Traska Strengthens Enforcement of the FLUEDRA Process

What the Fifth District's Decision Means for Property Owners and Developers

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Highlights

- The Fifth District held that an owner stated a viable claim to compel a special magistrate to issue the written recommendation required by the Florida Land Use and Environmental Dispute Resolution Act (FLUEDRA).
- Continued participation beyond the statute's 165-day timeframe may establish an agreement to extend the process, even without a written extension.
- A court may compel a magistrate to perform a statutory act but may not direct how a magistrate's discretion is exercised.
- The court reversed a dismissal and remanded for further proceedings. It did not direct approval of the owner's proposed use.

BOTTOM LINE
For owners and developers, the decision supports insisting on the procedural protections FLUEDRA provides while carefully documenting extensions and preserving judicial review.

How the Dispute Arose

The case concerned code enforcement involving an accessory structure constructed from shipping containers. The owner invoked FLUEDRA, and the parties participated in a mediation and hearing session. The parties later executed a tentative settlement subject to approval by the Brevard County Board of County Commissioners. Negotiations and Board consideration continued beyond the initial 165-day statutory period.

After the Board rejected the settlement, the County declined further participation, citing the expired period. The magistrate never issued a written recommendation. The owner sought mandamus relief. The trial court dismissed the complaint with prejudice without taking evidence on the disputed facts.

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What the Court Decided

The recommendation is a required step. The majority distinguished the duty to issue a recommendation from discretion over its substance. A court may compel a magistrate to perform a statutory act but may not direct how a magistrate's discretion is exercised.

An extension may be established by conduct. Section 70.51(23), Fla. Stat., requires parties' agreement to continue beyond 165 days but does not require a writing. In *Traska*, negotiating, signing a tentative settlement, and presenting it to the Board supported a factual inquiry into an implied extension. The appellate court did not conclusively decide that an extension existed or define its duration.

Disputed facts require evidence. Questions about the parties' agreement and completion of the hearing could not be resolved through competing representations at a non-evidentiary hearing. The majority allowed the owner to pursue a narrowed mandamus claim on remand. A dissent would have affirmed dismissal because the complaint and attachments did not establish an indisputable duty to continue.

Why Completion Matters

A written recommendation moves the dispute to the governmental action stage and helps determine the owner's next steps. Under section 70.51(21), Fla. Stat., the government generally has 45 days after receipt to accept, modify, or reject the recommendation. Inaction is treated as rejection unless that period is extended by agreement. The recommendation can also have statutory value in supporting later hardship relief and comprehensive plan analysis.

Completion also matters to deadlines. Section 70.51(10)(a), Fla. Stat., ties tolling of the time to seek judicial review of a local development order or enforcement action to governmental action on the recommendation. *Traska* supports resisting a claim that passage of day 165 alone conclusively ends the process in circumstances involving continued participation and an unissued recommendation. It does not establish unlimited tolling or resolve every possible termination scenario.

Practical Steps for Owners and Developers

- **When commencing a FLUEDRA proceeding, obtain written extensions before the deadline.** Identify the new endpoint, affected hearing and response dates, and the steps remaining. Evidence of an implied agreement should be a fallback rather than the planned approach.
- **Document the hearing.** Record when mediation ends, whether the merits hearing proceeds and when it concludes. Section 70.51(19), Fla. Stat., generally requires the written recommendation within 14 days after the hearing concludes.
- **Address a rejected settlement in advance.** A tentative agreement should specify how unresolved issues return to the magistrate if governing body approval is denied, with an agreed schedule for completion.

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- **Preserve review rights separately.** Track the underlying review deadline and time remaining, the recommendation and governmental action dates, and any available-use decision required under subsection (22). Do not assume a fresh appeal period or that a general reservation tolls every claim.
- **Seek focused relief when the process stalls.** A written demand should identify the overdue statutory act. Evaluate mandamus against the official responsible for that act without asking the court to dictate the recommendation or compel a settlement.

What Not to Overread

Traska strengthens the procedural value of FLUEDRA in a land use or enforcement dispute. It does not establish that a challenged order is unreasonable, authorize the magistrate to issue development permits, or satisfy the independent requirements of a Bert Harris or constitutional claim. The substantive record remains essential.

Sources

1. Decision: *Traska v. Board of County Commissioners of Brevard County*, No. 5D2025-1127 (Fla. 5th DCA Sept. 10, 2026), 2026 WL 2660145

2. Section 70.51, Florida Statutes (2026)

About Shubin Law Group

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