and Nicole S. Sayfie, "1999 Update on the Bert J. Harris Private Property Rights Protection Act," Florida Bar Journal, March, 1999, p. 54.

[84] For an excellent chart in which strategies for land conservation (rather than development or other appropriate use) are examined, *see* Madelyn Glickfeld, Sonia Jacques, Walter Kieser, Todd Olson. "Implementation Techniques and Strategies for Conservation Plans." *Economic and Planning Systems,* Winter 1995, p. 3. Retrieved December 12, 2002 at www.epsys.com/documents/consplns.pdf .

order to get a building permit, the lot-owner would need to acquire enough surrounding land to meet the Comprehensive Plan requirements. Problems can arise if the lot to be built on is surrounded by built-on lots -- the lot owner generally cannot acquire any abutting lots. In this situation, the local government can allow for a variance, if appropriate.

2. Plat Vacation

This technique is most commonly used when one landowner owns or acquires multiple lots. If no development has occurred for a certain amount of time, the landowner can request that the antiquated plat be vacated and a new plat is recorded. The government will generally allow such plat vacation provided no injury occurs to any other party who owns land in the subdivision.[85]

Earlier Florida law allowed a local government to initiate plat vacation on its own motion, provided certain conditions were met.[86] These provisions were repealed in 1985.[87] Despite repeal of the state law on plat vacation, local governments are authorized to adopt ordinances through which plat vacation can occur on the local government's initiative.[88] As local governments may not have the political climate to adopt such an ordinance, the state may wish to consider whether it would be in the state's interest to reinstate that authority.

3. Land Acquisition

a. Outright purchase – Local, state and federal governments could purchase land that is environmentally sensitive or otherwise important.[89] Considering the budgetary challenges currently facing all levels of governments, local governments should not anticipate this technique to be widely available.

b. Voluntary land submissions – Lot owners who accept the reality that they will not be able to build on their lot could be offered tax based incentives in exchange for deeding over their lots. It has been suggested that the lot owners could deduct the assessed value of their lots from their taxable income for that year. It has been proposed that legislation be enacted that would allow the government to forgive unpaid taxes on the lots, thus further enticing lot owners to donate their property.[90]

c. Delinquent tax deeds – Under Chapter 197, Florida Statutes, a mechanism is established under which a local government may gain ownership of a parcel where a land owner fails to pay property taxes. If the owner is delinquent on payment of taxes, the local government can gain control of the property through tax deed sales. The county is

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[85] Section 177.101, F.S.
[86] Section 163.280, F.S. (1983).
[87] Chapter 85-55, s. 19, L.O.F (1985). *See also* Maselli v. Orange County, 488 So.2d 904 (Fla. 5th DCA 1986).
[88] Attorney General Opinion 87-20, March 11, 1987.
[89] The state program under Preservation 2000/Florida Forever/Florida Communities Trust is one such example.
[90] Both these suggestions are contained in a June 12, 2000 letter from Jim Fleming to Lee County Commissioner Ray Judah.

not required to use the public tax deed sale process for parcels valued at less than $5,000.[91] Rather, if no one bids on the subject parcel, the property escheats to the county. Acquisition through escheatment or tax deed sales can, however, take several years to complete.[92]

Regardless of the acquisition technique used, the local government can benefit by increasing its store of lots and then using those lots either to benefit the community (for a park, for example) or as trading chips to move development into a designated area. The lots would be part of any transfer of development rights program the local government might establish.

4. Impact Fees

If a local government adopts an impact fee ordinance, developers and builders pay a share of the cost of development up front. The fees are used as a revenue source for the local government to pay for infrastructure for the development. The majority of platted subdivisions were platted before impact fee ordinances were adopted. This situation leaves the builder or developer with no responsibility for helping to pay for infrastructure that the local government must provide.

This technique is another tool best used when lot ownership rests in one entity's hands, and there is a willing and able developer who believes that even if required to pay impact fees, the enterprise will be profitable. The local government may be in a position to structure impact fees so that in an area it does not want to see developed, it will impose a high impact fee, thus discouraging development. A minimal impact fee can then be imposed on the area targeted for development. Even this approach has its limitations, however, as impact fees cannot be required retroactively on a parcel.

However, if a subdivision plat is vacated, it can be replatted and any impact fee ordinances existing at the time of replatting would apply.[93] However, plat vacation is difficult and impact fee ordinances have often been the subject of litigation. Furthermore, impact fees are basically a "pay as you go" technique, and therefore cannot ensure that the revenue generated will actually be realized or sufficient to pay for the necessary infrastructure. And, though they may help pay for development, they do not necessarily have a role in making use of the lots more orderly or consistent with current regulations. The applicability of impact fees as a tool is therefore somewhat limited.

5. Transfer of Development Rights Program

The theory behind a Transfer of Development Rights (TDR) program is it allows a landowner, usually through a governmental program, to transfer rights he or she has from one parcel to another parcel. In this way, the government identifies the area which it does not want to see developed, and targets other areas for development. The parcel which is to be preserved is the "sending" parcel. The parcel to which development rights are transferred is the "receiving" parcel. The transfer of rights from one lot to another can be

[91] Section 197.502(3), F.S.
[92] *Id.*
[93] Julian Juergensmeyer, "Drafting Impact Fees to Alleviate Florida's Pre-platted Lands Dilemma," Florida Environmental and Urban Issues, Vol. VII, No. 3 (April 1980).

noted in the form of a zoning certificate, notations on the subdivision plate, or some other written means.[94]

The ideal ownership pattern for a TDR program to be implemented would be one in which most lot owners have lots in both the sending and the receiving zones.
This technique will be of limited value where the lot owners do not have at least one lot in each zone.[95] Local governments may also need technical and financial assistance in developing appraisal techniques and incentive based strategies with specific goals, such as natural resources protection.[96]

It is important, too, that the incentives contained in the TDR program are adequate to convince the owners of lots targeted for preservation to participate in the program. This technique has been used with noteworthy success in various communities out west, particularly California, Washington and Oregon.[97]

As with other techniques, a TDR program will work only if the necessary variables are aligned in the right way. Unlike some other states, Florida law explicitly recognizes local governments' authority to establish TDR programs, and in fact encourages their use.[98] Other jurisdictions, such as California, rely on their inherent police powers to create such programs.[99] There must be sufficient "receiving" lands to make the endeavor viable. And, finally, there must be clear and meaningful communication between the public and private sectors in order to get people to participate in the program. As with many property rights related issues, the TDR technique has not been without its legal challenges.[100]

6. Incorporation

For certain communities, incorporation offers an alternative for dealing with land use issues in general. Some communities have incorporated, or sought to incorporate, in order to get out from under the county comprehensive plan and instead implement their own land use (or other governance) vision. However, in order to incorporate, certain standards and conditions must be met as required under Chapter 165, Florida Statutes. Because there are geographical, population, density and other requirements, not all platted subdivisions can avail themselves of this tool. Even areas that have incorporated, such as Palm Bay, continue to experience land use problems.

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[94] "Flexible and Innovative Zoning Series: Transferable Development Rights, *Managing Maryland's Growth, Models and Guidelines,* Maryland Office of Planning. January 1995, p.2.
[95] *See* "Platted Lands Study: Potential Strategies to Control Urban Sprawl in Platted Lands Communities." North Port Planning, Economic & Community Development Department. November, 1989. Part I, p. 9.
[96] Comment by Escambia County. LCIR Survey response, p. 3. October 8, 2002.
[97] Rick Pruetz, "TDR Developments in the West, Including Santa Fe County, NM. Art of TDR Grows Up – Case Studies in Two TDR Programs in the West," Presented at the Rocky Mountain Land Use Institute Conference, March 8, 2002.
[98] Section 163.3202, F.S.. *See* also s. 380.511(2), F.S.
[99] *See* fn. 94, p.5.
[100] *See* Suitum v. Tahoe Regional Planning Agency, 520 U.S. 725 (1997), in which the court limited its analysis to the ripeness of Plaintiff's claim in which she alleged the TDR program was effectively a taking. The TRPA and the plaintiff ultimately resolved the conflict in an out of court settlement.

Taxation issues can arise for communities wanting to incorporate which may pose as barriers to some antiquated subdivisions. In order to pay for services, the city of course needs a solid tax base. In those areas where there is no commercial or industrial development, not uncommon in antiquated subdivisions, the new city may experience difficulties raising revenue. The disadvantages of using this tool may exceed any benefits reaped.

7. Land Assembly, Adjustment and Pooling[101]

Land consolidation or land pooling efforts are another means of making the lots useful. As discussed in Chapter Five, this process is used in other states and abroad in countries such as Japan, Germany, and Australia.

Land consolidation occurs when an area is targeted for reassembly and the majority of owners are persuaded to support the readjustment of the property in a way that will give value to their investment, rather than remove it. The property owners are authorized to create a common enterprise such as a joint venture partnership or a corporation. Local government can also be involved. Dissenting land owners can opt out and be bought out.[102] Those who pool their lots basically place their ownership in a unified interest, out of which they anticipate receiving a proportional share of the profit. The property is considered as a whole, rather than as a collection of individually owned lots. The whole is then deplatted and replatted into a viable development, with each original owner retaining shares in the development in proportion to their original contribution of land. The replatted land is developed, and the individual owners can either receive a share of the enterprise, or they can sell their share. Either choice results in the landowner ending up with an asset of value, rather than unusable property.[103] Depending on how the plan is structured, legal ownership to the parcel may be transferred to the corporate entity, or remain with the individual land owner. This technique is useful only when all property owners can be identified, contacted, and choose to participate. As with most techniques, public participation and a strong political will on the part of the local government are vital to the success of the project.[104]

8. Community Redevelopment Act

The Community Redevelopment Act of 1969 could conceivably be used as a vehicle for development of the antiquated subdivisions. Under Chapter 163, Part III, Florida Statues, the Legislature established a process by which a city or county can, after making a

[101] This technique is discussed in greater detail in a report by Frank Schnidman, "Land Assembly: Background Information and Proposed Enabling Legislation," Prepared for Eastward Ho! Revitalizing Southeast Florida's Urban Core, May 1997.

[102] It can be difficult to obtain consent from neighbors for reassembly. *See* Carlos Campos, "An Outbreak of Buyout Fever: Aberdeen Forest Neighbors Back in Court After Nearly a Decade," *The Atlanta Journal-Constitution*, May 16, 1994.

[103] George W. Liebmann, "Land Readjustment for America: A Proposal for a Statute," Lincoln Institute of Land Policy Working Paper, 1998.

[104] For a concise illustration of land pooling, *see* excerpted material from "The Use of the Land Pooling/Readjustment Technique to Improve Land Development in Bangkok," R.W.Archer, HSD Working Paper, no. 10 (Bangkok: Urban Land Program, Human Settlements Division, Asian Institute of Technology, August, 1983) 1-8, retrieved at http://web.mit.edu/urbanupgrading/upgrading/issues-tools/tools/Reg-of-land.html#Anchor-Land-49425.

finding of necessity, create a Community Redevelopment Agency. The CRA has various enumerated powers with regard to the subject area. The primary purposes of the Act are to rehabilitate, clear and redevelop slum and blighted areas. The terms "slum" and "blighted" are defined in section 163.340, Florida Statutes.

It is unknown whether an antiquated subdivision could fall under the "blight" definition without further amendments to the statute. Advocates for wider application of the statute argue that it is advisable to take a pro-active approach and create a CRA to improve the conditions of an antiquated subdivision *before* the area deteriorates into blighted or slum conditions.

This technique, too, has its share of controversial aspects. The use of CRAs and the corollary exercise by a local government's of its eminent domain powers have been the subject of litigation.[105] Also, the use of CRAs in general has caused considerable conflict between municipalities and counties. Counties argue that tax increment financing revenues that go to the CRA divert too much revenue away from the counties. There is also concern that over the years, amendments to the CRA statute have made the definition of "blight" and "slum" much broader than necessary, thus enabling the creation of a CRA under conditions that do not rise to the level of need originally intended by the Legislature. As a result of these issues, the statute was amended during the 2002 session to make the application of the statute more restrictive.[106] However, local governments may be amenable to revisiting the parameters of the statute, provided any new use is narrowly defined to address platted lands.[107]

Because of the limitations that may pose problems if a CRA is used, perhaps a hybrid technique or quasi-governmental entity could be created and piloted. One proponent for revamping platted lands calls for using the Corkscrew Regional Ecosystem Watershed Trust (CREW), a non-profit corporation that offers land acquisition assistance to the South Florida Water Management District as a model.[108] It has been suggested that CREW could be replicated in some format, such as a Public Land Acquisition Trust (PLAT), whose only purpose would be to acquire targeted land in the affected land for greenways, commercial areas, public facilities, commercial space, and so on.[109]

C. SUMMARY

None of the techniques mentioned above is novel. These ideas have been discussed and on occasion, implemented in Florida or elsewhere. Yet, the first step in using any one of the options above requires information such as lot ownership patterns, lot size, level of build-out, and lot owner thoughts on future use. Simply collecting this data requires

[105] Rukab v. City of Jacksonville Beach, et al., 811 So.2d 727, (Fla. 1st DCA 2002).
[106] *See* Ch. 2002-249, ss.1-10, L.O.F. (2002).
[107] For example, certain antiquated subdivisions could fall under California's statutory definition of "blight." Cal. Health and Safety Code, Sections 33030-33039 (2002).
[108] Fleming Letter, p.3.
[109] *Id*.

significant human and technological resources. Many communities do not have the resources to take the critical step of data collection.

Those local governments that have been able to gather adequate information to complete data collection then have to secure resources and the political will with which to move to the next level of action, technique selection. This decision is best left to the individual community. Input received in response to the LCIR survey reflects basic consensus that the myriad tools available to address platted lands are best implemented at the local level. Due to the diversity of zoning and regulatory ordinances and policies among local governments, it would not be useful to seek a state-wide answer to a local problem. Nonetheless, the state may be in a position to assist local governments achieve their goals.

There are two techniques that policy makers may want to consider strengthening. First, local governments may benefit from having a clearly defined amplification of their powers of eminent domain. Any hesitance by a local government to act as a result of a platted lands situation, emanating from a threat of legal action, whether real or hypothetical, could be abated if the local government is confident that its actions will not be challenged. Although any judicial challenge and its outcome are contingent on the specifics of each set of variables, more explicit eminent domain authority could assist local governments in aggressively addressing the platted lands problem.

Second, related to the exercise of eminent domain authority by a local government, is the establishment of a CRA. Public-private enterprises can play a strong role in the disposition of platted lands, as some of the techniques described above illustrate. Language in Chapter 163, Florida Statutes, could be amended in a narrowly tailored way to meet the needs of stakeholders intent on addressing platted lands issues.

There are other statutory proposals, premised on the written proposal initially submitted through the Department of Community Affairs in 1986, that policy makers may also wish to consider.[110]

[110] Specifically, the SWFRPC has put forth legislative proposals for several years.

CHAPTER FIVE:
Platted Lands in Other Jurisdictions

Research for this project indicates that antiquated subdivisions are not a new problem to this country. Furthermore, because each jurisdiction has a different set of variables it must deal with, such as zoning laws, geographical and environmental considerations and so forth, techniques used to contend with antiquated subdivisions tend to be localized. Presented below are some of the approaches taken by other states and countries that are struggling to deal with their own set of platted subdivision and land use issues.

A. OTHER STATES

1. California

Not surprisingly, California experienced land marketing and sales schemes similar to those of Florida. "Sunset" magazine, which was owned by the Southern Pacific Railroad Company at the time, gave away lots in the Bay area as a way of promoting new subscriptions.[111] Land that was environmentally sensitive or geologically unsuitable was sold at a rapid pace. However, California's land laws developed differently than those of Florida, and therefore that state has its own framework of laws within which it must operate.

a. Subdivision Map Act

In 1893, California enacted the Subdivision Map Act (Map Act), a state law that merely required maps of subdivisions to be drawn a certain way recorded. Not until 1915, however, was the Map Act amended to require that subdivisions submit their plans to local officials for review. This step did not have much value, though, as no state standards had yet been established. By 1937, however, parcels could not be sold in subdivisions that had not actually been approved by local officials. This slowed rampant unregulated land sales.

Under the Map Act contiguous parcels contained within an antiquated subdivision and under common ownership may be "merged" to eliminate lots that do not conform to minimum parcel size requirements of the local zoning ordinance. Furthermore, the Map Act provides that antiquated subdivisions lots can be "validated" because land divisions performed in compliance with the law in effect at the time the lot was recorded are "grandfathered" as legal parcels. Lastly, when old parcels are too small or lack street access to infrastructure, a landowner may turn such parcels into developable lots through a process referred to as "Lot Line Adjustments". These adjustments are exempt from the mapping requirements of the Map Act when the adjustments do not create a greater number of parcels than previously existed.

[111] "California's Hidden Land Use Problem: The Redevelopment of Antiquatee Subdivisions," Senate Committee on Local Government Staff Report for an Interim Hearing of the Subcommittee on the Redevelpment of Antiquated Subdivisions," December 2, 1986, p. 19.

As with most states' land use laws, the Map Act continues to be amended. Most recently, in 2001, the Act was amended to limit landowners' and developers' ability to use antiquated subdivision to obtain or increase development rights.[112] Most significantly, SB 497 limited the number of lot line adjustments that can be exempted from the requirements of the Map Act to four, and expands the basis for local government review of lot line adjustments. The effects of these changes include precluding developers from merging small lots using the lot line adjustment process without local agency approval, and allowing local governments to impose fees and other infrastructure requirements as part of its approval process. While some stakeholders may find that the law increases the hurdles associated with obtaining development approval on antiquated subdivisions in California, others argue that such steps are necessary to close any loopholes that would otherwise have allowed undesirable development.[113]

b. Transfer of Development Rights Programs

Dozens of communities in California have established Transfer of Development Rights (TDR) programs. This type of program is similar to that described in Chapter Four. For example, San Luis Obispo County has two TDR programs. One program operated by the area's Land Conservancy is designed to protect certain habitat areas. The other is designed to protect rural lands. As of 2001, the second TDR program has protected 8,300 acres of sending sites.[114]

Another initiative in San Luis Obispo County began in 1998, as part of the state's involvement in preserving its agricultural lands. The San Luis Obispo Department of Planning and Building was given a $10,000 grant by the California Agricultural Land Stewardship Program. The grant was used to assist the county in mapping antiquated subdivisions. Once mapped, the county could then determine what effect their development would have on the area's agricultural lands. It is not known whether the county pursued conservation easement purchases once the grant expired.[115]

c. California Coastal Conservancy

The California Coastal Conservancy (CCC) is a state agency established in 1976 that uses "entrepreneurial techniques to purchase, protect, restore, and enhance coastal resources, and to provide access to the shore."[116] The CCC partners with local governments, other public agencies, nonprofit organizations, and private

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[112] The bill was approved by the Governor on October 13, 2001 and became effective on January 1, 2002. *See* http://www.leginfo.ca.gov/cgi-bin/postquery. *See also* Real Estate Newsletter: California Legislature Restricts Development of "Antiquated Subdivisions," June 2002, retrieved at http://www.lawcommerce.com/newsletters .

[113] *See* Cal. Government Code, Sections 65850.5, 66412, 66473.1, 66475.1, 66475.2, and 66499.35.

[114] Rick Pruetz, "TDR Developments in the West, Including Santa Fe County, NM. Part of TDR Grows Up – Case Studies in Two TDR Programs in the West," January 21, 2001. Paper presented at the Rocky Mountain Land Use Institute Conference, March 7-8, 2002.

[115] California Department of Conservation, July 31, 1998, retrieved at at www.consrv.ca.gov/news/1998_News_Releases/98021.htm

[116] See www.coastalconservancy.ca.gov for more information.

entities in performance of its duties. The CCC serves many functions, and is not limited to simply land conservation. Rather, it has been invested by the Legislature with broad powers to allow it to seek flexible solutions to complex land use problems throughout the state. As part of its activities, the CCC states that it has "retired more than 600 inappropriately planned subdivisions."[117]

In one of the CCC's projects, it purchased 265 acres of wetlands in Ormond Beach, a coastal community in Oxnard, for $9.7 million.[118] The goal was to remove beachfront lots from the commercial market and begin to compile acreage to protect an important wetland. Other conservation efforts can be found throughout the state.[119]

d. Land Readjustment

In 1986, California reported that it potentially had more than 400,000 vacant lots in antiquated subdivisions.[120] That same year, significant efforts were undertaken by the California Legislature to formulate legislation that would address the platted lands problem. It sought legislation that would:

- Contain clear declarations of legislative intent
- Rely on existing statutory definitions
- Call for implementation at the local level
- Not require state funding
- Remain consistent with existing local land use plans
- Provide a mechanism by which its use could be monitored

As a result of the Legislative activity above and other lobbying efforts, in 1989, California sought to pass S.B. 442, a land readjustment statute which authorized both private and public land readjustment projects. Detailed procedures were set forth in the bill that would allow both a group of private landowners and local governments to initiate and implement a land readjustment project. For various political reasons, S.B. 442 never became law.[121]

e. Reversion to Acreage

Local governments in California also utilize the state's "reversion to acreage" act which authorizes local government to initiate plat vacation once a series of

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[117] *Id.*

[118] "The Great Coastal Places Campaign: Development Threatens Ormond Beach," Retrieved October 2, 2002 at www.sierraclub.org/ca/coasts/ormond.asp .

[119] Madelyn Glickfeld, Sonia Jacques, Walter Kieser, Todd Olson. "Implementation Techniques and Strategies for Conservation Plans," Economic and Planning Systems, Winter 1995. Retrieved December 12, 2002 at www.epsys.com/documents/consplns.pdf

[120] "California's Hidden Land Use Problem: The Redevelopment of Antiquated Subdivision," prepared by the California Senate Committee on Local Government for the Interim Hearing of the Subcommittee on the Redevelopment of Antiquated Subdivisions, December 2, 1986.

[121] Similarly, in Hawaii several attempts have been made to pass land readjustment legislation without suceess. *See* Luciano Minerbi , "Attempts to Promote Land Readjustment in Hawaii," Land Assembly and Development, Vol. 1, No. 1 (Spring 1987).

required findings have been made. These include the developer's failure to make required improvements within an agreed upon timeframe or that no lots shown on the map have been sold in the previous five years.[122]

2. New Mexico

New Mexico's platted lands scenarios are not unlike Florida's. Large tracts of land were bought and set up as "paper" subdivisions. No water and sewer lines or roads were planned for, and lots were sold to people around the globe. As development moves towards some of these paper plats, developers and local governments are attempting to acquire the land in order to integrate it into more livable communities. Those parties have encountered the same resistance that their counterparts in Florida experience. Lot holders believe if they can just hold out a little longer before they sell, they will maximize their profits. What happens instead is that development progresses in a disorderly and inefficient fashion.

Some of the techniques described in Chapter Four are being experimented with in New Mexico. For example, in a development called Rio Rancho, there are efforts to have the city of Albuquerque declare the area "blighted" and create a CRA (authorized under statute) to redevelop the area. The city can use its eminent domain powers to buy out any lot holders unwilling to sell their property.

Local governments and private developers are also attempting to utilize land reassembly strategies in some areas. Efforts to locate lot owners and convince them to sell have been extensive. One real estate broker described his efforts to get twenty lot owners to sell as "almost an act of God".[123]

Albuquerque also employs special-assessment districts to control and direct growth. Special-assessment districts are used where, if the majority of landowners in an area agree to it, the city sells bonds to pay for infrastructure. The lot owners pay fees that are used to pay back the bonds over a period of ten years. The lot owners end up with sewers, streets, stormwater drainage and so on. Landowners may not like paying the fees, but at least they end up with a means of using their property and living in a viable community.

3. Utah

Utah law allows for owner-initiated plat vacation. In this process, Utah statutes require a hearing on any petition for a proposed plat vacation, alteration, or amendment, within 45 days of application under any of the following three conditions:

(1) where the plat includes the vacation of a public street or alley;
(2) where any owner within the plat notifies the municipality of their objection in writing within 10 days of the mailed notification; or

[122] Cal. Government Code s. 66499.11-29.
[123] John Hill, "Land-rush Leftovers," *Albuquerque Tribune*, March 16, 1999, retrieved at www.abqtrib.com/archives/news/031699_land.shtml

(3) where all of the owners of the plat have not signed the revised plat .[124]

Wyoming also has a similar process.[125] In addition to government and owner-initiated plat vacations, Virginia allows its local governments to vacate plats "on application of an interested person".[126]

B. OTHER COUNTRIES

The following section reviews other countries' experiences with readjustment or reassembling of antiquated subdivisions to conform to modern housing, industrial, economic and agricultural conditions and needs.

1. Japan[127]

One of the most effective methods of constructing urban infrastructure and providing urban serviced land in Japan in known as "Kukaku-Serei" or land readjustment. Land readjustment has been used in Japan for more than one hundred years.[128]

Rather than a regulatory program, land readjustment is a method of "positive project implementation."[129] In a Japanese land readjustment project, individual landowners relinquish a portion of their property in favor of infrastructure and development measures. This method has been used most effectively in areas of rapid suburbanization on the urban fringe and for improvements and reconstruction of disaster areas. It is a means to exchange housing units for land rights in urban renewal projects.[130]

In the mid-1980's, land readjustment projects covered "30 percent of the densely inhabited districts" in Japan.[131] For example, in the late 1980s, "90 percent of the cost of road construction" in Tokyo was covered by the cost of land purchases in a readjustment scheme.[132] That land readjustment partnership made the provision of infrastructure more affordable and less of an impediment to the environment.

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[124] Utah Code, s. 17-27-808-811.
[125] Wyoming Statutes, ss. 34-12-101-115.
[126] Virginia Code Annotated, s. 15.2-2272.
[127] Information for this section was taken primarily from, Dr. Yasuo Nishiyama, "Kukaku-Seiri (Land Readjustment): A Japanese Land Development Technique," Land Assembly and Development, A Journal of Land Readjustment Studies, Vol. 1, No. 1 (Spring 1987), at p. 1.
[128] A.L. Fernandez, "Land Readjustment: What Makes It Relevant to Developing Countries," United Nations Centre on Regional Development. Joint Learning Workshop on Community Based Environmental Improvement and Capacity Building. February 19-23, 2001, Nagoya, Japan. Retrieved April 30, 2002 at www.uncrd.or.jp/res/ws/landread.htm .
[129] "Kukaku-Seiri" at p. 1.
[130] *Id.*, at p. 2.
[131] *Id*.
[132] Mike Douglass and Ooi Giock Ling, "Industrializing Cities and the Environment in Pacific Asia: Toward a Policy Framework and Agenda for Action," prepared for the United States – Asia Environmental Partnership, retrieved from www.usaep.org/policy/framing1.htm., *citing* Mike Douglass, "Urbanization and Policy Alternatives in Asia," Chapter 4 in State of Urbanization in Asia (Bangkok: UNESCAP).

Typically, a suburban land readjustment project managed by a private association would work as follows. After forming a cooperative landowners association (similar to a neighborhood association), two procedures are pursued: (1) replatting and (2) land contribution. In replatting, the land is physically rearranged to provide "future infrastructure sites, reserve land for cost recovery, and redesign parcels into regular shapes." [133] In a land contribution process, each landowner is required to contribute about one-third or more of their land to the cooperative landowners association as a means of paying for the project's expenses.

In suburban Japan, land readjustment has been to accomplish a combination of infrastructure improvement and to supply serviced urban land, as was the case with the Tokyo-Garden City railway line. In that instance, a private railway company purchased every piece of available land. It then organized a land readjustment association with the surrounding landowners. Through land readjustment, the company kept its railway sites and provided land for commercial areas in front of the station and residential buildings. The project was considered successful in light of the increased demand for housing located near the railway station.

Ideally, land readjustment projects should be carried out *before* land values increase due to growth and speculation.[134] It is also important to note that land readjustment projects are gradual and are not meant as a comprehensive method of simultaneous land development and housing construction as is often the case in the United States.[135] Upon completion, a land readjustment project will cause land values to appreciate by: improving the surrounding infrastructure; changing the land from a non-residential agricultural use to an urban-serviced use; and, by causing a more intensive use of the area.

Land readjustment projects have successfully been used to achieve a variety of goals throughout Japan.[136] Nonetheless, land readjustment should not be considered a panacea. Cities in Japan have experienced their share of significant problems in their land readjustment efforts.[137]

Other countries, such as Germany, Australia, South Korea and Taiwan also use different variations of land readjustment.[138] Communities in the United States have attempted land readjustment projects with names such as commercial development pooling, negotiated

[133] "Kukaku-Seiri" at 3.
[134] *Id*., at 4.
[135] *Id.*, at 5.
[136] It is interesting to note that although land readjustment is not common in the United States, the nation's capital, Washington, D.C., resulted from such a process engineered by President George Washington. Robert H. Freilich and Michael M. Schultz, "Model Subdivision Regulations, Article 7," Second Ed. (Chicago: APA Planners Press, 1995).
[137] Akito Murayama, "Problems of Land Readjustment Project for Downtown Revitalization and Suggestions for the Future – A Case of Downtown Fukaya City, Saitama Prefecture," *Draft Report*, December, 2001.
[138] Thomas S. Lyons, "Economy Without Walls: Managing Local Development in a Restructuring World," p. 44 (1996), *citing* Frank Schnidman, Land Readjustment, Urban Land, 47, 2:2-6 (1988).

replatting, and residential neighborhood pooling, including Oregon, which uses negotiated replatting to modernize antiquated subdivisions in rural areas."[139]

2. Korea[140]

During Japan's occupation of Korea, land readjustment was introduced to Korea with the passage of the Colonial City Planning Act in 1934. After the Korean War ended in 1953, land readjustment was used as a mechanism to ensure basic service delivery and to revive urban cores that had been destroyed. Urbanization and economic development increased significantly during the 1960s and 70s. Several large readjustment projects of 300 to 400 hectares[141] were implemented around the urban fringe in order to make the area more fully utilized. These two decades saw major readjustment projects; as much as 64 percent of the readjustment projects in Seoul were completed during this period.

However, in the 1980s, due to increased land prices, land speculation and several other factors, public corporations, such as the Korea Land Development Corporation and the Korea National Housing Corporation, began buying land parcels for redevelopment. In 1980, the Residential Land Development Promotion Act was introduced. From the time of its introduction until 1987, 143 sites were designated for "public development" and only five for readjustment, illustrating a change in approach.

However, during this same period, land readjustment was used often for urban redevelopment projects. In 1983, a special joint renewal program initiated in 1983 was implemented, which called for land owners and residents to form an association. The association then invited private construction companies to be responsible for the development process. As of 1990, most residential renewal processes in Seoul used this technique.[142] Other land readjustment projects in Seoul require a set-aside for the provision of low-income housing. In these projects, less than half of the property is returned to its original owners.

3. Germany

Land readjustment has a very long tradition in Germany, and similar to Sweden, France, Japan, South Korea, Taiwan, India and Western Australia, the use of this tool is codified in law.[143] Historically, the use of land adjustment in Germany was used as a means of piecing together fractured agricultural lands.[144] Many projects have been completed with thousands of hectares of new building land for residential, commercial, industrial, and

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[139] *Id*., *citing* Arthur C. Nelson and J. Richard Recht, "Inducing the Rural Land Market to Grow Timber in an Antiquated Rural Subdivision," Journal of the American Planning Association, 54, 4:529-536 (1988).

[140] Information for this section was taken primarily from "Municipal Land Management in Asia: A Comparative Study", United Nations Economic and Social Commission for Asia and the Pacific, Ch. 10.6, retrieved at www.unescap.org/huset/m_land/chapter10a.htm .

[141] A hectare is 2.47 acres or 10,000 square meters.

[142] *See* fn.140.

[143] Jan Sonnenberg, "The European Dimensions and Land Management – Policy Issues (Land Readjustment and Land Consolidation as Tools for Development)," FIG Commission 7, Annual Meeting 1996, Budapest, Hungary. Information retrieved at http://www.geom.unimelb.edu.au/fig7/budg96/bud961.htm.

[144] George W. Liebmann, "Three Good Community-Building Ideas from Abraod," *The American Enterprise*, Nov./Dec. 1996, p. 3, retrieved at http://www.theamericanenterprise.org/taend96l.htm.

public infrastructure. Land readjustment also played a significant role in the former German Democratic Republic (East Germany) when it was reunified with the Federal Republic of Germany (West Germany).[145]

4. Western Australia[146]

Since 1928, Western Australia has been engaged in various land pooling projects, a process similar to land readjustment. These projects involve the preparation of a land pooling scheme for a selected urban-fringe area by the local government (local councils). When the scheme is approved, the local government consolidates the separate land holdings so that they can be planned, serviced, and subdivided as a single land development project. The project is financed by a short-term loan which is repaid by sales of the resulting new building sites. The remaining sites are passed on to the landowners. Pooling enables the local government to act as a land developer without buying the land, but rather as a compulsory partnership with the landowners. Local governments have mainly use land pooling to service and subdivide urban-fringe farmlands for new urban development and as a means to finance the cost the construction of infrastructure and designing a good subdivision layout in situations where there were barriers to the normal process of private land subdivision. Most landowners support the use of land pooling because it enables them to share in the profits of land subdivision for urban development.

C. SUMMARY

Just as was reported by several local governments throughout Florida, states and foreign countries formulate their strategies to contend with platted lands in a manner premised upon, and responsive, to the nuances of the individual jurisdiction. Policy makers and stakeholders in Florida should continue to examine and consider initiatives used in other areas, even if the fact patterns elsewhere are not identical to those in Florida's communities. Because of several land use features and other characteristics California has in common with Florida, any activity there should be closely monitored by policy makers and other stakeholders in Florida.

[145] Rainer Muller-Jokel, "German Land Readjustment – Ecological, Economic and Social Land Management," p. 5, (date unknown) retrieved at http://www.fig.net/figtree/pub/proceedings/korea/full-papers/pdf/session20/mullerjokel.pdf.

[146] Information for this section was taken primarily from R.W. Archer, "Land Pooling for Resubdivision and New Subdivision in Western Australia," American Journal of Economics and Sociology, Vol. 47, No. 2 (April 1988).

CHAPTER SIX:
Conclusions and Proposals

The phenomenon of antiquated subdivisions is a circular one. They owe their existence to persuasive marketing strategies, and yet their evolution into lands with more viable uses depends largely on modern marketing strategies. In order for any project to be successful, local governments, private developments or hybrid entities must take into consideration that they may need to dispel fears some property owners may have that their property is being "taken" from them rather than being turned into a valuable commodity.

While property rights concerns may have a chilling effect on government action, in the context of antiquated subdivisions, there is generally not much the property owner can do with the land without government intervention. Problems associated with antiquated subdivisions cannot be resolved unless all stakeholders work collaboratively, creatively and tailor their techniques to the nuances of the subdivision, while remaining consistent with the community vision.

Lot owners, developers and regulators, by working together, may achieve the highest likelihood of dealing successfully with the local platted lands dilemma. Government officials and policymakers may want to concentrate on establishing incentives that would make it attractive to the private sector to invest in developing the lands. The private sector may wish to focus on providing development projects designed to be well received by the public and government sector. Finally, by being receptive to non-traditional approaches, private landowners may find themselves participating in projects that transform their valueless lots into valuable commodities.

The current legal, fiscal and practical realities frequently leave many lot owners in antiquated subdivisions holding onto lots that have little or no value. The land owners may be fearful that will be taken advantage of by the government or private business. Not many financial or regulatory incentives to take on the risk of trying to make an antiquated subdivision into a viable community have been offered to private developers. The government is left with disorderly and potentially hazardous land use patterns at a time when the state continues to experience rapid growth. Recognizing that the inertia experienced by all stakeholders may be exacerbated by the passage of time, the LCIR sought to examine the problem in depth and arrive at viable conclusions and proposals.

A. CONCLUSIONS

Based on research during the course of this project, the following conclusions are made:

> (1) The lack of reliable information regarding the fiscal and development related impact of antiquated subdivisions on local communities is significant. Currently, there is no obligation or incentive for a local government to thoroughly assess the size, tax implications or future plan for an antiquated subdivision within its jurisdiction. It would be helpful if

local governments were required, as part of the comprehensive plan amendment process, to identify antiquated subdivisions and set out any goals, policies and objectives regarding these parcels.

(2) Creative strategies must be implemented at the local level. Each local government has its own platted lands situation. Each community also has its own local ordinances under which growth management is regulated. In light of the local nature of the problem and the local regulatory network under which any solutions must be implemented, it would be inappropriate for the state to attempt to formulate a "one size fits all" solution for this particular set of issues.

(3) Among the local governments that responded to the LCIR survey, the primary state action requested was for land acquisition funding. It is unlikely, given the state's current fiscal situation, that state funds will be available for land acquisition. However, the state can assist local governments' efforts to deal with platted lands by providing them other techniques.

(4) It is in the state's interest to support local governments in efforts taken at the local level.

B. PROPOSALS

It may be helpful if the state, in the context of growth management laws, explicitly recognized that antiquated subdivisions are in fact a barrier to orderly growth and meaningful preservation. Decision makers can do this by making changes to existing statutes in order to accomplish three things, and by leaving open for future consideration whether other statutory changes would be useful. Accordingly, the following legislative proposals are offered for consideration to allow property owners and local governments additional tools with which to address challenges posed by antiquated subdivisions.

First, local governments already are familiar with the requirements of comprehensive plan amendments. In order to validate any need to deal with an antiquated subdivision within its jurisdiction, through creation of a CRA or the use of any other technique, amend section 163.3177, Florida Statutes, to require local governments to identify in their future land use plans any area where the local government seeks to consolidate undeveloped platted or subdivided lots and the vacation of all or a portion of these lots to allow appropriate development or other use.

Second, amend the law to clarify that the exercise of eminent domain powers for platted lands development or conservation constitutes a public purpose. Specifically, section 125.01, Florida Statutes, should be amended to recognize that actions taken by the county government pertinent to antiquated subdivisions constitute a county purpose. Section 166.411, Florida Statutes should be amended to enumerate a municipality's authority to exercise its eminent domain powers for certain actions relevant to platted lands.

Third, amend the existing CRA statute to specify that under certain circumstances, antiquated subdivisions can be considered "blight". The definition of blight under section 163.340, Florida Statutes, can be altered, but narrowly so, to allow CRAs to be established to prevent further decline of an area whose orderly development or economic viability are hampered by platted subdivisions issues.

Finally, state policy makers may wish to evaluate whether Florida statutes should be amended to address recordation and administrative issues relevant to antiquated lands, as well as to reinstate local governments' authority to vacate plats on their own motion, previously provided under Chapter 177, Florida Statutes.

Unless action is taken, and relatively soon, Florida's land use problems may increase significantly as areas plagued with antiquated subdivisions continue to deteriorate, economically and environmentally.

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APPENDIX A

LEGISLATIVE SURVEY REGARDING PLATTED LANDS

Instructions:

- Please answer the following questions **no later than October 8, 2002**.
- **Provide the name(s), title(s), phone and facsimile numbers, and e-mail address(es) of the person(s) completing this survey.**
- **Provide the name(s), title(s), phone and facsimile numbers, and e-mail address(es) of any person(s) from other local governments (i.e., municipalities) who assisted in the preparation of your response.**
- If you cannot answer the question, please state the reason why. For example, if you do not have the data available to formulate the answer, please state as such.
- Should you have any questions regarding the information being solicited, please contact Carolyn Horwich, staff attorney, at 850/488-9627 or by e-mail at horwich.carolyn@leg.state.fl.us.
- Responses can be e-mailed to the address above, mailed to the address on the letterhead or faxed to 850/487-6587.

FOR PURPOSES OF THIS SURVEY, "ANTIQUATED SUBDIVISIONS" AND "PLATTED LANDS" ARE USED INTERCHANGEABLY.

Questions:

4. Are there antiquated subdivisions in your jurisdiction that adversely affect development or other appropriate use of land?

5. If so, please describe with specificity how these subdivisions generate the adverse effects.

6. If possible, quantify the area of land affected, i.e., number of lots, square miles, etc.

7. From what source did you gather the information for Question #3?

8. What is the approximate amount of revenue received by your local government in ad valorem taxes on the undeveloped lots located in antiquated subdivisions?

9. What percentage of lot-owners in antiquated subdivisions are not current in their ad valorem tax payments and how much is the outstanding liability?

10. Can you discern any pattern of tax certificate acquisition in any of the antiquated subdivisions?

11. Are more of the platted lands individually owned or are they owned by multi-lot owners, such as developers?

12. From what source did you gather the information for Question #8?

13. In rank of applicability, what are the most prevalent reasons that the subject lots cannot be developed, i.e., environmentally sensitive, lack of water source, zoning issues, etc.

14. Does the plat have opportunities for redevelopment for something other than singly family homes? If so, please describe.

15. Does the extent of the plat require developers to seek new lands in order to find adequate lands in size to have an appropriate mix of uses?

16. What efforts (i.e., ordinances, lobbying, etc.), if any, have been made at the local level to address the situation posed by platted lands?

17. Have these efforts been successful? If not, why not?

18. Have any of these efforts been made in an intergovernmental forum, i.e., county *and* municipality or regional?

19. Are you aware of any litigation (reported or otherwise; pending or resolved) arising out of an effort to develop --or preclude the development of-- an antiquated subdivision? If so, please describe.

20. Are you aware of any factors regarding your area's platted land situation that are unique to your jurisdiction?

21. Would specific legislative tools, such as state laws, local ordinances, and so forth, be of value to your jurisdiction in addressing platted lands? If so, please describe.

22. Which entities (i.e., associations, private citizens, etc.), if any, would you anticipate to support or oppose those proposed legislative tools?

23. What legislative or other tools have you sought in the past, if any, to address the platted lands situation in your area?

24. Is your jurisdiction currently involved in any legislative or lobbying effort, at the local or state level, regarding platted lands? If so, please describe.

25. Please provide any comments you believe would be relevant to this issue that have not been addressed above.

APPENDIX B

Proposed Platted Lands Legislation

Section Subsection (1) of Section 125.01 is amended to read:

125.01 Powers and duties.--

(1) The legislative and governing body of a county shall have the power to carry on county government. To the extent not inconsistent with general or special law, this power includes, but is not restricted to, the power to:

(g) Prepare and enforce comprehensive plans for the development of the county.
(h) Establish, coordinate, and enforce zoning and such business regulations as are necessary for the protection of the public.
(i) Adopt, by reference or in full, and enforce housing and related technical codes and regulations.
(j) Establish and administer programs of housing, slum clearance, community redevelopment, conservation, flood and beach erosion control, air pollution control, platted lands assembly or adjustment and navigation and drainage and cooperate with governmental agencies and private enterprises in the development and operation of such programs.

History.--s. 1, ch. 1882, 1872; s. 1, ch. 3039, 1877; RS 578; GS 769; s. 1, ch. 6842, 1915; RGS 1475; CGL 2153; s. 1, ch. 59-436; s. 1, ch. 69-265; ss. 1, 2, 6, ch. 71-14; s. 2, ch. 73-208; s. 1, ch. 73-272; s. 1, ch. 74-150; ss. 1, 2, 4, ch. 74-191; s. 1, ch. 75-63; s. 1, ch. 77-33; s. 1, ch. 79-87; s. 1, ch. 80-407; s. 1, ch. 83-1; s. 17, ch. 83-271; s. 12, ch. 84-330; s. 2, ch. 87-92; s. 1, ch. 87-263; s. 9, ch. 87-363; s. 2, ch. 88-163; s. 18, ch. 88-286; s. 2, ch. 89-273; s. 1, ch. 90-175; s. 1, ch. 90-332; s. 1, ch. 91-238; s. 1, ch. 92-90; s. 1, ch. 93-207; s. 41, ch. 94-224; s. 31, ch. 94-237; s. 1, ch. 94-332; s. 1433, ch. 95-147; s. 1, ch. 95-323; s. 41, ch. 96-397; s. 42, ch. 97-13; s. 2, ch. 2000-141; s. 34, ch. 2001-186; s. 36, ch. 2001-266; s. 3, ch. 2001-372; s. 20, ch. 2002-281.
[1]**Note.**--Section 22, ch. 2002-281, provides that "[e]xcept as otherwise expressly provided in this act, this act shall take effect one year after the legislature adopts the general appropriations act specifically appropriating to the Department of State, for distribution to the counties, $8.7 million or such other amounts as it determines and appropriates for the specific purpose of funding this act." The appropriation has not been adopted. Upon the act taking effect, paragraph (1)(y) as amended by s. 20, ch. 2002-281, will read:
(y) Place questions or propositions on the ballot at any primary election, general election, or otherwise called special election, when agreed to by a majority vote of the total membership of the legislative and governing body, so as to obtain an expression of elector sentiment with respect to matters of substantial concern within the county. No special election may be called for the purpose of conducting a straw ballot. Any election costs, as defined in s. 97.021(10), associated with any ballot question or election called specifically at the request of a district or for the creation of a district shall be paid by the district either in whole or in part as the case may warrant.

Section . Section 127.01, F.S., is amended to read:

127.01 Counties delegated power of eminent domain; recreational purposes, issue of necessity of taking.--

(1)(a) Each county of the state is delegated authority to exercise the right and power of eminent domain; that is, the right to appropriate property, except state or federal, for any county purpose. The absolute fee simple title to all property so taken and acquired shall vest in such county unless the county seeks to condemn a particular right or estate in such property.

(b) Each county is further authorized to exercise the eminent domain power granted to the Department of Transportation by s. 337.27(1), the transportation corridor protection provisions of s. 337.273, and the right of entry onto property pursuant to s. 337.274.

(2) However, no county has the right to condemn any lands outside its own county boundaries for parks, playgrounds, recreational centers, or other recreational purposes. In eminent domain proceedings, a county's burden of showing reasonable necessity for parks, playgrounds, recreational centers, or other types of recreational purposes shall be the same as the burden in other types of eminent domain proceedings.

(3) The consolidation of undeveloped platted or subdivided lots to allow its replat for more appropriate development or use shall be considered a county purpose.

History.--s. 1, ch. 7338, 1917; RGS 1503; CGL 2281; s. 1, ch. 22802, 1945; s. 18, ch. 63-559; s. 5, ch. 73-299; s. 1, ch. 84-319; s. 17, ch. 85-80; s. 4, ch. 88-168; s. 1, ch. 91-141; s. 62, ch. 99-385.

Section 166.411 Eminent domain; uses or purposes.--Municipalities are authorized to exercise the power of eminent domain for the following uses or purposes:

(1) For the proper and efficient carrying into effect of any proposed scheme or plan of drainage, ditching, grading, filling, or other public improvement deemed necessary or expedient for the preservation of the public health, or for other good reason connected in anywise with the public welfare or the interests of the municipality and the people thereof;

(2) Over railroads, traction and streetcar lines, telephone and telegraph lines, all public and private streets and highways, drainage districts, bridge districts, school districts, or any other public or private lands whatsoever necessary to enable the accomplishment of purposes listed in s. 180.06;

(3) For streets, lanes, alleys, and ways;

(4) For public parks, squares, and grounds;

(5) For drainage, for raising or filling in land in order to promote sanitation and healthfulness, and for the taking of easements for the drainage of the land of one person over and through the land of another;

(6) For reclaiming and filling when lands are low and wet, or overflowed altogether or at times, or entirely or partly;

(7) For the abatement of any nuisance;

(8) For the use of water pipes and for sewerage and drainage purposes;

(9) For laying wires and conduits underground;

(10) For city buildings, waterworks, ponds, and other municipal purposes which shall be coextensive with the powers of the municipality exercising the right of eminent domain; and

[1] (11) For obtaining lands to be conveyed by the municipality to the school board of the school district for the county within which the municipality is located, if the school board requests in writing that the municipality obtain such lands for conveyance to the school board and promises to use the land to establish a public school thereon. Fulfilling the purpose of this subsection is recognized as constituting a valid municipal public purpose.

(12) The consolidation of undeveloped platted or subdivided lots to allow its replat for more appropriate development or use.

History.--s. 1, ch. 73-129; ss. 1, 2, ch. 2001-77.

[1]Note.--Section 2, ch. 2001-77, provides that "[s]ubsection (11) of section 166.411, Florida Statutes, is repealed January 1, 2004. Any eminent domain action that was filed pursuant to that subsection before January 1, 2004, shall not be affected by this repeal."

Section ……..Section is amended to read:

163.3177 Required and optional elements of comprehensive plan; studies and surveys.--

(6) In addition to the requirements of subsections (1)-(5), the comprehensive plan shall include the following elements:

(a) A future land use plan element designating proposed future general distribution, location, and extent of the uses of land for residential uses, commercial uses, industry, agriculture, recreation, conservation, education, public buildings and grounds, other public facilities, and other categories of the public and private uses of land. Each future land use category [1]must be defined in terms of uses included, and [1]must include standards to be followed in the control and distribution of population densities and building and structure intensities. The proposed distribution, location, and extent of the various categories of land use shall be shown on a land use map or map series which shall be supplemented by goals, policies, and measurable objectives. The future land use plan shall be based upon surveys, studies, and data regarding the area, including the amount of land required to accommodate anticipated growth; the projected population of the area; the character of undeveloped land; the availability of public services; the need for redevelopment, including the renewal of blighted areas and the elimination of nonconforming uses which are inconsistent with the character of the community; and, in rural communities, the need for job creation, capital investment, and economic development that will strengthen and diversify the community's economy. The future

land use plan may designate areas for future planned development use involving combinations of types of uses for which special regulations may be necessary to ensure development in accord with the principles and standards of the comprehensive plan and this act. In addition, for rural communities, the amount of land designated for future planned industrial use shall be based upon surveys and studies that reflect the need for job creation, capital investment, and the necessity to strengthen and diversify the local economies, and shall not be limited solely by the projected population of the rural community. The future land use plan of a county may also designate areas for possible future municipal incorporation. The land use plan shall identify any area where the local government seeks to consolidate undeveloped platted or subdivided lots and the vacation of all or a portion of these lots to allow appropriate development or other use. The land use maps or map series shall generally identify and depict historic district boundaries and shall designate historically significant properties meriting protection. The future land use element must clearly identify the land use categories in which public schools are an allowable use. When delineating the land use categories in which public schools are an allowable use, a local government shall include in the categories sufficient land proximate to residential development to meet the projected needs for schools in coordination with public school boards and may establish differing criteria for schools of different type or size. Each local government shall include lands contiguous to existing school sites, to the maximum extent possible, within the land use categories in which public schools are an allowable use. All comprehensive plans must comply with the school siting requirements of this paragraph no later than October 1, 1999. The failure by a local government to comply with these school siting requirements by October 1, 1999, will result in the prohibition of the local government's ability to amend the local comprehensive plan, except for plan amendments described in s. 163.3187(1)(b), until the school siting requirements are met. Amendments proposed by a local government for purposes of identifying the land use categories in which public schools are an allowable use or for adopting or amending the school-siting maps pursuant to s. 163.31776(3) are exempt from the limitation on the frequency of plan amendments contained in s. 163.3187. The future land use element shall include criteria that encourage the location of schools proximate to urban residential areas to the extent possible and shall require that the local government seek to collocate public facilities, such as parks, libraries, and community centers, with schools to the extent possible and to encourage the use of elementary schools as focal points for neighborhoods. For schools serving predominantly rural counties, defined as a county with a population of 100,000 or fewer, an agricultural land use category shall be eligible for the location of public school facilities if the local comprehensive plan contains school siting criteria and the location is consistent with such criteria.

History.--s. 7, ch. 75-257; s. 1, ch. 77-174; s. 1, ch. 80-154; s. 6, ch. 83-308; s. 1, ch. 85-42; s. 6, ch. 85-55; s. 1, ch. 85-309; s. 7, ch. 86-191; s. 5, ch. 92-129; s. 6, ch. 93-206; s. 898, ch. 95-147; s. 3, ch. 95-257; s. 4, ch. 95-322; s. 10, ch. 95-341; s. 10, ch. 96-320; s. 24, ch. 96-410; s. 2, ch. 96-416; s. 2, ch. 98-146; s. 4, ch. 98-176; s. 4, ch. 98-258; s. 90, ch. 99-251; s. 3, ch. 99-378; s. 40, ch. 2001-201; s. 64, ch. 2001-279; s. 24, ch. 2002-1; s. 58, ch. 2002-20; s. 70, ch. 2002-295; s. 2, ch. 2002-296; s. 904, ch. 2002-387.

[1]Note.--As amended by s. 2, ch. 2002-296. The amendment by s. 70, ch. 2002-295, uses the word "shall."

Section Section 163.340, F.S., is amended to read:

163.340 Definitions.--The following terms, wherever used or referred to in this part, have the following meanings:
(1) "Agency" or "community redevelopment agency" means a public agency created by, or designated pursuant to, s. 163.356 or s. 163.357.
(2) "Public body" or "taxing authority" means the state or any county, municipality, authority, special district as defined in s. 165.031(5), or other public body of the state, except a school district.
(3) "Governing body" means the council or other legislative body charged with governing the county or municipality.
(4) "Mayor" means the mayor of a municipality or, for a county, the chair of the board of county commissioners or such other officer as may be constituted by law to act as the executive head of such municipality or county.
(5) "Clerk" means the clerk or other official of the county or municipality who is the custodian of the official records of such county or municipality.
(6) "Federal Government" includes the United States or any agency or instrumentality, corporate or otherwise, of the United States.
(7) "Slum area" means an area having physical or economic conditions conducive to disease, infant mortality, juvenile delinquency, poverty, or crime because there is a predominance of buildings or improvements, whether residential or nonresidential, which are impaired by reason of dilapidation, deterioration, age, or obsolescence and exhibiting one or more of the following factors:
(a) Inadequate provision for ventilation, light, air, sanitation, or open spaces;
(b) High density of population, compared to the population density of adjacent areas within the county or municipality; and overcrowding, as indicated by government-maintained statistics or other studies and the requirements of the florida Building Code; or
(c) The existence of conditions that endanger life or property by fire or other causes;
(8) "Blighted area" means an area in which there are a substantial number of deteriorated, or deteriorating structures, in which conditions, as indicated by government-maintained statistics or other studies, are leading to economic distress or endanger life or property, and in which two or more of the following factors are present:
(a) Predominance of defective or inadequate street layout, parking facilities, roadways, bridges, or public transportation facilities;
(b) Aggregate assessed values of real property in the area for ad valorem tax purposes have failed to show any appreciable increase over the 5 years prior to the finding of such conditions;
(c) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
(d) Unsanitary or unsafe conditions;
(e) Deterioration of site or other improvements;
(f) Inadequate and outdated building density patterns;

(g) Falling lease rates per square foot of office, commercial, or industrial space compared to the remainder of the county or municipality;
(h) Tax or special assessment delinquency exceeding the fair value of the land;
(i) Residential and commercial vacancy rates higher in the area than in the remainder of the county or municipality;
(j) Incidence of crime in the area higher than in the remainder of the county or municipality;
(k) Fire and emergency medical service calls to the area proportionately higher than in the remainder of the county or municipality;
(l) A greater number of violations of the Florida Building Code in the area than the number of violations recorded in the remainder of the county or municipality;
(m) Diversity of ownership or defective or unusual conditions of title which prevent the free alienability of land within the deteriorated or hazardous area; or
(n) Governmentally owned property with adverse environmental conditions caused by a public or private entity.

However, the term "blighted area" also means any area in which at least one of the factors identified in paragraphs (a) through (n) are present and all taxing authorities subject to s. 163.387(2)(a) agree, either by interlocal agreement or agreements with the agency or by resolution, that the area is blighted. Such agreement or resolution shall only determine that the area is blighted. For purposes of qualifying for the tax credits authorized in chapter 220, "blighted area" means an area as defined in this subsection.

(9) "Community redevelopment" or "redevelopment" means undertakings, activities, or projects of a county, municipality, or community redevelopment agency in a community redevelopment area for the elimination and prevention of the development or spread of slums and blight, or for the reduction or prevention of crime, or for the provision of affordable housing, whether for rent or for sale, to residents of low or moderate income, including the elderly, and may include slum clearance and redevelopment in a community redevelopment area or rehabilitation and revitalization of coastal resort and tourist areas that are deteriorating and economically distressed, or rehabilitation or conservation in a community redevelopment area, or any combination or part thereof, in accordance with a community redevelopment plan and may include the preparation of such a plan.

(10) "Community redevelopment area" means a slum area, a blighted area, or an area in which there is a shortage of housing that is affordable to residents of low or moderate income, including the elderly, or a coastal and tourist area that is deteriorating and economically distressed due to outdated building density patterns, inadequate transportation and parking facilities, faulty lot layout or inadequate street layout, or a combination thereof, or where the pattern of undeveloped platted or subdivided lots in an area makes the area unsuitable for appropriate development or use, which the governing body designates as appropriate for community redevelopment.

History.--s. 3, ch. 69-305; s. 1, ch. 77-391; s. 1, ch. 81-44; s. 3, ch. 83-231; ss. 2, 22, ch. 84-356; s. 83, ch. 85-180; s. 72, ch. 87-243; s. 33, ch. 91-45; s. 1, ch. 93-286; s. 1, ch. 94-236; s. 1447, ch. 95-147; s. 2, ch. 98-201; s. 1, ch. 98-314; s. 2, ch. 2002-294.