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Grover C. Herring

Tully Scott

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LAND SUBDIVISION CONTROL IN FLORIDA

GROVER C. HERRING and TULLY SCOTT*

A short while ago, in the lobby of the United States Department of Commerce Building in Washington, amid a great flashing of lights and ringing of bells it was announced that the nation's population had reached the 165,000,000 mark.[1] The nation's tremendous increase in population has been the subject of much comment. Malthusians gloomily predict mass starvation. Politicians tremble at the bumper crop of kissable babies. Public school facilities are strained to the snapping point.[2] State and local government officials have wrung blisters on their hands while wondering where these new citizens will live.[3]

Along with the startling population increase there is a great migration from outlying areas to urban centers. City facilities are heavily taxed; transportation is daily becoming more snarled; and urban areas are forced to grow in one way or another to provide for the tremendous influx of population. Modern transportation methods have hastened the rush to cities and made suburban development a practical answer to increasing urban growth. Expanding industry and overcrowded communities have taxed the ingenuity of governmental bodies.

Florida, probably more than any other state, is in need of a comprehensive plan of land subdivision control. In Florida's history of land development one gaudy period, known as the Florida "land boom," resulted in a rash of unplanned, unco-ordinated, unregulated,

*Grover C. Herring, LL.B. 1950, University of Florida; Member of West Palm Beach, Florida, Bar.

Tully Scott, A.B. 1949, Amherst College; LL.B. 1953, Harvard University; Member of West Palm Beach, Florida, Bar.

[1]See Time, June 6, 1955, p. 23, col. 3.

[2]For example, in the school year 1947-48 there were 16,659 pupils enrolled in Palm Beach County. By school year 1954-55, this number had risen to 29,084, an increase of 12,425 in 7 years. Since 1947 Palm Beach County has spent or been allocated $6,855,262 toward school facilities in order to meet this increased enrollment. Records, Boards of Public Instruction, Palm Beach County, Fla.

[3]Fonoroff, *The Relationship of Zoning to Traffic-Generators,* 20 LAW & CONTEMP. PROB. 238 (1955); Siegel, *Relation of Planning and Zoning to Housing Policy and Law,* 20 LAW & CONTEMP. PROB. 419 (1955); Vladeck, *Large Scale Developments and One House Zoning Controls,* 20 LAW & CONTEMP. PROB. 255 (1955).

and harmful subdivision activities.[4] Today Florida is one of the leading states in population increases,[5] and urban areas are growing at an unbelievable rate. Thousands are moving monthly into the state.[6] Moreover, the nature of Florida's economy has shifted from one of almost total agrarianism to one of mixed agrarianism and urbanization.[7] This remarkable growth has led to another real estate and building boom, clearly reflected in statistics of plat filings in the public records.[8]

The problem of providing for urban and suburban expansion is one of relatively recent origin,[9] and for that reason workable solutions are not widely known and understood. One authority lists four primary planning tools that may be used to control the use of land in an expanding community: public works, zoning, subdivision control, and protection of mapped streets.[10] Land subdivision control —

[4]It is common knowledge that large areas of subdivided lands have existed in and around "dead" cities and towns for years. See, *e.g.*, State Road Dep't v. Bender, 147 Fla. 15, 2 So.2d 298 (1941), involving the subdivision known as Sun City. See also Powers v. Scobie, 60 So.2d 738, 740 (Fla. 1952), wherein the Florida Supreme Court recognized the fact that "many wild and unimproved lands were subdivided during the Florida 'land boom' and remain in the same unimproved condition even today."

[5]STATISTICAL ABSTRACT OF THE UNITED STATES 1954, pp. 18-19. The population of the State of Florida for the period 1940 to 1950 increased by 46.1%, a rate surpassed only by California and Arizona. See Bartley, *Legal Problems in Florida Municipal Zoning*, 6 U. FLA. L. REV. 355 (1933).

[6]Since the census count of 1950 Florida has been gaining population at the rate of 3,464 persons per week. This gain is made up of 2,619 moving in from other states and 845 from the excess of residential births over residential deaths. Florida Review and Outlook, Nov. 1954, p. 3.

[7]1 DOVELL, FLORIDA HISTORIC, DRAMATIC & CONTEMPORARY 321 (1952); Alloway, *Constitutional Law*, 8 MIAMI L.Q. 158 (1954).

[8]A questionnaire was sent by the authors to the clerk of the circuit court of each of Florida's 67 counties inquiring about the number and use of plats of record. Answers were received from 39 counties, representing approximately 75% of the state population. The statistics compiled indicate that there are some 40,000 recorded plats in Florida and that 20% or more of these were recorded within the last 12 years. Answers to the questionnaire also indicate an early use of recorded plats in Florida, *e.g.*, Alachua (Arrendondo Grant), 1845; Clay, 1888; DeSoto, 1887; Escambia, 1831; Hamilton, 1890; Hernando, 1860; Hillsborough, 1847; Holmes, 1886; Levy, 1859; Okaloosa, "Svea Colony Lands" (no date); Washington, 1886.

[9]Zoning as a tool for assuring an orderly physical pattern of growth will shortly celebrate its 40th birthday in the United States. See Johnson, *Constitutional Law and Community Planning*, 20 LAW & CONTEMP. PROB. 199 (1955); Siegel, *supra* note 3.

[10]Haar, *The Master Plan: An Impermanent Constitution*, 20 LAW & CONTEMP. PROB. 353 (1955).

the comprehensive regulation of subdivision platting — is the tool most recently developed.[11] Land or municipal planning has been defined as[12]

> "... the accommodation, through unity in construction, of the variant interests seeking expression in the local physical life to the interest of the community as a social unit. Planning is a science and an art concerned with land economics and land policies in terms of social and economic betterment. The control essential to planning is exercised through government ownership or regulation of the use of the *locus*."

The subdividing of land is controlled by the regulation of plats. A plat is familiarly known and used as a shorthand method of land description in conveyances of real property.[13] This system is a boon to subdividers in that it permits and facilitates disposal and alienation of small parcels from larger tracts of land. It allows simple description of property and simple visualization for sales purposes, promotes simple recordation, and facilitates title abstracting. Since land today often changes hands with great rapidity, the plat system is an important aspect of modern conveyancing.[14]

FLORIDA LAW

Enabling Legislation

General Law. The first general plat legislation was enacted in 1925,[15] and except for minor additions in 1947,[16] 1949,[17] and 1953[18] has remained substantially unchanged. This statute relates only to

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[11]See Note, *Land Subdivision Control,* 65 HARV. L. REV. 1226 (1952).

[12]Grosso v. Board of Adjustment, 137 N.J.L. 630, 631, 61 A.2d 167, 168 (Sup. Ct. 1948); see Williams, *Planning Law and Democratic Living,* 20 LAW & CONTEMP. PROB. 317 (1955).

[13]A plat has been defined as a subdivision of land into lots, streets, and alleys, marked upon the earth and represented on paper, Burke v. McCowne, 115 Cal. 481, 47 Pac. 367 (1896).

[14]See BASYE, CLEARING LAND TITLES §1 (1st ed. 1953), recognizing the need for simplification in modern conveyancing.

[15]Fla. Laws 1925, c. 10275, now FLA. STAT. §§177.01-.13 (1953).

[16]Fla. Laws 1947, c. 24303, now FLA. STAT. §177.14 (1953).

[17]Fla. Laws 1949, c. 25267, now FLA. STAT. §177.15 (1953).

[18]FLA. STAT. §177.16 (1953).

the mechanics of preparing and filing plats and contains no attributes of community planning or land subdivision control.

County. The first county plat legislation was enacted in 1911. It made approval of plats a prerequisite to their being filed for record in Washington County.[19] In the last six years the following counties, either by special acts or so-called population acts, have been affected by enabling legislation: Alachua,[20] Brevard,[21] Broward,[22] Collier,[23] Dade,[24] Duval,[25] Hillsborough,[26] Indian River,[27] Lake,[28] Leon,[29] Martin,[30] Orange,[31] Palm Beach,[32] Pasco,[33] Pinellas,[34] St. Lucie,[35] Sarasota,[36] Seminole,[37] and Volusia.[38] This legislation is of two general types. One type, characterized by that of Pinellas County, relates primarily to the mechanics of preparing and filing a plat for record and in that respect resembles the general plat statute. The other type, typified by the enactments for Orange and Palm Beach counties,

[19]Fla. Spec. Acts 1911, c. 6316.

[20]Fla. Spec. Acts 1953, c. 28872.

[21]Fla. Spec. Acts 1955, c. 30597.

[22]Fla. Spec. Acts 1953, c. 28946, as amended, Fla. Spec. Acts 1955, c. 30626.

[23]Fla. Spec. Acts 1955, c. 30667.

[24]Fla. Laws 1949, c. 25519, as amended, Fla. Laws 1951, c. 27082, as amended, Fla. Laws 1953, c. 28823, as amended, Fla. Laws 1955, cc. 30201, 30202. This act as amended is applicable in counties having a population in excess of 300,000.

[25]The statutes cited in note 24 *supra* are applicable to this county.

[26]Fla. Spec. Acts 1953, c. 29130.

[27]Fla. Spec. Acts 1953, c. 29155.

[28]Fla. Spec. Acts 1953, c. 29219.

[29]Fla. Spec. Acts 1951, c. 27682; Fla. Spec. Acts 1955, c. 30941.

[30]Fla. Spec. Acts 1955, c. 30971.

[31]Fla. Laws 1953, c. 28447, as amended, Fla. Spec. Acts 1955, c. 30187. This is a "population act" applicable in counties having a population of not less than 114,750 and not more than 122,000. According to the 1950 census this statute is presently applicable only in Orange County.

[32]Fla. Spec. Acts 1949, c. 26112; Fla. Spec. Acts 1951, c. 27797, as amended, Fla. Spec. Acts 1953, c. 29385. All of these statutes were repealed by Fla. Spec. Acts 1955, c. 31113, §9. See also Fla. Spec. Acts 1953, c. 29388 (set-backs).

[33]Fla. Spec. Acts 1955, c. 31155.

[34]Fla. Spec. Acts 1949, cc. 26151, 26153.

[35]Fla. Spec. Acts 1953, c. 29490, as amended, Fla. Spec. Acts 1955, c. 31237; Fla. Spec. Acts 1953, c. 29494.

[36]Fla. Spec. Acts 1953, c. 29529.

[37]Fla. Laws 1955, c. 30067. This is a population act applicable in counties of not less than 25,500 and not more than 27,000. According to the 1950 census this act is now applicable only in Seminole County.

[38]Fla. Spec. Acts 1955, c. 31337.

authorizes the prescription of regulations governing the approval of plats for record.

Municipal. Many enabling statutes authorizing county regulation of plats also authorize regulation by municipalities located within the county.[39] In addition, many municipalities have been vested with subdivision control powers by their charters[40] or amendments thereto.[41]

Other Laws. There are also other statutes relating to plats. The Legislature has authorized the various boards of county commissioners to return platted lands to acreage for the purpose of taxation.[42] County and municipal authorities have been empowered to alter, lay out, maintain, establish, vacate, or discontinue roads and highways.[43] The boards of county commissioners have been authorized to vacate and abandon platted streets,[44] roads, and parks.[45] There is a statutory presumption that roads shown on county road maps are dedicated.[46] Other statutes provide for the laying of pipelines along county roads established by dedication,[47] the re-recording of copies of lost or destroyed maps and plats,[48] control over roads within the state park system,[49] payment of taxes on platted land before the filing of plats,[50] and for county parks[51] and easements of necessity.[52]

General Provisions.[53] Enabling legislation relating to land use

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[39]The statutes cited *supra* notes 21, 22, 23, 24, 25, 26, 27, 31, 32, 34, 35, 36, 37, 38 are applicable to municipalities located within the counties.

[40]*E.g.,* Fla. Spec. Acts 1947, c. 24981, §4(24) (West Palm Beach).

[41]*E.g.,* Fla. Spec. Acts 1955, c. 30582 (Belleair); Fla. Spec. Acts 1951, c. 27463 (Clearwater); Fla. Spec. Acts 1955, c. 31049 (Ocean Ridge).

[42]FLA. STAT. §§192.29-.30 (1953).

[43]FLA. STAT. §125.01(5) (1953); see FLA. STAT. §125.33 (1953) (closing and vacating of roads upon request of U. S. Government). Municipalities have the same general powers as counties over establishment and abandonment of roads, FLA. STAT. §§167.01-.03 (1953).

[44]FLA. STAT. §125.33 (1953).

[45]FLA. STAT. §125.33(1) (1953).

[46]Fla. Laws 1955, c. 29965, §110.

[47]FLA. STAT. §125.42 (1953).

[48]FLA. STAT. §695.15 (1953).

[49]Fla. Laws 1955, c. 29965, §30.

[50]FLA. STAT. §192.56 (1953).

[51]FLA. STAT. §125.46 (1953).

[52]FLA. STAT. §704.01 (1953).

[53]The various special and population acts previously mentioned are by no means uniform. Hence reference should be made to the particular act to determine

control generally authorizes county or municipal commissions to regulate the preparation, filing, and use of plats, and requires that all platted areas of one acre or more be approved by those bodies.[54] Ordinarily these bodies are, as administrative agencies, empowered to promulgate regulations to implement comprehensive plans for community development.[55] As a prerequisite to approval the city or county commission may prescribe widths of roads, streets, alleys, and other thoroughfares. The agency may require that subdividers develop their property and provide certain services in compliance with a general community plan of urban expansion.

The legislation usually provides that the governing body may require extension of any existing right of way across platted property; that the plat show a dedication to the public of all roads, streets, alleys, or other right of ways; and that the owner may reserve in himself the reversions to dedicated areas. Generally there is a requirement that the plat show the finished grades of all right of ways, the proposed elevations of the lands depicted, and the proposed facilities for street and land drainage. Subdividers are usually required to furnish performance bonds as a guarantee of compliance with the statutory provisions and the regulations promulgated thereunder. Frequently, however, the governing body is allowed to waive certain requirements as to streets, elevation, drainage, and the furnishing of performance bonds.

The subdivider is required to show that he has paid all taxes on the property before the plat may be approved. The legislation usually includes some provision for vacating subdivided lands, subject to certain conditions to protect owners of property within the platted area.[56]

The statutes usually provide for enforcement by stating that no transactions involving the property within the platted area shall be recorded by reference to the plat unless the plat has been approved by the governing body. It is usually further provided that no transactions involving the platted property shall be recorded in violation of the provisions of the statute. Finally, the acts generally state that all real property transactions that violate the provisions of the statutes are void ab initio.

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the scope and limits of its operation.

[54]Haar, *supra* note 10; Melli, *Subdivision Control in Wisconsin*, 1953 WIS. L. REV. 389.

[55]Reps, *Control of Land Subdivision by Municipal Planning Boards*, 40 CORN. L.Q. 258 (1955); Note 65 HARV. L. REV. 1226 (1952).

[56]See notes 42, 43 *supra*.

Inadequacy of Present Legislation

An evaluation of existing Florida laws will show that they are in many respects inadequate and do not provide the benefits derived by states that have enacted comprehensive land control legislation. As yet no statute setting forth a comprehensive plan for the control of subdivisions has been enacted.[57] Florida is one of three states without such legislation.[58] The acts should set out a community-wide plan for development and provide for periodic review to ascertain whether community progress has outgrown the plan. This would guide the agency in the promulgation of its regulations and aid subdividers in development planning.

The acts do not provide for planning on a regional basis for contiguous communities in highly populated areas. The Florida "Gold Coast," for instance, should be the subject of a regional plan.[59] Proper legislation should provide methods and standards for regional planning through close liaison, uniform regulations, and mutually approved master regional plans.

Under present laws the municipality cannot exercise its jurisdiction and regulatory powers beyond its boundaries, no matter how great the need.[60] The acts set up mutually exclusive powers in either the

[57]In 1935 the Legislature enacted FLA. STAT. §§419.01-.11 (1941), creating a state planning board. The board had no enforcement powers. Its primary function was to advise and assist administrative agencies as well as the Legislature in adopting methods and laws designed to protect the state's resources from waste because of inefficiency or shortsightedness. The board apparently did not function as contemplated and was abolished by the 1951 Legislature, Fla. Laws 1951, c. 26484, §10. It has been suggested by one writer that abolition of this board was justified because of its lack of enforcement power, its vastness of purpose, and lack of concentration. Samuels, *Administrative Law,* 8 MIAMI L.Q. 275 (1954).

[58]Florida, Mississippi, and Wyoming are the only states without enabling legislation for urban planning; Florida is also totally lacking in general subdivision control legislation. See Appendix: State Planning Enabling Acts, in Haar, *supra* note 10.

[59]Senning, *Regional Plan is Needed in South Florida,* Miami Herald, Nov. 7, 1954, p. 15-P, col. 1.

[60]This can be corrected to some extent by giving municipalities intrastate extraterritorial jurisdiction, *e.g.,* Fla. Spec. Acts 1947, c. 24981, §4(24) (charter of West Palm Beach). This, however, has been criticized as being unrealistic in view of the ease of modern transportation; see note, 65 HARV. L. REV. 1226 (1952). About one third of the cities in the United States of over 25,000 have authority to regulate subdivision control beyond their corporate limits, the most common limit being 3 miles. THE COMMUNITY BUILDERS HANDBOOK 39 (1954 Members' ed.), published by the Urban Land Institute, 1737 K. St. N.W., Washington 6, D.C.

municipal or the county administrative agencies. Unless the two engage in correlative planning, either may be frustrated by conflicting plans of the other.

The acts provide no method for resolving conflicts in function and jurisdiction between municipal subdivision control agencies and zoning agencies. An innocent subdivider might be caught between conflicting plans or regulations to his detriment. Adequate legislation should, within stated standards, provide for close liaison between zoning and subdivision authorities in order that such conflicts may be resolved.

The statutes delegate planning, rule-making, and enforcement powers to bodies of a clearly political nature.[61] Such groups are frequently subjected to great political and economic pressures; they cannot properly administer a comprehensive land use program while uninsulated from such pressures. Moreover, many political bodies are already overworked and are unable to do the farsighted and imaginative community planning required in the area of land use development. Municipal planning is "a science and an art" of such a specialized and technical nature that a political body of overworked laymen cannot do it justice. Because of the nature of municipal planning, adequate legislation should provide for "artisans" who can render advice or manage comprehensive planning. The need is for experts rather than nearsighted and politically inspired laymen.

The present statutes do not delimit the activities of the administrative agencies or define the areas in which they are to act.[62] They do not provide that this unlimited and discretionary regulatory power shall be used to promote health, safety, and welfare.[63] Specifically, there are no standards to guide the agencies as to where, when, why, and how they can waive statutory and regulatory requirements otherwise applicable to subdividers and regulate street widths, drainage matters, sewage disposal, and the like.

The statutes in no way induce administrative action; in fact, they

[61]The members of the boards of county commissioners as well as members of city commissions are elective. *E.g.*, see FLA. CONST. art VIII, §5.

[62]*Cf.* FLA. STAT. §176.02 (1953), which states that municipalities may enact zoning ordinances "for the purpose of promoting health, safety, morals, or the general welfare of the communities and municipalities of the State of Florida . . . ." The only similar language in Florida plat legislation is found in the Leon County act, which refers to the "safety and welfare of the people." See Fla. Spec. Acts 1955, c. 30941, §1; Phillips Petroleum Co. v. Anderson, 74 So.2d 544 (Fla. 1954); Oakland v. Roth, 25 N.J. Super. 32, 95 A.2d 422 (Sup. Ct. 1953).

[63]The only exception to this statement is Leon County; see note 62 *supra*.

appear to sanction administrative fence-sitting. Comprehensive legislation could provide that plats be deemed approved automatically if the agency fails to act within a specified time.[64] This would probably force the administrative agency to take some positive action.

There are no statutory provisions for notice and hearing before rule-making bodies that are formulating comprehensive community plans[65] or formulating regulations to give effect to such plans.[66] Hearings provide the regulating bodies with an awareness of the needs of the community. The inexperienced judgment of a politically motivated body is often substituted for the civic judgment of the community. Further, the statutes give the subdividers no voice in the formulation or execution of plans and regulations relating to them. Municipal planning is not a proper subject for quasi-Star Chamber proceedings.

The present Florida statutes do not provide for administrative review of actions taken by the administrative body. Recourse to judicial review through mandamus proceedings may be had, although the acts are silent in this respect.[67] Such recourse, however, only adds to the burden of the presently overtaxed judicial system. A more practical legislative approach would require some provision for preliminary administrative review procedures. This would, in most cases, correct the appealable errors of the administrative agencies and would reduce recourse to judicial review.

At present no standards are provided for the granting or denying of exceptions or variances from statutes or regulations. Legislation is not comprehensive unless it is flexible enough to allow certain exceptions in the application of the acts or regulations promulgated.

The so-called population acts that are sometimes used in Florida often fail to achieve the desired result. Such acts are particularly objectionable if used in times or areas of rapidly increasing popula-

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[64]*E.g.*, MD. ANN. CODE GEN. LAWS art. 661З, §27 (1951) (30 days); N.Y. GEN. CITY LAW §32 (45 days); State *ex rel.* Wollett v. Oestreicher, 68 Ohio L. Abs. 51, 121 N.E.2d 454 (1953).

[65]See note 15 *supra;* The Lordship Park Ass'n v. Board of Zoning Appeals, 137 Conn. 84, 75 A.2d 379 (1950); Hollywood v. Rix, 52 So.2d 135 (Fla. 1951); McRae v. Robbins, 151 Fla. 109, 9 So.2d 284 (1942); Miami Laundry Co. v. Florida Dry Cleaning & Laundry Board, 134 Fla. 1, 183 So. 759 (1938).

[66]YOKLEY, ZONING LAW AND PRACTICE 113-293 (2d ed. 1953), sets forth a suggested form for a municipal subdivision control act and a regional subdivision control act.

[67]Garvin v. Baker, 59 So.2d 360 (Fla. 1952).

tion. Conceivably, a county that did not come within the provisions of a population statute at the time of its enactment might later grow into the act and suffer a surprising application of it. Equally conceivably, a county coming well within the terms of such an act at the time of enactment might increase in population so as to grow out of its application. Thus subdivision control power might suddenly be lost to a county when most needed.

Last, there is the very grave objection that most of the enabling legislation in this area may be unconstitutional, either in whole or in part.[68] The question of invalidity arises under the broad principle of administrative law that invalidates an undefined delegation of legislative power to an administrative agency without standards for guidance, statements of purpose, and limitations. This principle has been uniformly upheld, both in Florida[69] and in other jurisdictions.[70] It is clear that the Florida Legislature has the power to regulate plat-

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[68]Possibly a "population act" might be deemed unconstitutional when population as a classification is arbitrarily and unreasonably used. See FLA. CONST. art. III, §20; Waybright v. Duval County, 142 Fla. 875, 196 So. 430 (1940); State *ex rel.* Baker v. Gray, 133 Fla. 23, 182 So. 620 (1938); Latham v. Hawkins, 121 Fla. 324, 163 So. 709 (1935).

In regard to special acts, there is always the possibility that the formalities of the Constitution, as required by Art. III, §21, may not be fully carried out. See State *ex rel.* Pierce v. Gustafson, 127 Fla. 741, 174 So. 12 (1937); State *ex rel.* Landis v. Crandon, 105 Fla. 309, 141 So. 177 (1932); Williams v. Dormany, 99 Fla. 496, 126 So. 177 (1930).

Query: Does the power to vacate platted roads conferred upon a board of county commissioners by a special act violate FLA. CONST. art. III, §20?

Some enactments, such as those for Martin and Leon counties, have no savings clauses; and if the enactment is invalid in part the entire act will fail. Some acts, however, do have savings clauses. Query: If the portion of the act declared invalid is the regulatory keystone of the act, will the remainder be of any operative benefit in land use control?

[69]Phillips Petroleum Co. v. Anderson, 74 So.2d 544 (1954); Robbins v. Webb's Cut Rate Drug Co., 153 Fla. 822, 16 So.2d 121 (1943); McRae v. Robbins, 151 Fla. 109, 9 So.2d 284 (1942); State *ex rel.* Palm Beach Jockey Club v. Florida State Racing Comm'n, 158 Fla. 335, 28 So.2d 330 (1946); State *ex rel.* Fulton v. Ives, 123 Fla. 401, 167 So. 394 (1936); Richey v. Wells, 123 Fla. 284, 166 So. 817 (1936); State *ex rel.* Davis v. Fowler, 94 Fla. 752, 114 So. 435 (1927); State v. Atlantic C.L.R.R., 56 Fla. 617, 47 So. 969 (1908).

[70]See Tuxedo Homes, Inc. v. Green, 63 So.2d 812 (Ala. 1953); Beach v. Planning and Zoning Comm'n, 141 Conn. 79, 103 A.2d 814 (1954); People v. Federal Surety Co., 336 Ill. 472, 168 N.E. 401 (1929); Park Hill Development Co. v. Evansville, 190 Ind. 432, 130 N.E. 645 (1921); Gordon v. Commissioners of Montgomery County, 164 Md. 210, 164 Atl. 676 (1933).

ting.[71] It is also clear that the Legislature may delegate this regulatory power to administrative agencies, with prescribed limitations upon its exercise.[72] Under present Florida plat legislation the regulating agencies are granted an unlimited range of discretionary rule-making power. Such a delegation of unlimited power might cause the entire delegation to fail.[73] The Florida Supreme Court has not as yet had an opportunity to pass upon this precise question.[74]

SUGGESTED APPROACH

In view of the need for land subdivision control in Florida and the inadequacies of present enactments, a new legislative approach must be taken if the advantages of intelligent land use control are to be secured. Adequate legislation should provide a sound approach to community expansion, with planned rather than scrambled pat-

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[71]The Florida Constitution does not grant particular legislative powers but rather specifically limits the general lawmaking power of the Legislature. Since the Constitution is silent in regard to plats, the Legislature has the power to regulate in this area. Parrish v. Hillsborough County, 98 Fla. 430, 123 So. 830 (1929); Tibbetts v. Olson, 91 Fla. 824, 108 So. 679 (1926); Stone v. State, 71 Fla. 514, 71 So. 634 (1916).

[72]Cases cited note 69 *supra;* Territory v. Achi, 29 Hawaii 62 (1926); Gore v. Hicks, 115 N.Y.S.2d 187 (Sup. Ct. 1952).

[73]Cases cited notes 69, 70 *supra;* Oakland v. Roth, 25 N.J. Super. 32, 95 A.2d 422 (Sup. Ct. 1953).

[74]At this writing the only reported Florida case relating to regulatory powers under the principle of subdivision control is Garvin v. Baker, 59 So.2d 360 (Fla. 1952), in which the Court upheld a city ordinance requiring that in each plat there be dedicated, for conformity purposes, 60 feet for street construction. The question of improperly delegated authority was not brought before either the circuit court or the Florida Supreme Court. The circuit court judge asserted that such regulation by the city was a proper exercise of police power.

Ironically enough, in Board of County Comm'rs v. F. A. Sebring Realty Co., 63 So.2d 256 (Fla. 1953), which did not involve subdivision control legislation, the Court indicated that there were "salient reasons" for presenting a plat to the county commissioners or other appropriate governing bodies for approval. The Court reasoned that this was necessary in order that the governing body might "determine whether the streets, alleys and parks offered for dedication are properly located and whether they have appropriate dimensions. This is also true with reference to the lots themselves as depicted on the map or plat." *Id.* at 258. This indicates that the Florida Supreme Court considers that the several boards of county commissioners possess inherent powers to regulate in this area without legislative authority. *But cf.* FLA. CONST. art. VIII, §5; FLA. STAT. §§125.01, 125.33 (1953); Molwin Inv. Co. v. Turner, 123 Fla. 505, 167 So. 33 (1936); Amos v. Mathews, 99 Fla. 1, 126 So. 308 (1930).

terns of residential development. It should answer many questions that beset governing bodies in a period of rapid population increases and community expansion. Such legislation would acquaint subdividers with the requirements they must meet in offering a developed area for sale and allow them a voice in community planning and regulation.

New legislation should be based on a general enactment uniformly applicable to all counties and municipalities in the state. It has already been pointed out that population acts and special acts may have practical and constitutional limitations. Public necessity and the community benefits that may be derived should dictate that legislation should be as free as possible from political considerations.

General enabling legislation, so worded as to insure certainty of purpose, is the only answer to the need for a fair and constitutionally valid enactment. Since plats are akin to deeds,[75] have many of the attributes of deeds,[76] and frequently convey interests in real property,[77] plat statutes, like deed statutes,[78] should be uniformly applicable throughout the state. The suggestions submitted merely touch upon the highlights of otherwise detailed legislation and are not intended to be comprehensive.

Legislation affecting land subdivision control should state the principle of control in the title of the act.[79] There should also be a preamble setting out the purposes to be served by the act and stating that it is promulgated to protect and foster the health, safety, morals, necessity, convenience, welfare, and prosperity of the counties and municipalities affected.[80]

After defining terms used, the act should establish within each county and municipality a planning board with members drawn from

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[75]FLA. STAT. §177.06 (1953) requires owners to execute plats in the presence of two witnesses and be "acknowledged in the same manner as deeds conveying lands."

[76]When a deed refers to a plat for the description of lands thereby conveyed, the plat is incorporated by reference as a part of the deed. Bank of South Jacksonville v. Cammar, 89 Fla. 296, 103 So. 827 (1925).

[77]*E.g.*, when a plat dedicates right of ways to the public for street purposes and this offer has been accepted, for all practical purposes the owner and subdivider has conveyed a property interest to the public. See Tuxedo Homes, Inc. v. Green, 63 So.2d 812 (Ala. 1953); Indian Rocks Beach South Shore, Inc. v. Ewell, 59 So.2d 647 (Fla. 1952); Jaynes v. Omaha Street Ry., 53 Neb. 631, 74 N.W. 67 (1898).

[78]FLA. STAT. §689.02 (1953).

[79]See YOKLEY, ZONING LAW AND PRACTICE 283 (2d ed. 1953).

[80]See Florida Highway Code of 1955, Fla. Laws 1955, c. 29965, §1.

recognized civic groups.[81] In order that the principles of the community plan and the purposes of the enactment may be carried out, the board should be granted regulatory powers in certain well-defined areas. Provision should be made, upon proper notice, for public hearings for the purposes of formulating a comprehensive plan for community development[82] and obtaining the views and advice of subdividers and the general public. The board could tentatively plan residential and industrial areas, streets, schools, parks, playgrounds, sewers, drainage areas, canals, power and water facilities, municipal or county services, and the like. The act should expressly state that the master plan is merely a planning guide rather than immutable law.[83] There should be provisions and standards for periodic review of the plan for the purpose of keeping in step with changes in population, social ideas, and technology.

The act should provide for co-ordination between municipal and county planning boards in order that unnecessary and needless conflicts may be prevented, for close liaison between contiguous municipalities so that regional development plans may be formulated,[84] and for the resolving of possible conflicts between planning and zoning boards within the same community.[85]

The planning board should be given the power, pursuant to clearly stated standards, to accept or reject plats; and the right of administrative review of the board's actions should be provided.[86] Mechanics for the preparation of plats for recording should be es-

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[81]See Note, 65 HARV. L. REV. 1226 (1952).

[82]*Ibid;* Reps, *Control of Land Subdivision by Municipal Planning Boards,* 40 CORN. L.Q. 258 (1955).

[83]The Florida Supreme Court has expressly recognized the validity of a master plan for development when it is intended as a guide for the city in the conduct of any project for public improvement and not as a straight jacket. Bennett v. Ft. Lauderdale, 78 So.2d 567, 568 (Fla. 1955). If the guide is considered immutable or mandatory, it becomes vulnerable to attack. See The Lordship Park Ass'n v. Board of Zoning Appeals, 137 Conn. 84, 75 A.2d 379 (1950).

[84]See Senning, *Regional Plan Is Needed in South Florida,* Miami Herald, Nov. 7, 1954, p. 15-P, col. 1.

[85]The techniques of zoning and plat control are employed under the police power, and it is submitted that close liaison between zoning and subdivision control agencies is indispensable; see Fordham, *The Challenge of Contemporary Urban Problems,* 6 U. FLA. L. REV. 275 (1953).

[86]*E.g.,* FLA. STAT. §176.14 (1953); see Reps, *Discretionary Powers of the Board of Zoning Appeals,* 20 LAW AND CONTEMP. PROB. 280 (1955).

tablished along the lines of that provided by the general laws.[87] The board should be empowered to waive certain provisions of the act or regulations promulgated thereunder, although this power should be exercisable only within definite and fixed standards[88] so as to prevent discriminatory or capricious action by the board.[89]

Lastly, the act should provide a means by which its provisions can be enforced. Such provisions may include:[90] (1) mandamus, injunction, or other civil remedies, (2) imposition of fines upon the subdivider, either by the planning board or through other judicial proceedings, (3) criminal proceedings, (4) power to refuse recordation of a violating subdivider's plat, and (5) power to declare conveyances void if the plats have not been approved.

It may be argued that such land subdivision control would constitute an unwarranted invasion of an owner's free and unfettered use of his land.[91] Restrictions, however, are not new in the law of real property.[92] The common law doctrine of private nuisance has long re-

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[87]FLA. STAT. §§177.01-.13 (1953).

[88]This seems necessary to avoid attack on constitutional grounds; *cf.* Oakland v. Roth, 25 N.J. Super. 32, 95 A.2d 422 (Sup. Ct. 1953).

[89]See Phillips Petroleum Co. v. Anderson, 74 So.2d 544 (Fla. 1954); State v. Christiansen, 142 Fla. 537, 195 So. 153 (1940). In Drexel v. Miami Beach, 64 So.2d 317 (Fla. 1953), the Court held an ordinance restricting the use of property for certain purposes invalid on the ground that no definite rules and conditions were provided to guide the authorities in the execution of their discretionary powers. See also note 88 *supra.*

[90]Dunham, *Private Enforcement of City Planning,* 20 LAW & CONTEMP. PROB. 463 (1955); Reps, *Control of Land Subdivision by Municipal Planning Boards,* 40 CORN. L.Q. 258 (1955); Note, 65 HARV. L. REV. 1226 (1952). Each of the suggested methods of enforcement may have certain shortcomings.

[91]*E.g.,* The Florida Supreme Court has recently stated that "the law favors the free and untrammeled use of real property," Ballinger v. Smith, 54 So.2d 433 (Fla. 1951). The Court has used similar language in cases relating to zoning laws, State *ex rel.* Helseth v. DuBose, 99 Fla. 812, 128 So. 4 (1930).

A citizen attending a recent hearing on proposed plat regulations in Palm Beach County was reported as saying, "The cities, counties, states and federal governments and their bureaus and boards are rapidly legislating the small man out of being the owner of anything larger than a small lot. The average man today can't afford to purchase a good sized lot because existing rules and regulations make it mandatory upon him to have all of the built-in features and refinements that he would normally acquire over a life-time at the time he buys property." Palm Beach Post, June 7, 1955, p. 1, col. 5.

[92]Reps, *Control of Land Subdivision by Municipal Planning Boards,* 40 CORN. L.Q. 258 (1955).

stricted the use of land.[93] Enforceable private restrictions upon use of real property can be imposed by restrictive covenants running with the land.[94] Further inroads upon the right of an owner to use his land in any manner he may choose have developed over the years, both by statute and court adjudication. Nuisance laws,[95] agricultural quotas,[96] the use of airspace over real property by persons other than the landowner,[97] grazing restrictions,[98] restrictions upon use of water,[99] federal regulation of oil production from the wellhead,[100] natural gas regulation,[101] forestry regulations,[102] and building codes and zoning regulations[103] are but a few of the numerous examples of encroachments upon the private use of land. There are many examples of nibbling at the traditional privileges of the fee simple absolute owner under the aegis of social or community betterment. As one writer neatly expressed it, real property owners today are faced with the spectre of "the diminishing fee."[104] Thus land subdivision control has not been, and should not be, considered objectionable upon that ground.

Other problems that may arise from land subdivision control include the following: tax considerations of dedicated lands, clearing of land titles, limits of police power, maintenance of dedicated streets and civil liability flowing therefrom, regulation for aesthetic purposes, minimum size of land subject to regulation, closing loopholes in land subdivision control legislation, plat approval as acceptance of dedicated areas, forced dedication of areas other than streets as a taking without compensation, reservation or dedication of areas other than streets, rights of the bona fide purchaser in connection with unapproved plats, variations from regulations and exceptions thereto, recovery of im-

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[93]Palm Corp. v. Walters, 148 Fla. 527, 4 So.2d 696 (1941); Mercer v. Keynton, 121 Fla. 87, 163 So. 411 (1935); Lutterloh v. Mayor of Cedar Keys, 15 Fla. 306 (1875).

[94]Heisler v. Marceau, 95 Fla. 135, 116 So. 447 (1928); Moore v. Stevens, 90 Fla. 879, 106 So. 901 (1925).

[95]*E.g.*, FLA. STAT. §386.12 (1953).

[96]*E.g.*, Wickard v. Filburn, 317 U.S. 111 (1942).

[97]*E.g.*, Tucker v. Iowa City & United Airlines, Inc., 1936 U.S. Av. R. 10; see also DYKSTRA AND DYKSTRA, BUSINESS LAW OF AVIATION 145 (1946).

[98]48 STAT. 1269 (1934), as amended, 43 U.S.C. §315 (Supp. II, 1954).

[99]See *Symposium on American Water Rights Law*, 5 S.C.L.Q. 102 (1952).

[100]*E.g.*, Champlin Refining Co. v. Corporation Comm'n, 286 U.S. 210 (1932).

[101]*E.g.*, State v. Thrift Oil & Gas Co., 162 La. 166, 110 So. 188 (1926).

[102]*E.g.*, FLA. STAT. §590.12 (1953).

[103]*E.g.*, FLA. STAT. c. 176 (1953).

[104]Gross, *The Diminishing Fee*, 20 LAW & CONTEMP. PROB. 517 (1955).

provement costs by a developer from the municipality, effect of a subdivider's improvements upon private utilities, and the effect of subdivision control upon the shoestring developer. A discussion of these problems is beyond the scope of this article.[105]

THE JUDICIAL VIEW

Although the matter of land subdivision control as a tool in land planning has only arisen within the past few decades, the courts in a number of jurisdictions have tested the validity of the procedure and found no objection to it.[106] Regulation of urban and suburban growth as a means of providing for the health, safety, morals, necessity, prosperity, convenience, and welfare of the population of growing areas is a valid exercise of sovereign police power.[107]

The New Jersey court stated in *Mansfield and Swett, Inc. v. West Orange*:[108]

> "The state possesses the inherent authority — it antedates the constitution — to resort, in the building and expansion of

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[105]The field of plat regulation is largely an unexplored area. This is natural enough in view of the fact that plat regulation is little more than an infant. Several of the questions or problems mentioned, however, have been raised or touched upon by other writers. See, *e.g.*, Miroyan, *A Discussion of the 1954 Capital Gains Provision Pertaining to Subdivision of Realty*, 6 HASTING L.J. 374 (1955); Nichols, *A Defense of the Subdivision Control Law and Proposals for Perfecting It*, 36 MASS. L.Q. 38 (No. 2, 1951); *Symposium on Land Planning in a Democracy*, 20 LAW & CONTEMP. PROB. 197 (1955); *Symposium on Urban Housing and Planning*, 20 LAW & CONTEMP. PROB. 351 (1955); Note, 65 HARV. L. REV. 1226 (1952); Comment, 49 MICH. L. REV. 909 (1951); Annot., 11 A.L.R.2d 524 (1950).

[106]*E.g.*, Ayres v. Council of Los Angeles, 34 Cal.2d 31, 207 P.2d 1 (1949); Ridgefield Land Co. v. Detroit, 241 Mich. 468, 217 N.W. 58 (1928); Mansfield & Swett, Inc. v. West Orange, 120 N.J.L. 145, 198 Atl. 225 (Sup. Ct. 1938).

[107]Town of Windsor v. Whitney, 95 Conn. 357, 111 Atl. 354 (1920); Garvin v. Baker, 59 So.2d 360 (Fla. 1952); Allen v. Stockwell, 210 Mich. 488, 178 N.W. 27 (1920); *cf.* Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926); *In re* Sidebotham, 12 Cal.2d 434, 85 P.2d 453 (1938).

The courts at first upheld subdivision control laws on the theory that the legislature could impose any requirement it might wish on the privilege of recording a plat. After recording became essential to the disposal of real property, however, this analysis was found inadequate and the courts later supported the statutes as an exercise of police power. See Smith, *Municipal Economy and Land Use Restrictions*, 20 LAW & CONTEMP. PROB. 481 (1955); Note, 65 HARV. L. REV. 1226 (1952).

[108]120 N.J.L. 145, 150, 198 Atl. 225, 229 (Sup. Ct. 1938).

its community life, to such measures as may be necessary to secure the essential common material and moral needs. The public welfare is of prime importance; and the correlative restrictions upon individuals rights — either of person or of property — are incidents of the social order, considered a negligible loss compared with the resultant advantages to the community as a whole. Planning confined to the common need is inherent in the authority to create the municipality itself. It is as old as government itself; it is of the very essence of civilized society. A comprehensive scheme of physical development is requisite to community efficiency and progress."

The courts have uniformly held that the legislative power to regulate in this area may be delegated to administrative bodies, when the purpose to be served has been adequately stated and the power delegated circumscribed by sufficient standards.[109] At the time of this writing, only one Florida case[110] relating to the validity of present plat legislation could be found. The Court in that case clearly upheld the power of a municipality to regulate the width of platted streets. It must be noted, however, that the question of whether the present Florida legislation constitutes an improper delegation of legislative powers was not in issue.

Conversely, the courts have uniformly held that when the legislature grants subdivision control powers to a local administrative body without adequate restrictive standards the grant is invalid.[111] A case illustrative of this rule is *Oakland v. Roth,*[112] in which a New Jersey court held that a statute containing a provision for waiver of approval of a submitted plat was unconstitutional, since it did not provide adequate standards to guide the planning board in the exercise of this power. The court reasoned as follows:[113]

"Judged by the above stated rule [the Administrative Law Rule in the Delegation of Legislative Power], *N J S A* 40:55-15 is unconstitutional. The Legislature has failed to provide ade-

[109]See notes 69, 70, 106 *supra.*

[110]Garvin v. Baker, 59 So.2d 360 (Fla. 1952).

[111]Territory v. Achi, 29 Hawaii 62 (1926); Oakland v. Roth, 25 N.J. Super. 32, 95 A.2d 422 (Sup. Ct. 1953); State *ex rel.* Wollett v. Oestreicher, 68 Ohio L. Abs. 51, 121 N.E.2d 454 (1953); see notes 69, 70 *supra.*

[112]25 N.J. Super. 32, 95 A.2d 422 (Sup. Ct. 1953).

[113]*Id.* at 37, 95 A.2d at 425.

quate standards by which the zoning board and the governing body of the borough are to be guided in the exercise of the power to waive the statutory requirements of approval for subdivisions. In effect, they are given an unlimited power to nullify statute provisions. This makes possible special and unreasonable discrimination in the administration of the law."

BENEFITS OF A COMPREHENSIVE PLAN

Adequate subdivision control could provide insurance against a recurrence of the disastrous land boom of the 'twenties by requiring the subdividing landowner, prior to sale, to make definite provisions for construction of such community services as streets, water, drainage, sewage disposal, power, and the like. In the past such community services have generally been provided at considerable cost by the municipality in which the subdivision was located.[114]

Such control would slow development schemes to a sound economic pace, prevent overdevelopment and overspeculation, restrain the ambitious subdivider from overextension and possible financial ruin,[115] and prevent frauds.[116] Moreover, comprehensive subdivision control would relieve the overburdened municipalities of the necessity of assuming large debts for the purpose of constructing and maintaining public services in newly developed areas. The need for special assessments would be minimized.

By providing comprehensive plans for sewage disposal, utilization of water resources, public power needs, and street development, subdivision control would create better community services. A fair and intelligent approach to the construction of public recreation areas

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[114]According to the International City Manager's Association, a study made by the City of Hayward, Cal., in 1951 showed that the capital outlay from the city government for new residential area services such as water, sewage, and police protection was about $800 an acre. A survey this year showed this cost as $1,176 an acre. After this study the city council voted that the proper charge to subdividers would be about $600 an acre. The city permits about 5 houses to an acre. Thus the fee to be charged to subdividers was set at $120 a dwelling unit. See 28 Fla. Municipal Record 16 (1955).

[115]Note, 65 HARV. L. REV. 1226 (1952).

[116]A recent and as yet unreported criminal case raising this point involved the sale of supposedly developed orange groves in one-acre lots to innocent purchasers through the showing of a plat. A great number of the lots were either not planted or under several feet of water. The corporate seller was held criminally liable for fraud. United States v. Gonterman, Case No. 6356-T. Cr., S.D. Fla., June 1955.

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and schools would be permitted. Comprehensive subdivision control would enhance real estate values or at least stabilize them at reasonable and realistic levels.[117] Florida could attain orderly, planned, and continuous development of urban and suburban areas without resort to disorganized and patchwork subdivisions. This would promote permanency of desirable home surroundings, add to the happiness and comfort of the citizens of the planned area, and promote the public welfare.[118]

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[117]Dunham, *Private Enforcement of City Planning,* 20 LAW & CONTEMP. PROB. 463 (1955).

[118]Dukeminier, *Zoning for Aesthetic Objectives: A Reappraisal,* 20 LAW & CONTEMP. PROB. 218 (1955); Reps, *Control of Land Subdivision by Municipal Planning Boards,* 40 CORN. L.Q. 258 (1955).