

DRAFT 2021 Pre-Legislative Session Issues

Priorities

Impact Fees

- Define infrastructure:
 - Last year's HB 1339, signed into law on June 9, 2020, requires local governments to provide specific impact fee reporting in their annual financial audit to the Florida Department of Financial Services (including the specific purpose and specific infrastructure).
 - FHBA will use the new annual DFS impact fee report as ammunition to help define infrastructure and ensure impact fees are going towards true infrastructure needs/projects (roads, buildings, schools, etc.).
- Impact Fee Caps:
 - FHBA proposes instituting policies that would limit the percent increase a jurisdiction can levy annually.
 - Recently in May, Hillsborough County adopted impact fee increases by 100 percent. Once the increase is adopted, total impact fees on a new single-family home built in the county would be \$28,000. In the midst of an affordable housing crisis, coupled with high unemployment and low inventory – artificially inflating the costs of new homes through fees will only exacerbate housing issues in the state.
 - Background: On May 20, 2020, in the height of a pandemic and record unemployment, Hillsborough County adopted 100 percent increases to the County's mobility fee and parks impact fee schedules. Although the fees will be phased in over the next few years, in year one alone, effective January 1, 2021 – mobility fees will increase 80 percent (90 percent in 2022, and full adoption of the 100 percent increase in 2023).
 - The costs of a new rural single family detached home (1,500 – 2,499 square foot living area) will increase from \$7,377.00 to \$13,278.60 on January 1, 2021. Combined with current school impact fees of \$8,227 (which were increased by more than 100 percent in March 2020) and fire and park impact fees, once full adoption is in place, the cost of a new home in Hillsborough County will be nearly \$28,000.00.
 - Further, while a July 13th CNBC article noted that the pandemic is pushing buyers to the suburbs, Hillsborough County's ordinance specifically penalizes rural new home builds by applying greater fees than their urban equivalents.
- Impact fee credit clarification on retroactivity.

Construction Defects/Right to Cure

- Defines material violation;
- Requires that those who take a cause of action cite the specific building code that was alleged to have been violated;
- Requires a notice of claim to be made under oath;
- Requires that the claim state a specific location of the alleged defect;

- Provides that the claimant provide the contractor with property maintenance records; and
- Provides that if a claimant does not allow a contractor/home builder an opportunity to inspect the defect in the current statutory timeframe, then the claim for damages is rejected.

COVID Safe Harbor

- HOA and Condo Associations not liable in any claim or action seeking damages for injury or death resulting from transmission of COVID-19 alleged to have resulted from the reopening of community amenities in accordance with applicable executive orders of the Governor, or local governmental authority.
- Enhance Evidentiary Standard for COVID-19 Claims to Clear and Convincing Evidence.

Statute of Repose

- Reducing Statute of Repose from current 10 year time limit.

Florida Building Code

- Move from the Current Three-year cycle to a Six-year cycle.

Swimming Pools

- General Contractor means a contractor whose services are unlimited as to the type of work which he or she may complete (not limited in the construction, repair, alteration, remodeling, or improvement of any structure or building type). These services include the construction of swimming pools. We expect a movement for only pool contractors to build pools. (Posiiton??)

Natural Gas Restrictions

- Preempt local governments from banning the use of propane or natural gas for residential homes. A movement in other states resulted in local governments actually banning propane or natural gas as an energy supply to new residential construction.

Homeowner Association (HOA) Reserves

- "HOA Reserve amendment" - if the declaration of covenants, articles or bylaws do not obligate the developer to create or fund reserves pursuant to paragraph... the association is responsible for the repair and maintenance of capital improvements that may result in a special assessment if reserves are not provided or not fully funded.
- Using condominium purchasing deposits for soft construction costs.
- HB 623 by Rep. Shoaf died in the Senate in 2020.

Preventing Local Control over Design and Code Changes

- Prohibit local governments from requiring design elements on private residential builds. Examples include requiring a certain number of windows, mandating two car garages, and in one case requiring a "workforce" housing development to have driveways made of pavers.
- Would exclude HOA's and Historic Districts from prohibition.
- Provide an appeal mechanism if local governments adopt local code amendments that are not unique to the area.

- Bill was filed last year, ready to pass the House but never heard by the Senate.

Sadowski Funding

Last session, with the Governor's support, the legislature fully funded the Sadowski. The economic chaos created by the COVID-19 virus required Governor DeSantis to veto over \$1 Billion in budget related items. SHIP funding was a tragedy of the necessary vetoes (Note: Governor DeSantis to use Cares Act funding to help COVID afflicted individuals with rent and mortgage payments).

FHBA will once again work for full funding of the Sadowski Trust Fund.

Issues to Watch

Florida Fire Prevention Code

- Ensure fire districts comply with set timeframes for the purposes of the plan review process.
- The law currently has no punishment for districts that purposely delay.
- If districts are unable to meet expected timelines, they would lose the ability to conduct further reviews and the process would not fall to the local jurisdiction that issued the permit.
- Address radio signal strength minimum requirements.

Natural Emergency (Ch. 252.363, F.S.)

- Clarification to ensure a Public Health Emergency constitutes as a Natural Emergency for the purpose of future Executive Orders.
- Executive Order 20-52 referred to COVID-19 as a *Public Health Emergency* and not as a *Natural Emergency*.
 - Ch. 252.363, F.S. triggers the tolling and extending of permits under a "Natural Emergency." Even with clarification from the Department of Business and Professional Regulation – that a public health emergency constitutes a natural emergency, until it is changed in statute, this will continue to cause problems with some jurisdictions down the road.

HOAs Dispute Resolution

- Regarding the Association of Poinciana Villages (Kissimmee, FL). The language states that while in dispute, if a parcel owner or an association fails to participate in a pre-suit mediation with a neutral third party mediator – HB 233 by Rep. Cortes in 2020 sought to require both parties to participate in "mandatory nonbinding arbitration" and prevent a suit until the arbitrator issues a final decision.
- *Oppose*.

Legislative Review of Occupational Licenses

- Provides for a systematic review of the costs and benefits of occupational regulatory programs before deciding to renew or simply letting the program expire (sunset's/peels licenses).
- HB 707 by Rep. Renner died in the Senate in 2020.

Statewide Office of Resiliency

- Establishes the Statewide Office of Resiliency with the Executive Office of the Governor, headed by a Chief Resilience Officer appointed by and serving at the pleasure of the Governor.
- Creates a nine member Statewide Sea-Level Rise Task Force to recommend to the Office the projections of the anticipated sea-level rise and flooding impacts along this state's coastline.
- If adopted, the task force's projections will serve as the state's official estimate of sea-level rise and flooding impacts for the purpose of developing future State projects and plans.
- Note: Resiliency was the buzzword of 2020 before COVID-19. Our focus is on what "resiliency" to sea-level rise looks like; and this differs in both chambers and even amongst legislators. Notable suggestions have included increasing freeboard by another foot, similarly to what we saw in (US) H.R. 3702.
- SB 7016 by Senator Lee died in the House in 2020.

Florida Climate and Resiliency Research Program

- Establishes the Florida Climate and Resiliency Research (an interagency) Program under the Department of Environmental Protection.
- The DEP Secretary and the Chief Resilience Officer shall coordinate and oversee the program.
- The program will prepare an assessment that analyzes the effects of climate change on the natural environment and project major trends for the next 25 to 100 years.
- Beginning January 1, 2021 and every four years thereafter, the program will provide a Resiliency Plan to the Governor and Legislature.
- Provides for participants, including but not limited to: The Commissioner of Agriculture, CFO, FDOT Secretary, Surgeon General, Chief Science Officer, executive directors from FWC, DEO, and Emergency Management, and various representatives throughout the state, including a rep. from the Florida Climate Institute.
- HB 913 by Rep. Diamond and SB 1232 by Senator Rouson both failed in their respective chambers.

Everglades Protection Area – HB 775 by Rep. Avila and SB 1390 by Senator Simmons

- Plans and plan amendments that are adopted by the governing body of a local government whose boundaries include portion of the Everglades Protection Area must follow the state coordinated review process.
- Last year FHBA lobbied to ensure it was only effective with two miles of the border.
- DEP shall determine whether the plan or plan amendment impedes the Everglades restoration and protection objectives.
- This is clearly an attempt at forum-shopping: The enviro groups are trying to use the State Legislative process to move the review of Master Plan Boundary changes – already very difficult at the local level to achieve now – from the Dept. of Economic Opportunity to the Florida DEP.
- We typically do not want State interference in local planning or zoning issues – and this is an excellent example of people using the political system for their own purposes.
- HB 775 by Rep. Avila and SB 1390 by Senator Simmons both failed in their respective chambers in 2020.

Redaction

In 2019, SB 248 relating to public records exemptions passed with good intentions to protect critical public servants (sheriffs) from retaliatory threats by individuals disgruntled with the performance of their duties. Unfortunately, the new law created serious unintended consequences with the potential to harm the very people it was intended to protect. SB 248 expanded the definition of “Home Address” in all public records exemptions to include the legal description of their residential real estate and exclude it from the official records. This information and the access to it is critical to the protection of sellers, buyers, contractors, lien holders, lenders and other creditors in the conveyance of real property.

Current law requires the recording of a deed or mortgage in the official records for the express purpose of protecting the new owner or the lender from any competing interests of a previous owner, lien holder or creditor. The redaction of official documents creates several problems, including but not limited to:

1. The lien of mortgage cannot be protected, nor can its priority be preserved against a junior lender or a judgment creditor.
2. An unscrupulous seller can sell the same property a second time to a bona fide purchaser for value without notice. This subsequent purchaser will have superior title to the original purchaser because the original purchaser, by redacting their legal description, failed to properly record their interests and thereby avail themselves of the protections of the recording act.
3. Bankruptcy proceedings may result in the setting aside of a redacted deed or mortgage under the bankruptcy code.
4. Parties that elect to redact the official records will find it difficult or impossible to convey or mortgage their property and may be unable to obtain title insurance.
5. Owners with a redacted legal description cannot use the protections of the construction lien law.
6. Redacted properties create issues for Notice of Commencement, Notice to Owner.
7. Redaction can create delays and extra steps for real estate transactions because documented ownership cannot be established thru the public land record.
8. Redaction can create a gap in the record of ownership, presenting opportunities for fraudulent land transactions.