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INTRODUCTION

*Julian C. Juergensmeyer**

Over the past decade, the State of Florida — its environment sensitive, its population exploding, and its economy expanding — has pioneered innovative land planning and development regulation law. Our Local Government Comprehensive Planning and Land Development Regulation Act, State Comprehensive Plan Act, Environmental Land and Water Management Act, and Regional Planning Council Act are considered models in many American states and even in foreign countries. The Growth Management Act of 1985 is unique in providing for a statewide planning framework that strengthens our major land use regulation and environmental protections laws and requires consistency between all state, regional, and local planning activities.

Legislation, however, means little unless it produces its intended result — in this instance, a better quality of life for Floridians. Should our statutes be amended? Replaced? Do they allow too much growth, or too little? Have judicial decisions affected their reach? The articles in this inaugural issue of the *University of Florida Journal of Law and Public Policy* raise such questions and offer some responses.

In the lead article, Paul Quinn explores the legal issues underlying the increased use of linkage programs. Linkage is a generic term that planners and politicians alike use to describe a variety of programs, especially those implemented in central cities, which require that developers contribute towards new — and hopefully affordable — housing, employment opportunities, child care facilities, transit systems, and the like in return for the city's allowing new commercial development. In describing the current linkage programs in Boston and Miami, Mr. Quinn points out that their operation raises several issues. He considers, for instance, whether a municipality has the authority to enact linkage programs; whether linkage programs constitute takings of private property requiring just compensation; whether linkage fees

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constitute unlawful taxes requiring specific statutory authorization; and whether a rational nexus can be established between new commercial development and a reduced supply of affordable housing. This incisive article concludes that linkage programs that meet these legal requirements can significantly increase the supply of low and moderate income housing.

In response to Mr. Quinn's analysis, Professors Forrest Huffman and Marc Smith's article examines the economic effects of linkage fees. Professors Huffman and Smith analyze the relation between new office development and insufficient affordable housing and query whether new commercial development by itself creates new jobs and a demand for housing (i.e. the "rational nexus"). Because this new development may simply be builders' responses to a pre-existing demand for commercial buildings, placing the economic onus of linkage fees on builders may be counterproductive. Because the economic effects of linkage vary according to the various responses of builders, Professors Huffman and Smith question the utility of linkage programs as providers of housing. Linkage fees may cause builders to abandon a project downtown for one farther from the city's core and thus thwart the very goal of linkage fees — affordable housing for low and moderate income groups. Furthermore, in those cities with a surplus of office space, Huffman and Smith expect that linkage programs may further inhibit new development projects. In effect, linkage programs might reduce, rather than increase, affordable housing.

Local governments in both Florida and other states have increasingly become involved in movements to protect the ecosystems within their jurisdictions. In response, Mary Jane Angelo, a staff attorney with the Center for Governmental Responsibility here at the University of Florida, drafted a comprehensive Model Wetlands Protection Ordinance that is currently under consideration in many Florida counties and municipalities. Ms. Angelo's article focuses on the due process and eminent domain issues implicit in such an ordinance and shows how her model ordinance either avoids or resolves them. For instance, Ms. Angelo analyzes the application of the takings clause of the United States and Florida Constitutions to land use regulations. Her research provides a useful and succinct overview of the legal issues local governments must confront in protecting the state's environmentally sensitive ecology.

Failure to incorporate economic analysis into legal analysis can produce a degree of naivete about the utility of legislative enactments. For example, legislative attempts to protect renters from higher rents or higher property taxes often result in failure. Professor Charles Delaney's insightful article assesses from theoretical and empirical

perspectives whether builders, buyers, or landowners shoulder the burden of impact fees. Professor Delaney presents a basic economic model to illustrate that impact fees have different effects on different classes of individuals: builders, buyers of new and old homes, sellers of old homes, and renters. Professor Delaney concludes that the economic effects of impact fees are directly related to housing supply and demand across jurisdictional boundaries.

The takings issues Ms. Angelo's article addresses are extremely important to land use planners. Mike Simon further explores the recent United States Supreme Court decisions in *Keystone*, *First English*, and *Nollan*, to determine their impact on takings jurisprudence. In these cases, the Court considered issues such as what constitutes a legitimate state interest for purposes of takings law and whether a state must give compensation for regulatory takings. Noting the inconsistent and contradictory nature of takings law, Mr. Simon concludes generally that although the Court's decisions do not radically alter prior takings law, they do create a different set of parameters that attorneys, developers, and government officials will test in coming years.

The final article demonstrates a practitioner's perspective. Thomas Baird, an Assistant Palm Beach County Attorney, examines the structure and operation of the Palm Beach County Planning Council, charged under the Palm Beach County Charter with developing a county-wide future land use plan pursuant to Florida's Local Government Comprehensive Planning and Land Development Regulation Act. Mr. Baird contends that the Planning Council lacks authority to develop a unified plan. Of particular interest is the Council's duty to prevent and resolve incompatibilities and conflicts among the thirty-eight local governments' land use planning efforts. The article demonstrates that inter-jurisdictional political and legal problems can effectively slow land use planning efforts.

Readers will also be interested in the Essay and Case and Comment sections, which present student-written commentaries on recent cases of general interest. These sections give student members of the *Journal* a chance to compete for the privilege of having their efforts published. The research skills and writing abilities these students have developed will certainly be rewarded as they enter a profession that demands precise and clear communication.

Finally, I would like to congratulate those who prepared this inaugural issue and to wish the *Journal* continued success. The academic efforts comprehended here epitomize a fine form and tradition of scholarly activity and demonstrates once again the commitment of University of Florida students and faculty who want this institution to compete with the very best in the nation.

