

SUPREME COURT OF FLORIDA

FILED

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SEP 18 1986

CLERK, SUPREME COURT

By pl Deputy Clerk CASE NO: 69,035

DEPARTMENT OF TRANSPORTATION

Petitioner,

v.

DR. & MRS. AUGUSTO LOPEZ-TORRES,  
TOWN OF OCEAN RIDGE, and AUDUBON  
SOCIETY OF THE EVERGLADES,

Respondents.

AMICUS CURIAE BRIEF

IN SUPPORT OF THE PETITIONER BY  
THE CITY OF BOYNTON BEACH, FLORIDA

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## PRELIMINARY STATEMENT

Petitioner, the DEPARTMENT OF TRANSPORTATION, was the Respondent in the Division of Administrative Hearings proceeding and the appellee before the District Court of Appeal.

Respondents, DR. and MRS. AUGUSTO LOPEZ-TORRES, were the Petitioners and Respondents the TOWN OF OCEAN RIDGE and AUDUBON SOCIETY OF THE EVERGLADES were Intervenors in the proceedings before the Division of Administrative Hearings and the DEPARTMENT OF TRANSPORTATION. DR. and MRS. LOPEZ-TORRES and the TOWN OF OCEAN RIDGE were appellants before the District Court of Appeal.

Before this Honorable Court, all parties will be referred to name.

The symbol "R" followed by page numbers shall refer to the Record on Appeal.

## STATEMENT OF THE CASE

In March of 1984, DR. and MRS. AUGUSTO LOPEZ-TORRES, filed a Request for Administration Hearing with the DEPARTMENT OF TRANSPORTATION which asserted that they were adversely affected by the decision to construct a bridge in Boynton Beach, Florida. (R: 23) The Department of Administrative Hearings scheduled a hearing and the issues to be addressed were "whether respondents proposed construction of a new bridge in Boynton Beach, Florida will destroy the quality of the residential property of petitioner and destroy environmentally sensitive property immediately adjacent to petitioner's residence". (R:32)

The TOWN OF OCEAN RIDGE and the AUDUBON SOCIETY OF THE EVERGLADES learned of the hearing were permitted to intervene and attended the hearing. (R: 33, 36 and 85)

Notice of the Division of Administrative Hearings proceedings was never given to the CITY OF BOYNTON BEACH (R: 296) nor did the CITY OF BOYNTON BEACH participate in the hearing in any way, although they have long supported the bridge location selected by the DEPARTMENT OF TRANSPORTATION.

By stipulation, the parties that were before the Department of Administrative Hearings agreed that the August 1984 hearing would address only the Motion for Entry of Summary Recommended Order made

by DR. and MRS. LOPEZ-TORRES on August 20, 1984 upon an issue of law. (R: 76) That motion requested that the DEPARTMENT OF TRANSPORTATION be prohibited from undertaking any development inconsistent with the Comprehensive Plan of the TOWN OF OCEAN RIDGE. (R: 37-75)

At the hearing held August 30, 1984, the Hearing Officer ordered the parties to submit a written statement of the facts describing the bridge project, any additional portions of the TOWN OF OCEAN RIDGE'S comprehensive plans and additional memoranda of law. (R: 18-21) No objection was made by any party to the Statement of Facts outlining the Boynton Beach Bridge Project and the exhibits submitted by the DEPARTMENT OF TRANSPORTATION. (R: 92-275)

The Hearing Officer recommended a ruling in favor of DR. and MRS. LOPEZ-TORRES and concluded that the construction of the Boynton Beach Bridge was inconsistent with and therefore precluded by the TOWN OF OCEAN RIDGE comprehensive plan. (R: 276-284)

Prior to the entry of a final order, the DEPARTMENT OF TRANSPORTATION received numerous ex parte communications which were made a part of the record, pursuant to 120.66, Fla. Stat. (1983). (R: 287-302) Included in such communications were letters from the President of the Greater Boynton Beach Chamber of Commerce and the City Manager of Boynton Beach. (R: 289; 296-8) There was no objection to the inclusion of these documents in the record.

The Secretary of the Department of Transportation, reviewed the record and entered a Final Order which adopted the findings of fact set forth by the Hearing Officer, made the additional finding that the comprehensive plan of the CITY OF BOYNTON BEACH provides for the relocation of the bridge, and rejected the Hearing Officer's conclusions of law. (R: 303-317)

Notice of Appeal of the Final Order was filed by DR. and MRS. LOPEZ-TORRES, the TOWN OF OCEAN RIDGE and the AUDUBON SOCIETY OF THE EVERGLADES. (R: 321) The issues presented by the parties to the Fourth District were: 1) whether the Comprehensive Planning Act can be construed in pari materia with the State Transportation Code to give significant legal effect to both; 2) whether the proposed Boynton Beach Bridge, with approach road, is inconsistent with and therefore precluded by the local comprehensive plan of the Town of Ocean Ridge; and 3) whether balancing of interests is the appropriate legal test in cases as here where there exists a conflict in transportation decisions and plans of state and local governmental entities.

DR. and MRS. LOPEZ-TORRES, the TOWN OF OCEAN RIDGE and the AUDUBON SOCIETY OF THE EVERGLADES stated in their Initial Brief below that the facts were not in dispute.

The Fourth District reversed the Final Order and remanded for a full evidentiary hearing pursuant to 120.57(1), however, the issues

set forth by the parties were not addressed directly. (A: 11) The grounds for the Fourth District's reversal were that: DR. and MRS. LOPEZ-TORRES were denied due process as they never received a full hearing on the merits; and by reevaluating the evidence, the Court determined that the DEPARTMENT OF TRANSPORTATION decision to relocate the Boynton Beach bridge was clearly erroneous and constituted an abuse of discretion. (A: 1-11) Additionally, the Fourth District certified three questions to this Court. (A: 11-12)

Judge Anstead stated in his dissenting opinion that there was no demonstration that the DEPARTMENT OF TRANSPORTATION "failed to comply with the relevant statutory scheme authorizing it to plan for and construct the bridge in question." (A" 13-15)

The Court accepted jurisdiction based upon the DEPARTMENT OF TRANSPORTATION'S Notice to Invoke Discretionary Jurisdiction dated July 9, 1986 and also granted the CITY OF BOYNTON BEACH'S request to file an Amicus Curiae Brief.



## STATEMENT OF THE FACTS

There has been a long and continuous controversy surrounding construction of the bridge that is the subject of this litigation. However, there has never been a dispute concerning the facts in this case.

The City of Boynton Beach lies on one side of the Intracoastal Waterway in Palm Beach County, Florida and directly across the Intracoastal Waterway, lies the Town of Ocean Ridge. The two municipalities are now joined by a two-lane bridge at Ocean Avenue. (R: 165, 167, 174)

For over ten years, the TOWN OF OCEAN RIDGE has opposed the relocation of the bridge to Northeast Second Avenue. At that time, the DEPARTMENT OF TRANSPORTATION held a Highway Corridor Location and Design Hearing in accordance with the Federal Aid Highway Act 23 U.S.C. 101 and 334.211, Fla. Stat. (1975). (R: 96-162) At the hearing, the Town Manager of Ocean Ridge and residents of both Ocean Ridge and Boynton Beach expressed support for the reconstruction of the bridge at its existing location. Other residents of Ocean Ridge and Boynton Beach expressed support for the relocation of the bridge to Northeast Second Avenue, seven hundred feet to the north. (R: 96-162)

The CITY OF BOYNTON BEACH has long supported the construction of the bridge at the new Northeast Second Avenue location. In 1975, the City Council of Boynton Beach passed Resolution No. 75-SS which states in part:

"That the Department of Transportation of the State of Florida be and is hereby requested to take immediate action to provide for a new high-silhouette bridge over the Intracoastal Waterway, continuing the approach to the bridge eastward from the juncture of U. S. Highway #1 and State Road #804 to A1A as aforesaid, in the City of Boynton Beach."

In August of 1977, the United States Department and Federal Highway Administration (FHWA) published a Final Negative Declaration (FND) for the replacement of the existing bridge with a new four-lane bridge in the location selected by the DEPARTMENT OF TRANSPORTATION. (R: 165)

In 1977, the CITY OF BOYNTON BEACH adopted a local comprehensive plan which calls for the relocation of the Ocean Avenue bridge to Northeast Second Avenue. (R: 296-298) Additionally, the relocation of the bridge to Northeast Second Avenue would be consistent with Palm Beach County's comprehensive plan. (R: 222 & 298)

In 1982 the TOWN OF OCEAN RIDGE adopted a local comprehensive plan which in part contains a recommendation to "continue to oppose construction of the Second Avenue bridge in an effort to discourage increased traffic congestion and safety hazards in the Town." (R: 60)

In August, 1983, after continuous local controversy over the bridge, the DEPARTMENT OF TRANSPORTATION undertook a study to determine whether a replacement bridge could be designed and built at the Ocean Avenue location. (R: 93-94) The result of the study was a Value Engineering Report (R: 266-274) which concluded that although a four-lane bridge could feasibly be built on the existing alignment, in view of all the circumstances and compromises in engineering necessary to to so, the study recommended that the bridge be relocated to Northeast Second Avenue.

After reviewing the Value Engineering report, the Secretary of the Department of Transportation, by memo dated March 16, 1984, reaffirmed the decision to relocate the bridge to Boynton Beach Boulevard (formerly Northeast Second Avenue). (R: 275)

**POINTS ON APPEAL**

**POINT ONE**

THE LEGISLATURE HAS PREEMPTED MUNICIPALITIES FROM EXERCISING CONTROL OVER THE ESTABLISHMENT OF STATE ROADS AND BRIDGES

**POINT TWO**

THE DOT HAS THE AUTHORITY TO ROUTE A STATE ROAD BRIDGE THROUGH OR INTO A MUNICIPALITY IN A CORRIDOR THAT SPECIFICALLY CONFLICTS WITH THE MUNICIPALITY'S COMPREHENSIVE GROWTH PLAN

**POINT THREE**

THE PROCEDURAL STANDARDS EMPLOYED IN THE CASE AT BAR WERE SUFFICIENT TO JUSTIFY THE DOT'S DECISION ON THE MERITS

## POINT ONE

### THE LEGISLATURE HAS PREEMPTED MUNICIPALITIES FROM EXERCISING CONTROL OVER THE ESTABLISHMENT OF STATE ROADS AND BRIDGES

The CITY OF BOYNTON BEACH supports the conclusion of the Secretary of the Department of Transportation that the Department can and must decide the location of state bridges, even in the event that one of the affected municipalities opposes such construction. The objection to the construction of the bridge on the grounds that it appears to be inconsistent with the Comprehensive Plan of the TOWN OF OCEAN RIDGE must fail. That plan was not adopted until 1982 (R 280), well after the decision by the DEPARTMENT OF TRANSPORTATION and well after the Comprehensive Plan was adopted by the CITY OF BOYNTON BEACH.

The clearest answer to the issues presented by this appeal lies in the common sense and plain meaning of the Florida Transportation Code and Local Comprehensive Planning Act. The former was intended to regulate statewide transportation; the latter proposed to regulate local development. While these two purposes may overlap, a bridge which would connect two state roads must be a matter of state decision making and a duty of the state.

The DEPARTMENT OF TRANSPORTATION has been given jurisdiction by the Legislature over matters of road construction and maintenance in the State's transportation systems. The record in this case reflects

that the DEPARTMENT OF TRANSPORTATION spent a considerable amount of time in order to make the decision regarding the proposed bridge (R92-95). The proposed bridge would have approach roads which would connect two state roads (State Road 5 to State Road A1A), and as such would be part of the state transportation system. (R 279.)

In State v. Florida State Improvement Commission, 75 So.2d 1 (Fla. 1954), the Florida Supreme Court examined the validation of bonds issued for the financing of a bridge. The Court discussed at length the authority to construct roads and bridges and stated as follows:

The establishment, continuance, and location of roads and bridges is vested in the discretion of administrative agencies. The sites or location of public improvements have always been questions over which men differed. Experience has demonstrated that squabbles and disputes over locations and sites of public improvements always come into being at the very contemplation of a major public improvement. It is true with reference to courthouses, schools, playgrounds, parks, and particularly with reference to roads and bridges... The primary purpose of building roads and bridges is to serve the general public rather than a particular individual or a particular part of a community. (Emphasis added.) (At page 4.)

The Court further stated:

In the planning and construction of roads and bridges discretion must be placed somewhere. The needs of communities, counties and the state may be considered by these agencies in which discretion is vested. It is well settled in this state that the authority of the Legislature over roads and bridges is plenary unless restricted or forbidden by some particular provision of the Constitution of the United States or of the State of Florida. (At page 3.) (Emphasis added.)

The supremacy of the DEPARTMENT OF TRANSPORTATION action over local action with respect to the location of state bridges is still the law.

In the case of Department of Transportation v. Hanes, 448 So.2d 1130 (Fla. 1st DCA 1984), the Court discussed the status of the Department of Transportation and, regarding its responsibilities, the Court noted:

DOT is responsible for coordination of the total highway and road system within the state, including the operation and maintenance of roads and culverts, drains, sluices, ditches, etc. See §334.11; 334.03(7); 335.04(4), Florida Statutes. DOT is also charged with a responsibility for anticipating future needs within the total environment of a community. (At page 1132.)

A review of the applicable statutes yields the conclusion that the DEPARTMENT OF TRANSPORTATION is legally charged with the construction of the state highway system. Section 334.044, Florida Statutes, delineates the power and duties of the Department, as follows:

(10) To develop and adopt uniform minimum standards and criteria for the design, construction, maintenance, and operation of public roads pursuant to the provisions of s. 336.045.

....

(12) To coordinate the planning of the development of public transportation facilities within the state and the provision of related transportation services as authorized by law.

(13) To designate existing, and to plan proposed transportation facilities as part of the State

Highway System and to construct, maintain, and operate such facilities. (Emphasis added.)

Section 334.046(1)(b), Florida Statutes, directly addresses the construction of bridges, and states:

(b) To meet the annual needs for resurfacing of the State Highway System, including repair and replacement of bridges on the system. (Emphasis added.)

Section 334.035, Florida Statutes, states:

The purpose of the Florida Transportation Code is to establish the responsibilities of the state, the counties, and the municipalities in the planning and development of the transportation systems serving the people of the state and to assure the development of an integrated, balanced statewide transportation system. This code is necessary for the protection of the public safety and general welfare and for the preservation of all transportation facilities in the state. The chapters in the code shall be considered components of the total code, and the provisions therein, unless expressly limited in scope, shall apply to all chapters.

Section 335.02, Florida Statutes, also supports the view that the Department of Transportation is responsible for the state highway system:

(1) The department shall have the authority to locate and designate certain roads as part of the State Highway System and to construct and maintain them with funds available to the department. Any road when so located and so designated shall become the property of the state and shall be under the jurisdiction and control of the department.

Section 339.155, Florida Statutes, directs coordination in the development of the Florida Transportation Plan. Boynton Beach contends that such coordination warrants central control. The language of the Florida Transportation Code expressly assigns to the



Department of Transportation and to no other agency the responsibility for statewide transportation. Because of such preemption, local law cannot negate the meaning and intent of the Department of Transportation action.

Even in areas where there is no express preemption, the laws of a municipality which would conflict with state law over the same subject are impermissible.

The Third District Court of Appeal, in City of Miami Beach v. Rocio Corp., 404 So.2d 1066 (Fla. 3rd DCA 1981), discussed conflicts between municipal law and the Florida Condominium Act, concluding that state law would control. Similarly, in Board of Trustees of the City of Dunedin Municipal Firefighters Retirement System v. Dulje, 453 So.2d 177 (Fla. 2nd DCA 1984), the Second District Court of Appeal reached the conclusion that state retirement legislation would be controlling over municipal regulations concerning retirement.

To consider a local ordinance pursuant to Chapter 163, Part II, Florida Statutes, as having superior status over the Florida Transportation Code in the area of bridge location would be tantamount to stripping the Department of Transportation of its powers.

## POINT TWO

THE DOT HAS THE AUTHORITY TO ROUTE A STATE ROAD BRIDGE THROUGH OR INTO A MUNICIPALITY IN A CORRIDOR THAT SPECIFICALLY CONFLICTS WITH THE MUNICIPALITY'S COMPREHENSIVE GROWTH PLAN

The location of state bridges is not an appropriate subject for local planning. The location of state highways is not an appropriate subject for local planning.

The proposed construction of approach roads for the bridge, that has been under consideration for over ten years, would connect two state roads, not two local streets (R 279). Since the proposal calls for a location partly in the CITY OF BOYNTON BEACH and partly in the TOWN OF OCEAN RIDGE, and entirely within the state highway system, Chapter 163, Florida Statutes, is not controlling.

It is the DEPARTMENT OF TRANSPORTATION'S duty, and no one else's, to determine matters relating to the state highway system. If the view supported by the TOWN OF OCEAN RIDGE in this case were correct, there would be no way to resolve conflicts between two local planning acts.

The CITY OF BOYNTON BEACH agrees that local comprehensive planning is important, and that the provisions of Chapter 163, Part II, Florida Statutes, do authorize a city to regulate growth and development within its area. The CITY OF BOYNTON BEACH will undoubtedly argue at length over decisions of the DEPARTMENT OF TRANSPORTATION in the future. As stated in Webb v. Hill, 75 So.2d 596 (Fla. 1954):

The board of municipalities and counties of the state are vested with no authority, duty or discretion with reference to the location, designation or construction of the state roads comprising the state highway system. They may argue, take sides, protest, or attempt to persuade of use influence for the special benefit of their property or municipality, but they have no lawful authority. The authority to exercise discretion and make decisions is vested in the state road department by the Legislature.

The bridge in question directly affects the CITY OF BOYNTON BEACH (since part of the bridge would be located therein), In addition, the approach road that is proposed would connect two state roads, and thereby be part of the state highway system.

The Local Comprehensive Planning Act provides for municipalities to plan within their boundaries. The obvious purpose of the Act is for planning that affects each respective municipality. A proposed bridge which would be part of the state road system obviously represents a different situation. This is particularly the case since the bridge would be located in part in two different municipalities.

The TOWN OF OCEAN RIDGE would strongly urge the significance of local control and local planning. But, does such importance include only the TOWN OF OCEAN RIDGE? The CITY OF BOYNTON BEACH submits that its own Comprehensive Plan requires the construction of the bridge (R 289, 296). The following is an excerpt from a letter written by Mr. Peter Cheney, City Manager for the CITY OF BOYNTON BEACH, to the Department of Transportation:

The City of Boynton Beach was not a party to this hearing and was not in any way notified or aware that the issue was being heard, even though Boynton Beach is as much involved with this issue as is the Town of Ocean Ridge . . .

However, I want to bring to your attention the fact that the bridge is included as a part of the City of Boynton Beach's Comprehensive Plan and is also an important part of Palm Beach County's plans for roadway improvements which were prepared and developed as a part of the West Palm Beach Urban Area Transportation Study, which was adopted by the Metropolitan Planning Organization. It is clear, therefore, that the bridge is part of an overall regional transportation system plan. The City of Boynton Beach has included the bridge in its plan and recognizes the need and appropriateness for the City to prepare its local plans with proper recognition of regional planning issues so that the City's plan is consistent and compatible with key regional planning issues and proposals. Additional City Planning has been based on these plans, which show the new bridge location . . . (R 296) (Emphasis added)

The TOWN OF OCEAN RIDGE suggests no avenue for the resolution of such a conflict. One municipality's plans are just as important as another's. The Legislature has resolved the matter and given the Department of Transportation the authority to build statewide highways and bridges. The CITY OF BOYNTON BEACH is not urging that

the DEPARTMENT OF TRANSPORTATION should choose one municipality's plans over another. However, the CITY OF BOYNTON BEACH does urge this Court to consider the necessity of having one entity -- the State Department of Transportation -- control the location of state roads. Since the DEPARTMENT OF TRANSPORTATION is the decision maker in Florida regarding state highways and bridges, the CITY OF OCEAN RIDGE cannot make the determination of where to locate a state bridge.

Both the Transportation Code and the Local Comprehensive Planning Act should be read together by this Court to resolve the questions posed here. We submit that the answer lies in §163.3211, Florida Statutes (1983):

Where this act may be in conflict with any other provision or provisions of law relating to local governments having authority to regulate the development of land, the provisions of this act shall govern unless the provisions of this act are met or exceeded by other provision or provisions of law relating to local government. Nothing in this act is intended to withdraw or diminish any legal powers or responsibilities of state agencies or change any requirement of existing law that local regulations comply with state standards or rules. (Emphasis added.)

One important consideration in the review of this case is that §163.3167 (4), Florida Statutes, provides that a municipality that did not have a Comprehensive Plan prior to 1979 must abide by the county comprehensive plan. In this case, the county plan allows for the bridge to be constructed (R 222). 163.3167 (4) provides as follows:

(4) When a municipality within a county under subsection (2) or when a special district or local governmental entity under subsection (3) has not prepared and adopted a comprehensive plan by July 1, 1979, as required by this act, the comprehensive plan of the county in which such municipality or special district or local governmental entity is situate shall govern. Such county shall have the responsibility to specifically review the application of its comprehensive plan to such municipality or special district or local governmental entity by not later than one year from the date by which such other local government was required to adopt its comprehensive plan.

The hearing officer's Recommended Order, in undisputed findings of fact, declared that Ocean Ridge had adopted its Comprehensive Plan in 1982. Since any plan adopted after 1979 has to abide by county planning, Appellants' argument that Ocean Ridge's plan is controlling lacks merit.

The Ocean Ridge Comprehensive Plan evidently missed the 1979 deadline, thus necessitating that Ocean Ridge be consistent with the county plan. Since the county plan would permit the proposed bridge, the fact that Ocean Ridge excludes the bridge is meaningless. (R 222, 280.)

### POINT THREE

THE PROCEDURAL STANDARDS EMPLOYED IN THE  
CASE AT BAR WERE SUFFICIENT TO JUSTIFY  
THE DOT'S DECISION ON THE MERITS

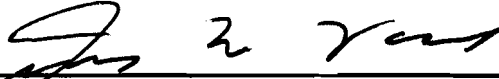
None of the parties that were before the Department of Administrative Hearings should be heard to complain regarding the procedural standards employed in this case. In fact, all of those parties had countless opportunities to express their views, all of those parties did express their views and the decision being reviewed is based upon stipulations of fact and documents submitted without objection.

Furthermore, this issue is entirely beside the point that this Court should address. The issue is one of law, not fact. As noted by Judge Anstead in his dissent below, reversal for a hearing to justify the decision of the Department of Transportation would leave numerous questions unanswered.

"[W]hat are the rules of the game? What sort of a hearing is to be held? Who will have the burden to prove what, and by what standard should a decision be made?"

**CONCLUSION**

The City of Boynton Beach, Amicus Curiae in this cause, respectfully requests that this Honorable Court respond affirmatively to the questions certified by the District Court of Appeal and reinstate the Final Order of the Department of Transportation


  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished to MAXINE F. FERGUSON, Esquire, Department of Transportation, Haydon Burns Building, MS 58, 605 Suwannee Street, Tallahassee, Florida 32301 by U. S. Mail and to HUGH MACMILLAN, JR., Esquire, Attorney for Dr. & Mrs. Lopez-Torres, 189 Bradley Place, Palm Beach, Florida 33480; JOHN C. RANDOLPH, Esquire, Attorney for Town of Ocean Ridge, P. O. Drawer "M", West Palm Beach, Florida 33402; JAMES R. BRINDELL, Esquire, Attorney for Audobon Society of the Everglades, P. O. Box 71, Palm Beach, Florida 33480; and J. MICHAEL HAYGOOD, Esquire, Attorney for Boynton Beach Community Redevelopment Agency, 1675 Palm Beach Lakes Blvd., Suite 905, West Palm Beach, Florida 33401, by hand delivery this 17th day of September, 1986, .

  
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