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IN THE SUPREME COURT OF FLORIDA  
SUPREME COURT NO. 81,278  
DISTRICT COURT OF APPEAL,  
FOURTH DISTRICT, NO. 92-1912

PALM BEACH COUNTY  
Petitioner

vs.

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

Respondents.

**FILED**

SID J. WHITE

APR 23 1993

CLERK, SUPREME COURT

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

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AMICUS CURIAE BRIEF FILED ON BEHALF OF THE  
FLORIDA ASSOCIATION COUNTY ATTORNEYS, INC.  
IN SUPPORT OF PETITIONER, PALM BEACH COUNTY

\_\_\_\_\_

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## STATEMENT OF THE CASE AND FACTS

For purposes of this Brief, the Florida Association of County Attorneys, Inc. adopts the Statement of the Case and the Facts contained in the Initial Brief of the Petitioner.

This brief concerns a question certified to the Florida Supreme Court as one of great public importance in Palm Beach County v. Wright, 612 So. 2d 709 (Fla. 4th DCA 1993). The certified question is as follows:

Is a county thoroughfare map designating corridors for future roadways, and which forbids land use activity that would impede future construction of a roadway, adopted incident to a comprehensive county land use plan enacted under the local government comprehensive planning and land development regulation act, facially unconstitutional under Joint Ventures Inc. v. Department of Transportation, 563 So. 2d 622 (Fla. 1990)?

This brief will first elaborate on and explain legitimate public purposes served by the right-of-way protection objectives implicated in the certified question. It will next explain the difference between the guidelines and objectives at issue here when compared to the mandatory restrictions at issue in Joint Ventures. Each argument will emphasize the role of the court in reviewing governmental actions which are founded on a legitimate public policy and the great deference to which these governments' legislative decisions are entitled when enunciating objectives and policies.

## SUMMARY OF THE ARGUMENT

To be constitutionally valid a legislative enactment and the local government's execution of that legislative mandate must support a legitimate government interest. The Florida legislature decided that right-of-way protection objectives were necessary to effective planning under Local Government Comprehensive Planning and Land Development Regulation Act. (§ 163.3161-3215 Fla. Stat. (1991). (hereinafter referred to as the "Act"). In order to be effective, public and private planners must be able to depend upon the validity of thoroughfare planning expectations.

The legitimate government interests served by right-of-way protection include coordination of planning efforts among both public and private sectors and providing a means by which the local government and the private sector can timely address and resolve issues involved in right-of-way protection and arrive at the appropriate negotiated solutions. The ultimate effect of this timely resolution of those issues indicates the local government's commitment to develop the planned corridor.

Right-of-way protection objectives validate thoroughfare planning expectations and the legislature's decision that such objectives are necessary to effective planning is presumptively valid.

The valid planning purpose of the thoroughfare map with right-of-way protection objectives in the context of a comprehensive plan adopted under the Act is distinguishable from the invalid, purely regulatory statutory map of reservation scheme addressed by this Court in Joint Ventures. In the Joint Ventures case, this Court reviewed statutory provisions which required

permitting agencies to prohibit all development along certain proposed roadway corridors. In contrast, planning objectives serve as guidelines for further implementation through land development regulations.

The right-of-way protection objectives are not regulatory in nature and do not require the local government to completely restrict development. Indeed, the Act itself states that its provisions are to be construed in a manner so as to protect private property rights.

Notwithstanding consistency requirements, the Act's bifurcated scheme separates the planning and regulatory functions. This Court's scrutiny of the case at issue should be directed at the implementation of the generalized planning objectives of comprehensive plans rather than at the planning objectives themselves.

## ARGUMENT

### I. RIGHT-OF-WAY PROTECTION OBJECTIVES IN COMPREHENSIVE PLANS SERVE LEGITIMATE PUBLIC PURPOSES.

The scope of legitimate state interests is extremely broad. Nollan v. California Coastal Commission, 483 U.S. 825, 835, 107 S.Ct. 3141, 3147, 97 L.Ed.2d 677 (1987). Comprehensive planning by its nature encompasses the broadest of general welfare interests. §163.3161(2-3) Fla. Stat. (1991). Governmental action is entitled to a presumption that it legitimately advances public interests. Pace Resources, Inc. v. Shrewsbury Township, 808 F. 2d 1023, 1030 (3rd Cir. 1987) (U.S. Supreme Court collected therein). In reviewing legislative actions, especially regarding the legitimacy of a public purpose, the role of the courts is



narrow. Berman v. Parker, 348 U.S. 26, 32, 75 S.Ct. 98, 102, 99 L.Ed. 27 (1954). The U.S. Supreme Court has held that "it will not substitute its judgment for a legislature's judgment as to what constitutes a public use 'unless the use be palpably without reasonable foundation.'" Hawaii Housing Authority v. Midkiff, 467 U.S. 229, 241, 104 S.Ct. 2321, 2329, 81 L.Ed.2d 186 (1984) citing United States v. Gettysburg Electric R. Co., 160 U.S. 668, 680 16 S.Ct. 427, 429, 40 L.Ed 576 (1896).

In the Act, the Florida legislature determined that effective planning requires the development of specified elements containing "policy recommendations for the implementation of the plan and its elements." §163.3177(5) Fla. Stat. (1991). In order to be effective, the elements of the plan must be internally consistent and coordinated. § 163.3177(2), § 163.3194(1)(a) Fla. Stat. (1991). Other planning efforts, both public and private, must be coordinated with elements of the local plan. § 163.3161(4 & 5) Fla. Stat. (1991).

The planning provision under consideration here, as limited by the certified question, states that a local government's objective is to prevent development which would impede future construction of a roadway. This objective must be considered in the context of an entire group of planning objectives in comprehensive plans as well as statutory limitations, all of which address the issue of right-of-way protection. These planning objectives lend credibility to the underlying expectation, relied on by both the public and private sector, that the roadway will actually be developed. The planning objectives direct local governments to use those means legally necessary to validate those underlying expectations.

In the public sector, planning for public services depends upon the availability and sizing of proposed major thoroughfares. Examples of such services include civil emergency services such as hurricane evacuation, airports, fire protection, schools, hospitals, and recreational facilities. The local government's stated objectives of realizing those facilities through assuring the availability of the right-of-way is an underlying expectation. Without such stated objectives, a comprehensive plan becomes a plan to develop a plan, instead of a plan upon which other planning efforts can rely.

In the private sector, thoroughfare maps provide constructive notice of the size and general location of proposed future facilities. A local government's request that a site plan accommodate the general location of the roadway provides actual notice to the private property owner. There is ample caselaw to guide both parties on issues of set-backs, accommodations, or dedications. Nollan, 107 S.Ct. 3141; Mayer v. Dade County, 82 So. 2d 513 (Fla. 1955); City of Miami v. Romer, 58 So. 2d 849 (Fla. 1952); Hernando County v. Budget Inns of Florida, 555 So. 2d 1319 (Fla. 5th DCA 1990); Lee County v. New Testament Baptist Church of Fort Myers, Florida Inc., 507 So. 2d 626 (Fla. 2d DCA) rev. denied 515 So. 2d 230 (Fla. 1987). The owner may determine that he does not want to accommodate the right-of-way on his plans. The government may decide that accommodation is not necessary. Both parties are forced to address the issue of the status of the future right-of-way in a timely manner.

The government may choose to make an offer to purchase, institute eminent domain proceedings, or allow the development as

the landowner requested and deal with compensation upon actual development of the roadway. When government chooses the latter option, it has determined, to borrow the language of the certified question, that the proposed development would not "impede future construction of a roadway". If the landowner chooses to accommodate the roadway, he may avoid the economic waste associated with condemnation of improvements and may preserve his options should the general location of the planned roadway be altered. The planning objectives force both the government and the private property owner to make informed decisions. It is this informed decision-making by all parties which adjusts the "benefits and burdens of economic life to promote the common good" thus serving a legitimate public purpose. Penn Central Transportation Co. v. City of New York, 438 U.S. 104, 124, 98 S.Ct. 2646, 2695, 57 L.Ed 2d 631 (1978). Both the public and private sectors can rely on development of transportation corridors which will actually be built.<sup>1</sup>

On a broader scale, the planning objectives promote the legitimate public purpose of having well planned communities with the attendant benefit of protected property values. Such planning objectives minimize the disruptive influences of building major thoroughfares and avoid the haphazard development patterns of unmanaged growth. It was this unmanaged growth, a Florida

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<sup>1</sup>"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." Tampa-Hillsborough Co. Expressway Authority v. A.G.W.S. Corp., 608 So. 2d 52, 57, n. 11 (Fla. 2d DCA 1992). J. Altenbernd dissenting.

tradition in the past, which served as the impetus for the adoption of the Act.

The Act's express purposes encompass the broad subject of growth management in the state of Florida and the resulting plans embrace a correspondingly broad scope of legitimate public purposes.<sup>2</sup> The U.S. Supreme Court has cautioned that enunciations of public purposes must not be mere platitudes but there must be legitimate public interests advanced by the objectives. Lucas v. South Carolina Coastal Council, \_\_ U.S. \_\_, 112 S.Ct. 2886, 2898 n.12, 120 L.Ed.2d 798 (1992). In the Act, the legislature determined that planning requires throughfare maps and right-of-way protection objectives such as those of the Petitioner. § 163.3177(6 & 9) Fla. Stat. (1991); Fla. Admin. Code R. 9-J-5.007 As is evident from the foregoing discussion, there is a rational basis for the legislature to have so decided.

This Court, in Joint Ventures, found that the government had no legitimate interest in an absolute restriction of development along certain reserved roadway corridors. The stated and singular purpose of the map of reservation statute, a narrow focused regulatory provision, was to "freeze" land values. This Court held that this is not a legitimate government purpose.

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<sup>2</sup> The Act's purpose is to "to utilize and strengthen the existing role, processes, and powers of local governments in the establishment and implementation of comprehensive planning programs to guide and control future development." §163.3161(2) Fla. Stat. (1991). The Act's intent is to "encourage the most appropriate use of land, water, and resources, consistent with the public interest; overcome present handicaps; and deal effectively with future problems that may result from the use and development of land within their jurisdictions." § 163.3161(3) Fla. Stat. (1991). See also PALM BEACH COUNTY ORDINANCE 89-17 §§ 2(A-B).

Thoroughfare maps and planning objectives are not "freeze" attempts. They are established, not for the purpose of reducing acquisition costs but rather are established for valid public purposes: coordinated planning; informed decision making by the public and private sector; forcing timely resolution of questions regarding dedication, acquisition, or development accommodation; balancing the necessary burdens and the attendant benefits of development supported by adequate infrastructure; and providing for well planned communities.

In summary, because this Court will not be ruling on the legislative wisdom of right-of-way protection and because review of the planning objectives is limited to a narrow scope, this Court should rule in favor of allowing the government to retain right-of-way protection provisions to support its established goal of efficient planning.

II. PLANNING AND REGULATORY FUNCTIONS ARE DISTINGUISHABLE UNDER THE ACT AND THE CONSISTENCY REQUIREMENT IN THE PLANNING PORTION OF THE ACT DOES NOT CONVERT PLANNING OBJECTIVES INTO REGULATORY MANDATES.

The Act consists of two parts. The comprehensive planning portion of the Act (Chapter 163.3161-3197 Fla. Stat. (1991)) directs the development of local comprehensive plans consisting of specified "elements". The purpose of those elements is for the "prescription of principles, guidelines, and standards for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area." § 163.3177(1) Fla. Stat. (1991). The regulatory portion implementing the Act (Chapter 163.3201-3243 Fla. Stat. (1991)) is specifically directed

at implementation of the more generalized elements of the planning portion. §§ 163.3167(1)(c); 163.3201 Fla. Stat. (1991).

In Joint Ventures the subject legislative enactment was a regulatory provision requiring permitting authorities to prevent any development along areas designated on the maps of reservation. This Court in Joint Ventures was concerned with "the means by which the legislature attempts to achieve that goal." Joint Ventures at 626.

In contrast, the certified question here concerns itself with an element of the planning portion of the Act, not its regulatory component. The provisions complained of in this case are guidelines and principles, implementation of which are subject not only to consistency requirements but also to the legislative directive that comprehensive plans are to be "construed broadly to accomplish its stated purposes and objectives." § 163.3194(3); 163.3194(4)(b) Fla. Stat. (1991). In construing comprehensive plans as general guidelines for implementation, consideration of a single provision or element has been rejected in favor of selecting among and harmonizing conflicting goals and priorities. Southwest Ranches v. Broward County, 502 So. 2d 931, 936 (Fla. 4th DCA 1987). B.B. McCormick & Sons, Inc. v. City of Jacksonville, 559 So. 2d 252 (Fla. 1st DCA 1990). For example, the legal status of comprehensive plan provisions are always subject to the requirement that they be construed in such a manner so as to protect private property rights. § 163.3194(4)(a) Fla. Stat. (1991); PALM BEACH COUNTY ORDINANCE 89-17 §§ 2(A-B).

The application of the map may raise taking issues which should be addressed at the time of such application. However, the

thoroughfare map and planning objectives are distinguishable from the regulatory statute in Joint Venture and are generalized planning tools which serve to guide public and private decision-making. Further, the Act itself provides that it is not self executing but must be implemented by zoning and other ordinances. §§ 163.3167(1)(c); 163.3201 Fla. Stat. (1991). Citizens Growth Management Coalition of West Palm Beach, Inc. v. City of West Palm Beach, Inc., 450 So. 2d 204 (Fla. 1984); City of Jacksonville Beach v. Grubbs, 461 So. 2d 160 (Fla. 1st DCA 1984).

The courts below misconstrued the consistency requirements of the Act and the local plan as regulatory or enforcement directives. § 163.3191(1) Fla. Stat. (1991). Consistency requirements do not serve that function. The requirement that land development regulations and development be consistent with comprehensive plans does not mandate that the local government execute the subject right-of-way protection objective by preventing development which may impede development of a roadway. What the Act does mandate is furthering of the goals, objectives and policies of comprehensive plans and directs the courts on how to evaluate the consistency of development approvals. §§ 163.3194(3)(a-b) Fla. Stat. (1991). This furtherance requirement is flexible and does not require the rigid adherence to established criteria characteristic of regulatory schemes. However, consistency analysis does call for a broad interpretation and a comprehensive view of local government action with regard to the overall plan. § 163.3194(3)(a-b) Fla. Stat. (1991). See e.g. Southwest Ranches, at 936; B.B. McCormick & Sons, Inc.

In Selby Realty Co. v. City of San Buena Ventura, 514 P.2d 111 (Cal. 1973), the California Supreme Court rejected a challenge to general planning provisions similar to those presented here. That court's decision was predicated, in part, on the difference between planning and implementation. That court held that it is the implementation of planning provisions, not the merits of the plan itself, which should be the focus of judicial scrutiny. Where consistency provisions are so strict that the difference between a plan and the plan's implementation becomes obscure, then a court's strict scrutiny may be appropriate.

In Florida, the legislature specifically set up a bifurcated planning/regulation scheme for growth management. Consistency requirements under the Act are not for purposes of merging planning and regulation but provide a flexible approach to implementing conflicting and often disparate planning objectives. Given this Court's role in a review of legislative decision-making, the legislature's view that the subject planning requirements are required components of an effective growth management effort is entitled to a presumption of correctness. Pace Resources, Inc. v. Shrewsbury Township, 808 F. 2d 1023, 1030 (3rd Cir. 1987) (U.S. Supreme Court cases collected therein.)

In reviewing the foregoing arguments, the question raised in the context of this facial challenge is whether the "mere enactment" of a planning provision, absent consideration of its implementation, indicates enactment for an invalid purpose. Respondents argue that the "mere existence" of consistency requirements in the act indicate that the planning objectives can only be implemented in an unconstitutional manner. As is evident



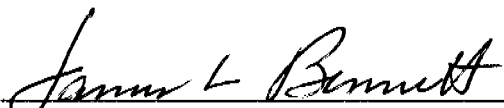
by the foregoing discussion, there are legitimate constitutional ways to implement the planning objectives. Keystone Bituminous Coal Assoc. v. DeBenedictis, 480 U.S. 470, 107 S.Ct. 1232, 1247, 94 L.Ed.2d 472 (1987); Glisson v. Alachua County, 558 So. 2d 1030, 1036 (Fla. 1st DCA) rev. denied 570 So. 2d 1304 (Fla. 1990).

#### CONCLUSION

For the above-stated reasons, the FLORIDA ASSOCIATION OF COUNTY ATTORNEYS, INC. urges this court to answer those issues in the negative and respectfully requests this Court reverse the decision of the fourth District Court of Appeal and direct that court to remand the case back with instructions that the trial court grant Palm Beach County's Motion for Summary Judgment declaring the thoroughfare map facially constitutional.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 21<sup>st</sup> day of April, 1993, to all counsel of record on the attached service list.



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