



OFFICE OF THE ATTORNEY GENERAL

LS 95-120

DEPARTMENT OF LEGAL AFFAIRS

THE CAPITOL

TALLAHASSEE, FLORIDA 32399-1050

ROBERT A. BUTTERWORTH
*Attorney General
State of Florida*

February 5, 1996

Mr. James L. Reinman
Melbourne City Attorney
1825 South Riverview Drive
Melbourne, Florida 32901

Dear Mr. Reinman:

On behalf of the City of Melbourne, you have asked whether the city may delegate to city staff the review of site plans that fall below a certain threshold of use or intensity and, if so, whether the site plan review is subject to the due process safeguards applicable to quasi-judicial acts of the governing body.

In sum, a city may delegate to city staff the review of site plans that fall below a certain threshold of use or intensity. While a review of such a site plan appears to be quasi-judicial in nature, it is more akin to an administrative application of the city's action that does not rise to the level of a rezoning of an individual tract of property such that the due process safeguards discussed in Board of County Commissioners of Brevard County v. Snyder¹ would be applicable.

You state that the city's current practice is for the city council to review site plans for "multifamily projects of twenty (20) or more units, all commercial developments of three (3) acres or more, all industrial developments of five (5) acres or more, mobile-home parks, institutional zoning and all conditional uses, and all plans for development of property within the Downtown Redevelopment Area." Site plans that fall below these thresholds of uses and densities are reviewed by city staff as "plot plans" pursuant to the building permit process.

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The question has arisen, however, whether the review of site plans is a matter that may be delegated by the city council to the staff. In Attorney General Opinion 94-58, this office was asked whether a city was authorized to delegate to an administrative board or entity its authority to rezone property within the city. The opinion concluded that while the enactment of original zoning ordinances has always been considered a legislative power that may not be delegated to a board or entity, conferring the authority or discretion to execute the policy of a zoning ordinance is an administrative or quasi-judicial function that may be delegated to administrative officials or boards.²

The conclusion and underlying rationale in Attorney General Opinion 94-58 would appear applicable to the situation you have presented. Thus, it would appear that the review of site plans is an administrative or quasi-judicial function that the City of Melbourne may delegate to city staff or an administrative entity.

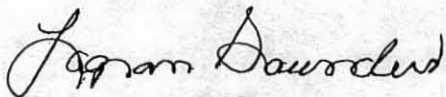
This office has taken the position that the conclusions in Jennings v. Dade County³ and Snyder are not applicable beyond land use and rezoning proceedings affecting a particular piece of property.⁴ As stated above, site plans that fall below specified thresholds of uses and densities are reviewed by city staff as "plot plans" pursuant to the building permit process. The Melbourne Code sets forth the criteria that must be met for plans to be approved by the permit process.⁵ It does not appear that the review of such plans under the building permit process involves an exercise of discretion on the part of city staff. Moreover, Article XXII of the Melbourne Code sets up a method of review for the building permit/plot plan approval process by the city's board of adjustment that provides procedural safeguards consistent with the requirements of Jennings and Snyder.

As previously noted by this office, the Snyder decision contains broad language that could be applied to numerous governmental actions that seek to implement governmental policies affecting an individual's property. This office, however, has declined to read the case in such an expansive manner, realizing the inordinate burden it would place on governmental entities in carrying out day-to-day duties.

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I trust these informal comments will be of assistance to you.

Sincerely,



Lagran Saunders
Assistant Attorney General

ALS/tgk

Enclosure

¹ 627 So. 2d 469, 474 (Fla. 1993).

² See, Board of County Commissioners of Brevard County v. Snyder, 627 So. 2d 469, 474 (Fla. 1993) (enactment of original zoning ordinance is legislative function) and State v. Roberts, 419 So. 2d 1164, 1167 (Fla. 2d DCA 1982), citing County of Pasco v. J. Dico, Inc., 343 So. 2d 83 (Fla. 2d DCA 1977) (power to zone involves legislative functions which cannot be delegated under constitutional principles of separation of powers). And see, 8A McQuillan Municipal Corporations (3d rev. ed. 1994) s. 25.215, pp. 166-167.

³ 589 So. 2d 1337 (Fla. 3d DCA 1991).

⁴ See, Op. Att'y Gen. Fla. 95-22 (1995) (review of plats to be recorded for compatibility with drainage district's criteria does not rise to level of quasi-judicial functions subject to increased procedural safeguards of Jennings and Snyder). And see, Informal Opinion to Mr. William E. Weller, City of Cocoa Beach, dated December 7, 1995 (copy enclosed) (consideration of dredge and fill permit pursuant to criteria set forth in city code is not the rezoning of a parcel of property that would be subject to the restrictions in Snyder).

⁵ See, Article XIX, s. 3(a)-(f), Melbourne Code.