

Land Use and Quasi-judicial Proceedings

Jason Gabriel, General Counsel

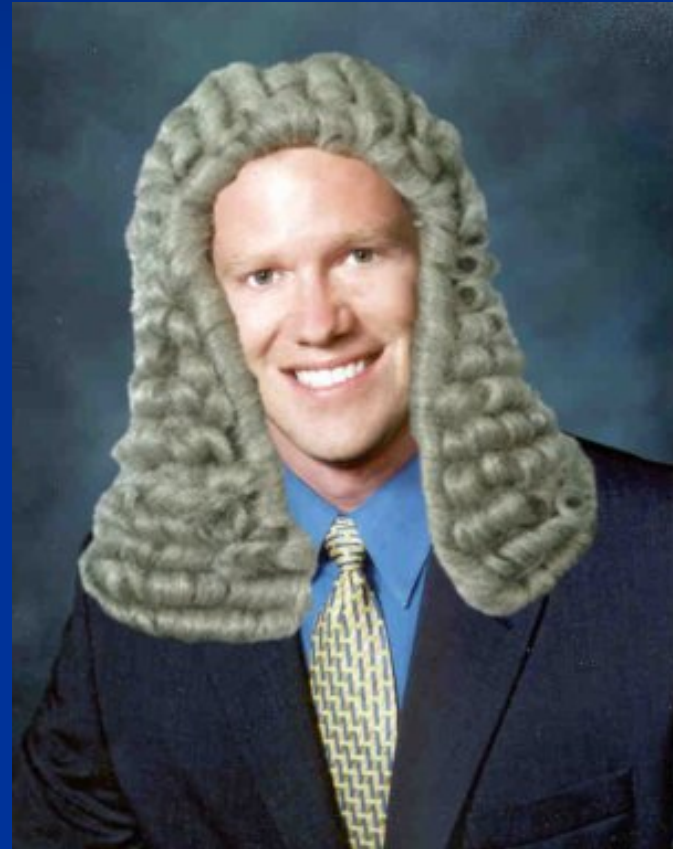
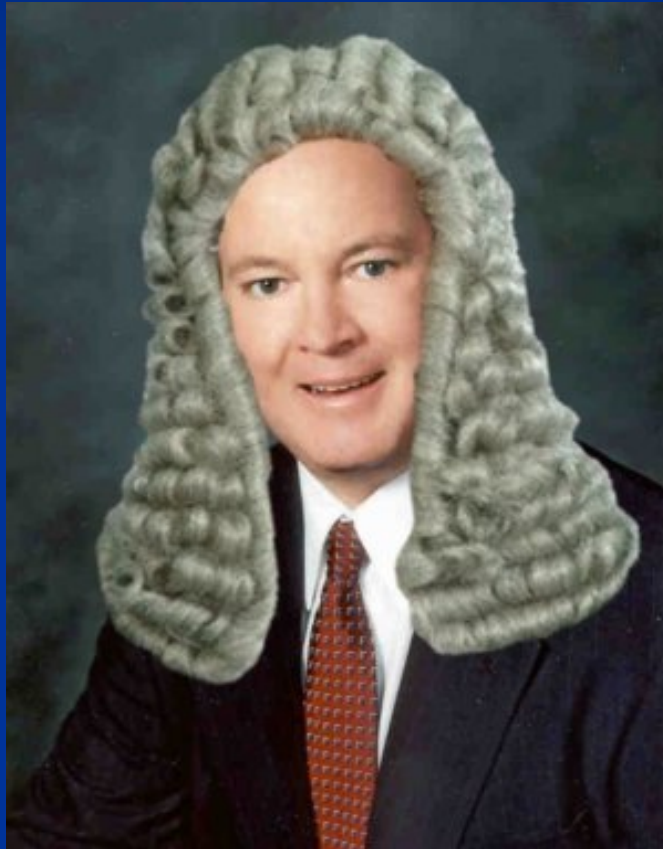
Paige H. Johnston, Assistant General Counsel

Susan C. Grandin, Assistant General Counsel

Are We Legislators...



Or Judges???



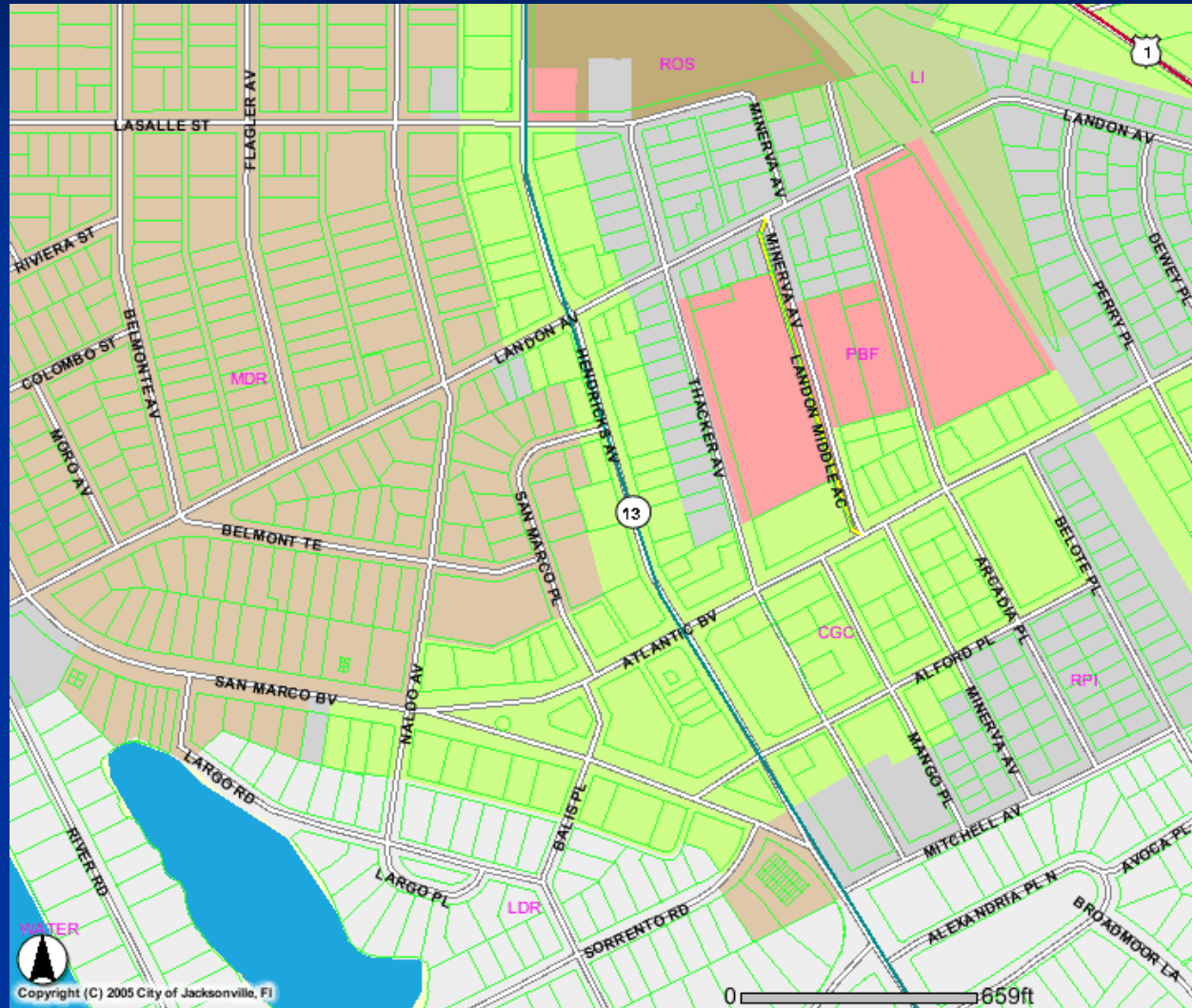
Comprehensive Plan

- Main land use policy document for City
- Goals
 - Objectives
 - Policies

Comprehensive Plan

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 - Text -elements
 - Future Land Use Map (FLUM)

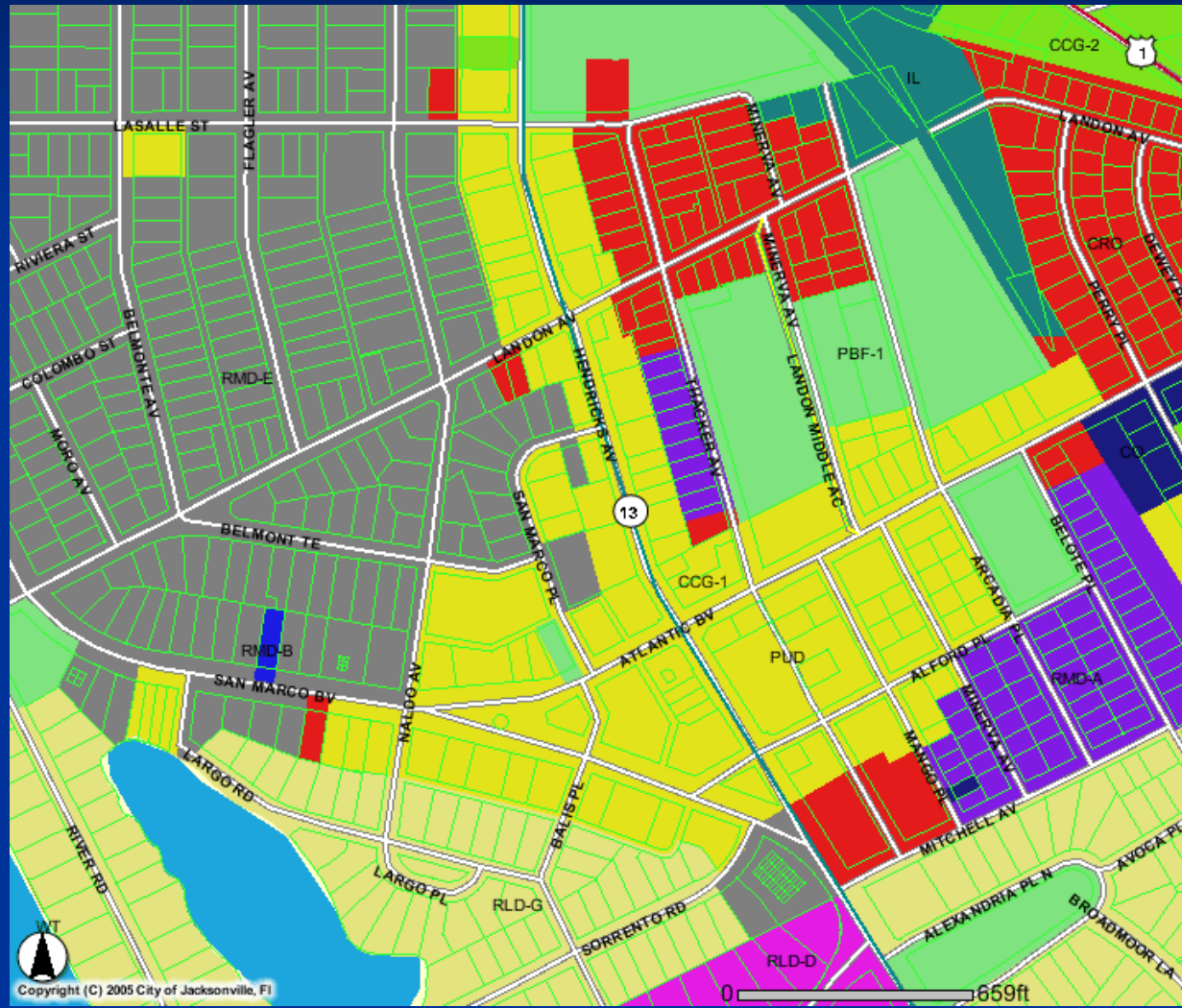
Future Land Use Map



Zoning Code

- Chapter 656 of Ordinance Code
 - Summary of allowed uses and development criteria in districts
- Municode.com

Zoning Atlas



Rezoning

- Change in Zoning District
 - Determines allowed uses and restrictions on use
- Conventional
- Planned Unit Development (PUD)

Zoning Waivers

- Relaxation of requirements for:
 - Street frontage width
 - Signs
 - Height
 - Size
 - Setback
 - Number of signs

Zoning Waivers - PC

- Minimum distance for liquor license locations, group home, etc.
- Must meet Zoning Code criteria
- Section 656.133, Zoning Code

Zoning Exceptions- PC

- Allows use that may not be appropriate at all locations within a zoning district
- Acceptable in some locations if certain criteria are met (Section 656.131(c))

Zoning Variances-PC

- Relaxation of Zoning Code where:
 - Not contrary to public interest
 - Conditions peculiar to property
 - Not result of actions of applicant
 - Literal enforcement = undue hardship
 - Section 656.132, Zoning Code

Certificates of Appropriateness-

- Jacksonville Historic Preservation Commission
- Alteration, demolition, relocation or new construction
 - Historic Districts
 - Designated landmarks

So What Difference
Does It Make?

Legislative or Quasi-judicial

- Legislative = Setting policy
- Quasi-judicial = Applying policy

Legislative

- Amending Ordinance Code
- Adopting changes to Comprehensive Plan:
 - Large and Small scale land use amendments;
 - Comp Plan Text amendments
 - Historic District Designation

Quasi-judicial

- Site specific rezonings
- Zoning variances, exceptions and waivers and appeals of same
- Appeals of COAs

Due Process Requirements

■ *Legislative*

- General statutory requirements for enacting ordinances

■ *Quasi-Judicial*

- Constitutional due process
 - Notice
 - Hearing

Substantial Competent Evidence

- *Quasi-judicial decisions must be based on substantial competent evidence*
- Substantial competent evidence is evidence a reasonable mind could accept as adequate to support a conclusion

Substantial Competent Evidence

- Substantial Competent evidence is:
 - Expert opinion
 - Based on education and experience
 - Application of education and experience to the case at hand
 - Must have a factual basis
 - Factual or expert testimony by laypersons
 - PDD Staff Report
 - Attorney argument is not substantial competent evidence

Ex parte Communications

■ *Legislative*

- Allowed

■ *Quasi-Judicial*

- Must be disclosed at beginning of hearing in detail (who, what, when, where, etc.)

Actions Inconsistent With Quasi-judicial Role

- Taking position on issue before hearing on evidence may result in recusal
- Inadequate notice to the public
- Non-disclosure of *ex parte* communications

Subject to Veto?

■ *Legislative*

■ Yes

■ *Quasi-Judicial*

■ No

*How would you like a
judge to handle your
case?*

Thank you!