

# PAPPAS METCALF JENKS & MILLER

PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW  
245 RIVERSIDE AVENUE • SUITE 400  
JACKSONVILLE, FLORIDA 32202  
Telephone: (904) 353-1980  
Telecopier: (904) 356-1018

G. TODD COTTRILL  
SPENCER N. CUMMINGS  
STEVEN B. GREENHUT  
THOMAS O. INGRAM  
THOMAS M. JENKS  
ROBERT A. LEAPLEY  
W. WILLIAM LI  
JOHN G. METCALF  
FRANK E. MILLER  
M. LYNN PAPPAS  
MARCIA PARKER TJOFLAT  
KATHRYN F. WHITTINGTON

JOHN R. CAMPBELL  
CHARLES L. GIBBS  
ZACHARY W. MILLER  
STACI M. REWIS  
ANDREW M. SODL  
JOSEPH J. VAN ROOY

## MEMORANDUM

**To:** Interested Clients

**From:** M. Lynn Pappas

**Date:** January 7, 2009

**Re:** Comprehensive Plans - Financial Feasibility Requirements  
Chapter 163, Fla. Statutes

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As of December 1, 2008, all local governments were supposed to have amended their comprehensive plans to show how they would make road improvements, expand school capacity and create other public infrastructure necessary to meet their adopted level of service standards within a 5-15 year period. This is the financial feasibility requirement of Chapter 163 as applied to comprehensive plans as a whole. The DCA has not been enforcing the requirement, but is now indicating that it intends to do so. This could cause local governments to be in an impossible position, depending on what assumptions can legally be made about the pace of development over a 5-15 year period, and depending on how possible it is to ever really afford the level of service standards that local governments have adopted. Worst case, local governments could be unable to amend their future land use maps until the statutes are changed. The more likely result is that in the near term, the DCA will develop informal policies allowing some amendments to go through, such as allowing amendments involving net reductions in development densities or intensities, additions of conservation lands, government-owned "economic development" projects, and projects which have particularly attractive mitigation packages, and some local governments will reduce LOS standards.

A 2005 amendment to the Growth Management Act required that by December 1, 2007, all local comprehensive plans and their elements must be "financially feasible." This term is defined for comprehensive plan purposes as meaning that by the end of the planning period, the adopted level-of-service standards are achieved and maintained, either by existing infrastructure or by planned infrastructure that is

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funded by committed funding sources for the first 3 years of the plan, or from committed or planned funding sources for years 4 and 5 of a 5-year capital improvements plan. 10 or 15 year capital improvements plans (CIPs) can also be adopted for schools and transportation. The December 1, 2007 deadline was later extended to December 1, 2008. The statute provides that local governments may not amend their comprehensive plans after December 1, 2008 until this requirement has been implemented. Certain groups are lobbying to have the deadline extended again.

Since 2005, the DCA has been applying the "financial feasibility" requirement to individual comprehensive plan amendments but not to entire plans since the CIE adoption date for local governments was extended to 2008. In a recent ORC report we received from DCA on a plan amendment, the DCA "reminded" St. Johns County of the December 1, 2008 deadline, the implication being that the County had not yet complied with the new requirement.

Based on the DCA's prior interpretations involving single land use amendments, it may assert that the only way to meet the financial feasibility requirement is for local governments to (1) assume "maximum theoretical density" on all undeveloped areas that are designated for development, (2) plan for infrastructure necessary to meet the adopted level of service standard, (3) meet the level of service standard within the applicable time period (5-15 years), and (4) show how that infrastructure will be funded using existing or planned funding sources. If this is the only acceptable methodology and the DCA sought to enforce this requirement, then it could result in moratoria on affected local comprehensive plan amendments until a local government "financially feasible" CIE is adopted. Other methodologies could be used to account for future public facilities needs, such as applying a growth factor to trip counts on the roads and using population growth estimates for purposes of estimating school enrollments, but the agency will likely err in favor of interpretations affording it more power in the growth management process.

DRIs and certain development in urban service areas and a few other areas can be excepted from the financial feasibility requirement as it pertains to transportation facilities for individual plan amendments, although it is not clear how DCA will apply this exception to the extent that the overall CIE has not been adopted consistent with the requirements of a overall plan financially feasible CIE. In other words, while the comprehensive plan amendment that is otherwise entitled to the exception may be considered in compliance, it is possible that DCA would argue that the moratorium on plan amendments is universal without the countywide CIE, since these CIE failures are likely to relate to other infrastructure items.

MLP/df