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## FLORIDA'S DOWNTOWNS: THE KEY TO SMART GROWTH, URBAN REVITALIZATION, AND GREEN SPACE PRESERVATION

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# FLORIDA'S DOWNTOWNS: THE KEY TO SMART GROWTH, URBAN REVITALIZATION, AND GREEN SPACE PRESERVATION

## **Cover Page Footnote**

B.A., 1990, Program of Liberal Studies of Notre Dame; M.A., 1994, Government, University of Texas at Austin; J.D., 1997, University of Florida. Mr. Marshall is an associate with Holland & Knight LLP in Tampa, Florida. The views expressed in this Article are those of the author and do not necessarily reflect the views of Holland & Knight LLP. The author would like to thank Mary T. Marshall, Esq., Willoughby M. Marshall, AIA, Marie Q Marshall, Glenn Ross, Lynn C. Hearn, Esq., and Garry Rhoden, Esq. for their assistance with this article.

# FLORIDA'S DOWNTOWNS: THE KEY TO SMART GROWTH, URBAN REVITALIZATION, AND GREEN SPACE PRESERVATION

John T. Marshall\*

## INTRODUCTION

"You have got to build what people want to buy," explains Ted Krusen, whose family owns hundreds of acres of open pastureland in Zephyrhills, Florida, a small community north of Tampa.<sup>1</sup> Using 200 acres of agricultural land, the Krusen family will build 800 homes and add nine holes to a golf course. Their decision reflects a pattern of suburban fringe growth that has pushed progressively outward from Florida's center cities over the past thirty years.<sup>2</sup> The State's growth management laws have encouraged development at the outskirts of metropolitan areas by requiring that new development occur only where the infrastructure exists, or where infrastructure adequate to support the proposed development is planned.<sup>3</sup>

This requirement, intended to control growth, actually promotes development on the suburban fringe where infrastructure is generally under-utilized<sup>4</sup> and discourages urban revitalization.<sup>5</sup> The eco-

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1. Andy Reid, *Family Plans New Holes, Homes*, TAMPA TRIB., June 3, 2001, at 1, available at 2001 WL 5503986.

2. *Id.*

3. Robert C. Apgar, *Comprehensive Plans in The Twenty-First Century: Suggestions to Improve a Valuable Process*, 30 STETSON L. REV. 965, 973, 975 (2001). Florida's growth management laws have tended to encourage suburban development making it easier to develop land in areas with lightly traveled roads. *Id.*

4. Cynthia Barnett & Mary Elden Klas, *Managing Growth: 10 Steps Toward a More Liveable Florida*, FLA. TREND, Dec. 1, 2000, at 68, available at 2000 WL 32136510. To give a general idea of where the "urban fringe" is located in most cities, the technical definition describes it as the territory lying beyond both the "urban core" and "urbanized areas." FLA. LEGIS. COMM. INTERGOVTL. REL., 1998 REPORT ON THE DEVELOPMENT OF A STATE URBAN POLICY 22-23 (Feb. 1998) [hereinafter URBAN POLICY REPORT]. The population density in these urban areas is at least 1,000 people per square mile. *Id.*

5. Barnett & Klas, *supra* note 4.

conomic justification for suburban fringe development is simple: it is less expensive to build a golf community on rolling cow pasture than to redevelop a city block and upgrade a city's already over-used roads, sewers, and water lines.<sup>6</sup>

The suburban development that has accommodated Florida's tremendous demand for new homes and commercial buildings in the past thirty years has come with costs.<sup>7</sup> Florida's cities have paid for a disproportionate share of new roads and sewer systems to connect new communities to surrounding metropolitan areas.<sup>8</sup> Stagnant population growth in city centers has undercut the cultural vitality of cities, imposing a cost not easy to quantify, but still precious to the city's bottom line.<sup>9</sup> "Workaday" cities that are empty at night are perceived as dangerous and fail to attract the residents, shops, and restaurants that could bolster their tax bases.<sup>10</sup>

With most data forecasting Florida's rapid growth to continue for the next twenty-five years,<sup>11</sup> Florida's Governor Jeb Bush and the Florida legislature have paused to evaluate how the state is

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6. James C. Nicholas & Ruth L. Steiner, *Growth Management and Smart Growth in Florida*, 35 WAKE FOREST L. REV. 645, 667 (2000). Florida's managed growth laws are noted in the legislature's early commitment to reverse the pattern of environmental neglect that had characterized land use in Florida during the first six decades of the twentieth century. *Id.* at 658. It is cheaper and easier to develop infrastructure at the urban fringe. *Id.* at 667.

7. Daniel R. Maudelker, *Managing Space to Manage Growth*, 23 WM. & MARY L. REV., 801, 802 (1999). Lower density suburban development has resulted in increased capital and operating costs for public facilities and for transportation. *Id.*

8. Brad Smith, *Florida Considers Trying to Measure Public Expense of Sprawl*, TAMPA TRIB., Apr. 2, 2001, available at 2001 WL 17608526. Research on the cost of public facilities has established that Florida's urban residents pay a disproportionate amount of the cost for infrastructure improvements constructed to serve outlying suburban developments. *Id.*

9. William W. Buzbee, *Sprawl's Political—Economy and the Case for a Metropolitan Green Space Initiative*, 32 URB. LAW. 367, 371-72 (2000). Investments in real estate development at the fringe of cities has undermined the vitality of central city areas. In the period from 1990 to 1997, several of Florida's major cities experienced almost no growth in population. URBAN POLICY REPORT, *supra* note 4, at 19. During this time, Miami grew by only 1.7 percent, St. Petersburg (Florida's fourth largest city), Fort Lauderdale (seventh largest), and Miami Beach (fourteenth largest) experienced growth of less than one percent. *Id.* By comparison, Florida's overall average rate of growth for the same time period was 13.7 percent. *Id.*

10. JENNIFER MOULTON, BROOKINGS INST. CTR. ON URBAN AND METRO. POLICY, TEN STEPS TO A LIVING DOWNTOWN 15 (1999), available at <http://www.brook.edu/ES/urban/moulton.pdf>. Downtowns are generally dismissed as places to live or visit because they are popularly portrayed as unclean and unsafe. *Id.* That is why safety and cleanliness are key concerns for cities. *Id.*

11. Census Bureau, Pub P25-1131, Population Projections States: 1997-2025 (1997), available at [www.census.gov/prod/2/pop/p25/p25-1131.pdf](http://www.census.gov/prod/2/pop/p25/p25-1131.pdf).

managing its growth.<sup>12</sup> This article examines Florida's growth management system and its impact on Florida's urban centers. Since Florida's plan for limiting sprawl and promoting urban development will inform other states, the article also evaluates policy recommendations that may be incorporated in Florida's 2002 growth management legislation.

## I. THE EXISTING LANDSCAPE—AN OVERVIEW OF FLORIDA'S KEY GROWTH MANAGEMENT LAWS

Over the past thirty years, Florida's growth management laws have pursued two objectives: preservation of the state's natural resources and implementation of top-down comprehensive planning—with state-mandated planning goals passed down from state to region to county to city. Laws aimed at protecting natural resources were a response to decades of unrestricted development in and around the State's most sensitive natural resources, including the Everglades, the Florida Keys, and Miami's Biscayne Bay.<sup>13</sup> To protect these and other resources, the Florida legislature enacted legislation in the late 1960s and early 1970s that controlled development in environmentally sensitive areas.<sup>14</sup>

Florida's Environmental Land and Water Management Act of 1972 is a leading example of these efforts. Twenty-nine years after its enactment, it still informs the large-scale developments impacting environmentally sensitive lands.<sup>15</sup> The 1972 Act called for designation of "areas of critical state concern."<sup>16</sup> By 1979, five major areas of the state had been designated as areas of critical concern, including the Florida Keys, the City of Key West, and Apalachicola Bay in the state's panhandle.<sup>17</sup> The 1972 Act also mandated state review of Developments of Regional Impact

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12. Pamela Mercer, *Governor Still Tries to Sell School Ideas: Jeb Bush Doesn't Want Homes Built if the State's Schools are Crowded*, ORLANDO SENTINEL, Aug. 10, 2001, at 1.

13. Nicholas & Steiner, *supra* note 6, at 650-51.

14. *Id.* at 650-51. Florida's managed growth laws are rooted in the legislature's early commitment to reverse the pattern of environmental neglect that had characterized land use in Florida during the first six decades of the twentieth century. *Id.*

15. Fla. Stat. § 186.001; Nicholas & Steiner, *supra* note 6, at 652 – 53. Two of the 1972 Act's main provisions requiring review of development in "areas of critical state concern" and review of "development(s) of regional impact" remain important and much discussed features of Florida's growth management regime. *Id.*

16. Nicholas & Steiner, *supra* note 6, at 652.

17. *Id.* at 653.

(“DRI”), which are developments that affect more than one county.<sup>18</sup>

The second objective of Florida’s growth management laws has been comprehensive planning. Beginning with the enactment of the Florida State Comprehensive Planning Act in 1972,<sup>19</sup> and continuing with the enactments of subsequent comprehensive planning laws in 1975, 1985, and 1991, the State aimed to construct “an integrated system of local, regional, and state planning” to inform future development.<sup>20</sup> The central goal of the State’s growth management system is to ensure that adequate infrastructure exists to accommodate new development.<sup>21</sup> Florida officials have coined this concept “concurrency.”<sup>22</sup> Concurrency bars local governments from approving new development until infrastructure exists to handle the new growth.<sup>23</sup> Concurrency may also have the unintended effect of encouraging fringe development by shifting development from older city-centers—whose infrastructure is necessarily constrained—to previously undeveloped rural areas.

Concurrency imposes steep costs on city-centers because city roads and infrastructure already operate at, or above, capacity.<sup>24</sup> Under the existing concurrency requirement, it is significantly less expensive to build homes, office centers, and commercial space outside the urban core because suburban roads, water lines, and sewers are not taxed to capacity and will not require replacement

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18. *Id.* at 655. DRI review is widely opposed by developers, but experience has shown that developments subject to the DRI process exhibit better planning and are more environmentally sound than non-DRI developments. *See id.* at 655-56.

19. Florida State Comprehensive Planning Act of 1972, ch. 72-295, 1972 Fla. Laws, § 1 (current version at Fla. Stat. § 186.001).

20. Nicholas & Steiner, *supra* note 6, at 651.

21. David L. Powell, *Recent Changes in Concurrency*, 68 FLA. B.J. 67 (1994). Florida’s concurrency requirement, which requires that physical infrastructure is ready at the same time new development is completed, “is the teeth” of the State’s growth management system. *Id.* at 67.

22. *Id.* at 67.

23. Ronald L. Weaver, *Concurrency, A Growth Management Tool*, 12 U. FLA. J.L. & PUB. POL’Y 251, 252 (2001). There are currently eight mandatory public facilities subject to concurrency under Ch. 163, Part II, Florida Statutes. *Id.* *See also* Barnett & Klas, *supra* note 4.

24. Brad Smith, *Florida Considers Trying to Measure Public Expense of Sprawl*, TAMPA TRIB., Apr. 2, 2001, available at 2001 WL 17608526 (reporting that research on the cost of public facilities has established that Florida’s urban residents pay a disproportionate amount of the cost for infrastructure improvements constructed to serve outlying suburban developments).

due to age.<sup>25</sup> As a result, concurrency pushes development toward the urban fringe, often resulting in sprawl.<sup>26</sup>

By preserving Florida's natural resources and ensuring that infrastructure supports new development, Florida's growth management laws have safeguarded nationally significant natural resources and helped develop thriving suburban communities. These are significant accomplishments for a state that has absorbed eight million new residents in the past twenty-five years.<sup>27</sup> Population statistics, however, show that Florida's growth has bypassed many of the state's urban areas.<sup>28</sup> While cities such as Ft. Lauderdale, Miami, Miami Beach, and St. Petersburg grew less than two percent from 1990 through 1997, the rest of Florida grew by an average of thirteen percent.<sup>29</sup> The welfare of downtown and near-downtown neighborhoods has been largely unaddressed over the same time period.<sup>30</sup> Developers maintain that they alone cannot resurrect blighted urban neighborhoods, indicating that government involvement is necessary.

## II. NEW IDEAS FOR GROWTH MANAGEMENT: THE 2000 – 2001 GROWTH MANAGEMENT STUDY COMMISSION

On July 3, 2000 Governor Jeb Bush signed Executive Order #2000-196, establishing the Growth Management Study Commission (the "Commission").<sup>31</sup> Governor Bush asked the Commission to recommend changes to the State's growth management laws and propose goals for how Florida should manage its anticipated rapid growth over the next thirty years.<sup>32</sup> In signing the Order, Governor Bush concluded that the State's growth management regime

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25. See generally Barnett & Klas, *supra* note 4.

26. Apgar, *supra* note 3, at 973, 975; Nicholas & Steiner, *supra* note 6, at 670. The transportation concurrency requirements are one cause of sprawl. *Id.* at 975. These requirements push development out of urban neighborhoods and into surrounding rural areas because those areas "have more lightly traveled roads." *Id.* at 973.

27. *A Liveable Florida?*, MIAMI HERALD, Feb. 21, 2001, at 6B.

28. Legislative Committee on Intergovernmental Relations, *supra* note 4, at 19.

29. *Id.*

30. This is true notwithstanding the Florida Legislature's consideration of legislation to reduce the burden of concurrency requirements on urban infill developments. Powell, *supra* note 21, at 69. For example, in 1993, Florida enacted legislation creating special exceptions for transportation concurrency to promote development in urban infill areas. *Id.* This modification of the concurrency requirement has been largely unsuccessful in promoting redevelopment of urban sites. Nicholas & Steiner, *supra* note 6, at 668.

31. Exec. Order No. 2000-196n (July 3, 2000), available at <http://www.floridagrowth.org> (last visited Feb. 13, 2002).

32. *Id.*

needed to be overhauled because it fostered a “quality of growth [that did] not [meet the State’s] expectations.”<sup>33</sup> With Florida’s population expected to increase to twenty-three million by the year 2030—a fifty percent jump<sup>34</sup>—the governor decided it was time to formulate a plan that would ensure the growth of “[q]uality communities well into the next century.”<sup>35</sup>

The twenty-six member Commission was drawn from the Florida legislature, the governor’s cabinet, local government representatives, and the agricultural, development, and environmentalist communities.<sup>36</sup> The Commission had only six months—from August 2000 through February 15, 2001—to develop recommendations for submission to the Florida legislature.<sup>37</sup> In formulating its recommendations, the Commission was directed by the governor to give special consideration to nine growth-related topics and to ensure that recommendations for improvements in each of these areas included state, regional, and local implementation strategies.<sup>38</sup> The role that cities can or should play in a proposed growth management system was not singled-out as a subject for the Commission’s determination.<sup>39</sup>

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33. *Id.*; Nicholas & Steiner, *supra* note 6, at 650-51.

34. FLA. GROWTH MGMT STUDY COMM’N, A LIVABLE FLORIDA FOR TODAY AND TOMORROW, FINAL REPORT 3 (2001) [hereinafter FINAL REPORT].

35. *Id.* Despite the Governor’s criticism of Florida’s growth management laws, the State of Florida has traditionally been recognized as a leader in the area of growth management. *See, e.g.*, Powell, *supra* note 21, at 69-70 (describing Florida’s implementation of concurrency requirements as the “nation’s most ambitious experiment in growth management”) (internal quotation marks omitted).

36. FINAL REPORT, *supra* note 34.

37. *Id.* at 2; *A Livable Florida?*, *supra* note 27.

38. Exec. Order 2000-196 (July 3, 2000), <http://www.floridagrowth.org> (last visited Feb. 10, 2002). The nine topics were as follows: 1) fashioning an appropriate vehicle to communicate the State’s goals for growth management—something other than the cumbersome State Comprehensive Plan; 2) outlining appropriate roles for state, regional, and local governmental agencies to play in creating, implementing, and reviewing local government comprehensive plans; 3) inserting public education and public safety into the State’s growth planning; 4) ensuring that local comprehensive plans reflect regional differences among counties; 5) creating an increased role for citizens in the comprehensive plan process; 6) deciding whether or not to jettison the existing “development of regional impact” program, which requires intensive State, regional, and local involvement in developments that cross city or county lines; 7) evaluating whether existing growth management laws do enough to protect the private property rights of Floridians; 8) developing a state-wide rural policy; and 9) considering public and private incentives for guiding development patterns. *Id.*

39. In general terms, the Governor stated that Florida’s new growth management system “should foster urban renewal.” *Id.* Urban renewal, however, unlike rural policy concerns, was not singled-out as an area of focus.



In February 2001, just weeks prior to the 2001 Florida legislative session, the Commission answered Governor Bush's charge with a report entitled *A Liveable Florida for Today and Tomorrow*.<sup>40</sup> For the report, the commission tied growth management to economic development.<sup>41</sup> Through a thriving state economy, the Commission declared, Florida could address its "major challenges," including "education, infrastructure, the environment, public safety, social services, and affordable housing."<sup>42</sup> The Commission's report lacked a coherent and cohesive strategy for promoting and managing the growth of Florida's cities.

The Commission's Report presented the Florida Legislature with eighty-nine discrete recommendations topically divided into five areas: (1) Preparing Florida for the New Economy,<sup>43</sup> (2) Enhancing Citizen Involvement,<sup>44</sup> (3) Redefining the Role of Government in the Growth Management Process,<sup>45</sup> (4) Creating More Livable Communities,<sup>46</sup> and (5) Develop[ing] a State Rural Policy.<sup>47</sup> Each of the eighty-nine recommendations suggests specific changes to Florida's laws in areas such as growth management, education, grant programs, neighborhood revitalization, and building codes.

The Commission's urban revitalization recommendations were subsumed in part four of its report, "Creating More Livable Communities." The report recommended that the Florida Legislature do the following:

40. FINAL REPORT, *supra* note 34.

41. *Id.* at Recommendation 1, at 10; *A Liveable Florida?*, *supra* note 27, at 6B.

42. FINAL REPORT, *supra* note 34, Recommendation 1, at 10-11; *A Liveable Florida?*; *supra* note 27, at 6B.

43. FINAL REPORT, *supra* note 34, Recommendations 1-19, at 8-16. To ensure that new growth promotes economic development, the Commission recommended that the Legislature adopt a uniform cost accounting tool. *Id.* at Recommendations 2-10, at 12-13; *A Liveable Florida?*, *supra* note 27, at 6B.

44. FINAL REPORT, *supra* note 34, Recommendations 20-41, at 17-23. The Commission proposed that this could be achieved by restructuring the growth management review process so that it works "from the bottom up" and encourages citizens to participate early in the process. *Id.* at 17.

45. *Id.* at 23-30 (Recommendations 42-63). The Commission proposed achieving this goal by trading in existing "top down" growth management system for an approach that puts primary planning responsibilities in the hands of local governments and regional planning councils.

46. *Id.* at Recommendations 64-79. The chief proposal for livability was to require that local governments include school facilities in their land use plans. *Id.* at Recommendations 64-67; Randolph Pendleton, *Growth Report Ready for Lawmakers Commission Suggests More Local Control*, FLA. TIMES-UNION, Feb. 13, 2001, at B1.

47. FINAL REPORT, *supra* note 34, at Recommendations 82-89, at 38-41. The Commission recommended that the rural policy be based on restoring rural land values, enhancing the ability of landowners to realize economic value from their property, and protecting private property rights. *Id.* at 38.

- Shift responsibility for the Main Street Program, which assists downtown shop owners in creating a more attractive streetscape, from the Florida Department of State to the Florida Department of Community Affairs;<sup>48</sup>
- Expand Florida's Neighborhood Improvement District [NID] or Safe Neighborhoods programs to include Urban Infill and Redevelopment Areas, making these renewed urban neighborhoods eligible for additional or increased grant funding from the State of Florida;<sup>49</sup>
- Formulate a standardized system of review for use by state agencies that gives funding priority to designated Infill Areas within local communities;<sup>50</sup>
- Revise Florida's Grants program to provide a higher grant percentage to outright grants and to increase the threshold for implementing programs;<sup>51</sup>
- Create a single document that lists the complete range of revitalization tools, resources, and training available to urban communities and make the list accessible on the Internet;<sup>52</sup>
- Foster the establishment of Community Land Trusts that will assist local non-profit organizations with maintaining affordable housing;<sup>53</sup>
- Minimize displacement of urban residents who live in areas designated as Urban Infill or Redevelopment Areas by creating a strategy of development with minimal displacement;<sup>54</sup>

48. *Id.* at Recommendation 68, at 33.

49. *Id.* at Recommendation 69, at 33. The Neighborhood Improvement District or Safe Neighborhood programs are authorized by Fla. Stat. § 163 pt. IV (2001). An urban area qualifies as an "urban infill and redevelopment area" if the neighborhood (1) is currently served by public facilities, such as waste water, water, schools, and transportation or will be served within five years; (2) suffers from "pervasive poverty"; (3) supports "a proportion" of buildings that are substandard, overcrowded, or abandoned; (4) lies within ¼ mile of a transit stop (at least fifty percent of the neighborhood must be within this ¼ mile distance); (5) is next to an existing brownfield, enterprise zone, or Main Street. Fla. Stat. § 163.2514(1) (2001).

50. FINAL REPORT, *supra* note 34, Recommendation 70, at 34.

51. *Id.* at Recommendation 71, at 34. Florida's Urban Infill and Redevelopment Assistance Grant Program is authorized by Fla. Stat. § 163.2523 (2001). Grants are made to cities for development of urban infill plans and implementation of infill projects. *Id.* Preference in the award of urban infill grants is given to projects centered in a redevelopment area, a Main Street Program, a state or federal enterprise zone, or a neighborhood improvement district. *Id.*

52. FINAL REPORT, *supra* note 34, Recommendation 72, at 34.

53. *Id.* at Recommendation 73, at 35. The concept of a Community Land Trust is described *infra* at note 101 and accompanying text.

54. The Commission noted that this recommendation necessitates amendment of §§ 163.2511-163.2526. *Id.* at Recommendation 74, at 35.

- Channel additional funding from the State's Division of Emergency Management to expand urban emergency shelter space;<sup>55</sup>
- Promote planning that provides for transportation hubs, mixed and flexible land use patterns, dispersed affordable housing, and urban green parks;<sup>56</sup>
- Revise existing building codes, fire codes, historic preservation and building codes in a manner that encourages remodeling and rehabilitation of existing buildings;<sup>57</sup>
- Exempt Urban Infill Areas from existing concurrency requirements; and<sup>58</sup>
- Encourage cities to measure the level of service by using the Florida Department of Transportation's (FDOT) alternative measurement techniques such as "multimodal" vehicle miles traveled and access-based and zone-based approaches.<sup>59</sup>

Two of the Commission's twelve recommendations with respect to urban areas were incorporated in Florida Senate Bill 310, which was one of the three growth management bills considered by the Florida Legislature in the 2001 legislative session,<sup>60</sup> none of which gained final approval.<sup>61</sup> By foregoing the Commission's ten remaining recommendations, however, the Florida Legislature passed up methods of urban revitalization that were relatively non-controversial and inexpensive. These existing Commission recommendations, as well as other ideas, deserve to be considered.

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55. *Id.* at Recommendation 75.

56. *Id.* at Recommendation 76.

57. *Id.* at Recommendation 77.

58. *Id.* at Recommendation 78.

59. *Id.* at Recommendation 79, at 36.

60. Final S.B. 310, 33rd Sess. (Fla. 2001); S.B. 330, 33rd Sess. (Fla. 2001) (the two Senate bills were ultimately combined) H.B. 1617, 103rd Sess. (Fla. 2001); H.B. 1487, 103rd Sess. (Fla. 2001); Mike Salinero, *Builders Hammer Growth Proposal*, TAMPA TRIB., Apr. 9, 2001, at 1, available at, 2001 WL 5499026 (describing the key provisions of the combined Senate Bill 310/380 and the two Florida House bills).

61. Two of the urban revitalization recommendations were incorporated in Senate Bill 310/380, which ultimately fell victim to a heated battle between Governor Bush and Florida's home builders concerning a proposal to link new development to an adequate supply of classrooms with any increased student population. Mary Ellen Klas, *Once More—With Feeling*, FLA. TREND, Sept. 2001, at 90 (describing Governor Bush's failure to win approval of major growth management legislation in 2001 as possibly the greatest defeat of his tenure as governor).

### III. REVITALIZING FLORIDA'S URBAN CENTERS IS A KEY TO GROWTH MANAGEMENT

Florida, like many states, has neglected the primacy of its city-center areas while developing its growth management plans.<sup>62</sup> The reason is simple. Downtown development has been the unfortunate victim of the misplaced value given to concurrency—the Florida Legislature's technique for ensuring that development is contemporaneous with the infrastructure necessary for its support.<sup>63</sup>

As described above,<sup>64</sup> concurrency has not served downtown areas well.<sup>65</sup> The willingness of local governments to fund improvements to public facilities has promoted development on former greenfields<sup>66</sup> at the suburban fringe.<sup>67</sup> Encouraging development at the fringes has generally pushed workers and homeowners away from the city-center toward the newer suburbs, requiring new homes, schools, and services.<sup>68</sup>

The danger of this fringe-oriented development pattern is twofold. First, an imbalance of development in outlying metropolitan areas causes a flight of financial capital and people.<sup>69</sup> According to Bruce Katz, director of the Brookings Institution Center on Urban and Metropolitan Policy, this pattern undermines the urban core and weakens a city's oldest communities.<sup>70</sup> On a fundamental

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62. ROBERT H. FREILICH, ALI-ABA LAND USE INSTITUTE, URBAN SPRAWL, "SMART GROWTH," AND SUSTAINABLE DEVELOPMENT 148 (1999).

63. *Id.* Florida has attempted to turn the tide of development back toward the center-city by promulgating an administrative rule that requires cities to fight urban sprawl by promoting infill development and urban redevelopment as an alternative to development of greenfields. FLA. ADMIN. CODE ANN. R. 9J-5.006 (1999); Douglas R. Porter, *Reinventing Growth Management for the 21<sup>st</sup> Century*, 23 WM. & MARY ENVTL. L. POL'Y REV. 705, 721 (1999). There "are few signs" that rule 9J-5.006 has catalyzed more compact development. *Id.* at 721.

64. *Supra* Part II.

65. Apgar, *supra* note 3, at 973, 975; Nicholas & Steiner, *supra* note 6, at 670.

66. A "greenfield" is an undeveloped piece of land, generally dedicated to agricultural or recreational use. Porter, *supra* note 63, at 738 n.1.

67. *Id.* at 721. See also Brad Smith, *County's Land Rush*, TAMPA TRIB., Aug. 8, 2001, at A1. A report issued this year by the Hillsborough County Planning Commission advertised that the County's urban service area could accommodate almost 400,000 more residents. *Id.* The Hillsborough County Planning Commission controls planning issues in the urban service area that lies beyond Tampa.

68. Peter Grant, *Sprawl Thins Populations of Older Suburbs*, WALL ST. J., July 9, 2001, at A2. Promoting growth in the outer fringes of the urban core has exerted a "centrifugal force" on the movement of population and new development away from the urban core. *Id.*

69. *Id.*

70. *Id.*

level, this sprawling brand of development threatens cities because it drains the dynamic personal relationships, working activities, and leisure pursuits that give each city its distinctive character. The city becomes an increasingly private realm. A lack of connection with neighbors or co-workers means "more strangers and increased suspicion," as well as more security guards, fences, and neglect of poor people who cannot afford to leave the city.<sup>71</sup> As a result, "[t]he city is more rigid, less trusting, and less efficient."<sup>72</sup>

In contrast, dynamic urban centers promise their residents a safe and attractive community in which to live, a thriving business environment in which to work, and a stimulating environment in which to pursue leisure interests.

Dull, inert cities . . . contain the seeds of their own destruction and little else. But lively, diverse, intense cities contain the seeds of their own regeneration, with energy enough to carry over for problems and needs outside themselves.<sup>73</sup>

Cities benefit regions and states because their commercial, educational, cultural, and natural resources entice people to enjoy and explore other parts of a state.

When people choose not to live or work downtown, they choose the suburbs and encourage continued development of the suburban fringe. Deciding to live, work, or develop land outside the center-city increases pressure to develop greenfields or rural areas. Only those cities that have succeeded at drawing residents back to the city successfully stem the tide of sprawl.<sup>74</sup> Urban revitalization is a crucial part of any effort to curb development of green spaces, farmland, and rural areas. It is the keystone to smart growth in Florida.

#### **IV. THE FLORIDA LEGISLATURE'S SMART GROWTH FORMULA: URBAN REVITALIZATION IS THE MISSING INGREDIENT**

The 2001 Florida Legislature only pursued two of the Growth Management Study Committee's recommendations for urban revitalization: Recommendation 78, which exempts Urban Infill Areas from concurrency requirements,<sup>75</sup> and Recommendation 71, which

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71. John T. Marshall, *Rebuilding the American City*, 1 PLANNING FORUM: 55, 62-63 (1995).

72. *Id.* at 63.

73. JANE JACOBS, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES* 585 (Modern Library, 3d ed. 1993).

74. Grant, *supra* note 68, at A2.

75. S.B. 310, 33rd Sess (Fla., 2001); S.B. 380, 33rd Sess. § 5 (Fla., 2001).

suggests increased funding for the Urban Infill and Redevelopment Assistance Grant Program.<sup>76</sup> Both of these recommendations would help promote downtown redevelopment. It is important, however, to reflect on the legislature's decision to incorporate only two of the Commission's recommendations and the extent to which this decision may have resulted in passing over ideas that could contribute to comprehensive urban revitalization legislation. As the Florida Legislature formulates Florida's 2002 growth management legislation, the Study Commission's recommendations deserve re-examination.

Among the best features of the Growth Management Study Committee's Report is its dynamic definition of what a Florida city—or any city—aspires to be. The Report's introductory statement on urban revitalization vividly describes the importance of cities to Florida's economic and cultural vitality. It finds cities essential to providing entire regions with “a unique nature of place, human scale and character . . . an opportunity to consider our past, explore our diversity and dream of the future to be.”<sup>77</sup> The built environment plays an essential role in shaping the vitality of urban areas because cities thrive as “market places for the exchange of commodities and ideas” based on “patterns of development, structure, building types, forms, open spaces, and vistas and views.”<sup>78</sup> The Committee aptly describes Florida's cities as incubators for the State's culture and diverse ethnic identities because they foster “individualism, unpredictability, creativity, and spirit.”<sup>79</sup>

Building great cities, such as those described in the Commission's urban preamble, is an ongoing project, part artistic endeavor and part science.<sup>80</sup> No single set of recommendations is a sufficient

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76. *Id.* at § 32. The Senate Bill suggested appropriation of \$500,000 for funding the Urban Infill and Redevelopment Assistance Grant Program. *Id.*

77. FINAL REPORT, *supra* note 34, at 31.

78. *Id.*

79. *Id.* at 32.

80. Recommending ways to make cities more “livable” communities is an enormous and inherently elusive charge for any group of individuals such as the Commission. At the least, it is a subject deserving of more than seven months study. *Id.* at 3, 6-7. Understanding the forces that give life to cities has preoccupied Western civilization's greatest students of the city, from Aristotle to Max Weber and beyond. ARISTOTLE, THE POLITICS (Carnes Lord trans., Univ. of Chicago Press 1984) (c. 335 B.C.). Aristotle's *Politics* is devoted to the science of city building. Based on exhaustive empirical observation, he observed that cities are essential to human well being because they assist their citizens in the pursuit of “the good”—the best and highest goal that contributes to the individual and collective happiness of the community. *Id.* at 35, 37. Centuries later, the German sociologist Max Weber grappled with the same question – what essential characteristic defines a city. MAX WEBER, ECONOMY AND SOCI-

catalyst for revitalization. The Commission's recommendations could have been expanded, however, to provide the legislature with more anecdotal, specific guidance for realizing the potential of Florida's cities. The Commission's single recommendation for preserving a city's "unique character" and its several recommendations for ensuring a city's continued "diversity" need more detail. This detail will enable transcription of the Commission's insights into legislation or appropriate action by state administrative agencies. The Commission's Report provides Florida with a helpful start, but more detail and concrete examples are needed for the Commission's insights to provide a blueprint for how best to revitalize cities.<sup>81</sup>

Appreciating a city's "unique character" heads up the Commission's list of recommendation for urban revitalization.<sup>82</sup> Character, the Commission notes, is what "distinguishes [a city] from [its] neighbors" and ensures its "self identification."<sup>83</sup> The Commission's sole suggestion for promoting the special character of Florida's cities is to encourage urban retail business districts to participate in the State's Main Street program.<sup>84</sup>

The Main Street Program was originally designed by the National Trust for Historic Preservation to bring the centralized management approaches of contemporary malls to the commercial business districts of "smaller urban centers."<sup>85</sup> Under this program, a single Main Street Manager, acting like a mall manager, controls activities, public relations, and shop types in the "collective interests of the shopkeepers on the main street by coordinating new business efforts."<sup>86</sup> The Main Street program has provided a

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ETY 1213 (Guenther Roth & Claus W. Hich eds., Univ. of Cal. Press 1978) (1956). A city, Weber concluded, is an economic unit: it "is always a market center." *Id.* The competing views of a city's essential characteristics, including those of Aristotle and Weber, effectively underscore the challenge that the Commission faced in developing a prescription for revitalizing Florida's cities.

81. Charles Pattison, *Rushing Toward a Better Florida*, TAMPA TRIB., Mar. 4, 2001 (Commentary), at 1 (acknowledging that the Commission had some positive "concepts," but "did not sufficiently or appropriately flesh them out"). At least one member of the Florida Legislature commented that the Commission's Report succeeded in articulating a large number of aspirational goals, but expressed disappointment that it "gave [the legislature] very little direction how to move forward." Smith, *supra* note 24, at 1 (comments of Rep. Bob Henriquez, D-Tampa).

82. FINAL REPORT, *supra* note 34, at 33.

83. *Id.*

84. *Id.* at 33, Recommendation 68.

85. WILLIAM J. MURTAGH, *KEEPING TIME: THE HISTORY AND THEORY OF PRESERVATION IN AMERICA* 113 (2d ed. 1993).

86. *Id.* at 114.

helpful tool for the revitalization of Florida's towns and small cities.<sup>87</sup> However, as the centerpiece of the State's efforts to preserve the "unique character" of Florida's major cities, it is inadequate for two reasons.

The first is the scope of the downtown revitalization challenge. Major downtown urban areas are home to several "main streets" and do not consist of a single strand of store fronts forming a unified commercial district. Before establishing the Main Street program, a city must identify how the city's Main Street initiative promotes the character of the city-center and the city as a whole.<sup>88</sup> Further, gathering sufficient numbers of shop owners to coordinate their activities is a steep challenge, especially where entire blocks are darkened by the empty windows of long-closed stores.<sup>89</sup>

Second, to the extent that the Main Street program is a "marketing strategy utilizing old buildings,"<sup>90</sup> it values downtowns as a shopping destination. Smart growth is possible only if downtowns are successfully nurtured, not just as commercial hubs, but as cultural, residential, and educational hubs as well. Convincing business owners to restore the facades of their buildings or to contribute to the purchase of street furniture is a large undertaking by itself. Promoting downtown buildings as a locus for culture, recreation, education, housing, and business, however, is beyond the reach of the Main Street program's tools.<sup>91</sup> If streetscape improvements are the primary focus of rehabilitation it is clear that the unique character of Florida's cities is being under-appreciated and

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87. Florida's Main Street program, which is administered by the Division of Historic Resources in the Office of the Secretary of State of Florida, has helped revitalize dozens of Florida towns and small cities—most with population below 50,000 people. Florida Main Street, at [http://dhr.dos.state.fl.us/bhp/main\\_st/index.cfm](http://dhr.dos.state.fl.us/bhp/main_st/index.cfm) (last visited Feb. 8, 2002).

88. Legislative Committee on Intergovernmental Relations, *supra* note 4, at 62 (plans for development or revitalization of center-city neighborhoods must be consistent with the over-arching blueprint for design and planning for the entire city).

89. That is not to say, however, that the Main Street program cannot revitalize downtowns dominated by empty storefronts. *Volunteer Recruiters*, FLA. TREND, Oct. 2001, at 32. In Clearwater, Florida, the Main Street program recruited local business leaders to secure new retailers for an eight-block area in downtown Clearwater plagued by vacant storefronts. *Id.*

90. MURTAGH, *supra* note 85, at 167.

91. JENNIFER MOULTON, BROOKINGS INST. CTR. ON URBAN AND METRO. POLICY, TEN STEPS TO A LIVING DOWNTOWN 10 (1999), available at <http://www.brook.edu/ES/urban/moulton.pdf>. The downtown built environment must encourage people not only to shop downtown, but to live downtown, eat downtown, and pursue leisure downtown. *Id.*



under-protected.<sup>92</sup> Revitalization requires a city to appreciate the way in which its downtown built environment defines the large metropolitan area, its senses of self and place.

The Main Street revitalization program is an important, but limited, vehicle for statewide stewardship and revival of urban business districts. By identifying the Main Street program as the lynchpin rejuvenating a city's character, the Commission missed an opportunity to educate legislators about the challenges of preserving the unique character of the urban built environment. It is important for legislators and citizens to understand the scope of nurturing a city's unique character. The recipe for urban character is complex, involving preservation of a city's historic and natural resources as well as construction of urban infill projects sympathetic to the city's natural and built environments.<sup>93</sup> All of these elements reinforce a sense of place that draws new residents, tourists, and workers into the city-center.<sup>94</sup>

One critical step to promoting the unique character of Florida's downtown neighborhoods is to understand the geographic boundaries of those city-center areas. Interestingly, there is no standard method or map for delineating the contours of America's downtowns.<sup>95</sup> Defining the boundaries of Florida's downtowns would assist in solidifying the identity of the adjacent near-downtown areas that possess their own unique character. Further, to the extent that downtown and near-downtown areas lack physical boundaries, Florida's cities should revive historic neighborhood names and identities, or perhaps adopt new names for certain downtown districts. No different than putting a name with a face, fixing names

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92. The Main Street program builds on the fact that historic areas make an important contribution to the economic vitality of cities. RICHARD C. COLLINS ET AL., *AMERICA'S DOWNTOWNS: GROWTH POLITICS AND PRESERVATION* 16 (1991). However, preservation of historic commercial buildings is just one element of any effort to perpetuate the unique character of the center-city. To protect downtown character effectively, a range of other initiatives must be implemented, including ordinances allowing the transfer of downtown development rights, demolition control ordinances, and downtown design guidelines. *Id.* at 12, 17.

93. John T. Marshall, Note, *The Property Rights Movement and Historic Preservation in Florida: The Impact of the Bert J. Harris, Jr. Private Property Protection Act*, 8 U. FLA. J.L. & PUB. POL'Y 283, 289-90 (1997) (describing economic development of Florida's cities through historic preservation).

94. *Id.*

95. REBECCA R. SOHMER & ROBERT E. LANG, BROOKINGS INST. CTR. ON URBAN AND METRO. POLICY, *DOWNTOWN REBOUND* 2 (2001), available at <http://www.brook.edu/es/urban/census/downtownrebound.pdf>. Researchers at the University of Pennsylvania are currently preparing the first official definition of downtown districts for select American cities. *Id.*

for center-city neighborhoods gives them identity and makes them “legible.”<sup>96</sup> Conferring nominal and geographic identities on city neighborhoods will not, in and of itself, catalyze commercial or residential development, but it may encourage such development by delineating the boundary of a new urban improvement district or a new police patrol district.<sup>97</sup> A Main Street program that highlights the architectural and commercial potential of a unified business district is a compliment to any effort to survey and define downtown neighborhoods.

One of these key components of “smart” urban growth is “diversity.”<sup>98</sup> The Commission describes diversity as the challenge of accommodating the “competing needs” of cities’ residents.<sup>99</sup> The Commission addresses this challenge with three discrete recommendations, each of which will serve the diverse needs of urban communities. First, Community Land Trusts and strategies for minimizing displacement of urban residents during revitalization of urban infill neighborhoods will ensure that local and state officials keep the city open to low-income residents and homeowners.<sup>100</sup> Second, channeling additional state dollars from the State’s Division of Emergency Management to expand urban emergency shelter space will guarantee that cities are prepared to care for residents and workers in a time of emergency.<sup>101</sup> Third, modifying

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96. MOULTON, *supra* note 91, at 10 (describing what can make a neighborhood “legible”).

97. MOULTON, *supra* note 91, at 15. For example, creation of Denver’s downtown business improvement district was soon followed by the formation of a new Denver police district covering downtown and immediately adjacent neighborhoods. *Id.* A membership-based business organization, which created the business improvement district, paid for the police patrols. *Id.*

98. Robert Ceroveo, *Growing Smart by Linking Transportation and Urban Development*, 19 VA. ENVTL. L.J. 357, 364-65 (2000). Ceroveo identifies density, diversity, and design as the three essential elements of sustainable development. *Id.*

99. FINAL REPORT, *supra* note 34, at 34.

100. *Id.* at 35, Recommendations 73 & 74. A Community Land Trust is ordinarily formed as a non-profit, tax exempt corporation. Stacey Janeda Pastel, *Community Land Trusts: A Promising Alternative for Affordable Housing*, 6 J. LAND USE & ENVTL. L. 293, 295-96 (1991). The purpose of the Community Land Trust is to provide affordable housing to people with low and moderate incomes. *Id.* The land trust purchases neglected houses, rehabilitates the houses, and gives residents long-term ground leases for up to ninety years. *Id.* at 296. “The residents own the houses, but the ground lease limits their ability to resell the houses.” *Id.*

101. FINAL REPORT, *supra* note 34, at 35, Recommendation 74. This is a prescient recommendation following the September 11, 2001 attacks on the World Trade Centers and the Pentagon. The Commission undoubtedly crafted this recommendation in response to the need for emergency shelters in the event of natural disasters such as hurricanes. After the events of September 11, 2001, however, this recommendation generally recognizes that future growth management laws must account for the fact

existing building and fire code requirements to make renovation and adaptive reuse of historic downtown buildings feasible is an outstanding proposal for opening the city's downtown and near-downtown neighborhoods to shoppers, small businesses, artists, and prospective center-city homeowners.<sup>102</sup> The report, however, only generally discusses policies for key amenities such as transportation resources and urban green spaces.<sup>103</sup>

Governor Bush has called on the state to set goals for creating new points of access to the city for its diverse constituency. These recommendations answer the call. In addition, the Commission's recommendations provide specific ideas for implementing the stated goal of establishing urban "diversity."<sup>104</sup> By tying the report's stated goals to concrete suggestions for action, the Commission provides a blueprint for urban revitalization in Florida.

In contrast, the Commission's recommendation calling for an emphasis on urban design, transportation planning, and urban green parks must go further. The Commission needs to sketch out more fully the possibilities for Florida's cities.<sup>105</sup> Without specific examples for revitalizing streets, constructing downtown housing, and creating urban green spaces, the Commission passed up an important opportunity to foster public appreciation of the connection between the vitality of a city's character and the diversity of its land uses.<sup>106</sup> As Florida's cities continue to grow rapidly over the

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that cities must be prepared to handle a wide range of emergency situations. Neil Johnson, *Smart Growth Boosts Hurricane Safety, Bush Says*, TAMPA TRIB., May 17, 2001, at 4 (reporting that following the events of September 11, 2001, the Commission's recommendation generally recognizes that future growth management laws must account for the fact that cities must be prepared to handle a wide range of emergency situations).

102. Final Report, *supra* note 34, at 35, Recommendation 77; Neal Peirce and Curtis Johnson, *Your City Too Bland? Crack the Codes*, S. FLA. SUN-SENTINEL, Dec. 3, 2000, at 6G, available at 2000 WL 28995916.

103. *See id.* at 35, Recommendation 76 (recommending land use designs that "utilize transportation hubs, incorporate mixed and flexible land use patterns, promote the development of economically mixed and geographically dispersed affordable housing and promote urban green parks"). The Commission also issued recommendations on maintaining "safety," "density," "economic vitality," and mobility. *Id.* at 33-36, Recommendations 69-72 and 78-79. These general areas of focus are not the focus of in-depth analysis because they articulate specific ideas for urban revitalization programs that need no elaboration.

104. Exec. Order No. 2000-196 (July 3, 2000); FINAL REPORT, *supra* note 34, at 35-36.

105. FINAL REPORT, *supra* note 34, at 35 Recommendation 76.

106. David Villano, *Staying Alive: Miami Officials Have a Plan to Pump Life Into Downtown Once the Workday Ends*, FLA. TREND, Dec. 1, 2001, at 18. Specific examples can be drawn from the comprehensive approach that Florida cities, such as Miami, are taking to downtown revitalization. *See id.* Repaving sidewalks to facili-

next thirty years,<sup>107</sup> the cities that value the nexus between urban design, transportation planning, and urban green spaces, stand a better chance of sustaining downtown growth and harnessing sprawl.<sup>108</sup>

Planning, aided by urban design, is an investment that will pay for itself.<sup>109</sup> Urban green spaces draw pedestrians looking for quiet places to eat lunch, tourists seeking vistas or backdrops for photographs, and businesses looking for distinctive environments to locate their business or residential development.<sup>110</sup> Dollars invested in well-designed urban parks add to value of adjacent properties.<sup>111</sup>

To the extent possible, new roads should be planned to trace existing natural topography such as rivers, bays, and wetlands.<sup>112</sup> City streets and the expressways running through them can no longer be viewed solely as a means of getting from "here" to "there." These thoroughfares are the ribbons that tie together the community and as such must be viewed as a "multi-purpose public realm" that attracts pedestrians, vehicular traffic, and top notch development.<sup>113</sup> In practice, this translates into streets that allow for slower traffic flows with dimensions that allow for broad landscaped sidewalks drawing pedestrians into local shops.<sup>114</sup> Finally, through design and attractive landscaping, infill and higher density urban development is possible next to expressways and frontage roads.<sup>115</sup> This infill development adjacent to existing transportation corridors will save cities and counties nearly fifty percent in

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tate outdoor cafes, opening one-way streets to two-way traffic, and converting old office buildings into residential condominiums are improvements that Miami's Downtown Development Authority believes will revitalize the center city. *See id.*

107. Exec., *supra* note 104.

108. *See, e.g., NPR: Morning Edition: Jacksonville, Florida, Mayor John Delaney Talks About Problems With Urban Sprawl*, (NPR radio broadcast, May 9, 2001), available at 2001 WL 9327418 (reporting that the city of Jacksonville is buying thousands of acres of undeveloped land for use as a nature preserve and ultimate use as a dedicated corridor for mass transit).

109. *See* Legislative Committee on Intergovernmental Relations, *supra* note 4, at 62, 68 (identifying inadequate urban design processes as one of the central causes of urban traffic problems, the loss of pedestrian traffic and the failure of Florida's cities to implement a successful mass transit system).

110. Buzbee, *supra* note 9, at 384.

111. *Id.*

112. Calvin Platt, *Furthering the Lessons That Landscape Architects Offer in the War on Sprawl* ARCHITECTURAL REC., Feb. 2001, at 51.

113. *Id.*

114. *Id.*

115. *Id.*

public facility costs,<sup>116</sup> raise urban property values, and preserve green spaces that might otherwise have been developed.<sup>117</sup>

## V. CONCLUSION

Florida has mushroomed in both population and developed land area. Growth management strategies have barred development in and around the state's most sensitive environmental areas. The strategies have generally limited development to places where the infrastructure exists to support expansion. Florida's growth management techniques have largely succeeded in protecting Florida's rural communities and treasured natural resources from sprawling development.

Florida's growth management strategies of the past thirty years have also created a thriving market for new homes on quarter-acre lots; new homes within walking distance of fairways and the greens of new golf courses. As a result, new housing and business development travel farther and farther away from Florida's downtown city-centers, causing the population in urban neighborhoods to remain flat. Florida is at a crossroads in its growth. The State can smartly encourage further development of its existing downtown and near-downtown areas, or inadvertently encourage development of new subdivisions on previously undeveloped greenfields.

The direction of development depends upon whether Florida can successfully revitalize its downtown communities. The empirical evidence suggests that the tide of sprawl is curtailed only where cities have successfully redirected growth back to the urban core. Therefore, Florida's success in turning the tide against sprawl depends, in large part, on the State's ability to bring its city-centers back to life. Making downtown a more desirable destination for living, working, and recreating will help turn Florida's growth back toward urban areas, revitalizing these areas, while preserving existing green spaces.

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116. See Freilich, *supra* note 62, at 151 (citing a study of Florida public facilities that found public facilities cost between \$16,000 and \$17,000 per unit for development within the transportation corridors and almost \$24,000 for scattered development).

117. *Id.*

