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# ZONING AND PLANNING LAW REPORT

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## LOOKING FOR “SMART GROWTH” IN REDEVELOPMENT: LESSONS FROM AN EVOLVING SOUTH FLORIDA SUCCESS STORY

By Frank Schnidman

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### Introduction

Redevelopment is a puzzle, and the pieces lie all over the place. Planning. Finance. Land supply. Land assembly. Environmental concerns. Development options. Staffing. Market analysis. Public/private partnerships, etc. Local governments all over America are struggling to put the pieces together to come up with economically viable approaches to succeed, and the mistakes made and lessons learned are substantial.

In the middle of the 20th Century, we were concerned with slum clearance and the provision of safe, sanitary housing and viable areas for business. Federal government involvement brought massive urban renewal programs that saw entire neighborhoods acquired and leveled to provide a clean slate to rebuild our inner cities. We now have evolved to a period of urban redevelopment where we are both seeking to remove traditional vestiges of slum and

blight, and to use the powers of government to improve the economic health of our cities.

Each year the United States must accommodate an additional 2.7 million people, and to do so requires an additional 1.5 million housing units—each year. The question is not whether we will grow, but where and how we will grow. The where is likely everywhere and the how is hopefully with “Smart Growth.”

For the past 30 years, state and local governments have been involved in extensive efforts to manage growth, and the focus has been on the process of plan making and plan implementation. This process-driven effort is giving way to an evolving approach that focuses on what is being built and where it is being built. We are moving from the era of “Growth Management” to the era of “Smart Growth.”

Smart Growth is often described as growth that is economically sound, environmentally friendly and

supportive of community livability—growth that enhances our quality of life. Key aspects of Smart Growth include conducting a collaborative and integrated planning process that attempts to involve the various “stakeholders” in decisions about future growth. In addition, Smart Growth encourages municipalities to streamline the development review and permitting process, eliminating unnecessary bureaucratic red tape—all to assist in making Smart Growth development as economically successful as possible. Additionally, Smart Growth not only encourages infill development and recycling of previously developed sites, but also encourages compact and mixed-use development that integrates open space protection, provides alternatives to the car, and blends residential, commercial and retail development—in both urban and suburban development, with the desire of creating active and exciting places to live, work and play.

One could look at numerous areas of the country to seek guidance about what approach to take to put this redevelopment puzzle together. Previous issues of the *Zoning and Planning Report* have even examined state and local programs that have served as model approaches to good growth management and Smart Growth. For this article, however, the focus is on Southeast Florida and the efforts of one bold and innovative local government that has decided to grab itself by the bootstraps and pull itself into a better quality of life through innovative and creative use of redevelopment for both economic development and to address slum and blight problems. Common practice is to undertake a case study once the process and the project being analyzed are substantially complete. Here we are looking at a process and a project at mid-point. This is being done because the experience to date illustrates creative and both basic and innovative approaches to local government taking the initiative to implement its redevelopment goals and objectives. The efforts of this city, North Miami, deserve examination, and the approach used is one that can provide guidance to so many others about how to approach the redevelopment puzzle and put all the pieces together.

### **The Southeast Florida Situation**

Florida’s Growth Management era began in 1972 with the modification of the way local government handled development planning and permitting, creating a process that involved the State, regional agencies, counties, and local governments in the planning for and permitting of selected types of development. The State of Florida has periodically updated this land use planning and development regulatory approach. The 21st Century finds the State and its regional agencies and local governments now focusing on Smart Growth concerns—what is being built and where it is being built

rather than on just the process of plan making and development regulation.

One major planning program that has seen this evolution from process to substance is the efforts to protect the Everglades in Southeast Florida by, among other things, trying to relieve development pressure on these sensitive western lands by fostering development and redevelopment along the eastern coastal fringe. Though this environmental problem may be unique to South Florida, the issues of land supply for development, environmentally sensitive lands, and the need to accommodate new growth within existing urbanized boundaries are paramount in numerous metropolitan areas in the United States.

As federal, state, regional, and local environmental regulators struggled to implement Everglades restoration and preservation, it was the members of the appointed Florida Governor’s Commission for a Sustainable South Florida that in 1996 laid the foundation for the current approach to development and preservation by recommending that development and redevelopment be directed east to the region’s urban core area along the coast. This recommendation was called *Eastward Ho!* The Governor’s Commission report stated:

This initiative will protect the environment and encourage compact, efficient development patterns and will forge a public/private partnership to promote compact urban density . . . . The *Eastward Ho!* Initiative wants to promote home ownership, encourage community schools, improve public safety, create jobs in the study area for people living there . . .

Simply described, *Eastward Ho!* efforts to date seek to revitalize and improve the quality of life in Southeast Florida’s historic urban areas, in an effort to lessen development pressure and urban sprawl in sensitive lands in the west that are needed to restore the Everglades ecosystem and protect the region’s future water supply. The Everglades provide a natural urban extension boundary, and in fact, the experience of other states in dealing with efforts to establish man-made urban boundaries was in the minds of the members of the Commission as they formulated the details of *Eastward Ho!*

Supporting *Eastward Ho!* concerns, government analysts and private sector consultants warned that Southeast Florida was fast running out of land supply for development, and more and more, developers were being forced to look at the remaining vacant and redevelopable parcels in the east and address any problems with these individual sites to bring them online for development. Many of these properties have title problems, need significant land use regulatory changes to allow an economically viable use, have fragmented ownership patterns

preventing assembly of parcels large enough for a development that makes sense, or have environmental problems in need of remediation.

And, most governments in the Southeast Florida region are seeking ways to both protect environmental resources and provide development opportunities to help meet the need for the significant forecasted population growth. "Sustainable Development" is a key term describing what is sought—sites that are least subject to coastal storm surge, where negative impacts on the environment will be minimal, and where public facilities and services already exist or can be easily expanded to meet the demands of new development. And, of course, they want Smart Growth.

### **Infill Redevelopment in the 21<sup>st</sup> Century**

Many pieces of the redevelopment puzzle prevent the use of vacant or passed-over sites in our metropolitan regions. In addition to use and ownership issues, actual or perceived environmental contamination of urban infill sites—along with the risks and costs associated with addressing it—is a significant barrier to redevelopment in the *Eastward Ho!* corridor, and governments in the corridor are targeting the reuse of abandoned or underused sites as part of their *Eastward Ho!*, sustainable development and Smart Growth efforts.

### *Back to the City*

In addition to government policies fostering eastward development and redevelopment, a growing number of South Florida residents and newcomers are seeking eastern locations. This market-driven demographic is helping to promote the movement of population into the corridor, and is helping to implement policies designed to put into use the vacant and passed-over parcels in the eastern coastal fringe. And with 30,000 or more new arrivals projected each year in Miami-Dade County alone, finding appropriate infill locations for new development has become a priority for both government and the development community. Land supply to accommodate this continuing growth is limited by the Atlantic Ocean on the east and the Everglades on the west, and development pressure is approaching the western boundary and is bouncing back to the east because of both governmental restrictions and the shortage of developable land. Small-scale infill can be seen in all the eastern communities, and when larger parcels are available or can be assembled, new mixed-use developments are the preferred use.

As with most metropolitan areas in the United States, Miami-Dade County has examined both infill development and brownfields issues through committees and task forces, and the County has revised its land development regulations to provide a more flexible approach to such

development to allow for the creation of higher-density projects to take advantage of existing eastern infrastructure and to take the pressure off of western expansion. "The County is willing to work with its local governments to facilitate large development opportunities where a 'sense of place' can be created," stated North Miami City Manager Clarence Patterson, "where a quality pedestrian environment can be created, and where design and scale provide a true place for people."

### *Passed-Over Parcels* Opportunities

While there is still substantial demand in Southeast Florida for traditional suburban development, the shrinking supply of appropriate sites is a problem. And, as mentioned, there is a growing market interest for locations where a more "urban" lifestyle can be provided. Purchasers are looking for places where they can enjoy nearby offices, shops, hotels, and restaurants. Governments are responding to this evolving market demand by recognizing that they themselves are part of the problem in providing this "urban" lifestyle in the way they undertake both planning and development regulation, and they are trying to become part of the solution. That is one of the elements of *Eastward Ho!*

Communities are engaging in visioning and strategic planning to both identify sites and determine acceptable patterns of development. They are exploring more flexible and streamlined development review processes, the elimination of outdated land development regulations, and providing financial incentives for infill development.

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“Urban infill and redevelopment are recognized as a way to combat urban sprawl and as a method to protect and revitalize older urban neighborhoods,” stated James Murley, former Secretary of the Florida Department of Community Affairs, “in addition to promoting economic development, improving infrastructure efficiency, increasing affordability of urban housing, and improving access to transportation. The goal is to make Florida’s existing urban areas more livable.”

### Challenges

The most common issue to arise when passed-over parcels are proposed for development or redevelopment is that residents of nearby single-family or lower-density multifamily neighborhoods object to the proposed population increase as well as the additional strain on municipal services, burden on the schools, and increased traffic. In fact, when a large parcel becomes the candidate for development, neighbors may organize to find every real and potential problem that could result from the development of the site, and often bring political pressure to have government intervene to minimize or prevent development. Recent examples in the region show that a landowner or developer may get so frustrated by these actions that it may end up selling the land and moving on, or find the government filing an eminent domain action to acquire the land for a public use to prevent the development.

### The City of North Miami

The City of North Miami at first impression would not strike you as a candidate for the poster child for Smart Growth/Redevelopment in Southeast Florida. But it is, in fact, as it moves forward with a creative and innovative solution to both its economic development and its redevelopment needs. The City, with a population slightly over 50,000, is located midway between Miami and Fort Lauderdale and is known as the “Most Diverse City of Miami-Dade County.” It contains an evolving community of immigrants from the Caribbean, the largest group being of Haitian descent. It also contains a significant numbers of low-income residents living in substandard housing. It is part of the continuous urban mass that stretches the length of the Southeast Florida coast. Its development pattern results in a municipality physically indistinguishable from the mid-20th Century “strip city” development patterns of communities to the north, south, and west.

The City realized that one of the keys to its future economic health was the development of a large parcel of City-owned property that had previously been leased for development, and was for a period of time operated as a landfill. Innovative City leaders, with extensive citizen involvement, fostered a vision for the future,

developed community support for the vision, and, through a Request for Qualifications (RFQ)/Request for Proposal (RFP) process, sought out and found a developer that would partner with them not only in the redevelopment of the specific site into a premier project but also work with the City to protect and revitalize its older urban neighborhoods, promote City-wide economic development, increase the supply of market-rate affordable and assisted housing, and generally work with government officials and citizens alike to make the City a better place to live for existing and future residents. The process by which the City has gone forward with this effort, and the continuing action by all those involved, make North Miami a case study appropriate for immediate analysis for the lessons to be learned and the carryover of the experience to other communities as they move forward with their own vision planning and redevelopment implementation.

The focus from the beginning of the City’s efforts, and which increased in intensity upon developer selection, was identifying the benefits of Smart Growth and infill development and consciously trying to avoid the problems of redevelopment. The public/private partnership between the City of North Miami and its selected developer, the Swerdlow Boca Development Company, LLC (SBD) is trying to stay focused on this path. They are working together to redevelop the site of a former landfill into one of Southeast Florida’s premier *Eastward Ho!* Smart Growth, sustainable mixed-use residential communities. Experts recognize that infill and Smart Growth go well together: “The best infill results occur when large properties—forgone greyfield malls or abandoned industrial sites, for example—can be developed into pedestrian-friendly, mixed-use residential neighborhoods that include town center retail, parks, and even schools.” (ULI Emerging Trends 2003, p. 35)

This creative public/private partnership uses the leased City land as the engine to fund the upgrading of a substantial portion of the City because the “deal” was based upon an economic approach that provided the proverbial “something for everyone”—the City, its citizens, the developer, and the region. Simply, using the redevelopment tools under Florida law, a Community Redevelopment Agency (CRA) was established that includes both the leased parcel and the other areas in the City in need of redevelopment. Through the tool of Tax Increment Financing (TIF), almost all increases in property tax revenue within the CRA boundary will be earmarked for expenditure only within the CRA district—expenditure targeted to upgrade existing problem areas. And, in a significant departure from traditional public/private partnerships for redevelopment, none of the TIF funds will be used as economic incentives for the private development. Instead, the City’s

lease agreement with SBD negotiated a series of benefits to the City in return for a reduced lease cost. After significant public input and numerous public meetings, the decision was made to structure the “deal” to allow the developer to benefit by structuring a long-term lease that would allow condominium sales and financing, and to allow the City to benefit from the allocation of all TIF funds to address the problem areas of the City within the CRA boundary.

### **The Munisport Site**

The past two years have seen a very transparent public process of developer selection and redevelopment plan preparation, where intense public negotiation resulted in the spread of development benefits to most parts of the City, and where project impacts were identified and addressed. In addition to addressing redevelopment issues, key concerns publicly considered included real and perceived environmental problems with the site and the ability of engineering solutions to successfully address those problems. Meticulous environmental and engineering studies identified solutions that both the community and regulatory bodies determined would result in a site suitable for a mixed-use development that included residential uses.

This open process resulted in widespread support for the project, as opposed to the traditional controversy that often occurs when a developer seeks increases in height and density to undertake a redevelopment project. In fact, the approval of the SBD project included a citizen referendum that allowed significant height and density increases necessary to transform the City’s “Munisport” site into Biscayne Landing, the economic engine that would drive the City’s redevelopment efforts.

### **A Little History**

The City of North Miami has sought to develop this property for more than 30 years. The process began in 1970 when the City was involved in a transaction that included the purchase of 350 acres for the development of a municipal recreational facility, and it became complicated in 1972 when it leased 291 acres to Munisport, Inc. for the development of the desired recreational facility. (Hence the name “Munisport.”) Landfilling on the site had begun in 1970, primarily to raise the elevation of the wetland areas and to provide sub-grade for construction. The generally deteriorating state of the economy in the early 1970s and the growing demand for landfill sites in the region resulted in Munisport abandoning development plans for the recreational facility and continuing formal landfill operations.

Munisport operated a permitted landfill until 1981, when the Florida Department of Environmental Regulation (DER) revoked Munisport’s landfill operating permit. By this time, the landfill portion of the site had grown

to 170 acres. In 1982, the U. S. Environmental Protection Agency (EPA) placed approximately 35 acres of the site on the National Priorities List in the Superfund program. A Remedial Investigation/Feasibility Study (RIFS) to determine the nature and extent of contamination was completed by EPA in 1988. This multi-year study included extensive and detailed site analysis, and concluded that the site posed no threat to human health, and a 1989 Water Quality and Toxicity Assessment also concluded that “The landfill proposes no threat to human health,” and was therefore suitable to be considered for residential development. Yet, this long history of environmental investigation identified concern for potential impact on aquatic life in adjacent wetlands, because of underground concentrations of ammonia. Creative thought and a sound engineering solution were needed to successfully address this issue if the site was to have a redevelopment future. EPA worked with the City and County regulatory agencies to define the best practices that could be used for a phased cleanup of the site, and by 1998 transferred regulatory responsibility to the County, subsequently removing the portion of the site designated under the Superfund program.

### **Site Preparation**

As previously discussed, in 2001 the City began to implement its plan to lease the Munisport site for private development, and desired to have the selected developer work with the County and take over site cleanup responsibilities. During a six-month selection process, three qualified developers made three presentations to the City Council and City residents at various public meetings and workshops during both the RFQ and RFP process, in addition to presentations at City Commission meetings. There were also major presentations on three separate occasions to concerned community organizations. By April 2002, the City selected the Swerdlow Group to develop “Biscayne Landing” on the site, and the development team includes both the Coral Gables-based Swerdlow Group and Boca Developers of Deerfield Beach. The entity they formed to undertake Biscayne Landing is Swerdlow/Boca Development Company, LLC (SBD).

SBD and Miami-Dade County Department of Environmental Resource Management (DERM) are now working together on the groundwater remediation plan for ammonia—the chemical causing regulators concern over the impact on adjacent wetlands—and on the final landfill closure plan. The groundwater remediation effort is a cutting-edge approach that treats the problem below grade and alleviates the need to pump water out of the ground and treat it before pumping it back in the ground.

The fill material at this site has been in place more than two decades, and, as the environmental studies found,

much of the waste has already biodegraded. The closure plan provides for the “capping” of the area, resulting in a site suitable for mixed-use residential development.

Nick Albergo, the President of Tampa-based HSA Engineers & Scientists, which is handling the geotechnical aspects of the cleanup, led the study that helped determine that the site is suitable for residential development, and that remaining environmental issues would be resolved by the innovative state-of-the-art plans to address concerns about impact to adjacent wetlands and the way the site will be capped. In addition, Wilbur Mayorga, chief of the Miami-Dade County Department of Environmental Resource Management (DERM), is looking forward to having a final resolution to the use of this site after more than 20 years of site investigation and analysis.

And to insure that remediation efforts are a success, a complete groundwater monitoring network is being put in place under a long-term care plan in compliance with the Florida Department of Environmental Protection (DEP) rules and approved by DERM. This plan requires site monitoring so that all systems remain fully functional as designed and constructed, and the plan helps insure that the state-of-the-art creative efforts to prepare this site are always functioning properly.

### **The Project—A Smart Growth Urban Center**

The Development Agreement between the City and SBD was executed in November 2002. As the City desired, it transferred responsibility for final site cleanup to SBD, and outlines the development profile for the site, which will include, among other things:

Between 2,800 and 5,000 residential units;

Between 20,000 and 100,000 square feet of commercial space;

Between 150 and 400 hotel units.

In addition, there were numerous other details in the Agreement, including SBD responsibilities for numerous on-site and off-site improvements. The City crafted the Agreement to attempt to address every conceivable regulatory issue the project would face. Once the Agreement was executed, it was included with most permit applications, and resulted in efficient and timely permitting review, as most agency questions were covered and addressed in the Agreement. Regulators from State, regional, and local agencies supported the project. “This will truly be a Smart Growth city within a city,” said City Attorney John C. Dellagloria upon the signing of the Agreement. “North Miami will see one of the largest new residential projects in Southeast Florida, and this mixed-use community will not only include substantial on-site amenities, but also will provide the tax revenue to fund significant off-site improvements and allow us

to implement a program of redevelopment and revitalization throughout the CRA.”

Among the planned on-site amenities are the traditional multiple clubhouses, pools, and tennis courts. Planned off-site amenities that the City negotiated with SBD to provide include a charter school, an Olympic training facility, renovations to the existing City Library, and uniquely and most importantly, a provision requiring an equal number of new or rehabilitated affordable housing units to be built in the western and central portions of the City as are built in Biscayne Landing.

### **Conclusion**

The Biscayne Landing mixed-use development conforms to the *Eastward Ho!* policies of South Florida governments, with nationally recognized Smart Growth criteria, and with the urban infill policy of Miami-Dade County. Biscayne Landing is one of the few remaining large infill parcels in eastern Miami-Dade County, and is located in an area facing significant growth pressures. The citizens of North Miami expressed their support for this project through a November 2002 referendum dealing with development of the site.

City officials also strongly supported development of the site. They worked to prepare a vision for the future, found a developer that would work in partnership with them to implement that vision, and have shown the will to move the process forward. Strong leadership and solid citizen participation have brought residents, business leaders, and interest groups together to work with the City to monitor the implementation of this vision over the long term.

Regulatory agencies from the Federal Government, the State of Florida, the South Florida Regional Planning Council, Miami-Dade County, and the City of North Miami have worked for almost two decades to address the environmental concerns of the Biscayne Landing site. All the affected regulatory agencies are working to assist in the implementation of the City’s vision for the redevelopment of this site as Biscayne Landing.

HSA Engineers & Scientists (HAS), the consulting firm handling the environmental investigation of the site, stated in a recent report:

Based on our review of existing data and numerous meetings with the affected regulatory agencies, when combined with the planned landfill closure tasks . . . it is clear that the development of this mixed use community can occur on the former landfill site without adverse impacts to human health or undesirable impacts downstream of the development to the nearby plant and animal community.

Biscayne Landing is a textbook infill development project, and Smart Growth exemplified—development

of 193 vacant acres in a built-up urban area into an integrated mixed-use project that will generate tax revenue to substantially assist in the redevelopment of other areas of the community.

This case study will be revisited in a future issue of the *Zoning and Planning Law Report*, and a critical analysis undertaken of the experience of both the City of North Miami and the developer, including a review of any mistakes made and lessons learned. For now, however, North Miami provides a critical example of the need for local government to conscientiously work with its citizens to create a vision for the future, to undertake a truly transparent process of moving forward to implement that vision, and to focus on the real world of development economics to create the proper atmosphere to attract and retain private-sector interest.

## **RECENT CASES**

### **Tree Protection Ordinance Not Bound by Georgia Zoning Enactment Statute; Takings Challenge Rejected**

The Supreme Court of Georgia held that a comprehensive tree protection ordinance enacted by DeKalb County's Board of Commissioners was not a zoning law. It therefore was not invalid for failure to comply with the enactment procedures contained in the state Zoning Procedures Law. *Greater Atlanta Homebuilders Ass'n v. DeKalb County*, 277 Ga. 295, 588 S.E.2d 694 (2003). The court found that the tree ordinance, "viewed as a whole, does not regulate according to zones or districts." 588 S.E.2d at 296. The court acknowledged that the ordinance did contain three references to zones or districts, but concluded, "These limited references to districts do not turn the ordinance into a zoning ordinance in light of the fact that the majority of the ordinance's requirements apply uniformly to all land and to all land disturbance activities regardless of the location of that land within the County." 588 S.E.2d at 696.

The court also denied a takings claim asserted by homebuilders against the ordinance. First of all, the court upheld a finding that the plaintiffs were not deprived of all economically viable use of their property. Secondly, the court rejected a *Dolan* "rough proportionality" claim. The court stated, "*Dolan* . . . is inapposite because it was an as-applied challenge to a City's requirement that an owner deed portions of her land to the city. In contrast, this case involves a facial challenge to a generally applicable land-use regulation." 588 S.E.2d at 697.

## **NOTED IN BRIEF**

### **A township zoning hearing board did not violate the Pennsylvania Sunshine Act when it engaged in private discussions during a recess in a public hearing.**

*Kennedy v. Upper Milford Tp. Zoning Hearing Bd.*, 834 A.2d 1104 (Pa. 2003). The public hearing concerned an application to increase the height of a communications tower. The Supreme Court of Pennsylvania held that for purposes of the 1998 Sunshine Act, the board's discussions during the recess were quasi-judicial deliberations during a private executive session, and were thus permitted by the statute. The court stated that zoning hearing boards are "quasi-judicial bodies which perform formal fact-finding and deliberative functions in a manner similar to that of a court . . . . Indeed, unlike municipal governing bodies, which in the zoning context, act in both a legislative and a quasi-judicial capacity, zoning hearing boards have only quasi-judicial authority." 834 A.2d at 1114. The court continued, "As an agency characterized predominantly by judicial characteristics and functions, it is particularly appropriate for zoning boards to deliberate privately. . . . To the extent that the Board members discussed, during the recess, the pending application looking toward the rendering of a decision, the discussions constituted deliberations by an agency possessed only of quasi-judicial authority within the intendment of the 1998 Sunshine Act." 834 A.2d at 1115, 1117. Furthermore, the court concluded that by the express terms of the statutory language at issue, "quasi-judicial deliberations conducted by a zoning hearing board in the matter of a contested application pending before the agency are a proper subject of an executive session from which the public can be lawfully excluded." 834 A.2d at 1119.

**A zoning board erred when it denied a certificate of nonconforming use to a landowner based upon an "unsubstantiated, technical requirement."** *Smalley v. Zoning Hearing Bd. of Middletown Tp.*, 834 A.2d 535 (Pa. 2003). The board had found that the landowner, who had a nonconforming in-home accounting office, had never established a lawful use because he did not secure a "use and occupancy permit." A trial court affirmed, but the Supreme Court of Pennsylvania found no evidence that there was such a permit requirement at the time the use was established. "This Court will not decide the case upon a fiction. We cannot simply assume that the use and occupancy permit requirement invoked by the Board existed in the township. And, if the requirement existed, it is something that should be simple for the ZHB . . . to document for us – particularly where the ZHB . . . suggest[s] that the 'requirement' is controlling." 834 A.2d at 542. The court concluded, "[Z]oning authorities cannot arbitrarily refuse to recognize the existence of a valid nonconforming use by invoking non-existent, technical restrictions. Accordingly, we find that appellant established a valid nonconforming use in this case, and the ZHB's conclusion otherwise, which is supported by no evidence, cannot stand." 834 A.2d at 543.

The court also found that the trial court abused its discretion and “clearly erred” when it asserted an alternative basis for denying the certificate of nonconforming use that was not based on the findings of the board.

**Coastal site plan reviews conducted by a planning and zoning commission under the Connecticut Coastal Management Act were not final decisions and were not subject to appeal.** Fort Trumbull Conservancy, LLC v. Planning and Zoning Com’n of City of New London, 266 Conn. 338, 832 A.2d 611 (2003). The Supreme Court of Connecticut held that a citizens’ group was not entitled to judicial review of the commission’s recommendations in favor of proposed roadway improvements and a public-access riverwalk. After reviewing the relevant statutes, the court found that the legislature “intended the coastal site plan review to be part of the planning or zoning application or . . . referral and not a separate review.” 832 A.2d at 620, 266 Conn. at 353. The court concluded that the commission’s actions were “merely nonbinding recommendations to the city council,” and were “not appealable final decisions.” 832 A.2d at 623, 266 Conn. at 359. The court also held that the group’s status as “environmental intervenors” did not confer the right to appeal an otherwise nonappealable decision.

**Published notice of proposed zoning amendments did not satisfy the requirements of Virginia statutes.** Glazebrook v. Board of Sup’rs of Spotsylvania County, 266 Va. 550, 587 S.E.2d 589 (2003). The Supreme Court of Virginia held that the notice did not contain a sufficient “descriptive summary.” Instead, the notice “merely stated that the ‘development standards’ for the specified zoning districts in question would be amended.” 587 S.E.2d at 592. The court stated: “No citizen could reasonably determine, from the notice, whether he or she was affected by the proposed amendments except in the most general sense of being located in a particular type of zoning district. Nor could a citizen determine whether the proposed amendments affected zoning issues that were of interest or concern to the citizen. Given the number of issues subsumed under the heading ‘development standards,’ using that heading as a descriptive summary fails to inform citizens of the universe of possible zoning ordinance amendments in any meaningful way.” 587 S.E.2d at 592-93. Because the notice was inadequate, the zoning amendments were void ab initio.

**In New Hampshire, the standard of judicial review is the same whether the underlying decision was made by a zoning board of adjustment or a planning board.**

“Although the language of the two provisions is somewhat different, we have consistently applied the same standard of review in appeals . . . the burden of proof is on the party seeking to set aside the decision of the zoning board or planning board to show that the decision is unlawful or unreasonable.” Bayson Properties, Inc. v. City of Lebanon, 150 N.H. 167, 834 A.2d 202, 206 (2003). Under that standard, the court refused to set aside a planning board’s denial of a site plan application for a grocery store and parking lot. On another issue, the court held that a party “claiming bias on the part of a planning board member must raise that issue before the board at the earliest possible time.” 834 A.2d at 207. In this case, the court found that the bias claim was not raised in a timely manner. “Waiting until after eleven hours of hearings held over three months to raise a concern about alleged bias of board members does not fulfill the plaintiffs’ obligation to raise the issue at the earliest possible time.” 834 A.2d at 208.

**A zoning ordinance allowing appeals from the board of adjustment to the county commission was preempted by South Dakota statutes.** In re Yankton County Com’n, 2003 SD 109, 670 N.W.2d 34 (S.D. 2003). In 2000, the state legislature repealed existing statutes and enacted a comprehensive statutory zoning scheme, which included a detailed statutory procedure for appealing from decisions of a board of adjustment. The statute authorized appeals from a board of adjustment to the circuit court, and not to the county commission. The Supreme Court of South Dakota concluded that the repeal of the prior statutes (which had allowed appeal to the county commission), and the enactment of the new comprehensive appellate scheme, “expressed legislative intent to completely occupy the field of taking board of adjustment appeals.” 670 N.W.2d at 40.

**A South Dakota county, planning the creation of a jail-work release facility, was not subject to the zoning ordinances of the city** where the facility was to be located. City of Rapid City v. Pennington County, 2003 SD 106, 669 N.W.2d 120 (S.D. 2003). The Supreme Court of South Dakota found that the jail facility fell within the meaning of a statutory provision that allowed a county to overrule a city planning commission in order to construct and maintain a “public building.” The court stated, “We believe that in enacting [the statute], the Legislature could foresee that the placement and construction of certain public facilities, like jails, may not be popular with city residents, so it provided a mechanism to authorize county construction of these facilities.” 669 N.W.2d at 123.

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