

**FILED**

SID J. WHITE

APR 21 1993

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

PALM BEACH COUNTY,

Petitioner,

vs.

Case No. 81,278

WILLIAM WRIGHT, RICHARD  
ELLIOTT, THOMAS J. KAMIDE,  
HERBERT G. ELLIOTT, and  
EDWARD L. CONNOP,

Fourth District Court of  
Appeal Case No. 92-1912

Respondents.

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**BRIEF OF AMICUS CURIAE  
BROWARD COUNTY  
IN SUPPORT OF PETITIONER, PALM BEACH COUNTY**

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**STATEMENT OF INTEREST OF AMICUS CURIAE**

Pursuant to the mandates of the Local Government Planning and Land Development Regulation Act, Chapter 163, Part II, Florida Statutes (1991), Broward County, by statute, is charged with the duty and authority to prepare and implement a county-wide comprehensive plan and, therefore, has an important interest in the instant case.

The decision of the Fourth District Court of Appeal has far-reaching effects which will inhibit the ability of all local planning agencies to perform the essential planning functions critical to land use regulation, including the implementation of plans for safe and adequate roadways to service the needs of the residents of the cities and counties throughout the state of Florida.

### SUMMARY OF ARGUMENT

The opinion of the Fourth District Court of Appeal in the present case is predicated on the holding in Joint Ventures, Inc. v. Dept. of Transportation, 563 So. 2d 622 (Fla. 1990). The opinion in Joint Ventures is inapplicable here, however, because the statute in question in Joint Ventures, § 337.241, Fla. Stat. (1987), prohibited the construction of any improvements on future rights-of-way once a surveyed map of reservation was recorded. By contrast, the present case deals with local trafficways maps which are prepared merely to provide a local government with the ability to commence development in an orderly fashion and protect the safety of its residents.

Under § 337.241, Fla. Stat., once a map of reservation is recorded, a building setback line is established and the issuance of building permits is prohibited which constitutes, in effect, a building moratorium. The map of reservation also places a cloud on the title to the property. In Joint Ventures, the Supreme Court interpreted the statute as simply a means of preventing increases in the cost of property earmarked for condemnation under the state's eminent domain powers. Id. at 626.

However, in the case at issue, trafficways maps are merely utilized as long-range planning tools. Indeed, it has long been recognized that the ability of a community to plan for orderly development through the implementation of regulations is within its police powers.

In 1985 the legislature, in recognition of the fact that it is necessary for local governments to coordinate the pace and extent of development to provide for adequate facilities and services, enacted the Local Government Planning and Land Development Regulation Act, Chapter 163, Part II, Fla. Stat. (the "Growth Management Act").

The Growth Management Act mandates that local governments throughout the state of Florida prepare comprehensive plans which plans must include, in addition to other components, a traffic circulation element for identification and planning of future trafficways. § 163.3177(6)(b), Fla. Stat. The rule implementing the traffic circulation element requires the preparation of a traffic circulation map or map series, and accompanying local land development code regulations, based on an evaluation of specific data and analyses as delineated in the rules. *See Fla. Admin. Code R. 9J-5.007 and 9J.5005(2)*, respectively.

Subsection 9J-5.007(1)(b) of Rule 9J-5, *Fla. Admin. Code* (1986), mandates that an analysis of projected trafficways be shown on a trafficways map or map series in order to determine the need for new facilities or expansions to "provide safe and efficient operating conditions on the roadway network." As stated previously, these maps are simply long-range planning tools prepared in accordance with state law.

Therefore, based on the above, it is respectfully requested that this Court reverse and remand this case to the Fourth District Court of Appeal with directions to the circuit court to grant Palm

Beach County's request for summary judgment declaring the County's thoroughfare map facially constitutional.



## ARGUMENT

- I. THE PREPARATION OF A TRAFFICWAYS MAP, AND IMPLEMENTING REGULATIONS, IS A VALID EXERCISE OF THE POLICE POWERS REQUIRED TO REGULATE THE PACE AND EXTENT OF DEVELOPMENT AND TO PROTECT A COMMUNITY'S HEALTH, SAFETY, AND WELFARE; AND UNLESS AND UNTIL THE REGULATION GOES TOO FAR, IT DOES NOT CONSTITUTE A TAKING.

Historically, setbacks to protect rights-of-way have been held to be a valid exercise of a local government's police power. City of Miami v. Romer, 58 So. 2d 849, 852 (Fla. 1952). In order to defeat such a land use regulation, it must be shown that its provisions are clearly arbitrary and unreasonable and have no substantial relation to the public health, safety, morals or general welfare. Romer at 852.

Consistent with the holding in Romer, land use regulations that address traffic and safety issues are an appropriate goal of a local government with regard to the planning for safe and adequate trafficways. Such land use regulations routinely include the design of future trafficway corridors, a prerequisite to an orderly planning process. Local governments must look to the future and must anticipate the course development will take. Consequently, the preparation of projected trafficways maps is a fundamental necessity to such planned growth.

Proposed traffic corridors need not and do not remain inflexible and "the mere plotting of a street upon a city plan without anything more does not constitute a taking of land . . . ." City of Miami v. Romer, et al., 73 So. 2d 285 (Fla. 1954) (quoting

Miller v. City of Beaver Falls, 368 Pa. 189, 82 A.2d 34, 36 (1951)).

Maps depicting existing and projected trafficways ensure the development of a system of roadways sufficient to accommodate the flow of traffic, if the integrity of the maps is preserved as new land is subdivided and developed. Once streets are plotted, property owners are placed on notice so that they can develop, in an orderly fashion, in conformity with projected trafficways. Re Philadelphia Parkway, etc., 250 Pa. 257, 95 A. 429 (1915). These maps ensure adequate rights-of-way are available to meet future transportation needs.

Since it is a local government's duty to plan for future corridors, it is inconceivable that a local government could be prohibited from plotting traffic corridors on a flexible map which is subject to change upon a change of circumstances, or upon petition of a property owner. The intent and purpose of such regulation is to create orderly development of the community, a proper exercise of the police power.

Traditionally, this Court has taken the position that zoning and land use regulations, and the power to restrict the use of private property, involve an exercise of the local government's police powers. Josephson v. Autrey, 96 So. 2d 784, 787 (Fla. 1957). This Court has also recognized that land use controls, if not unreasonable or arbitrary, are a legitimate objective and exercise of the legislative authority of the local government's police powers. Id. at 788; Romer, 58 So. 2d at 851. In Josephson,

this Court acknowledged that local governments are charged with the duty and responsibility of developing and implementing land use controls and development regulations. An important aspect of such duty and responsibility is the planning for projected future roadways.

This Court has also acknowledged that a property owner's expectations may not always be consistent with or in the best interest of a community as a whole. When a local government imposes land development controls that interfere with and are contrary to those expectations, an individual property owner may be required to endure regulations restricting the use of his or her property in the interest of the general public. Josephson, 96 So. 2d at 787; See City of Miami Beach v. Wiesen, 86 So. 2d 442 (Fla. 1956).

In the instant case, a map is not recorded against the property so there is no cloud on the title. Nothing is required of the property owner until development is imminent. At that time, the local government may only request a dedication of right-of-way that does not exceed the impact the development will create. Consequently, there is no burden on a developer until such time as construction is contemplated. Moreover, dedication is a condition of development approval long held to be within the realm of the local government's proper police powers. See Wald Corp. v. Metropolitan Dade Co., 338 So. 2d 863 (Fla. 3d DCA 1976); Hollywood, Inc. v. Broward Co., 431 So. 2d 606 (4th DCA 1983).

In Dept. of Transportation v. Weisenfeld, 18 Fla. L. Weekly D803, (Fla. 2d DCA March 26, 1993) (en banc), the Fifth District Court of Appeal specifically receded from its holding in Orlando/Orange Co. Expressway Auth. v. W & F Agrigrowth-Fernfield, Ltd., 582 So. 2d 190 (Fla. 5th DCA), rev. denied, 591 So. 2d 183 (Fla. 1991). (The court, in Agrigrowth, based its decision on the holding in Joint Ventures.) In its opinion in Weisenfeld, the court stated that an owner's affected property interest must be viewed as a whole in order to determine whether the property owner was deprived of all, or substantially all, use of the property. 18 Fla. L. Weekly at D804. Consequently, in evaluating the intent of a trafficways map, it must be determined whether such a map would constitute such an interference or "substantial deprivation" as to constitute a taking.

As Judge Stone stated in his dissent in the case at bar:

The thoroughfare map itself is not a "taking of all land in its path." There is nothing in this record demonstrating that the map deprives all owners of property within proposed traffic corridors of all economically viable use of their property. At a minimum, without considering the financial impact on specific parcels, affected land is still usable for purposes such as parking, landscaping, ingress and egress and temporary structures.

Palm Beach Co. v. Wright, 612 So. 2d 709, 713 (Fla. 4th DCA 1993).

Clearly, unless and until a regulation goes "too far," there is no infringement on a property owner's rights and there can be no taking. See Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 415, 43 S. Ct. 158, 67 L. Ed. 322 (1922). In determining whether a regulation goes "too far," the United States Supreme Court uses a

two prong test. The first prong of the test is whether a particular regulation substantially advances a legitimate state interest. Agins v. City of Tiburon, 447 U.S. 255, 260, 100 S. Ct. 2138, 65 L. Ed. 2d 106 (1980); Accord Nollan v. California Coastal Comm'n, 483 U.S. 825, 107 S. Ct. 3141, 97 L. Ed. 2d 677 (1987). In the event the regulation fails to advance a legitimate state interest, the regulation can be declared invalid. The second prong of the test is whether a regulation interferes to such an extent that it denies an owner of all economically viable use of his or her property. Id. at 260.

In fact, as stated in Joint Ventures at 626:

Although regulation under the police power will always interfere to some degree with property use, compensation must be paid only when that interference deprives the owner of substantial economic use of his or her property . . . . [Emphasis supplied]

Applying the two prong test in this instance, the implementation of a trafficways map is a legitimate state interest which does not, in and of itself, deny a property owner of all economically viable use of his or her property.

From the above, it is clear that a trafficways corridor or circulation map is simply a projection of what roadway or trafficway corridors may be necessary to support future development, and is clearly distinguishable from the statute in Joint Ventures. The mere plotting of a street on a map, without more, is clearly within the police power of local governments.

**II. THE IMPLEMENTATION OF A TRAFFICWAYS MAP IS MANDATED BY THE GROWTH MANAGEMENT ACT, MUST CONFORM TO AND BE CONSISTENT WITH THE LOCAL GOVERNMENT'S COMPREHENSIVE PLAN, AND IS THEREBY DISTINGUISHABLE FROM JOINT VENTURES.**

In 1985 the Florida legislature enacted the Growth Management Act replacing the Local Government Comprehensive Planning Act previously enacted in 1975. Unlike the earlier Local Government Comprehensive Planning Act, which was permissive, the Growth Management Act is mandatory upon all local governments--cities and counties, in Florida.

The Growth Management Act includes minimum standards for comprehensive planning at the local level. Once a comprehensive plan is adopted, all development and all actions taken in regard to development orders by governmental agencies must be consistent with the adopted comprehensive plan. § 163.3194, Fla. Stat. When the legislature enacted the Growth Management Act, the legislature placed the burden of future land planning on the local governments and stated:

[I]t is the purpose of this act to utilize and strengthen the existing role, processes, and powers of local government in the establishment and implementation of comprehensive planning programs to guide and control future development. [Emphasis supplied]

§ 163.3161(2), Fla. Stat.

Over the last few decades, Florida has experienced unprecedented, runaway growth. So now, more than ever, the planning of coordinated development is of critical concern to the state, as well as to all local governments. The legislature was fully cognizant of Florida's diminishing resources when it mandated

that local governments adopt comprehensive plans containing, at a minimum, specific provisions for the use of land, water, open space, potable water wellfields, stormwater management, protection of environmentally sensitive lands, and sufficient public services and facilities. § 163.3202, Fla. Stat.

Under the mandate of the Growth Management Act, local governments are required to prepare and submit a comprehensive plan for approval to the Department of Community Affairs ("DCA"). To receive approval from DCA, the plan must be consistent with the Growth Management Act and must include all of the required elements set forth in the statutes and the rules. § 163.3177, Fla. Stat. Implementation of the comprehensive plan is through locally enacted land development code regulations.

The Traffic Circulation Element is a required element set forth in *Fla. Admin. Code* R. 9J-5.007 (1986):

[T]o establish the desired and projected transportation system in the jurisdiction and particularly to plan for future motorized and non-motorized traffic circulation systems . . . and . . . depicted on the proposed traffic circulation map or map series within the element.

The implementation of a trafficways map does not require dedication of property until such time as development becomes imminent. At that time, "[t]he rational nexus test requires that there be a reasonable connection between the required dedication of land and the anticipated needs of the community . . . ." Lee Co. v. New Testament Baptist Church, 507 So. 2d 626, 629 (Fla. 2d DCA 1987). "Such dedication must . . . not [be] for the purpose of 'banking' the land for use in a projected but unscheduled possible

future use." Id., citing 181, Inc. v. Salem Co. Planning Bd., 133 N.J. Super. 350, 336 A.2d 501, 506 (Super.Ct. Law Div.1975). Accordingly, until such time as a property owner prepares to develop, or until such time as the local government exercises its eminent domain powers, title to the property remains undisturbed and unfettered by any restrictions.

Further, a trafficways map can be viewed as an asset to orderly development. As Judge Altenbernd so aptly pointed out in his well-reasoned dissent in Tampa-Hillsborough Co. Expressway Authority v. A.G.W.S. Corp., 608 So. 2d 52, 57, n. 11 (Fla. 2d DCA 1992), the recording of the map of reservation under the statute in Joint Ventures, § 337.241 (2) and (3), Fla. Stat., might even be considered beneficial:

Indeed, some landowners with parcels that include small portions inside the corridor may actually have benefitted from the map. Before the map, the landowners knew a road was proposed but had little assurance where it would be built. Such uncertainty can affect one's ability to develop property.

Similarly, the preparation of a trafficways map, as required by the Growth Management Act's traffic circulation element, could benefit an affected property holder who would then have knowledge of the location of a proposed traffic corridor.

Unlike Joint Ventures, the case at issue does not involve a situation in which a property owner is prevented from selling or developing property. Once the property was surveyed and a map of reservation was recorded, the statute in that case imposed a moratorium which, in effect, prevented a property owner from initiating any new construction or renovating an existing structure



that would exceed twenty percent of the appraised value, for a period of up to ten years. Orlando/Orange Co. v. Orange North Assoc., 590 So. 2d 1099, 1100 (Fla. 5th DCA 1991). In other words, a surveyed and recorded map of reservation constitutes a moratorium for economic purposes, whereas a trafficways map is part of the planning process required not only as an element of the Growth Management Act, but as a common sense approach to efficient and systematic development.

Again, the intent of the legislature and the purpose of the Growth Management Act should be considered in determining a distinction between the case at bar and Joint Ventures. The legislature clearly intended that an approved comprehensive plan set general guidelines and principles to address future problems that may result from the use and development of land within local jurisdictions. § 163.3194(4)(b), Fla. Stat.; See Glisson v. Alachua County, 558 So. 2d 1030, 1036 (Fla. 1st DCA 1990).

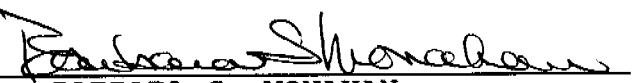
Therefore, the reasoning in the Joint Ventures case is inapplicable in the case at bar since the need for an orderly planning process through the use of projected trafficways maps is clearly distinguishable from the statute in Joint Ventures, which, in effect, was held to constitute a building moratorium to prevent an increase in the cost of future planned acquisitions.

CONCLUSION

Trafficways maps are necessary planning tools for the orderly, systematic and efficient development of communities, as well as for the protection of the health and safety of its residents. The Fourth District Court of Appeal's decision has far-reaching effects. It places the very heart of the Growth Management Act at issue. There is no way in which a local government can plan conscientiously for systematic growth unless it is in a position to implement and enforce its comprehensive plan as authorized by state statute, or through the police powers granted to local governments to ensure the health, safety and welfare of its residents. For these and the foregoing reasons, the decision of the Fourth District Court of Appeal should be reversed and remanded with directions to the circuit court to grant Palm Beach County's request for summary judgment declaring the County's thoroughfare map facially constitutional.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that one copy of the foregoing Brief of Amicus Curiae has been furnished by United States Mail to each of the persons on the attached mailing list this 20<sup>th</sup> day of April, 1993.

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