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Comment: Questioning the Florida Rule on Rezoning Single Parcels of Land by Referendum

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COMMENT

QUESTIONING THE FLORIDA RULE ON REZONING SINGLE PARCELS OF LAND BY REFERENDUM

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Florida's rule regarding the use of local referenda to rezone single parcels of land has had an erratic history.[1] The question today is essentially this: where the sovereign state has created a statutory scheme of required comprehensive land planning and consistent zoning decisions, should voters be allowed to decide the fate of single parcels of land by referenda?

I. HISTORY OF THE FLORIDA RULE

As early as 1950, the Florida Supreme Court addressed the question of whether the initiative process could properly be used to determine a question involving land use. In *Barnes v. City of Miami*, taxpayers sought to enjoin the city from calling and holding an initiative referendum to determine whether to begin a program of low-cost housing and slum clearance.[2] The court dismissed the complaint and plaintiffs appealed.[3] The Florida Supreme Court held that the state may confer upon a municipal corporation the power of initiative in any legislative or administrative matter, so long as it is "within the realm of municipal affairs."[4] The court quoted from *McQuillin*,[5] stating that the initiative power, once extended to the people by the legislature, encompassed virtually all matters of local concern except those matters "expressly or impliedly excluded from its operation by exceptions contained in the charter, the general statutes of the state, or constitutional provisions."[6] Application of the same rule could arguably lead to a different conclusion: that the general statutes of the state, specifically chapter 163,

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1. For a nationwide perspective regarding the use of referenda in zoning, see Rosenberg, *Referendum Zoning: Legal Doctrine and Practice*, 53 U. CIN. L. REV. 381 (1984).

2. Barnes v. City of Miami, 47 So. 2d 3 (Fla. 1950).

3. *Id.* at 4.

4. *Id.*

5. 5 E. MCQUILLIN, MUNICIPAL CORPORATIONS § 16.54 (3d rev. ed. 1981).

6. *Barnes*, 47 So. 2d at 4.

Florida Statutes,[7] have preempted the power of initiative and referenda as to the zoning of single parcels of land.

Twenty-two years after *Barnes*, Florida addressed the question of whether referenda could be used to determine land use questions. In *City of Coral Gables v. Carmichael*,[8] the Third District Court of Appeal reasoned that "[t]he power of initiative or referendum may be conferred by the sovereignty upon a municipality with respect to any matter legislative or administrative, within the realm of local affairs; and often the power, as conferred, is extensive . . . ."[9] In *City of Coral Gables*, the landowner sought and received from the city commission a change in existing zoning from single-family residential use to multi-family and other less restrictive uses of his land.[10] The city charter provided for a referendum procedure on any ordinances adopted by the commission, other than ordinances involving appropriations and those levying taxes. After the referendum petition had been filed, Carmichael sought an injunction. Among other grievances in his complaint, Carmichael alleged that the city's referendum procedure was not applicable because the zoning code provided that any aggrieved party had redress by petition for certiorari to the circuit court, and the referendum as applied to the zoning on his single parcel violated due process of law and denied equal protection of the laws.[11] The circuit court permanently enjoined the city from holding the referendum.[12]

The Third District Court of Appeal reversed, and held that a rezoning, like a zoning, is a legislative act and therefore subject to public referendum.[13] The court stated that the power of referendum was "cumulative and alternative to the legislative power with respect thereto that is conferred upon the City Commission . . . ."[14] The court also held that submission of the ordinance to referendum would not deprive petitioner of due process or equal protection.[15]

Despite similar holdings, the facts in *Barnes* are clearly distinguishable from those in *City of Coral Gables*. *Barnes* involved the use of the initiative procedure to determine whether Miami should commence a low-cost housing program, an issue far more general in character than a

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7. FLA. STAT. § 163 (1985).
8. 256 So. 2d 404 (Fla. 3d DCA 1972).
9. *Id.* at 411 (quoting 5 E. MCQUILLIN, MUNICIPAL CORPORATIONS § 16.54 (3d rev. ed. 1981)).
10. *Id.* at 406.
11. *City of Coral Gables*, 256 So. 2d at 407.
12. *Id.*
13. *Id.* at 408.
14. *Id.* (quoting Barnes v. City of Miami, 47 So. 2d 3 (Fla. 1950)).
15. *Id.* at 409.

referendum on a zoning decision involving a single parcel. The issue in *Barnes* was clearly a matter of citywide interest, involving the use of taxpayer monies and philosophical considerations regarding the proper role of the city. This factor was controlling, regardless of whether the decision effected a change in current zoning.[16] *City of Coral Gables* involved a particular piece of property and the landowner's desire to change the property's zoning. At the time the landowner requested a change in zoning, Coral Gables had a comprehensive zoning ordinance in effect. Arguably, when a municipality has a comprehensive plan, it is implicit that if a city council approves a zoning change, the change is in accordance with the plan.[17] Unless the plan is "totally unreasonable," a court should not secondguess the board's decision.[18]

The *City of Coral Gables* court cited *City of Miami Beach v. Schauer*[19] for the proposition that the ordinance rezoning petitioner's land was legislative and therefore subject to referendum.[20] However, *City of Miami Beach*, decided in 1958, like *Barnes* in 1950 and *City of Coral Gables* in 1972, were all judicial interpretations decided before the passage of several major comprehensive planning acts which fundamentally changed Florida's approach to land development regulation through mandated planning. Indeed, the 1985 Local Government Comprehensive Planning and Land Development Regulation Act[21] mentions zoning only in passing. The legislature intended administrative decisions to be made pursuant to uniform, consistent plans which would govern decisionmaking on individual parcels.[22]

In 1976, Florida's First District Court of Appeal reversed the earlier trend of judicial validation of referenda in rezonings in *Andover Development Corp. v. City of New Smyrna Beach*.[23] *Andover* involved a protracted effort by a landowner to procure building permits for condominiums on about fifty acres of land. During the permitting process, the zoning ordinance applicable to Andover's land was repealed by initiative and referendum, and an ordinance severely restrict-

16. *See also* Forest City Enterprises, Inc. v. City of Eastlake, 41 Ohio St. 2d 187, 324 N.E.2d 740 (1975) (the court reasoned that the referendum was appropriate for large scale, community-wide decisions, but rejected it for more specific determinations affecting separate parcels of land).

17. The local governing body must determine if the proposed use of land will "further objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government." FLA. STAT. § 163.3194 (1987).

18. *See generally* Machado v. Musgrove, 519 So. 2d 629 (Fla. 3d DCA 1987), *cert. denied* 13 Fla. L. Weekly 522 (1988).

19. 104 So. 2d 129 (Fla. 3d DCA 1958).

20. *City of Coral Gables*, 256 So. 2d at 408.

21. FLA. STAT. § 163.3161 (1985).

22. *See* FLA. STAT. §§ 163.3191(1)(b), .3194(1)(b), and .3194(3)(a)-(b) (1987).

23. 328 So. 2d 231 (Fla. 1st DCA 1976), *cert. denied* 341 So. 2d 290 (Fla. 1976).

ing density of buildings was enacted.[24] Andover sought a writ of mandamus from the trial court to force the city to issue the permits; this request was denied.[25] On appeal, the First District Court of Appeal found a denial of due process under both the Florida and U.S. Constitutions.[26]

The court found that the referendum initiated by the citizens of New Smyrna Beach was directed at a single landowner and motivated by Andover's seeking to use its property under the previous zoning laws.[27] The land had been zoned Residential Resort-Planned Unit Development when Andover purchased it, and the corporation had sought development permits pursuant to that zoning.[28] The court held that because the referendum sought to overrule the factfinding and other legitimate functions of the planning commission and the "administrative" decision of the city commission, it therefore violated basic requirements of due process and was void.[29] Furthermore, the *Andover* court held that the city was equitably estopped from changing the zoning of Andover's land by referendum due to Andover's reliance on the city's former conduct.[30]

The *Andover* court also found that city officials had not yielded to the "clamor of the crowd" syndrome: "Deprivation of the legitimate use of a citizen's property is not the proper subject of a town hall meeting. The purported initiative and referendum action was arbitrary and capricious."[31] *Andover* represented a change in Florida's rule, finding that a local referendum was arbitrary, capricious, and violative of due process because it ignored the legitimate property interests of a single landowner who had sought administrative decisions through proper channels under existing zoning ordinances.

Andover expressly denied the holding of its sister court in *City of Coral Gables v. Carmichael*,[32] which had upheld the use of referenda in zoning, even though both cases involved the use of a single parcel of land. The *Andover* court, in reaching its conclusion, reasoned that the *City of Coral Gables* court had relied heavily on California decisions that had validated the referendum process. The *Andover* court noted that in recent opinions, "the California courts have, as a whole, re-

24. *Id.* at 233.
25. *Id.*
26. *Id.* at 238.
27. *Id.*
28. *Id.* at 233.
29. *Id.* at 238.
30. *Id.*
31. *Id. See also infra* notes 146-149 and accompanying text.
32. 256 So. 2d 404 (Fla. 3d DCA 1972).

jected the rationale of *City of Coral Gables*."[33] The *Andover* majority followed the Ohio Supreme Court's decision in *Forest City Enterprises, Inc. v. City of Eastlake*.[34]

The developer in *Forest City Enterprises* applied for a zoning change from light industrial to multi-family, high-rise use.[35] Eastlake had a comprehensive zoning ordinance in place at the time, which was amended to permit the requested use after the planning commission approved the application.[36] Eastlake's charter required a fifty-five percent voter approval of any land use changes adopted by the city council; this provision had been adopted as an amendment to the city charter during the course of the controversy over the developer's proposal.[37] An election was held, but the ordinance rezoning the developer's property failed to receive the requisite fifty-five percent of the votes cast.[38] The developer filed a declaratory judgment action, and the Court of Common Pleas upheld the validity of the voter approval and the fifty-five percent requirement.[39] The Ohio Supreme Court found that the rezoning of petitioner's land, which effectively amended the city's comprehensive land use plan, was a legitimate legislative act by the city council, and the referendum provision in Eastlake's charter was an unlawful delegation of legislative power.[40]

The United States Supreme Court reversed, finding that under the Ohio Constitution, the power of referendum was not a delegated power, but instead was one reserved to the people.[41] Ohio's Constitution provides that "the people reserve to themselves the power to propose . . . laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote . . . ."[42] Further, the Supreme Court ruled that a rezoning of a single parcel of land by popular referendum did not violate the due process clause of the fourteenth amendment.[43]

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33. 328 So. 2d at 235.

34. 41 Ohio St. 2d 187, 324 N.E.2d 740 (1975). The *Andover* decision was weakened by the United States Supreme Court decision in City of Eastlake v. Forest City Enterprises, Inc., 426 U.S. 668 (1976). However, because *City of Eastlake* relied on Ohio's Constitution, it was unclear as to what extent *Andover* would be overruled. Rader, *Rezoning by Referendum and the Right of Due Process under the Florida Constitution*, 57 FLA. B.J. 556 (1983).

35. *Forest City Enterprises*, 41 Ohio St. 2d at 187-88, 324 N.E.2d at 742.

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.* at 196-98, 324 N.E.2d at 743-44.

41. City of Eastlake v. Forest City Enterprises, Inc., 426 U.S. 668, 679 (1976).

42. OHIO CONST. art. II, § 1.

43. *City of Eastlake*, 426 U.S. at 679.

The *City of Eastlake* decision was a new development in land use law which Florida adopted as its own in *Florida Land Co. v. City of Winter Springs*.[44] There, an ordinance rezoning Florida Land Company's property and amending the comprehensive land use map and the official zoning map, both of which were part of the City's comprehensive plan, was adopted by the city council.[45] Pursuant to the city charter provision for initiative and referendum, a group of citizens formed to require the city council to reconsider its adoption of the ordinance.[46] When the city council declined to repeal the ordinance, the citizens requested the issue be submitted to a vote of the electorate.[47] Florida Land Company brought suit to enjoin the referendum.[48]

The trial court granted summary judgment in favor of Florida Land Company, enjoined the city, and reinstated the ordinance.[49] The Fifth District Court of Appeal reversed, and Florida Land Company appealed on two grounds: 1) because they were deprived of their right to proper notice and right to be heard, despite the fact that hearings on petitioner's rezoning request had been held both by the Planning and Zoning Board and the city council, their due process rights had been violated under both the state and federal constitutions;[50] and 2) the city's act of rezoning their land was an administrative rather than a legislative function and therefore not subject to referendum.[51]

In response to Florida Land Company's first argument, the Florida Supreme Court held that "[t]he referendum . . . is the essence of a reserved power" in Florida.[52] In reaching this conclusion, the court relied upon article I, section 1[53] and article VI, section 5[54] of Florida's Constitution.[55] Basing its rationale on the Florida Constitution, the court adopted *Eastlake* as precedent, and held that certain discernable due process standards which apply to delegated powers do not apply where the power is reserved to the people.[56]

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44. 427 So. 2d 170 (Fla. 1983). However, as one author noted, the Fourth District Court of Appeal ignored *City of Eastlake* in City of Tamarac v. Sable Palm Golf Club, Inc., 382 So. 2d 139 (Fla. 4th DCA 1980), wherein it invalidated a city charter provision that required a referendum before rezoning recreational lands for other use. Unfortunately, the court cited no authority. Rader, *supra* note 34, at 556.

45. *Florida Land Co.*, 427 So. 2d at 172.

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.* at 174.

52. *Id.* at 172.

53. *See infra* note 131.

54. *Id.*

55. *Florida Land Co.*, 427 So. 2d at 172.

56. *Id.* at 173-74.

In a case where a zoning change is within the boundaries of a local comprehensive plan, a petitioner might argue that fundamental fairness is denied where a referendum is allowed. Once a comprehensive plan is adopted by a local government and found consistent with the regional and state plans, this becomes an acceptable guide for planning future land development within the local government area. Therefore, it may be fundamentally unfair for a landowner to be denied use of a single parcel that is within the confines of a comprehensive plan, particularly where the majority's decision in referendum is based on factors other than the land use plan which would be the criterion for land development decisions. The *Florida Land Co.* court aptly noted that "all zoning changes made in this fashion are subject to the whims of a referendum and to the vicissitudes of the electorate."[57] Comprehensive land planning simply does not intend the exercise of whims.[58]

In response to Florida Land Company's second argument, the court cited *Schauer v. City of Miami Beach*[59] and concluded that, because the passage of a zoning ordinance is a legislative function, the rezoning is legislative also.[60] However, *Schauer* had been decided sixteen years before the Florida legislature adopted the first Local Government Comprehensive Planning Act in 1975.[61] Based upon the consistency and administrative decisionmaking requirements of this Act and its successor acts, the court's reasoning in support of referendum does not apply. Moreover, Oregon courts have cautioned against rendering land use decisions based on labels.[62] To say that all rezonings are per se "legislative acts" under Florida's present comprehensive land planning scheme is to attach a label that is outdated, at best.[63]

II. Is a Rezoning of a Single Parcel of Land a Legislative or an Administrative Act?

Traditionally states have characterized rezonings, even of single parcels, as legislative acts under the rationale that because the zoning of a parcel of land within the discretion of the local governing body is legislative, then a rezoning must be legislative also.[64] A number of states,

57. *Id.* at 174.

58. *See supra* note 22 and accompanying text.

59. 112 So. 2d 838 (Fla. 1959).

60. *Florida Land Co.*, 427 So. 2d at 174.

61. Fla. Stat. § 163.3161 (1975).

62. *See* Fifth Avenue Corp. v. Washington County, 282 Or. 591, 617-18 n.20, 581 P.2d 50, 65 n.20 (1978); Aukland v. Board of County Comm'rs, 21 Or. App. 596, 601, 536 P.2d 444, 446 (1975); and Fasano v. Board of County Comm'rs, 264 Or. 574, 507 P.2d 23 (1973).

63. *See infra* note 111 and accompanying text.

64. *Fasano*, 264 Or. at 579, 507 P.2d at 26 ("[t]he majority of jurisdictions state that a zoning ordinance is a legislative act and is thereby entitled to presumptive validity").

including Florida, have looked to California for precedent in this area.[65] The California rule was clearly set forth in the 1985 *Yost* decision, where the court held that zoning and rezoning ordinances and the adoption of and amendments to general plans are legislative actions.[66] The California rule further provided that "[t]he approval of variances, conditional use permits, and tentative subdivision maps, which involve the application of preestablished standards and conditions to particular land uses, is adjudicatory."[67] These rules were applied in a recent California case, *W. W. Dean & Associates v. City of South San Francisco*.[68]

In *Dean*, a developer owned and sought to develop San Bruno Mountain, an area of approximately 3,600 acres.[69] During the permitting process, San Bruno Mountain was discovered to be a habitat for the Mission Blue butterfly, which had been listed as an endangered species by the United States Fish and Wildlife Service.[70] The developer agreed to donate or sell 2,000 acres which it owned in San Mateo County and elsewhere in California, to limit development to one-third of the mountain, and to submit to a development plan which would protect the endangered habitat.[71] After a public hearing, the city approved specific plans for development of one section of the mountain.[72] Subsequent to this approval, further soil and geotechnical studies disclosed that the slope was susceptible to landslides.[73] The developer was therefore required to amend the project to provide for additional upslope grading with retaining walls; this amendment required temporary disturbance of approximately twenty-five acres of land designated for conservation and further required Dean to fund habitat enhancement on thirty offsite acres not included in the original plan.[74]

The city voted to require a public referendum on the amendment.[75] The developer then filed a writ of mandate in the superior court, seeking to enjoin the city from holding the referendum election.[76] The trial

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65. For a discussion of California's constitutional provisions regarding initiative and referendum, see Note, *Arnel Dev. Co. v. City of Costa Mesa: Rezoning by Initiative and Landowners' Due Process Rights*, 70 CALIF. L. REV. 1107 (1982).

66. Yost v. Thomas, 36 Cal. 3d 561, 570, 685 P.2d 1152, 1158, 205 Cal. Rptr. 801, 807 (1985).

67. W.W. Dean & Associates v. City of South San Francisco, 236 Cal. Rptr. 11, 15 (Cal. Ct. App. 1987). *See* Horn v. County of Ventura, 24 Cal. 3d 605, 614, 596 P.2d 1134, 1136-37, 156 Cal. Rptr. 718, 722-23 (1979).

68. 236 Cal. Rptr. 11 (Cal. Ct. App. 1987).

69. *Id.* at 13.

70. *Id.*

71. *Id.*

72. *Id.* at 14.

73. *Id.* at 15.

74. *Id.*

75. *Id.*

76. *Id.*

court found that the adoption of the amendment to the developer's plan was an administrative act.[77] The appellate court, in affirming the trial court, could not find that the amendment to the developer's plan called for any change in land use and found that the amendment encompassed only those changes absolutely necessary for the previously approved project to go forward.[78]

A change in land use appears to be a critical factor in the determination of whether a city council's act is legislative or administrative. This raises the question of whether a rezoning that is within the boundaries of a pre-adopted comprehensive plan is truly a change in land use.

In *State ex rel. Hickman v. City Council*, the issue was whether in Missouri the initiative procedure was available to rezone a tract of real property.[79] There, the city council had found the rezoning of the tract to be administrative in nature and the initiative process to be inappropriate under the city manager form of government.[80] Both the trial and appellate courts disagreed.[81] Although the Missouri Court of Appeals found that "[t]he rezoning here really has elements of both legislative and administrative action,"[82] the majority held that "[c]ase authority leads to the conclusion that the action in question is 'legislative' action here so as to allow initiative."[83]

The Missouri court cited *City of Eastlake* for the proposition that use of a referendum in a zoning issue is not invalid on a procedural due process theory where the referendum is a power reserved to the people.[84] Specifically, the court stated that "[t]he [*City of*] *Eastlake* court held that use of a referendum in a zoning issue is not invalid on a procedural due process theory because the people can reserve to themselves power to deal directly with matters which might otherwise be assigned to a legislative body."[85] The court also noted that *City of Eastlake* had been followed by a Florida decision which held that once a power of referendum is reserved to the people, then certain discernable due process standards which accompany delegated powers do not apply.[86]

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77. *Id.*
78. *Id.*
79. 690 S.W.2d 799 (Mo. Ct. App. 1985).
80. *Id.* at 800.
81. *Id.* at 801-02.
82. *Id.* at 802.
83. *Id.*
84. *Id.* at 803.
85. *Id.*
86. *Id.* (citing Orange County Indus. Dev. Auth. v. State, 427 So. 2d 174 (Fla. 1983)). While *Orange County* is an excellent assessment of Florida's bond validation procedure, it does not state a rule on the referendum as a reserved power. However, Florida Land Co. v. City of Winter Springs, 427 So. 2d 170 (Fla. 1983), which immediately precedes *Orange County* in Volume 427 of West's Southern Second Reporter, specifically enunciated a rule regarding the referendum—that the referendum in rezonings of single parcels of land is constitutionally valid.

However, the fifth and fourteenth amendments of the United States Constitution mandate that no person be deprived of "life, liberty or property without due process of law,"[87] and do not condition this right upon an unlikely modifier such as "unless such deprivation is pursuant to powers reserved herein to the people."

Hawaii follows the California and Missouri rules.[88] Citing *City of Eastlake*, the Supreme Court of Hawaii upheld the use of the referendum to nullify an existing ordinance which established zoning on one owner's single parcel of land.[89] Washington has drawn the line a little differently in the legislative-administrative dichotomy. The general rule in Washington is that the adoption of a comprehensive plan and zoning code by a local government is legislative in nature, but amendments to the zoning code and rezonings are administrative functions not subject to referendum.[90]

In *Leonard v. City of Bothell*,[91] the Washington Supreme Court found that even a city council's vote to modify the comprehensive plan, where such modification was anticipated in the language of the plan, and its subsequent vote to rezone an area to allow more intensive use, were both administrative actions not subject to referendum.[92] The tests used in Washington are those enunciated by *McQuillin* and quoted in the zoning cases of numerous states:

> Actions relating to subjects of a permanent and general character are usually regarded as legislative, and those providing for subjects of a temporary and special character are regarded as administrative.
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> . . . .
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> The test of what is a legislative and what is an administrative proposition, with respect to the initiative or referendum, has further been said to be whether the proposition is one to make new law or to execute law already in existence. The power to be exercised is legislative in its nature if it prescribes a new policy or plan; whereas, it is administrative in its nature if it merely pursues a plan already

87. U.S. CONST. amends. V and XIV, § 1.

88. For a general discussion of Michigan law in this area, see Ternan, *Zoning Administrative Decisions in Court*, 63 MICH. B.J. 145 (1984); for a general discussion of Kansas law in this area, see Comment, *Rezoning in Kansas: Legislation, Adjudication, or Confusion*, 30 U. KAN. L. REV. 571 (1982); and for a general discussion of Colorado law in this area, see Note, *Referendum and Rezoning: Margolis v. District Court*, 53 U. COLO. L. REV. 745 (1982).

89. County of Kauai v. Pacific Standard Life Ins. Co., 65 Haw. 318, 653 P.2d 766 (1982).

90. Leonard v. City of Bothell, 87 Wash. 2d 847, 850, 557 P.2d 1306, 1309 (1976) (citing Fleming v. Tacoma, 81 Wash. 2d 292, 299, 502 P.2d 327, 331 (1972)).

91. 87 Wash. 2d 847, 557 P.2d 1306 (1976).

92. According to Rosenberg, *supra* note 1, at 420, Washington has taken the most extreme position rejecting zoning referenda.

adopted by the legislative body itself, or some power superior to it.[93]

In *Leonard*, the comprehensive plan classified as agricultural the land on which the landowner sought to build a regional shopping center.[94] The plan stated that the land was appropriate for agricultural use "at this time," but "[i]t is foreseeable that pressures will arise for commercial and other facilities within the North Creek Valley. The Comprehensive Plan does not at this time provide such uses, but is not to be construed as discouraging or prohibiting such more intensive uses."[95] The city council passed an ordinance which rezoned the property and modified the city plan.[96] When the council refused to order a referendum election, Leonard sought a writ of mandamus in the superior court.[97] The court granted summary judgment in favor of the city and Leonard appealed.[98]

Because the ordinance "merely rezoned" the property and modified language of the plan to reflect an anticipated land use change, the court found that the city's actions were not legislative or policymaking in nature, and therefore the action was not subject to referendum.[99] *Leonard* was decided without dissent by the Washington Supreme Court, en banc, on December 16, 1976, just six months after the United States Supreme Court's decision in *City of Eastlake*. It was quoted in the 1984 case of *Heider v. City of Seattle*,[100] which indicates that the *Leonard* rule is still good law. Thus, Washington, unlike Florida, has developed a yardstick by which to differentiate and disallow referenda on rezonings of single parcels of land.

Supporting its decision not to subject the ordinance to a referendum, the *Leonard* court cited cases from Michigan, Nebraska, Nevada, New Jersey, Texas, Utah, Arizona, Connecticut, and Missouri.[101] Missouri has changed its rule since the *City of Eastlake* decision.[102] New Jersey

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93. 5 E. McQUILLIN, *supra* note 5, § 16.55 (footnotes omitted).

94. *Leonard*, 87 Wash. 2d at 848, 557 P.2d at 1307.

95. *Id.* at 851, 557 P.2d at 1309.

96. *Id.*, 557 P.2d at 1308.

97. *Id.*

98. *Id.*

99. *Id.* One author stated that this decision ignored the fact that the developer was trying to convert 140 acres from low to extremely high intensity use and that a rezoning on such a magnitude might be better suited for a broad legislative policymaking decision. He concluded, however, that the court apparently wished to maintain a uniform position against subjecting rezoning decisions to referenda control. Rosenberg, *supra* note 1, at 422.

100. 100 Wash. 2d 874, 675 P.2d 597 (Wash. 1984).

101. *Leonard*, 87 Wash. 2d at 851, 557 P.2d at 1309.

102. *See supra* notes 79-87 and accompanying text.

has not, and in fact, has continued to uphold the rule set forth in *Township of Sparta v. Spillane*.[103]

The *Sparta* court addressed the question of whether the referendum procedure provided by statute applied to an amendment to a municipality's zoning ordinance.[104] The trial court had concluded that the referendum procedure was not applicable, and in a decision of first impression, the Superior Court, Appellate Division, affirmed.[105]

The court said the question pitted the philosophy of comprehensive planning against that of wider public participation in the zoning process.[106] The court's concerns in *Sparta* reflected consideration of several important issues now facing Florida courts: 1) Zoning in accordance with a comprehensive plan must reflect both the present and future needs of the community; 2) sporadic attacks on the plan through referenda would tend to fragment it; 3) in changes under the plan, social, economic and physical characteristics of the community need to be considered; 4) the intent of the New Jersey Legislature was to provide a uniform procedure for all municipalities in zoning matters; 5) the New Jersey Legislature authorized local governments to establish administrative agencies to assist in land use functions; 6) the New Jersey Legislature laid down specific and detailed procedures for carrying out these functions; 7) parts of the state's zoning statute are inherently incompatible with the referendum process; and 8) the publicity accompanying a referendum campaign and the exposure and discussion of the issues generated do not "justify disregarding [the] procedural requirements" of the statute.[107] Because Florida has a newly developed, complex, statewide and state mandated comprehensive land use planning process, the Washington and New Jersey rules are worth serious consideration by Florida courts.

Also compelling, based on developments in Florida's statutory land use law since 1975, is the now famous *Fasano* rule adopted by the Oregon Supreme Court almost fifteen years ago.[108] There, the court developed a two part inquiry for determining whether an action is legislative or administrative in nature: If the proposed zoning or land use action would result in a general policy or rule applicable to an open

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103. 125 N.J. Super. 519, 312 A.2d 154 (1973).

104. *Id.* at 521, 312 A.2d at 155.

105. *Id.* at 525, 312 A.2d at 157-58. The court also stated that "certain aspects of the zoning statute seem inherently incompatible with the referendum process." *Id.* at 526, 312 A.2d at 158.

106. *Id.* at 524, 312 A.2d at 157-58.

107. *Id.* at 527, 312 A.2d at 157-58.

108. Fasano v. Board of County Comm'rs, 264 Or. 574, 507 P.2d 23 (1973). *See also* Rose, *Planning and Dealing: Piecemeal Land Controls as a Problem of Local Legitimacy*, 71 CALIF. L. REV. 837, 845-46 nn. 18-19 (1983) (listing states that have been influenced by the *Fasano* doctrine).

class of persons, interests, or situations, then the action is legislative and can be proposed or vetoed by initiative or referendum; if the proposed action is one to apply a general rule or policy to a specific individual, interest, or situation, then it is quasi-judicial or administrative in nature, and not subject to referendum.[109]

Oregon has consistently held that labels are not controlling.[110] The name applied, whether "variance," "amendment," "zoning" or "rezoning," is simply not material to the inquiry. Labels appear to play too great a role in the Florida rule on land use and referenda.[111] Oregon, however, does not use the rule to routinely disallow referenda, but enforces the right of referendum where it believes it is appropriate under the state's comprehensive planning process.[112]

An illustrative Oregon case is *Heritage Enterprises v. City of Corvallis*, which involved the question of whether 345 acres of land in the city's urban growth area should be annexed into the city.[113] The city council determined that the proposed annexation was compatible with existing land use policies and submitted the annexation to the voters.[114] The measure was voted down, and Heritage Enterprises appealed.[115] The court held that the referendum order by the city council was valid, since the question submitted to the voters was not whether the proposal

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109. *Id.* at 26-27 (citing Comment, *Zoning Amendments—The Product of Judicial or Quasi-Judicial Action*, 33 OHIO ST. L.J. 130, 137 (1972)).

110. *See* Fasano v. Board of County Comm'rs, 264 Or. 574, 580-81, 507 P.2d 23, 26-27 (1973); Fifth Avenue Corp. v. Washington County, 282 Or. 591, 617-18 n.20, 581 P.2d 50, 65 n.20 (1978); Heritage Enterprises v. City of Corvallis, 300 Or. 168, 172-73, 708 P.2d 601, 603-04 (1985); and Baker v. City of Milwaukie [sic], 271 Or. 500, 510-14, 533 P.2d 772, 778-79 (1975). *See also supra* note 62 and accompanying text.

111. *See generally Florida Land Co.*, 427 So. 2d at 174 (the court classified a zoning amendment, like the original ordinance itself, as legislative, not administrative) (citing Schauer v. City of Miami Beach, 112 So. 2d at 839). *See also supra* note 63 and accompanying text.

In Note, *Arnel Dev. Co. v. City of Costa Mesa: Rezoning by Initiative and Landowners' Due Process Rights*, 70 CALIF. L. REV. 1107 (1982), the author faulted the *Arnel* court for taking labels too seriously and not looking through form to substance. The author stated that the court had mechanically applied the legislative/nonlegislative distinction and suggested instead that a balancing approach be used in deciding whether a land use choice may be made by the people. The author concluded that a balancing approach would encourage initiative as well as safeguard protected rights. In Comment, *The Legislative - Adjudicative Distinction in California Land Use Regulation: A Suggested Response to Arnel Development Co. v. City of Costa Mesa*, 34 HASTINGS L.J. 425 (1982), the author stated that *Arnel* was a regression in California law due to its reliance on labels. Further, the author noted that some states had abandoned strict reliance on labels in favor of a definitional approach that allows greater judicial scrutiny of "local" legislative decisions (citing *Fasano*) or that prevents land use decisions from being made by the electorate directly (citing *Leonard*).

112. *See supra* note 110.

113. 300 Or. 168, 708 P.2d 601 (1985).

114. *Id.* at 170, 708 P.2d at 602.

115. *Id.*

complied with the local comprehensive plan. Instead, the question was whether the electorate desired annexation: "The question referred to the voters was not whether the proposal *could be* adopted under the applicable land use law, but whether this proposal *should be* adopted at that time."[116]

III. Is the Florida Rule on Rezoning by Referendum Compatible with its Statutory Scheme of Comprehensive Planning?

The question is not which state Florida might choose to emulate. Nor is the question whether Florida should follow the federal rule in *City of Eastlake*,[117] which was based on the Ohio constitutional and statutory system and addressed the narrow question of whether referenda on rezonings in Ohio violated federal due process. Rather, the question for Florida is whether, now that a sophisticated statewide planning process has been statutorily implemented, it is valid to characterize zonings and rezonings under these comprehensive plans as anything other than administrative acts. If these determinations by local government are administrative, the question arises whether the check by referendum is constitutionally or statutorily appropriate.[118]

Several fundamental constitutional problems were not addressed by the Florida Supreme Court in *Florida Land Co.* First, the adoption in Florida of the 1975 Local Government Comprehensive Planning Act[119] and the amendments in 1985[120] may fundamentally change the way Florida courts define "legislative acts" in land use cases. In fairness to the court, *Florida Land Co.* was decided on January 27, 1983, and Florida's legislature did not adopt the most significant changes to the 1975 Act until the spring of 1983 and thereafter. Second, the appropriateness of using the referendum in Florida is not based on "procedural

116. *Id.* at 172, 708 P.2d at 603 (emphasis in original).

117. 426 U.S. 668 (1975).

118. For a general discussion of the history of initiative and referenda, see Sirico, *The Constitutionality of the Initiative and Referendum*, 65 IOWA L. REV. 637 (1980); Comment, *The Direct Initiative Process: Have Unconstitutional Methods of Presenting the Issues Prejudiced Its Future?* 27 UCLA L. REV. 433 (1979); and Note, *Constitutional Constraints on Initiative and Referendum*, 32 VAND. L. REV. 1143 (1979).

119. FLA. STAT. §§ 163.3161-.3211 (1975).

120. FLA. STAT. §§ 163.3161-.3215 (1985). With the 1985 amendments, the short title of the Local Government Comprehensive Planning Act (LGCPA) was changed to the "Local Government Comprehensive Planning and Land Development Regulation Act." The LGCPA had also been amended in 1984 to include a section concerning the adoption of comprehensive plans. FLA. STAT. § 163.3184 (1984).

requirements of a superseded municipal ordinance."[121] Rather, it is based on chapter 166, Florida Statutes,[122] which establishes the statutory power of referenda pursuant to article VI, section 5, of Florida's Constitution, and on the statutory requirements of chapter 163, Florida Statutes,[123] which was also adopted pursuant to constitutional authority.[124] Because the various consistency requirements of chapter 163[125] were adopted after the court's *Florida Land Co.*[126] decision, it is appropriate to view the question from a new perspective.

Many of the relevant cases cite *McQuillin* as persuasive authority for the proposition that, where the legislature extends the initiative power, that power generally extends to "all matters of local concern other than those excluded by express or necessarily implied exceptions contained in charter, statutory or constitutional provisions."[127] Since Florida's 1985 Act[128] includes detailed and specific procedural requirements for the adoption and enforcement of land use plans, including three-dimensional consistency requirements, it is fair to conclude that these are statutory exceptions that exclude the initiative and referendum.[129] The *Sparta* court pointed out that, even though *McQuillin* advocates referenda being given wide use if possible, "it should be noted, however, that he adds a caveat that any grant of the power of initiative and referendum and its exercise are subject to and must be construed with governing constitutional and statutory provisions."[130]

The court in *Florida Land Co.* cited two state constitutional provisions[131] which indicate that the power of the referendum in Florida is based squarely on the constitutional requirement that the Florida leg-

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121. The *Florida Land Co.* court cited Dwyer v. City Council, 200 Cal. 505, 516, 253 P. 932, 936 (1927) for the proposition that "the constitutional right reserved by people to submit legislative questions to a direct vote cannot be abridged by any procedural requirements of a superceded municipal ordinance dealing with the same subject of legislation."

122. FLA. STAT. § 166 (1987).

123. FLA. STAT. § 163 (1987).

124. FLA. CONST. art. III, § 1 states that "[t]he legislative power of the state shall be vested in a legislature of the State of Florida . . . ."

125. *See supra* note 22, *infra* note 129, and accompanying text.

126. 427 So. 2d 170 (Fla. 1983).

127. 5 E. MCQUILLIN, *supra* note 5, § 16.54.

128. FLA. STAT. § 163.31 (1985).

129. 5 E. MCQUILLIN, *supra* note 5, § 16.54, at 191. *See generally* FLA. STAT. §§ 163.3194(1)(b), .3194(3)(a)-(b), and .3194(4)(a) (1987).

130. *Sparta*, 312 A.2d at 156.

131. FLA. CONST. art. I, § 1 provides that "[a]ll political power is inherent in the people. The enunciation herein of certain rights shall not be construed to deny or impair others retained by the people." FLA. CONST. art. VI, § 5 provides that "[s]pecial elections and referenda shall be held as provided by law."

islature make provision for it.[132] The court, however, failed to cite the following relevant constitutional provision: "The legislative power of the state shall be vested in a legislature of the State of Florida . . . ."[133]

Given the plain language of all three sections, it is difficult to agree with the court's conclusion in *Florida Land Co.*, that the Florida power of referenda is a reserved power. When article VI, section 5 is read in pari materia with Florida's nondelegation clause contained in article III, section 1, it is hard to imagine that the referendum was intended to be a reserved power in Florida, rather than a power constitutionally valid if properly established, delegated, and provided for by law. Indeed, the very language of the Florida's reservation of powers clause contained in article I, section 1 refers specifically to rights other than those enunciated in the constitution. Because the right of referenda was enunciated specifically in article VI, section 5, it could not be among those contemplated under article I, section 1, which are those rights not enunciated or included in Florida's Constitution.

All legislative power rests solely in the legislature,[134] and the courts strictly enforce the nondelegation doctrine.[135] Because referenda shall be held in Florida "as provided by law,"[136] it is reasonable to read Florida's statutes relating to referenda in pari materia with the statutes relating to land use regulation and planning. It is also logical to ask whether the legislative intent in passing the 1985 Act, as stated by the statute and manifested prior to and throughout the 1985 legislative session, precludes the application of any existing statutory language on referenda to the land development regulation process.

Florida's adoption of the federal rule in *City of Eastlake*,[137] which provided that referenda on zoning changes of single parcels do not violate fundamental due process requirements, raises several questions not

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132. In Leary, *Power to the People? A Critique of the Florida Supreme Court's Interpretation of the Referendum Power in Florida Land Company v. City of Winter Springs, 427 So. 2d 170 (Fla. 1983)*, 15 FLA. ST. U.L. REV. 673, 679 (1987), the author stated that the *Florida Land Co.* court "used the 'inherent power of the people' clause from article I, section 1 to bootstrap article VI, section 5 into the constitutional reservation of power necessary to complete the [*City of*] *Eastlake* equation."

133. FLA. CONST. art. III, § 1. In Leary, *supra* note 132, at 680, the author noted that:

> In the crucial sentence of [article VI,] section 5, there is no mention of the people, power, or the reservation of power. It is extraordinary that the people of Florida would choose to reserve to themselves the power to make law by referendum without mention of the concepts of power or its reservation, and would do so in a section of the constitution dealing not with the distribution of power but with the regulation and administration of elections.

134. FLA. CONST. art. III, § 1 and art. II, § 3.

135. *See* Askew v. Cross Key Waterways, 372 So. 2d 913, 925 (Fla. 1978).

136. FLA. CONST. art. VI, § 5.

137. 426 U.S. 668, 679 (1976). *See Florida Land Co.*, 427 So. 2d at 173-74.

specifically addressed in *City of Eastlake*. First, if in Florida a change of zoning is granted by a city pursuant to and consistent with an adopted comprehensive plan, should the voters be able to disallow such action on a single parcel? Second, would this not be an administrative function, to enforce the plan, once adopted, by administrative notice, hearing, and decisionmaking based on predetermined and codified criteria? Third, should the power of referenda in article VI, section 5 apply to land use decisions in Florida, since it contains the proviso, "as provided by law?" Fourth, is this power, as qualified, substantively the same as that power of referenda contained in the Ohio Constitution?

Because Florida's rule has been derived from an Ohio case,[138] it is helpful to compare the constitutional framework of Florida and Ohio on the power of referenda. Ohio's Constitution provides that "[t]he legislative power of the state shall be vested in a general assembly . . . but the people reserve to themselves the power to propose to the general assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote . . . ."[139] It further provides that "[t]he initiative and referendum powers are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action . . . ."[140] These provisions, upon which the *City of Eastlake* decision was based, constitute a specific constitutional reservation of the power of referendum to the people that is not found in the Florida Constitution.

Florida's Constitution contains no direct mention of the referendum as a reserved power as does the Ohio Constitution, but instead allows it to be exercised "as provided by law." The plain language suggests that the legislature has delegated the power to regulate referenda by statute, and that referenda are to be held only in accordance with statutory guidelines as mandated. However, in *Florida Land Co.*,[141] the Supreme Court cited *City of Eastlake*[142] for the proposition that the referendum is the essence of a reserved power, and continued by citing article I, section 1 and article VI, section 5 of Florida's Constitution.[143] The *Florida Land Co.* court made no attempt to compare Florida's relevant

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138. *City of Eastlake*, 426 U.S. 668 (1976). *See* Forest City Enterprises, Inc. v. City of Eastlake, 41 Ohio St. 2d 187, 324 N.E.2d 740 (1975).

139. OHIO CONST. art. II, § 1.

140. OHIO CONST. art. II, § 1.f.

141. 427 So. 2d 170 (Fla. 1983).

142. 426 U.S. 668 (1976).

143. *Florida Land Co.*, 427 So. 2d at 172.

constitutional provisions regarding referenda with Ohio's.[144] Although certain powers are reserved to the citizens of Florida, referenda are not among those powers specifically enumerated.[145]

The *City of Eastlake* decision was also predicated on the fact that *Euclid* standards apply in Ohio. Thus, if a zoning decision is reached by a referendum that is clearly arbitrary and capricious, having no substantial relation to the public health, safety, morals, or general welfare, then a landowner has a legitimate cause of action in court, and even the decision of the voters would fail.[146] By way of footnote, the Supreme Court in *City of Eastlake* stated the standard to be applied: "The critical constitutional inquiry, rather, is whether the zoning restriction produces arbitrary and capricious results."[147]

In adopting the federal rule, the Florida court makes the same point, that a zoning decision of the voters by referendum could be challenged by the landowner and would fail in court, if shown to be "arbitrary and capricious and unreasonable, bearing no substantial relation to the police power."[148] Thus, in Florida a landowner may seek an unpopular use of a single parcel of land, even one which meets preestablished criteria under a comprehensive plan, but this use may be disallowed by the will of the majority at referendum. Essentially, the court's answer in *Florida Land Co.* was that if the referendum proved too unfavorable to the landowner, the landowner still had a remedy in court by showing the city's ordinance to be "arbitrary, capricious and unreasonable."[149] The difficulty with this answer is that the Florida yardstick in zoning questions has long been the "fairly debatable standard," not the *Euclid* standard used in this instance by the Florida court.[150] Virtually any rezoning question, which receives at least some votes on either side at referendum, could be found by a court to be fairly debatable.[151] If the

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144. One author has noted that the Florida Supreme Court in *Florida Land Co.* "ignored the readily apparent differences between the Florida and Ohio constitutions" and instead "simply resolved the conflict by endorsing the view of the district court that had been on the winning side in the [*City of*] *Eastlake* struggle." Leary, *supra* note 132, at 678.

145. *See* FLA. CONST. art. VI, § 5.

146. Euclid v. Ambler Realty Co., 272 U.S. 365 (1926). *See* Hunter v. Erickson, 393 U.S. 385, 392 (1969).

147. 426 U.S. at 676 n.10.

148. *Florida Land Co.*, 427 So. 2d at 174 (citing Euclid v. Ambler Realty Co., 272 U.S. 365 (1926)).

149. *Florida Land Co.*, 427 So. 2d at 174.

150. *See generally* Machado v. Musgrove, 519 So. 2d 629 (Fla. 3d DCA 1987), *cert. denied* 13 Fla. L. Weekly 522 (1988); Southwest Ranches v. Broward County, 502 So. 2d 931 (Fla. 4th DCA 1987).

151. In McPherson, *Cumulative Zoning and the Developing Law of Consistency with Local Comprehensive Plans*, 61 FLA. B.J. 71(7), 73 (1987), the author stated that "[t]he fairly debatable standard is expressly prescribed for administrative review of a local determination that its land

court intended by this 1983 decision to replace the fairly debatable standard traditionally used in Florida, the question then arises, under what circumstances would the court find a decision by a majority of voters to be "arbitrary and capricious?" The idea of the court second-guessing the collective mind of the electorate, or measuring a land development regulation against the thoughts of a reasonable or rational voter, is repugnant to Florida's accepted practice of land use planning enforcement with pre-adopted criteria. How could a Florida landowner, challenging a referendum result on the use of a single parcel, prevail in a court which uses the fairly debatable standard? *Florida Land Co.* seems to present more questions than it answers.

In *City of Eastlake*, the court held that, as a power reserved constitutionally to the people, referenda do not per se violate procedural due process guarantees of the fourteenth amendment. Whether the result of a referendum was unreasonable would be determined as a matter of state law, as well as by fourteenth amendment standards.[152] Florida's standard is far from a reasonableness standard, yet Florida has affirmatively adopted the federal rule in *City of Eastlake* as its own. The present Florida rule allowing referenda on rezoning of single parcels presents practical problems. Where a decision is reached by referendum on the zoning of a single parcel, who should the landowner sue? Is the electorate an appropriate defendant? How could the landowner sue the city council if that body had not rejected the request but had found it consistent with the legislative plan? If the electorate is sued, how would the court judge between the statute and the electorate? In fact, Florida appellate courts have now gone beyond the "fairly debatable" rule and have required at least stricter scrutiny to measure consistency with established land use plans.

In *Machado v. Musgrove*, petitioners sought professional office zoning on land which was zoned in the county's comprehensive plan for ranchlands, nurseries, and croplands.[153] The Dade County Commission, by a three-to-two vote, granted petitioner's rezoning request.[154] However, the circuit court, applying the "fairly debatable" test, reversed on the basis that the office complex was incompatible with other uses in the area and violative of the land use plan.[155]

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development regulations are consistent with its plan and that its plan is internally consistent, but not, however, for the judicial review of a local determination that a development order is consistent with the plan." Based upon the rationale of Southwest Ranches v. Broward County, 502 So. 2d 931 (Fla. 4th DCA 1987), the author stated that this must be true for truly meaningful judicial review to exist.

152. *City of Eastlake*, 426 U.S. at 668.

153. 519 So. 2d 629 (Fla. 3d DCA 1987).

154. *Id.* at 631.

155. *Id.*

On appeal, the district court distinguished between a "statutorily mandated legislative plan to control and direct the use and development of property within a county or municipality" and "the means by which the comprehensive plan is implemented."[156] The court stated that a reviewing court will apply the fairly debatable test to a zoning action and a strict scrutiny test to land use cases.[157] Because the applicants for rezoning were unable to show that their request was consistent with each element of Dade County's comprehensive plan and would further the objectives of the plan as a whole, the court affirmed the trial court.[158]

The *Machado* court held that a local government's otherwise broad powers of zoning are statutorily limited by the chapter 163[159] requirement that zoning actions conform to approved land use plans.[160] Further, the court found, based on the strict scrutiny standard, that the rezoning action by the Dade County Commission was inconsistent with the county's comprehensive plan and therefore void.[161] The court determined that it was unnecessary to address the question of whether the commission's zoning action was in fact "fairly debatable."[162]

While the *Machado* test requires a developer to show consistency with each element of the local plan and consistency with the plan as a whole, the test enunciated by the Fourth District Court of Appeal in *Southwest Ranches v. Broward County*[163] requires consistency with the plan as a whole.[164] In *Southwest Ranches*, the court required a strict scrutiny test, in addition to the fairly debatable test, in a case where the proposed land use was more intensive than that allowed by the local comprehensive plan.[165] Although the court scrutinized each element of the plan individually, its final decision rested on viewing the comprehensive plan as a whole.[166] Citing sections 163.3194(4)(a)-(b), Florida Statutes,[167] the court examined whether the proposed changes were consistent with the general principles and guidelines of the local plan when construed broadly.[168]

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156. *Id.* at 631-32.
157. *Id.*
158. *Id.* at 635-36.
159. FLA. STAT. § 163.3194(3) (1985).
160. *Machado*, 519 So. 2d at 633-35.
161. *Id.*
162. *Id.*
163. 502 So. 2d 931 (Fla. 4th DCA 1987).
164. *Id.* at 938.
165. In McPherson, *supra* note 152, at 71(7), the author noted that Florida's First District Court of Appeal had suggested *Southwest Ranches*' same dual standard in City of Jacksonville Beach v. Grubbs, 461 So. 2d 160, 163 n.3 (Fla. 1st DCA 1985).
166. *Southwest Ranches*, 502 So. 2d at 934-40.
167. FLA. STAT. § 163.3194(a)-(b) (1985).
168. 502 So. 2d at 936-37.

These recent Florida appellate opinions raise questions about the characterization of zonings and rezonings in Florida as legislative acts. These decisions also have an impact on the question of whether a referendum used to rezone a single parcel of land is a power constitutionally reserved solely for the people. Appeal to voters cannot give any reasonable expectation that the strict scrutiny standard will be applied and to that extent, referendum is inappropriate.[169] Where, however, the general policies or guidelines of a local government's comprehensive plan are in question, referenda are eminently appropriate.

IV. CONCLUSION

Florida's 1985 Local Government Comprehensive Planning and Land Development Regulation Act anticipates that land use decisions on single parcels of land will be made consistently and in conformity with pre-adopted land use plans. The present Florida system of fixing general guidelines and policies, against which individual land use decisions will be measured and made, makes Florida ideally suited for the Oregon approach to the referenda on rezoning problems. In Florida, decisions regarding the adoption or amendment of the comprehensive plan, where the policy or guideline affects more than one interest or individual, could be labelled as "legislative" in nature and thus referenda would be allowed. The decision of whether a zoning or rezoning request, or any land development regulation affecting a single interest or ownership, meets the criteria of or is consistent with the legislated plan could be labelled as "administrative" in nature and referenda on these decisions would be judicially disallowed.

The analytical framework, rather than the label, would control. Thus, the legislative intent of comprehensive planning, that land use decisions be made within a framework of pre-adopted consistent plans, would be satisfied. Additionally, the constitutional requirement that referenda be held "as provided by law"[170] would not be offended.

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169. In Cookston and Bruton, *Zoning Law: 1980 Developments in Florida Law*, 35 U. MIAMI L. REV. 581, 607 (1981), the authors stated that referenda deny a property owner of a zoning board's due regard for preserving a comprehensive zoning plan, and that referenda are least appropriate and most discriminatory in zoning decisions that affect a single owner or single tract. Such decisions are more adjudicative than legislative in nature, in contrast to the adoption of a general comprehensive zoning ordinance.

170. FLA. CONST. art. VI, § 5.