IN THE SUPREME COURT
STATE OF FLORIDA

GENE BROWN, d/b/a
LEISURE PROPERTIES, LTD.,
and LEISURE PROPERTIES, LTD.,
a Florida limited partnership,

Petitioners,

CASE NO. 74,531

vs.

APALACHEE REGIONAL
PLANNING COUNCIL,

Respondent.

ANSWER BRIEF OF RESPONDENT

On Discretionary Review Pursuant to a Question
of Great Public Importance Certified by
the First District Court of Appeal

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

A. CASES

D. FLORIDA ADMINISTRATIVE CODE:

E. OTHER AUTHORITIES:

PRELIMINARY STATEMENT

1. Defendants/Appellees below, GENE BROWN, d/b/a LEISURE PROPERTIES, LTD., and LEISURE PROPERTIES, LTD., a Florida limited partnership, are herein referred to as "Petitioners."

2. Plaintiff/Appellant below, APALACHEE REGIONAL PLANNING COUNCIL, is herein referred to as "Respondent."

3. All references herein to the Florida Statutes, whether by section or chapter, are to the Florida Statutes (1981), unless otherwise indicated.

4. The specific statutory authorities for adoption of Ch. 29L-2.02, Fla. Admin. Code, as amended October 14, 1981, include Sections 163.01, 380.06 and 380.07, and Ch. 160, Fla. Stat. (1981), and are herein referred to collectively as the "Statutory Authorities" or "Statutes."

5. All references to the Florida Administrative Code are to the 1981 compilation, unless otherwise indicated.

6. Ch. 29L-2.02, Fla. Admin. Code, as amended October 14, 1981, is herein referred to as "Rule 29L-2.02" or "the Rule."

7. The Interlocal Contract Creating the Apalachee Regional Planning Council, dated September 4, 1979, made by and among the Boards of County Commissioners of Calhoun County, Franklin County, Gadsden County, Gulf County, Holmes County, Jackson County, Leon County, Liberty County, Wakulla County, and Washington County is referred to herein as the "Interlocal Agreement." (DCAR. 110-122) (Appendix D)

8. All references to the record in the District Court of Appeal are indicated by page number, thus: "DCAR. ____."

9. All references to the record on appeal are indicated by page number, thus: "R. ___." The District Court's opinion is attached hereto and designated as Appendix A. (R. 1-8)

STATEMENT OF THE CASE AND FACTS

The Respondent hereby adopts the Statement of the Case and Facts as set forth by Petitioners in their Initial Brief.

ISSUE ON APPEAL

WHETHER THE POWER TO SET AND COLLECT FEES FOR DEVELOPMENT OF REGIONAL IMPACT REVIEW COSTS, AS EXERCISED PURSUANT TO RULE 29L-2.02, WAS PROPERLY DELEGATED TO THE APALACHEE REGIONAL PLANNING COUNCIL BY THE FLORIDA LEGISLATURE.

SUMMARY OF ARGUMENT

The First District Court of Appeal found the provisions of Chapters **160** (now codified as Ch. 186, Fla. Stat. (1987)), **163** and **380**, Fla. Stat., valid statutory authority for Rule 29L-2.02. Apalachee Regional Planning Council v. Brown, **546** So.2d **451** (Fla. 1st DCA 1989). The legislative purpose expressed in the Statutes is a valid exercise of the police power for regulation of development and protection of the environment.

Primary responsibility for review of developments of regional impact falls upon regional planning agencies such as Respondent. The legislature has determined that certain fees are justifiable in this review process, and has authorized Respondent to charge such fees "when appropriate." As the First District Court found, fee making authority is an essential, but technical aspect of the review process. (R. **6)** The determination of appropriate fees under Rule 29L-2.02 is based directly upon the cost of the review.

The First District Court correctly perceived that this case falls within the public policy exception to the strict application of the nondelegation rule, and that specific guidelines are therefore not required. (R. 4-5) The Statutory Authorities deal with the exercise of the state's police power for the protection of the health and welfare of the citizenry. Thus, the Statutes will pass constitutional muster because it is possible to glean sufficient guidance in establishing fees based

upon a general reading thereof. Respondent's fee making authority is guided by the legislative purposes stated in the Statutory Authorities, and by the specific regulatory scheme embodied in Ch. 380, Fla. Stat.

The rulemaking process has provided protection against the arbitrary and unreasonable exercise of fee authority. Rule 29L-2.02 has been reviewed and found acceptable by the Joint Administrative Procedures Committee of the legislature, and operated satisfactorily for a number of years. Judicial review is available to those who feel that the amount of a fee is inappropriate or unreasonable.

Although the Rule at issue in this cause was not directly affected, Respondent's authority to assess and collect fees for review of DRIs was recently confirmed and ratified by the legislature by passage of Chs. 89-375 and 89-536 which amend Section 380.06, Fla. Stat. (1987). By adding subsection 380.06(23)(d), the Legislature has expressly authorized the assessment and collection of fees to recover the costs of development of regional impact review by agencies such as Respondent, and has ratified the current rules of all regional planning agencies on this subject.

Several rules of statutory interpretation are applicable. Each rule leads to the conclusion that Respondent's exercise of authority in determining and assessing fees is a valid delegation of legislative authority. First, each of the Statutes providing

authority for determination and assessment of fees by Respondent must be considered as a whole; the totality of said Statutes must be read in pari materia. (R. 3 and 7) Second, the Statutes are presumptively valid and any doubt must be resolved in favor of constitutionality. Third, the Court is bound to defer to the legislature's judgment in the matter of environmental regulation. Fourth, the Court should liberally construe the Statutes to accomplish their valid legislative purpose. Fifth, though the Statutes may be subject to different interpretations, the Court must follow that interpretation which provides for constitutionality. Finally, the burden on Petitioners of demonstrating unconstitutionality is onerous: that such result is clear beyond any reasonable doubt.

ARGUMENT

A. THE DISTRICT COURT PROPERLY FOUND THAT THE STATUTORY AUTHORITIES FOR RULE 29L-2.02 EXPRESS A CLEAR AND VALID LEGISLATIVE PURPOSE.

1. RULE 29L-2.02

The Rule at issue in this appeal sets forth the method of calculating fees for Respondent's review of developments of regional impact (herein "DRIs"). The rule provides as follows:

> 29L-2.02 Fees. Each DRI application, except for applications submitted by a local, state or federal agency shall be accompanied by a fee deposit, as detailed below. When required no application shall be accepted for review unless accompanied by this fee deposit. This fee deposit shall be combined with other funds available to perform the function outlined by § 380.06, Florida Statutes. The amount of the application review fee shall be determined by the following procedures:
>
> (1) The applicant shall remit a fee deposit of Four Thousand Dollars ($4,000.00) payable to the Council for review.
>
> (2) This fee deposit shall set up an account for the applicant with the Council. The Council shall keep accurate records of the actual cost which shall be deducted from the deposit fee, with any amount remaining refunded to the applicant. If the cost of review exceeds the fee deposit, the applicant shall be liable to the Council for 100% of the review cost up to Ten Thousand Dollars ($10,000.00) and 80% of the review cost over Ten Thousand Dollars ($10,000.00).

Petitioners have not questioned the general rulemaking authority of Respondent and the amount of the fee imposed under Rule

29L-2.02, nor did the District Court. Petitioners have challenged only the underlying statutory authority for Rule 29L-2.02, and the District Court ruled on that issue alone.

2. **SOURCES** OF **AUTHORITY**

a. Ch. 380, Fla. Stat.

There was no specific fee authority contained in Ch. 380, Fla. Stat., at the time of adoption by Respondent of Rule 29L-2.02. However, since the briefing and argument of this matter before the District Court, the law has been amended to confirm and ratify the authority of regional planning agencies such as Respondent to recover the costs of DRI review through fee assessment by amending Section 380.06, Fla. Stat. (1987). The legislature adopted Chs. 89-375 and 89-536, 8 Fla. Session Law Service 2183 and 2373 (West 1989) (Appendices B and C), which acts provide for the addition of a new Fla. Stat. § 380.06(23)(d). This new provision clarifies and confirms Respondent's already existent fee authority by expressly providing for regional planning agencies to recover the costs, direct and indirect, of conducting DRI reviews. Given this most recent consideration by the legislature of fee authority for agencies such as Respondent, and the legislature's confirmation and clarification of such authority, the Court should infer that such action supports Respondent's contention that the legislature's intent was to provide Respondent with the authority

to promulgate and collect fees under Rule 29L-2.02. Dept. of Banking and Finance v. Evans, 540 So.2d 884, 887 n.1 (Fla. 1st DCA 1989). If the legislature had intended otherwise, it clearly would have repealed the prior grant of authority to charge fees.

Furthermore, these legislative changes mean that the issue certified by the District Court is no longer one of great public importance. Because the Rule challenged in this cause is not the current fee rule of Respondent, it was not specifically ratified by the recent legislative enactments. However, insofar as DRI review fees assessed prospectively, agencies such as Respondent now have specific fee authority in new Fla. Stat. § 380.06(23)(d). The case at bar will thus have an impact only between these litigants and, therefore, it would be appropriate for this Court to discharge its jurisdiction, and reject Respondent's appeal.

The Florida Environmental Land and Water Management Act of 1972, Fla. Stat. §§ 380.012-380.10, has as its stated purpose the protection of Florida's natural resources and environment in order to insure a water management system that will reverse the deterioration of water quality and provide optimum utilization of water resources, facilitate orderly and well-planned development and protect the health, welfare, safety and quality life of the residents of this state. Fla. Stat. § 380.021. The Act includes detailed provisions concerning DRIs and mandates with specificity

substantial undertakings by regional planning councils in conducting DRI reviews. Fla. Stat. § 380.06.

The Act also specifically provides that Respondent "may adopt additional rules, not inconsistent with rules adopted by the state land planning agency, to promote efficient review of developments-of-regional-impact applications." Fla. Stat. § 380.06(22)(c). The ability of Respondent to recover reasonable costs of DRI review clearly promotes efficient review, and indeed is necessary to such review.

b. Ch. 163, Fla. Stat., and the Interlocal Agreement

Respondent was created in 1979 pursuant to the Interlocal Agreement. The authority for such agreements is embodied in the Florida Interlocal Cooperation Act of 1969, Ch. 163, Fla. Stat. (herein "ICA"). The stated purpose of the ICA is to permit and facilitate cooperation among local governments on the basis of mutual advantage in order to make best use of their resources to provide services and facilities in, among other things, influencing and regulating development. Fla. Stat. § 163.01(2). The ICA provides that local governments may exercise jointly any power, privilege or authority which they share in common and which each might exercise separately. Fla. Stat. § 163.01(4). A joint exercise of power is accomplished pursuant to contract in the form of an interlocal agreement. The interlocal agreement may provide for, among other things, "the fixing and collecting

of charges, rates, rents or fees, where appropriate, and the making and promulgation of necessary rules and regulations and their enforcement by or with the assistance of the participating parties to the interlocal agreement." Fla. Stat. § 163.01(5)(h) (emphasis added).

The Interlocal Agreement explicitly grants authority to Respondent to, among other things, "determine and collect charges or fees for any lawful purpose, including but not limited to, reviews, referrals, and for providing local assistance for special services." (DCAR. 120) (Appendix D)

c. Ch. 160, Fla. Stat.

Respondent's activities and authority are mandated by the Florida Regional Planning Council Act, Ch. 160, Fla. Stat. (now codified as Ch. 186, Fla. Stat. (1987)) (herein "FRPCA"). The express purposes of the FRPCA are to establish a common system of regional planning councils for coordination of agencies involved in regional planning, and to enhance the opportunity of local governments to resolve issues and problems transcending their individual boundaries. Fla. Stat. § 160.002(2). Although created pursuant to Ch. 163, Fla. Stat., Respondent is a regional planning council for purposes of the FRPCA as well. Fla. Stat. § 160.01(5). Under the FRPCA, Respondent is required to develop a comprehensive regional policy plan concerning long-range physical, economic and social development, and has the power to

adopt rules for the regulation of its affairs and the conduct of its business; to "fix and collect membership dues, rents, or fees when appropriate"; and to enter into contracts to provide, at cost, such services related to its responsibilities as may be requested by local governments within the region. Fla. Stat. § 160.02(1), (12) and (19) (emphasis added).

3. CLEAR LEGISLATIVE PURPOSE

The specific provisions concerning "appropriate" fee determination and assessment contained in Fla. Stat. §§ 160.02(12) and 163.01(5)(h) are necessary, but minor, aspects of a comprehensive regulatory framework. The Court must consider each statute as a whole. Sanicola v. State, 384 So.2d 152, 153 (Fla. 1980); State v. Hous. and Fin. Auth. of Polk Cty., 376 So.2d 1158, 1160 (Fla. 1979). Furthermore, and as was done by the District Court, the various statutes are to be considered in pari materia, and the Court is obliged to consider the entire scheme of DRI regulation when construing the fee authority provisions. 49 Fla.Jur.2d, Statutes, § 175, and authorities cited therein.

Chapters 160, 163 and 380, Fla. Stat., each include a statement of legislative purpose. The essence of that purpose emanates from the provisions of the Statutes. The District Court found that the Statutory Authorities were clear in their purpose, and that their purpose was valid. Indeed, this Court has

previously concluded that the regulation of development by the legislature protects the health and welfare of the citizenry, and is a valid exercise of the police power. Graham v. Estuary Properties, Inc., 399 So.2d 1374, 1381 (Fla. 1981) ("Protection of environmentally sensitive areas and pollution prevention are legitimate concerns within the police power"). The District Court correctly acknowledged the statutory scheme in which the question of fee determination is decided and concluded that such scheme evidenced a clear legislative purpose.

B. THE EXERCISE OF AUTHORITY TO DETERMINE WHEN FEES ARE "APPROPRIATE" IS GUIDED AND CONSTRAINED BY A CLEAR LEGISLATIVE PURPOSE. THEREFORE, IMPLEMENTATION OF SUCH AUTHORITY BY ADOPTING RULE 29L-2.02 IS NOT UNCONSTITUTIONAL.

As noted by the District Court, the statutory scheme for DRI regulation is a complex one. (R. 6-7) However, the legislative purpose underlying it is clear, and the purpose is a legitimate one. In this context the District Court found that the legislature's delegation of the authority to determine an "appropriate" fee passes constitutional muster.

1. RULE OF NONDELEGATION

The rule of nondelegation springs directly from the Florida Constitution:

> The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

Art. II, § 3, Fla. Const. In addition, the constitution vests the legislative powers solely in the legislature, and contemplates their exercise by that body alone. Art. III, § 1, Fla. Const.

2. THE DRI FEE IS NOT A TAX

Petitioners have characterized the fees charged by Respondent as a tax. The logic of Petitioners' contention is

unclear, and Petitioners have cited no authority for this proposition. Respondent assumes that by characterizing Respondent's fee as a tax it follows that the Respondent shoulders a heavier burden in demonstrating its authority to make the assessment. While the District Court did not so state, implicit in its decision is a rejection of the Petitioners' contention. The District Court throughout its decision consistently refers to the assessment made by Respondent as a fee. Furthermore, it is clear under the law of this state that there is a legal distinction between a fee and a tax, and that the assessment made by Respondent against Petitioners was in the nature of a fee. Bateman v. City of Winter Park, 37 So.2d 362, 363 (Fla. 1948); Contractors and Builders Ass'n v. City of Dunedin, 329 So.2d 314, 318 (Fla. 1976); Home Bldrs. v. Bd. of Palm Beach Cty. Comm'rs, 446 So.2d 140, 144 (Fla. 4th DCA 1983); Hollywood, Inc. v. Broward County, 431 So.2d 606, 611 (Fla. 4th DCA 1983); 50 Fla.Jur.2d, Taxation, §§ 1:2-1:15, and authorities cited therein. The use of the word "fee" in the Statutory Authorities is, in itself, a limitation on Respondent to charge only that sum which will offset the cost of conducting Petitioners' DRI review.

The fee assessed against Petitioners by Respondent was pursuant to express statutory authority. The authority was part and parcel of a complex and detailed regulatory scheme. The fee assessed Petitioners was directly related to Respondent's

regulatory duties described in detail in Ch. 380, Fla. Stat., which responsibilities are clearly a valid exercise of the state's police power. The amount of the fee assessed against Petitioners was based directly upon the cost of the DRI review performed by Respondent for Petitioners. As such, the charge made by Respondent against Petitioners is clearly within the legal standards set forth by this Court in determining that Respondent's assessment is a fee, and the validity of such an assessment.

3. FEE DETERMINATION IS NOT LEGISLATIVE BUT ADMINISTRATIVE

The rule of nondelegation is steadfast in Florida law. Nonetheless, the courts recognize that there are limitations to this rule because not every power is a "legislative" power. E.g., Friends of the Everglades, Inc. v. Zoning Board, 478 So.2d 1126, 1128 (Fla. 1st DCA 1985) (decision to pursue appeal is executive not legislative). It is the power to say what the law is that may not be legislatively delegated. The relevant inquiry has been stated thus, by this Court:

> [T]he crucial test in determining whether a statute amounts to an unlawful delegation of legislative power is whether the statute contains sufficient standards or guidelines to enable the agency and the courts to determine whether the agency is carrying out the Legislature's intent.

Dept. of Insurance v. Southeast Volusia Hosp. Dist., 438 So.2d 815, 819 (Fla. 1983).

The District Court did not find that Rule 29L-2.02 fee assessment is a fundamental and primary policy decision, which this Court has found to be solely within the province of the legislature. Askew v. Cross Key Waterways, 372 So.2d 913 (Fla. 1978). The District Court characterized fee determination and assessment as "a technical issue of implementation . . .," citing, Southeast Volusia Hosp. Dist., 438 So.2d at 820. (R. 6)

The legislature has determined, as a matter of policy, which development projects must be reviewed, when review occurs, who is to conduct the review and how review is performed. The legislature has determined, in considerable detail, specific review criteria and processes to be used by Respondent in conducting DRI review. Fla. Stat. §§ 380.06 and 380.0651. This legislative framework provides an adequate basis for determining whether, in promulgating Rule 29L-2.02 requiring partial reimbursement for costs incurred in conducting a DRI review, the Respondent is carrying out the intent of the legislature.

4. SPECIFIC GUIDELINES NOT REQUIRED

a. Guidance from Clear Intent of Statute

In order to avoid delegation of authority to say what the law is, the legislature must provide adequate standards to guide the administrative agency or allow the courts to ascertain whether the agency is properly executing the powers delegated. However, it is clear that the legislature need not set out

specific guidelines in order to delegate fee determination authority to Respondent. It is sufficient if the Statutory Authorities define "a pattern by which the rule or regulation must be made to conform," Florida Canners Ass'n v. State Dept. of Citrus, 371 So.2d 503, 513 (Fla. 2d DCA 1979), quoted in, Cornwell v. Univ. of Florida, 307 So.2d 203, 212 (Fla. 1st DCA 1975), and that such standards be reasonable. (R. 5) Chapters 160, 163 and 380, Fla. Stat., establish such a pattern.

For many years this Court has recognized the authority of the legislature to enact laws establishing a general policy which leaves the detail of the policy to the discretion of administrative or executive officials. As noted by the Court in State v. Atlantic Coastline R. Co.:

> A direct exercise by the legislature of the police power is in accordance with immemorial governmental usage. But the subject matter may be such that only a general scheme or policy can with advantage be laid down by the Legislature, and the working out in detail of the policy indicated may be left to the discretion of administrative or executive officials. [Citation omitted.]
>
> The constitutionality of statutory provisions authorizing executive or administrative officers of boards to formulate rules and regulations to make the statute effective for the public purpose designed has generally been assumed or conceded without question. But in a number of well-considered cases it has been distinctly held that, where a valid statute complete in itself enacts the general outlines of a governmental scheme, or policy, or purpose, and confers upon officials charged with the duty of assisting and administering the law authority to make, within designated limitations and subject to judicial review, rules and regulations, or to ascertain facts, upon which the statute by its own terms operates in carrying

> out the legislative purpose, such authority is not an unconstitutional delegation of legislative power. [Citations omitted.]

47 So. 969, 971 (Fla. 1908).

The principle set forth in Atlantic Coastline has been consistently confirmed by this Court. In Dept. of Insurance v. Southeast Volusia Hosp. Dist., supra, the Court reviewed the constitutionality of Fla. Stat. § 768.54, concerning the Florida Patients' Compensations Fund (herein the "Fund"). The statute was challenged based upon the contention that it was an unlawful delegation of legislative power. The Court upheld the constitutionality of the statute in the following particular respects: that "actuarial soundness" is a meaningful legal standard, 438 So.2d at 819; that base fees may be "adjusted downward" for any fiscal year in which a "lesser amount would be adequate'' was sufficient without the statute clearly defining the administrative agency's options, 438 So.2d at 820; that the statute need not set forth specific criteria for how or when additional fees are to be collected, id.; that the statute need not specify when a deficit exists, id.; and that unconstitutionality did not follow simply because the statute was subject to differing interpretations, id.

One of the important issues raised in Southeast Volusia Hosp. Dist. concerned the lack of statutory standards and guidelines for assessments by the Fund under Fla. Stat. § 768.54(3)(c), a problem analogous to the one sub judice.

Therein, the District Court determined that the lack of guidelines gave "total discretion" to the Fund to determine whether assessments were excessive, sufficient or insufficient to satisfy claims. However, this Court expressly disagreed, stating:

> [W]e find no merit in the proposition that this constitutes the sort of delegation which is a nondelegable legislative function. The question of determining when a deficit exists or not is a technical issue of implementation and not a fundamental policy decision. To require constant legislative supervision of the question of when a deficit exists or the selection from the numerous available tests that might be used for that purpose is neither practical nor required by the Constitution. [Citation omitted.]

This is precisely the issue in this case, and this Court has previously decided it in Respondent's favor. Just as the Fund in Southeast Volusia Hosp. Dist., the Respondent determines and assesses fees in accordance with a complex and detailed statutory scheme which provides all the guidance needed in doing so.

See also, In Re Advisory Opinion to the Governor, 509 So.2d 292 (Fla. 1987) (upholding the constitutionality of Ch. 87-6, Laws of Florida, notwithstanding that numerous operative terms in the statute were not defined by the legislature); Microtel, Inc. v. Fla. Public Service Comm., 464 So.2d 1189, 1191 (Fla. 1985) (clear legislative intent illuminates general statutory standard); Sanicola v. State, supra (upholding the constitutionality of Fla. Stat. § 409.185, even though the statute did not specifically define a "change in circumstances");

State v. Hous. Fin. Auth. of Polk Cty., supra (upholding the constitutionality of Fla. Stat. Ch. 159, part IV (1978), on the grounds that the statute as a whole provided adequate guidelines); Bigler v. Dept. of Banking and Finance, 394 So.2d 989 (Fla. 1981) (upholding the constitutionality of Fla. Stat. § 659.03 (1977), concerning administrative review of banking applications); Florida State Bd. of Arch. v. Wasserman, 377 So.2d 653 (Fla. 1979) (general and ambiguous statutory guidelines in Fla. Stat. § 467.11 (1973), sufficient in light of clear legislative intent); and State v. Bender, 382 So.2d 697 (Fla. 1980) (upholding the constitutionality of Fla. Stat. §§ 322.261 and 322.262 (1977), where legislature assigned to the administrative agencies the responsibility for establishing proper uniform testing procedures for determining alcohol content in the blood); Jones v. Dept. of Revenue, 523 So.2d 1211 (Fla. 1st DCA 1988) (upholding the constitutionality of Fla. Stat. § 195.096(3)(b) (1983), on the grounds that "professionally accepted methodology" creates legally cognizable standard); Cornwell v. Univ. of Florida, supra (upholding the constitutionality of Fla. Stat. § 240.042(2)(f), on the basis that the statute evidenced a clear legislative intent and the administrative body could adopt rules and regulations to carry out such intent in light of the general statutory scheme); and Florida Teaching Profession v. Turlington, 490 So.2d 142 (Fla. 1st DCA 1986) (upholding the constitutionality of Fla. Stat.

§ 231.532 (1984 Supp.), on the basis that the statute provided reasonable guidance).

b. Public Policy Exception

The First District Court of Appeal correctly applied the public policy exception to the requirement that the legislature provide specific guidelines. (R. 4-5) This exception was set forth by this Court in North Broward Hosp. Dist. v. Mizell, thus:

> The general rule, which requires an express standard to guide the exercise of discretion is also subject to the exception that where it is impracticable to lay down a definite comprehensive rule, such as where regulation turns upon the question of personal fitness, or where the act relates to the administration of a police regulation and is necessary to protect the general welfare, morals, and safety of the public, it is not essential that a specific prescribed standard be expressly stated in the legislation.

148 So.2d 1, 4 n.11 (Fla. 1962), quoted in, Astral Liquors, Inc. v. Dept. of Business Regulation, 463 So.2d 1130, 1132 (Fla. 1985).

Respondent's review of a DRI culminates in a report and recommendations which are, in essence, site-specific evaluations of the impact of a proposed development on particular resources. Fla. Stat. § 380.06(12). Due to the various types, sizes and locations of DRIs, see, Fla. Stat. § 380.0651, and Ch. 28-24, Fla. Admin. Code (1987), it is not an exaggeration to assert that no two DRIs, and thus no two DRI reviews, are alike. Even within the same type of DRI, i.e., residential projects, character and

location differences will dictate diverse review requirements. Thus, costs of review differ significantly, and it is entirely impracticable for the legislature to set forth specific fee limitations or guidelines for DRI review.

This Court has recognized that "the practicalities of the subject matter sought to be controlled must be considered." Bender, 382 So.2d at 700. See also, In Re Advisory Opinion to the Governor, 509 So.2d at 311. This mandate has been carried forth by the courts when assessing the adequacy of statutory guidance to administrative agencies. E.g., Bigler v. Dept. of Banking and Finance, 368 So.2d 449, 450-51 (Fla. 1st DCA 1979); Jones, 523 So.2d at 1214; Dept. of Admin. v. Nelson, 424 So.2d 859 (Fla. 1st DCA 1982); and Burgess v. Florida Dept. of Commerce, 436 So.2d 356, 358 (Fla. 1st DCA 1983). When dealing with complex matters such as DRI review, the absolute necessity of delegating the determination of detail to administrative agencies is clear, for "[i]f the legislature had not done so, it 'would be forced to remain in perpetual session and devote a large portion of its time to regulation.'" Jones, 523 So.2d at 1214, citing, Microtel, Inc., 464 So.2d at 1191.

If there be the slightest doubt that the subject matter and review of DRIs is a complex process, one need only briefly review Ch. 380, Fla. Stat., the rules of the eleven regional planning councils and the rules of the Florida Department of Community Affairs. One could hardly conceive of a subject which begs more

convincingly for the delegation of authority by the legislature. As much is fairly inferred from the Court's decision in Graham v. Estuary Properties, Inc., supra.

c. Protection Afforded by the APA

Another important consideration is the protection provided by the rulemaking procedures under the Florida Administrative Procedure Act, Ch. 120, Fla. Stat. As noted by the District Court in another case:

> If there ever was a need in Florida for the legislature to provide minutely detailed standards and guidelines in its delegation of authority to administrative agencies, that need was eliminated with the enactment of the Florida Administrative Procedure Act in 1974. Subsequent decisions of this court have recognized that the legislative employment of phrases such as "policy-making position", the definition of which is then to be refined by the administering agency through the processes of adjudication and rulemaking, will not, by itself, render an otherwise constitutional statute infirm.

Burgess, 436 So.2d at 358; and see, Fla. Stat. § 380.06(22)(c). This principle has special application in this case. Rule 29L-2.02 was a product of the complete panoply of rulemaking procedures under the APA. Parties such as the Petitioners, and others, had ample opportunity for offering advice and direction during the rulemaking process. Petitioners have not demonstrated or even suggested otherwise.

Further, Petitioners have not challenged the general rulemaking authority of Respondent, the implementation of

Rule 29L-2.02 or the application and operation of the Rule which has been in effect for a number of years in one form or another. Such a reality has not gone unnoticed by the courts. In Dept. of Admin. v. Nelson, the First District Court of Appeal stated:

> [W]e have repeatedly held that when the agency committed with statutory authority to implement a statute has construed the statute in a permissible way under the APA disciplines, that interpretation will be sustained though another interpretation may be possible. When the agency so interprets the statute through rulemaking, the presumption of correctness is stronger. And when as here the agency's interpretation of the statute through rulemaking has been on the books for several years without legislative correction, in this case since 1972, the presumption is stronger still.

424 So.2d at 858, citing, King v. Seamon, 59 So.2d 859, 861 (Fla. 1952), and other cases.

In a similar vein, it should be noted that Rule 29L-2.02 and similar rules of the other regional planning councils have been reviewed by the Joint Administrative Procedures Committee, a standing committee of the legislature required by law to determine whether a rule is a valid exercise of delegated legislative authority. The JAPC concluded that the Rule is a valid delegation of authority, and has left it, and the other similar rules, standing for a number of years without objection.

Petitioners, and others similarly situated, had the benefit of numerous protections within the administrative process. They had ample opportunity for input into the process, and did not challenge the general rulemaking authority of Respondent. This

certainly mitigates any complaint at this time that the Statutory Authorities are constitutionally infirm.

d. Judicial Review

Finally, the determination of the amount of a fee charged by Respondent is subject to judicial review. For years, the courts have reviewed administrative agency action under Chapters 160, **163** and **380**, Fla. Stat. Such review is available with respect to the question of whether the amount of a fee is appropriate in the circumstances in any case, and one which the Petitioners in this case have not seen fit to pursue. Nonetheless, a court of competent jurisdiction, based upon a reading of the Statutory Authorities and understanding of the legislative purposes, would clearly be in a position to make such a determination.

The Petitioners have not contended that the fee required by the Rule is excessive. Indeed, the Petitioners stipulated that if the Respondent is legally authorized to assess a fee, that the amount charged under the Rule is due and owing. (R. **73)** It would certainly seem as a matter of fact that the Rule established a reasonable fee, and Petitioners have conceded as much by their stipulation. This adds further credence to Respondent's contention that, as a matter of law, an "appropriate" fee is a legally cognizable standard.

5. "APPROPRIATE" AS A LEGALLY COGNIZABLE STANDARD

The question herein is whether, in the context of a clear legislative purpose evidenced by the statutory scheme, and in light of common law and common sense, it is possible for Respondent or a reviewing court to determine if, when, and to what extent a fee is appropriate. Respondent's counsel, after a diligent search, has not found a Florida case interpreting the word appropriate in a similar context, but it has been found to establish a legally cognizable standard in other jurisdictions. As much is noted by Justice Ervin in Sarasota County v. Barg, 302 So.2d 737, 745 (Fla. 1974) (concurring in part and dissenting in part), citing, 1 Am.Jur.2d, Administrative Law § 119. See also, Fairfield Comm. v. Land and Water Adj. Comm., 522 So.2d 1012, 1014 (Fla. 1st DCA 1988), where the court upheld the facial validity of administrative rules adopted pursuant to Fla. Stat. § 120.53(1)(c) (1985), which authorized the adoption of "rules of procedure appropriate" for presentation of law and evidence in dispute. The Court should note that "proper" and "appropriate" have been utilized throughout Fla. Stat. § 380.06 as words of guidance or limitation without challenge. E.g., Fla. Stat. § 380.06(6), (7)(a), (8)(b)4., (9)(b), (11)(a)6., (11)(b), (14)(a), (17)(b)7., (20)(b). Also, consider a dictionary definition of appropriate: "especially suitable or compatible: fitting." Webster's Seventh New Collegiate Dictionary at 44. In essence, a fee is appropriate if it is consistent and compatible

with the legislative purpose, and in keeping with the services provided by Respondent pursuant to its statutory mandate.

On numerous occasions the courts have interpreted certain words or phrases of a general nature as providing a cognizable legal standard. Two such examples were mentioned, State v. Atlantic Coastline R. Co., supra, and Dept. of Insurance v. Southeast Volusia Hosp. Dist., supra. Other examples are available. Of particular note is Florida Canners Ass'n v. State Dept. of Citrus, supra, wherein this Court examined a statutory provision providing the citrus commission with authority to adopt "proper and necessary" rules and regulations. 371 So.2d at **507**. The Court concluded that this grant of authority was not an unlawful delegation of legislative power because the standard of proper and necessary constituted a legitimate constraint on the citrus commission's rulemaking authority. **371** So.2d at 512. The Court also noted that such authority was subject to judicial review. Id. This case is meaningful because the words "proper" and "appropriate" are synonymous. If the word "proper" constitutes a meaningful standard, "appropriate" must also. See also, Miami Bridge Co. v. Miami Beach Railway Co., 12 So.2d 438 (Fla. **1943)** ("reasonableness" as a legal standard); Sanicola v. State, supra ("change in circumstances" defined based upon statute's context in absence of specific definition); Florida State Bd. of Arch. v. Wasserman, supra (general statutory language construed in light of intent of statute).

The statutory requirement that fees be appropriate clearly provides meaningful guidance in determining such fees. As noted, the legislature made the policy determination that regional planning councils have the need for fees, membership dues, charges or rents, and delegated the authority to such agencies to charge same when appropriate. It is clearly within the ability of the trial court to ascertain whether Respondent's fees are appropriate based upon the common usage of the word, legal parameters established by the case law, and legislative purposes contained in the Statutory Authorities.

C. THE RULES OF STATUTORY INTERPRETATION, PROPERLY APPLIED, FAVOR UPHOLDING THE CONSTITUTIONALITY OF THE STATUTORY AUTHORITIES AND THE CHALLENGED RULE.

The applicable rules of statutory interpretation directly lead to the conclusion that Rule 29L-2.02 is a legitimate exercise of validly delegated legislative authority. First, as found by the District Court, the Statutory Authorities must be read in pari materia. (R. 3 and 7) Second, it is axiomatic that the legislature is presumed to intend that its actions are within the bounds of the Constitution. Sandlin v. Cr. Just. Stds. & Trg. Commission, 531 So.2d 1344, 1346 (Fla. 1988); State v. Atlantic Coastline R. Co., 47 So. at 984. This rule of deference to legislative action must be exercised by this Court. Third, the burden on Petitioners to demonstrate unconstitutionality of the Statutes is an onerous one: unconstitutionality must appear clearly and beyond any reasonable doubt. Id. Obviously, the District Court was not persuaded that Petitioners met their burden. Fourth, the Statutory Authorities are part and parcel of remedial legislation. The legislature's goal of regulating development and protecting the environment for the health, welfare and protection of the general public is a legitimate and valid exercise of the state's police power, and is thus remedial in nature. Statutes effectuating this purpose should be liberally construed. City of Miami Beach V. Burns, 245 So.2d 38 (Fla. 1971). Finally, if there is any interpretation of the Statutory Authorities that will render them constitutional, the

Court is bound to make that interpretation. Southeast Volusia Hosp. Dist., 438 So.2d at 820.

CONCLUSION

The provisions of Chapters 160, 163 and 380, Fla. Stat., constitute adequate and sufficient statutory authority for the promulgation and enforcement of Rule 29L-2.02. The administrative discretion granted by the Statutes to Respondent for determining an appropriate fee pursuant to Rule 29L-2.02 is governed by legislatively proscribed standards and criteria. Whether such a fee effectuates the intent of the legislature can be ascertained. Therefore, the Statute Authorities are constitutional, and Rule 29L-2.02 is an appropriate and reasonable exercise of validly delegated authority.

For the reasons stated herein, this Court should affirm the First District Court of Appeal's decision.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to Gene D. Brown, Esq., 1519 Killearn Center Blvd., Tallahassee, FL 32308; and Arthur C. Wallberg, Assistant Attorney General, Department of Legal Affairs, The Capitol, Suite 1501, Tallahassee, FL 32399-1050, by U. S. Mail, this 28th day of September, 1989.

Tommy E. Roberts Jr., for
LINDA LOOMIS SHELLEY