



1000 Friends of Florida Growth Management Challenges, 1989-2012

This provides a brief overview of some of the important growth management challenges 1000 Friends has participated in over the years. 1000 Friends thanks Richard Grosso, Esq., Terrell K. Arline, Esq. and Liesl Voges for their contributions to this summary.

Comprehensive plans:

Department of Community Affairs v. Brevard County, DOAH Case No. 88-5577GM (1989)

Brevard County was the first County to submit a comprehensive plan to DCA under the 1985 Growth Management Act. DCA found the plan not in compliance. 1000 Friends intervened and raised noncompliance issues not addressed by DCA such as lack of protection for the Indian River Lagoon and urban sprawl problems. Through negotiations the case was settled and 1000 Friend's intervention was instrumental in bringing about greater consideration for the environment.

Austin et al v. City of Cocoa & Department of Community Affairs, 89 ER FALR 128 (Admin. Comm'n 1989)

This case was the first challenge to a comprehensive plan that had been found in compliance by DCA under the 1985 Growth Management Act. 1000 Friends monitored this case and provided moral support to a local citizen's group challenging DCA's ruling that the City of Cocoa's comprehensive plan was in compliance. The Florida Administration Commission found that the City's plan was not in compliance. Citing several issues raised by the citizen's group, the Commission found that the plan did not adequately protect wetlands, failed to protect the city's historic resources, and that during the plan adoption process the city had not provided adequate public participation opportunities.

Department of Community Affairs v. Lee County, DOAH Case No. 89-1843GM (1989)

DCA found Lee County's comprehensive plan not in compliance. 1000 Friends intervened and raised noncompliance issues regarding transportation concurrency, urban sprawl, lack of adequate protection for barrier islands, and other issues. 1000 Friends suggested an alternative transportation grid system, and a settlement was reached. This case highlighted the need for transportation concurrency in local comprehensive planning.

Department of Community Affairs v. Martin County, DOAH Case No. 90-2327GM (1990)

DCA found the Martin County comprehensive plan not in compliance. 1000 Friends intervened and raised issues about road construction, concurrency, urban sprawl, and other issues. A negotiated settlement was reached. Included in the settlement were protections for the Loxahatchee River.

Department of Community Affairs v. Walton County, 92 ER FALR 208 (Admin. Comm'n 1992)

DCA found the Walton County comprehensive plan not in compliance. 1000 Friends intervened. The Florida Administration Commission issued a final order finding the plan not in compliance. 1000 Friends negotiated an agreement with Walton County for remedial amendments providing, among other things, greater protection of the County's natural coastal resources. Note: This Administration Commission final order was later set aside

because of a Standing issue involving 1000 Friends, although the remedial amendments that resulted from the case to protect South Walton County remained in place. See St. Joe Paper Co.

Monroe County Chowder & Marching Society, Inc. v. Department of Community Affairs & Monroe County, 703 So. 2d 480 (Fla. 1st DCA 1997)

1000 Friends was a party to this case which ended six years of litigation over the compliance of Monroe County's comprehensive plan. The 1st District Court of Appeals affirmed that Monroe County's comprehensive plan did not do enough to safeguard the environmental sustainability of the Florida Keys. The court upheld a DOAH hearing officer's and the Florida Administration Commission's findings of fact that the Florida Keys' near-shore waters had reached their carrying capacity.

Vicki Minnaugh and Robert Minnaugh vs. County Commission of Broward County, Case No. SC00-875 (4th DCA Case No. 4D99-0751)

In a case arising out of Broward County, the Supreme Court of Florida agreed with 1000 Friends and the Florida Chapter of the American Planning Association that a local government's denial of small scale plan amendments (those impacting fewer than 10 acres) is a legislative and not a quasi-judicial decision. As a result, local governments retain the discretion to refuse to amend the local comprehensive plan without undue concern that the courts will overturn their decision.

Poulos v. Martin County, 700 So. 2d 163 (Fla. 4th DCA 1997)

1000 Friends of Florida filed an influential amicus brief in support of local citizens in this precedent-setting case that guaranteed citizens the right to a trial to challenge the factual determinations made by local governments when approving development orders under their comprehensive plans.

Pinecrest Lakes, Inc. v. Shidel, 795 So. 2d 191 (Fla. 1st DCA 2001)

1000 Friends of Florida filed an amicus brief in support of Ms. Shidel in this landmark case. The Fourth District Court of Appeal upheld the right of citizens to require local governments to follow their comprehensive plans. The court found an apartment complex in Martin County to be inconsistent with the local comprehensive plan. Saying that the developer had acted "in bad faith" and constructed the project while the lawsuit was pending, the court required the developer to tear down the illegal buildings, at a cost of more than \$3 million. The Circuit Court had ruled in Ms. Shidel's favor in 1999, finding the buildings inconsistent with Martin County's plan and calling for the controversial structures to be demolished. In upholding Shidel's position, the appellate court noted that the Supreme Court of Florida had asserted in 1993 that local land use decisions were subject to "strict scrutiny" by the courts in order to ensure that development would be consistent with the comprehensive plan. The court said Florida law was "a command to cities and counties that they must comply with their own Comprehensive Plans."

Florida Institute of Technology, Inc. v. Martin County, 641 So. 2d 898 (Fla. 4th DCA 1994)

The Fourth District Court of Appeal reversed a \$4.75 million judgment against Martin County, which had refused to amend its comprehensive plan to allow for higher density development beyond its urban service line, in an area known as Section 28. The court ruled that the county's decision to limit densities outside its Primary Urban Service Area was "based on rational and sound planning principles, designed to preserve agricultural lands, protect wetlands and environmental resources, ensure the efficient use of public resources, and discourage urban sprawl." 1000 Friends submitted an amicus brief on appeal.

1000 Friends of Florida, Inc. v. State, Dep't of Community Affairs, 760 So.2d 154 (Fla. 1st DCA 2000)

The First District Court of Appeals ruled in favor of 1000 Friends of Florida, the Friends of the Matanzas, and the Hamilton family from Crescent Beach. The Court held that the citizens were entitled to seek a declaration from the Department of Community Affairs of whether the Florida Department of Transportation's extension of 6 miles of water and sewer lines to a rest stop on I-95 in southern St. Johns County required a plan

amendment. In supporting broad citizen access to the agency, the Court said, "the public interest is served in encouraging agency responsiveness in the performance of their functions."

1000 Friends of Florida, Inc. v. State of Florida Department of Community Affairs, and the City of Stuart, Case No. 4D01-2320, 824 So.2d 989, August 2002.

The Fourth District Court of Appeals determined that the City of Stuart could enter into joint planning agreements with the county regarding areas the city was likely to annex, without having said agreements incorporated into its comprehensive plan. Further, the city did not have to modify its comprehensive plan on areas it planned to annex prior to annexation. By allowing cities and counties to enter into agreements governing the future outcomes of such essential planning functions, the court has allowed for the circumvention of protections afforded by procedures for amending comprehensive plans. This results in the loss of protection of public and state oversight and sufficient public participation in the process.

St. Johns County v. Department of Community Affairs, Department of Transportation, 1000 Friends of Florida, Friends of Matanzas, Patrick Hamilton, George Hamilton, and G. William Hamilton, Case No. 5D01-3413, 836 So.2d 1034, December 27, 2002

1000 Friends of Florida, along with the Department of Community Affairs and Department of Transportation, challenged St. Johns County in regards to sewer and roadway improvements within the county's existing right-of-way. The court determined that because there was nothing in the record to suggest that the drainage, roadway, and sewer improvements were outside of the County's existing rights of way, there was no requirement that they be consistent with the County's comprehensive land use plan, so the County would not be required to amend its comprehensive plan.

1000 Friends of Florida, Inc. and Florida Wildlife Federation v. Department of Community Affairs and Palm Beach County (Scripps), DOAH Case No. 04-4492GM, 2005

1000 Friends of Florida challenged whether amendments to the Palm Beach County Comprehensive Plan, adopted to accommodate the County's development of the Scripps biotechnology research park on 1,900 acres known as the Mecca site, were in compliance. The Administrative Law Judge found the plan amendments to be in compliance. Following this ruling, and using the background information generated by the 1000 Friends of Florida appeal, a separate appeal of the U.S. Army Corps of Engineers' permit for the same project was filed by Florida Wildlife Federation (among other parties) in federal court. The judge determined that the permit was inadequate in that it only addressed a portion of the site. The permit was remanded with instruction to comprehensively address the site in its entirety and all related impacts. Due to the lengthy time requirement this would require, the County ultimately agreed to move the Scripps project site to the Briger Tract originally recommended by 1000 Friends.

1000 Friends of Florida, Inc. and Rosa Durando v. Palm Beach County, Salvatore J. Balsamo, and Lantana Farm Associates, Inc., AC Case No. ACC-09-004, DOAH Case No. 06-4544GM, December 10, 2009

1000 Friends of Florida challenged two separate comprehensive plan amendments adopted by the Palm Beach County Commission which would alter the Future Land Use Map. These changes included the Balsamo Amendment that changed a 97.55-acre parcel from rural residential to low residential and the second one, the Lantana Farms Amendment, would change a 26.23-acre parcel in the same way. The Administrative Law Judge found both parcels to be located outside the urban service area designated by the Comprehensive Plan. The appellate court did not challenge this ruling and found the amendments to not be in compliance with the comprehensive plan of Palm Beach County. The court determined that the county failed to demonstrate that these amendments were appropriate given the area and surroundings. This case represents one of the few instances where the "fairly debatable" burden of proof was overcome.

Martin County Conservation Alliance and 1000 Friends of Florida, Inc. v. Martin County, Department of Community Affairs, Martin Island Way, LLC, and Island Way, LC, Case No. 1D09-4956, December 14, 2010
1000 Friends of Florida filed a lawsuit against Martin County and the Department of Community Affairs' approval of two comprehensive plan amendments, the Land Protection Amendment and the Urban Services Amendment, as not consistent with the comprehensive plan. The First District Court of Appeals determined that 1000 Friends failed to establish how its interests were adversely affected, and thus lacked standing on appeal. The Court imposed sanctions against 1000 Friends for the seemingly "frivolous" suit despite a strong dissent arguing that the precedent set by this order will unduly discourage participation in the appellate process. An en banc hearing was requested and subsequently denied. 1000 Friends of Florida now has an appeal pending before the Florida Supreme Court, which has been viewed by commentators and interest groups as one of significant precedential impact

Department of Community Affairs and 1000 Friends of Florida v. Palm Beach County, Florida Crystals Corp., and Okeelanta Corp., DOAH Case No. 09-6006GM, January 3, 2011
1000 Friends of Florida challenged land use amendments to the Palm Beach County Comprehensive Plan that would have allowed a massive "inland port" – a major truck and rail distribution enter – in the Okeelanta region of the Everglades Agricultural Area, which is central to future ecosystem restoration efforts. . The strength of the case prepared by 1000 Friends of Florida and its successful negotiations resulted in the relocation of the proposed facility to a more appropriate location outside of the critical future restoration area.

Lowe's Home Ctrs., Inc. v. Department of Community Affairs, 60 So. 3d 421 (Fla. 1st DCA 2011)
1000 Friends of Florida led this legal challenge to land use amendments adopted by Miami-Dade County that expanded the County's Urban Development Boundary. After trial, a state administrative law judge recommended denial of the Lowes amendment, which would have allowed a home improvement store to be built on remnant Everglades wetlands, but upheld the approval of the second amendment on narrow grounds that precluded the approval from serving as a precedent for future changes. On appeal, the First District Court of Appeal upheld the denial, based on the arguments submitted by 1000 Friends.

Standing:

Department of Community Affairs v. Monroe County, 11 FALR 4004 (Dep't of Community Affairs 1989)
DCA, citing violation of county and state law, issued Monroe County a stop work order on a road construction project in the Florida Keys, a state-designated area of critical environmental concern. Monroe County sought a formal hearing on the matter. 1000 Friends attempted to intervene. A DOAH hearing officer denied 1000 Friends an opportunity to intervene. The hearing officer filed a recommended order in favor of DCA. DCA issued a final order adopting the recommended order, but also ruling that 1000 Friends should have been able to intervene as an affected person. DCA held that in enforcement proceedings such as this, an organization such as 1000 Friends could not have initiated the proceedings; however, once initiated by DCA, the organization would have standing to intervene. Note: The 3rd DCA later reversed this final order; but, the court did not address the issue of whether 1000 Friends had standing to intervene.

St. Joe Paper Co. v. Department of Community Affairs, 657 So. 2d 27 (Fla. 1st DCA 1995)
The 1st District Court of Appeals set aside an earlier Administration Commission final order finding Walton County's comprehensive plan not in compliance. The court ruled that 1000 Friends should not have been allowed to intervene because the organization had not qualified as an affected person which had both participated in the local planning process and owned or operated a business within the boundaries of the local government area. In addition, the court held that 1000 Friends could not have intervened in the case as a representative of its members because 1000 Friends had failed to substantiate that some of its members lived within Walton County. This case shows that even though the standing requirements of the Growth Management Act may be broad, technical requirements still must be met.

Putnam County Environmental Council, Inc. v. Bd. of Cty. Comm'rs. of Putnam County, 757 So. 2d 580 (Fla. 5th DCA 2000)

In a landmark decision, the 5th District Court of Appeals ruled that the Putnam County Environmental Council (PCEC) had standing to challenge a permit for a middle school next to Etoniah Creek State Forest. The PCEC felt this project was inconsistent with the Putnam County Comprehensive Plan, but a lower court found that it did not have standing to challenge the permit. 1000 Friends filed an amicus brief in cooperation with the PCEC. The Court of Appeals "liberally construed" the Growth Management Act, concluding that the group's interest in the conservation and protection of the natural resources of the forest were sufficient to give it standing.

NAACP, Inc. v. Florida Board of Regents, 863 So. 2d 294 (Fla. 2003)

1000 Friends of Florida acted as amicus curiae in a lawsuit between NAACP and the Florida Board of Regents in regard to the minority association lacking standing to challenge new amendments to admissions protocol in the State University System. The Supreme Court of Florida overturned the decision by the First District Court of Appeals and gave NAACP associational standing without having to demonstrate immediate and actual harm because a substantial number of the association's members were both prospective applicants to the State University System and were minorities who would be affected differently than non-minority applicants by a change in policy concerning minority admissions. This case allowed for organizations to gain associational standing for their members as long as they could demonstrate that a substantial number of its members were "substantially affected" by the challenged rule and the subject matter of the rule was within the association's general scope of interest and activity.

Areas of Critical State Concern:

Monroe County, et al. v. Ambrose, 866 So.2d 707, Fla. 3rd DCA 2003).

1000 Friends of Florida filed a "friend of the court" brief which helped Monroe County and the Village of Islamorada successfully defend a legal challenge by landowners in the Florida Keys who claimed a vested right to complete development of single-family homes on their land without complying with the current land use plan requirements. The Third District Court of Appeals, agreeing with the points made by 1000 Friends, upheld the historically narrow view of vested rights and an appropriately expansive view of the legal effect of modern comprehensive plans. The court stated that it would be unconscionable to allow the landowners to ignore evolving and existing land use regulations under circumstances when they have not taken any steps in furtherance of developing their land.

Developments of Regional Impact:

Bay Point Club, Inc. v. Bay County, 890 So. 2d 256 (Fla. 1st DCA 2004)

1000 Friends of Florida acted as amicus in a lawsuit between Bay Point Club and Bay County regarding proposed changes to a development that has been determined to be a "development of regional impact" (DRI). The First District Court of Appeals affirmed the holding by the lower court that the developer's vested rights in previously approved DRI did not include proposed changes, and thus developer's changes had to be approved by county board of commissioners.

Land development regulations:

Florida Home Builders Association, Inc., Tallahassee Builders Association, Inc., Hermitage Ventures, L.L.C., and Sue C. Boynton v. City of Tallahassee, 15 So.3d 612 (Fla. 1st DCA 2009).

1000 Friends of Florida acted as amicus curiae in a lawsuit between the Florida Home Builders Association and the City of Tallahassee regarding the constitutionality of the City's Inclusionary Housing ordinance. The Second Judicial Circuit of Florida disagreed with the Association, deeming the ordinance constitutional. The First District Court of Appeals dismissed further action due to the associations' lack of appropriate standing.

Carillon Community Residential Association v. Seminole County, 45 So.3d 7 (Fla. 5th DCA 2010)

Acting as amicus curiae, 1000 Friends submitted legal arguments to Florida's Fifth District Court of Appeal in support of the position of a residential neighborhood association that argued it had a "due process" right question local government staff and others during a local "quasi-judicial" land use hearing. The Fifth District Court of Appeals ultimately rejected these arguments..

Permitting:

1000 Friends of Fla. et. al. v. Monroe County, ("18 Mile Stretch" case), (1997)

In this suit, 1000 Friends argued that the Fla. Department of Transportation and the South Florida Water Management District had to consider offsite or "secondary" impacts in the form of the increased development that would be allowed as a result of the permitting for the widening of the "18-mile stretch"—the portion of US 1 from Florida City to Key Largo. The ultimate ruling agreed with 1000 Friends that the project would cause growth in the Florida Keys and that this issue was relevant to the issuance of the environmental permit, but found that current planning efforts were adequate to protect the environment in the face of such increased development.

St. Johns River Water Management District v. Consolidated-Tomoka Land Co., 717 So.2d 72 (Fla. 1st DCA 1998)

1000 Friends successfully filed an amicus brief on behalf of the St. Johns Water Management District which had adopted rules to regulate development along the Tomoka River and Spruce Creek. An administrative law judge interpreted the Administrative Procedures Act to require specific statutory authority for the Water Management District to adopt the rules. The appeal court overturned the decision, ruling that an agency "rule is a valid exercise of delegated legislative authority if it regulates a matter directly within the class of powers and duties identified in the statute to be implemented."

City of Sarasota and Bridge Too High Committee v. Department of Transportation, et. al. (Fla. 1st DCA 2001)

Court of Appeal reversed a decision of the Florida Department of Transportation to replace the Ringling Causeway Bridge in Sarasota County with a fixed span, high-rise bridge. The Court concurred with the position of 1000 Friends that the FDOT's decisions could be challenged in administrative hearing. It also agreed that the City of Sarasota and the Bridge Too High Committee had standing to challenge the decision. This confirmed the public's right to contest FDOT road and bridge decisions.

1000 Friends, et al. v. Palm Beach County, Florida and Bergeron Sand, Rock and Aggregate, Inc., 69 So. 3d 1123 (Fla. 4th DCA 2011)

1000 Friends of Florida brought a lawsuit against Palm Beach County and Bergeron Sand, Rock, and Aggregate, Inc. regarding a proposed mining operations expansion resulting in a total of 945 acres authorized for general commercial mining in the Everglades Agricultural Area. The District Court of Appeal ruled in favor of 1000 Friends, reversing the lower court's interpretation of the County's Comprehensive Plan, and ruling that the Plan allowing mining "only" for certain limited, specifically identified purposes. The case has been followed by subsequent cases and stands as a bar to large-scale mining in the EAA.

Takings:

Glisson v. Alachua County, 558 So. 2d 1030 (Fla. 1990)

1000 Friends filed an amicus curia brief in support of the County's position. The 1st District Court of Appeals rejected a landowner's prima facie takings challenge to County's land use regulations limiting development in the special planning area of Cross Creek. This Case established the principle that local government could place development restrictions on land areas designated as having unique attributes or where development could be highly hazardous.

Reahard v. Lee County, 968 F.2d 1131 (11th Cir. 1992)

1000 Friends filed an amicus curia brief in support of the County's position. The 11th Federal Circuit Court of Appeals vacated and remanded federal magistrate's determination that there had been a taking of landowner's property by the County. The court found that there had not necessarily been a taking just because the property's value had been substantially reduced by the Lee County Comprehensive Plan's designation of the property as a Resource Protection Area. The court set forth judicial guidelines for conducting a more thorough analysis in determining whether a taking has occurred.

Palm Beach County v. Wright, 641 So. 2d 50 (Fla. 1994)

1000 Friends filed an amicus curia brief in support of the County's position. A landowner had a portion of his property located within the corridor of the thoroughfare map from Palm Beach County's comprehensive plan. The landowner alleged that the map was unconstitutional. The Florida Supreme Court disagreed. The Court held that the map served a legitimate government purpose and was a valid exercise of County planning authority. In addition, the Court held that just having private property located within a thoroughfare map did not represent a per se taking. Whether a taking had occurred should be determined on a case-by-case basis only after the property owner had filed for a development permit.

Advisory Opinion to the Attorney General Re: Property Rights, 644 So. 2d 486 (Fla. 1994)

1000 Friends was an interested party in opposition to the petition. The Florida Supreme Court invalidated an initiative petition for a constitutional amendment giving landowners the right of full compensation for diminished value of vested property resulting from the exercise of governmental police power.

Advisory Opinion to the Attorney General Re: People's Property Rights Amendments Providing Compensation for Restricting Real Property Use May Cover Multiple Subjects and Advisory Opinion to the Attorney General Re: Property Rights, 699 So. 2d 1304 (Fla. 1997)

1000 Friends was an interested party in opposition to the petitions. The Florida Supreme Court invalidated two initiative petitions for constitutional amendments; one would have eliminated the single subject requirement for citizen initiatives regarding private property rights, and the other would have provided compensation to landowners for any reduction in property values due to governmental regulations.

Standard of review:

Brevard County v. Snyder, 627 So. 2d 469 (Fla. 1993)

1000 Friends filed an amicus curia brief in this case. The Florida Supreme Court upheld the County's denial of a landowner's "upzoning" request. This case raised the level of judicial review for most, but not all, rezoning decisions from the fairly debatable standard to strict scrutiny. Such quasi-judicial rezoning decisions were now required to more closely mirror relevant comprehensive plans. At the same time, the court affirmed that a local government has discretion to zone within the range of any land-use designation category, and that a landowner is not entitled to the highest zoning use of his or her land that is allowed by the comprehensive plan.

Martin County v. Yusem, 690 So. 2d 1288 (Fla. 1997)

1000 Friends filed an amicus curia brief in support of the County's position. The Florida Supreme Court found that an amendment to the County's comprehensive plan, even though limited in effect and site-specific, amounted to a legislative action. The court distinguished the previous Snyder decision by clarifying that all amendments to comprehensive plans are legislative actions subject to the fairly debatable standard of review, and that all zoning decisions are quasi-judicial actions subject to the strict scrutiny standard of review. In addition, the court held that citizens might still be able to intervene in cases at trial even though they had not been present at local hearings.

Miscellaneous:

Board of Trustees of the Internal Improvement Trust Fund v. Board of Professional Land Surveyors, 566 So. 2d 1358 (Fla. 1st DCA 1990)

1000 Friends filed an amicus curia brief in support of the Board of which argued that the Florida legislature had only delegated the Board of Surveyors authority to set minimum technical standards for the practice of surveying in Florida, and that the Board of Surveyors lacked authority to determine the riparian rights of disputing parties. The 1st District Court of Appeals agreed with the Board of Trustees and invalidated the rules proposed by the Board of Surveyors. The court held that the determination of riparian boundaries should be judicially resolved under all applicable laws. This case ensured that the domain of state lands would not be arbitrarily limited.

Department of Community Affairs v. Moorman, 664 So. 2d 930 (Fla. 1995)

1000 Friends filed an amicus curia brief in support of DCA's and Monroe County's position. The Florida Supreme Court upheld Monroe County's ban on fenced-in private property on Big Pine Key. The Court found that the ban was constitutional because the restriction on fencing was a rational measure by the County to ensure the continued habitat of the endangered Key deer. This case underscored the notion that private property rights do not trump the public interest in environmental protection.