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**IN THE SUPREME COURT
STATE OF FLORIDA**

SUPREME COURT OF FLORIDA
CASE NO. 79,720

**BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA,**

FIFTH DISTRICT COURT OF
APPEAL CASE NO. 90-1214

Petitioner,

-vs-

**JACK R. SNYDER and GAIL K.
SNYDER, his wife,**

Respondents.
/

**AMICUS CURIAE JURISDICTIONAL BRIEF
ON BEHALF OF PETITIONER**

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**AMICUS CURIAE JURISDICTIONAL BRIEF
ON BEHALF OF PETITIONER**

STATEMENT OF THE CASE AND FACTS

The amici curiae, Space Coast League of Cities, Inc., the City of Melbourne, and the Town of Indialantic, adopt the statement of case and facts submitted in the Petitioner's jurisdictional brief. Furthermore, the amici curiae adopt the appendix filed by the Petitioner.

SUMMARY OF THE ARGUMENT

The instant amici curiae suggest two jurisdictional bases for this Court's review of the instant decision. First, the district court's decision holds that rezoning is sometimes a legislative function and sometimes a quasi-judicial function, depending upon a functional analysis. This holding expressly and directly conflicts with this Court's decisions, as well as with decisions of other district courts of appeal that have consistently held that rezoning is a legislative function. Therefore, this Court should accept conflict jurisdiction of this matter.

Alternatively, this Court may have mandatory jurisdiction because the district court's decision inherently declares a statute (section 166.041, Fla. Stat. (1991)) invalid. Section 166.041 provides that a municipality's rezoning of specific parcels of property is a legislative action. The district

court's opinion thus implicitly declares this statute invalid. Under the inherency doctrine, this Court has mandatory jurisdiction in order to avoid non-uniform application of laws. Thus, this Court should accept jurisdiction of this matter either because the district court opinion inherently declares a statute invalid or because the district court opinion expressly and directly conflicts with rulings of this Court, as well as with rulings of other district courts of appeal.

ARGUMENT

I. THE DISTRICT COURT'S DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS OF OTHER DISTRICT COURTS OF APPEAL AND WITH DECISIONS OF THE FLORIDA SUPREME COURT ON THE SAME QUESTION OF LAW.

This Court has jurisdiction pursuant to art. V, §3(b)(3), Fla. Const., and Fla.R.App.P. 9.030(a)(2)(A)(iv), because the district court's decision, Snyder v. Board of County Commissioners, 16 F.L.W. D3057 (Fla. 5th DCA Dec. 12, 1991), expressly and directly conflicts with decisions of other district courts of appeal and with decisions of the supreme court on the same question of law.

The Florida Supreme Court has expressly held that rezoning is a legislative, rather than quasi-judicial, function. See, e.g., Schauer v. City of Miami Beach, 112 So.2d 838 (Fla. 1959), in which this Court stated:

It is obvious to us that the enactment of the original zoning ordinance was a legislative function and we cannot reason that the amendment of it was of different character.

Id. at 839. Citing specifically to Schauer, this Court reconfirmed this holding in Florida Land Co. v. City of Winter Springs, 427 So.2d 170, 174 (Fla. 1983). Moreover, the Florida district courts of appeal have agreed that it is well settled that a rezoning action is an exercise of legislative power to which a reviewing court applies the deferential fairly debatable test. See, e.g., statement of the law in Machado v. Musgrove, 519 So.2d 629, 632 (3d DCA 1987), rev. denied, 529 So.2d 694 (Fla. 1988); see also statement of the law in Jennings v. Dade County, 589 So.2d 1337, 1349 (Fla. 3d DCA 1991) (on rehearing) (Ferguson, J., concurring) (in addition to citing Schauer and Machado, concurring opinion also cites sections 163.3161 and 166.041, Fla. Stat. (1991), for the proposition that "[i]t is settled that the enactment and amendment of zoning ordinances is a legislative function"), rev. denied, (citation unknown) Fla. 1992).

The instant decision, however, expressly and directly conflicts with the traditional view that rezoning is a legislative action. In contrast, the instant decision expressly applies a functional analysis and holds that rezoning may be sometimes legislative and sometimes quasi-judicial. See Snyder, 16 F.L.W. at D3062. According to the instant decision, a rezoning constitutes legislative action only when the

rezoning is "of broad general application." See id. A rezoning is not legislative, however, when it involves the application of a previously enacted general law to a specific parcel of privately owned land. See id.

The instant decision expressly addresses both Schauer and Florida Land Co. and purports to distinguish those cases. Despite this attempt at rationalizing these cases, the holding in the instant decision constitutes a radical departure from this Court's previously expressed views. Furthermore, the district court does not even purport to distinguish other cases, such as the Florida Supreme Court's decision in Gulf & Eastern Development Corp. v. City of Fort Lauderdale, 354 So.2d 57 (Fla. 1978), that expressly state that rezoning is a legislative function. Unless settled by this Court, the instant decision will engender confusion and litigation throughout the state. Because of this conflict, this Court should exercise its discretionary jurisdiction to review this case.

II. THE INSTANT APPEAL IS WITHIN THE MANDATORY JURISDICTION OF THIS COURT BECAUSE THE DECISION UNDER REVIEW INHERENTLY DECLARES A STATE STATUTE INVALID.

Art. V, §3(b)(1), Fla. Const. (1980), and Fla.R.App.P. 9.030(a)(1)(A)(ii) provide that a decision of a district court of appeal declaring a state statute invalid may be appealed as a matter of right. Under prior versions of article V, this

Court accepted jurisdiction if the decision inherently passed upon the constitutionality of a law even if it did not expressly do so. See Harrell's Candy Kitchen, Inc. v. Sarasota-Manatee Airport Authority, 111 So.2d 439 (Fla. 1959). It is still an open question, however, whether the inherency doctrine has survived the 1980 amendment to the Florida Constitution. See Arthur J. England, Jr. & Richard C. Williams, Jr., Florida Appellate Reform One Year Later, 9 Fla. St. U. L.Rev. 222, 229 n.20 (1981).

Although it has been suggested that one case, Southern Gold Citrus v. Dunnigan, 399 So.2d 1145 (Fla. 1981) (Table - appeal dismissed), has resolved this issue against the viability of the inherency doctrine, see England & Williams, supra, at 229, the Dunnigan decision itself was issued without opinion or citation. Thus, only by referring to unreported "appellate papers" were the commentators able to suggest that Dunnigan resolved the issue.

Because the precedential value of a decision without opinion is questionable, however, see, e.g., Florida Insurance Guaranty Association v. Celotex Corp., 547 So.2d 696 (Fla. 4th DCA 1989), this court's dismissal of Dunnigan without explanation should not be construed as prohibiting the inherency doctrine altogether. After all, this court might have lacked jurisdiction on some other basis - perhaps, for example, because the district court decision lacked opinion or citation. See Southern Gold Citrus v. Dunnigan, 392 So.2d 73

(1st DCA 1980) (affirming without opinion) app. dismissed, 399 So.2d 1145 (Fla. 1981)). The instant amici respectfully contend that dismissing an appeal in which the district court decision contained no opinion or citation is different from cases such as the present case, in which the district court issued a lengthy opinion which, as will be explained below, implied that section 166.041, Fla. Stat. (1991), is invalid.

When it is clear that a district court opinion implies that a state statute is invalid, the instant amici respectfully suggest that this Court should fulfill the intent of the framers of the 1980 amendment by continued adherence to the inherency doctrine. See Arthur J. England et al., Constitutional Jurisdiction of the Supreme Court of Florida: 1980 Reform, 32 U. Fla. L.Rev. 147, 169 (1980). According to Justice England, the framers of the 1980 amendment intended to preserve the inherency doctrine. See id. at 169. The framers believed that supreme court review of decisions invalidating a statute is essential for uniformity in the application of the law. See id. at 167, 169. Furthermore, "the contrast between the 'expressly' requirements in section 3(b)(3) and the omission of any like directive in [section 3(b)(1)] suggests that inherency is preserved." Id. at 169.

The instant amici further suggest that the difference in language between the former and amended versions of section 3(b)(1) extends the inherency doctrine even to situations in which the lower court did not directly review the statute in

question. The inherency doctrine developed under the pre-1980 constitutional mandate that an appeal, as a matter of right, existed from decisions which "initially and directly" passed on the validity of a state statute. See England et al., supra, at 166. The 1980 amendment, however, omitted these words and provided instead that mandatory jurisdiction existed from district court decisions "declaring invalid a state statute" Art. V, §3(b)(1), Fla. Const. (1980). The omission of the word "directly," along with the choice not to include the "expressly" requirements of section 3(b)(3), indicate an intent, not only to carry forward the inherency doctrine, but also to broaden the doctrine to include decisions of courts that may not have squarely faced the issue of the invalidity of a statute, but whose effect, nevertheless, is to declare that the statute is invalid.

Whenever a district court's decision has the effect of declaring a statute invalid, there arises the likelihood that the law will not be applied uniformly. This is significant, because the very reason the framers mandated jurisdiction for decisions declaring statutes invalid was the framers' concern that the statute at issue would not be applied uniformly. See England et al., supra, at 169. Thus, in order to fulfill the intent of the framers, this Court should assume jurisdiction under the inherency doctrine when the effect of a district court decision is to implicitly declare a statute invalid. Otherwise, there will be lack of uniformity and, as in the

present case, further confusion in an area of law that is already marked by uncertainty.

In the present case, although the district court does not expressly address section 166.041, Fla. Stat. (1991), the court's opinion in effect invalidates this statute, at least as applied in certain circumstances. Section 166.041(1)(a) defines an "ordinance" as an official legislative action. Section 166.041(3)(c) provides a procedure for enacting ordinances for the rezoning of specific parcels of real property. Therefore, under these statutory provisions, a municipality engages in legislative action when, by ordinance, it rezones specific parcels of property.

The trial court's opinion, however, states otherwise. Although the order under review concerns a county rather than a municipality, the opinion relies heavily on cases involving municipal rezonings. For example, the instant district court particularly analyzes Schauer v. City of Miami Beach, 112 So.2d 838 (Fla. 1959), as a case in which it was "broadly stated that a rezoning action is a legislative action, not a quasi-judicial action." See Snyder v. Board of County Commissioners, 16 F.L.W. D3057, D3060. The district court then explains that broad judicial statements suggesting that all rezonings are legislative in nature, such as the Florida Supreme Court's statement in Schauer, 112 So.2d at 839, are out of step with the realities of zoning practice. See Snyder, 16 F.L.W. at D3060. Thus, according to the district court, its view that

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CONCLUSION

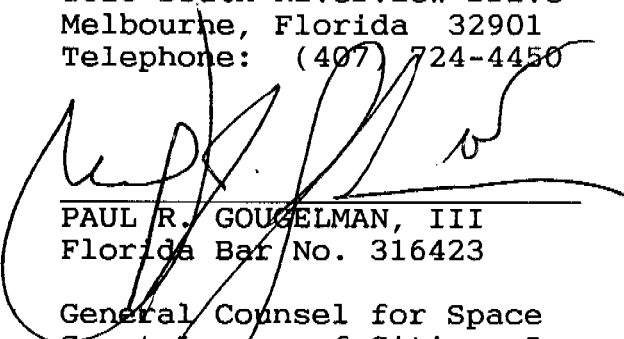
This Court should not allow the district court's decision to stand, and this Court should accept jurisdiction either because of conflict with this Court's previous decisions or because the district court's decision inherently declares a state statute invalid.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished by U.S. Mail to FRANK J. GRIFFITH, JR., ESQUIRE, Attorney for Respondents, P.O. Drawer 6310-G, Titusville, Florida 32782-6515, and to EDEN BENTLEY, ESQUIRE, Attorney for Petitioner, Office of the County Attorney, 2725 St. Johns Street, Melbourne, Florida 32940, on this 23rd day of April, 1992.


Respectfully submitted,

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