

Supreme Court of Florida

No. 67,092

STEPHEN B. IRVINE, Petitioner,

vs.

DUVAL COUNTY PLANNING COMMISSION, ET AL., Respondents.

[October 2, 1986]

SHAW, J.

We review Irvine v. Duval County Planning Commission, 466 So.2d 357 (Fla. 1st DCA 1985), because of direct and express conflict with Rural New Town, Inc. v. Palm Beach County, 315 So.2d 478 (Fla. 4th DCA 1975). Art. V, § 3(b)(3), Fla. Const.

The facts and issues of law are comprehensively set forth in the majority and dissenting opinions below. On the facts and circumstances of the case, we agree with Judge Zehmer (dissenting) that once the petitioner met the initial burden of showing that his application met the statutory criteria for granting such exceptions, "the burden was upon the Planning Commission to demonstrate, by competent substantial evidence presented at the hearing and made a part of the record, that the [special] exception requested by petitioner did not meet such standards and was, in fact, adverse to the public interest." Irvine, 466 So.2d at 364. In our view, the Planning Commission failed to carry its burden. We quash the decision below and remand for further proceedings consistent with this opinion.

It is so ordered.

MCDONALD, C.J., and ADKINS, BOYD, OVERTON, EHRLICH and BARKETT, JJ., Concur

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

Application for Review of the Decision of the District Court
of Appeal - Direct Conflict of Decisions

First District - Case No. AX-455

Barry A. Bobek of Barry A. Bobek, P.A., Jacksonville, Florida; and
Stephen A. Hould of Flowers, Hould, Jensen & Westling, Jacksonville,
Florida,

for Petitioner

Gerald A. Schneider, General Counsel, and Robert G. Alexander,
Assistant Counsel, Jacksonville, Florida,

for Respondents