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IN THE SUPREME COURT  
STATE OF FLORIDA

CITY OF MELBOURNE, a municipal  
corporation in the State of  
Florida,

Appellant,

v.

CASE NO. 81,652

JOSEPH ALBERT PUMA,

Appellee.

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BRIEF OF AMICUS CURIAE  
FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS AND  
ROBERT A. BUTTERWORTH, ATTORNEY GENERAL, STATE OF FLORIDA  
ON BEHALF OF APPELLANT CITY OF MELBOURNE

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STATEMENT OF THE FACTS AND THE CASE

The Department and the Attorney General adopt the statement of the facts and the case set forth by Appellant City of Melbourne.

SUMMARY OF ARGUMENT

At issue in this case is the City of Melbourne's decision not to amend its adopted comprehensive land use plan. The adoption of a comprehensive land use plan involves the establishment of policies to guide the future growth and development of lands within the local government's jurisdiction. It is the "constitution" which land development regulations and permit decisions must follow. The adoption of this planning policy document, and the decision of whether and when to change that policy document, are clearly legislative functions of local government.

In this case, the trial court and appellate court have treated the City's exercise of its legislative duties as quasi-judicial, thereby extending the flawed holding in Snyder v. Board of County Commissioners of Brevard County, 595 So.2d 65 (Fla. 5th DCA 1991), juris. accepted, 605 So.2d 1262 (Fla. 1992, Case No. 79,720), which held that a site-specific zoning decision is quasi-judicial. Zoning regulations implement the comprehensive plan. While the Department and the Attorney General believe that Snyder is incorrect, even if it is upheld, it does not support the conclusion in this case. This is not a zoning case. This is a comprehensive plan amendment case to which Snyder does not and should not apply.

Because the land use planning process can only be viewed as a legislative function, the appellate court decision in this case

must be reversed.

### ARGUMENT

A LOCAL GOVERNMENT'S DECISION WHETHER TO CHANGE ITS ADOPTED COMPREHENSIVE LAND USE PLAN IS A LEGISLATIVE FUNCTION, NOT A QUASI-JUDICIAL ONE. THE TRIAL AND APPELLATE COURT RULINGS TO THE CONTRARY IN THIS CASE MUST BE REVERSED.

The issue in this case is whether a local government's decision to amend or not amend its future land use element of its adopted comprehensive land use plan is a legislative act subject to the deferential "fairly debatable" standard, or whether it is a quasi-judicial act. This case is not a zoning case, as the property-owner/Appellee suggests. (See Appellee's Response to Motion by the Attorney General to Appear as Amicus Curiae, dated June 4, 1993).

The City of Melbourne has adopted a comprehensive land use plan under the provisions of Chapter 163, Part II, Florida Statutes. Section 163.3177, Florida Statutes, governing required and optional elements of comprehensive plans, provides, in pertinent part:

(6) In addition to the requirements of subsections (1)-(5), the comprehensive plan shall include the following elements:

(a) A future land use plan element designating proposed future general distribution, location, and extent of the uses of land for residential uses, commercial uses, industry, agriculture, recreation, conservation, education, public buildings and grounds, other public facilities, and other categories of the public and private uses of land. The future land use plan shall include standards to be followed in the control and distribution of population densities and building and structure intensities. The proposed distribution, location, and extent of the various

categories of land use shall be shown on a land use map or map series which shall be supplemented by goals, policies, and measurable objectives. Each land use category shall be defined in terms of the types of uses included and specific standards for the density or intensity of use. The future land use plan shall be based upon surveys, studies, and data regarding the area, including the amount of land required to accommodate anticipated growth; the projected population of the area; the character of undeveloped land, the availability of public services; and the need for redevelopment, including renewal of blighted areas and the elimination of nonconforming uses which are inconsistent with the character of the community. The future land use plan may designate areas for future planned development use involving combinations of types of uses for which special regulations may be necessary to ensure development in accord with the principles and standards of the comprehensive plan and this act. The land use maps or map series shall generally identify and depict historic district boundaries and shall designate historically significant properties meriting protection.

Once the plan, including the future land use map, is adopted, it is implemented through land development regulations and through decisions on applications for development orders and permits, which include zoning and rezoning of land. Sections 163.3194, 163.3201, Florida Statutes; Section 163.3164(6), (7), and (22), Florida Statutes (definitions of "development order," "development permit," and "land development regulations").

Through the land use element of its adopted comprehensive plan and the use distributions reflected on its future land use map, a local government charts its future course of development. It is afforded the flexibility to determine when that future has arrived through the implementation of zoning within the area designations shown on the land use maps. Board of County Commissioners of Leon County v. Monticello Drug Company and O'Connor Development Corporation, 18 Fla. L. Weekly D1307, D1309 (Fla. 1st DCA, May 21,

1993) (quoting City of Jacksonville Beach v. Grubbs, 461 So.2d 160 (Fla. 1st DCA 1984), rev. denied, 469 So.2d 749 (Fla. 1985)).

Mr. Puma has not yet reached the zoning stage. In its comprehensive land use plan, the City designated Mr. Puma's property for residential development, which was consistent with the zoning designation he had enjoyed up to that time. (R: 64, 188) Mr. Puma wants a change in the land use designation to allow for commercial development, a higher intensity use. (R: 357-358) Since a zoning change from residential to commercial is inconsistent with the City's adopted comprehensive plan, he had to first seek a change to the comprehensive plan itself in the form of an amendment to the future land use map. It is the City's rejection of that proposed amendment to its comprehensive plan which is the subject of this proceeding.

In this case, the initial Final Judgment finds in favor of the City, sustaining its decision not to amend its comprehensive plan, based in part upon a finding that its decision was "fairly debatable." Subsequently, the trial court granted rehearing and entered an amended order based on its review of Snyder v. Board of County Commissioners of Brevard County, 595 So.2d 65 (Fla. 5th DCA 1991), juris. accepted, 605 So.2d 1262 (Fla. 1992, Case No. 79,720), currently under review in this Court. The trial judge remanded to the City with directions to either grant the comprehensive plan amendment recommended by the City's Planning and Zoning Board or, alternatively, to hold an evidentiary hearing and support any denial by findings of fact based upon the evidence



presented.

In Snyder, the district court discarded the "fairly debatable" standard in zoning cases and held that site-specific zoning under a comprehensive land use plan should be determined through quasi-judicial procedures, and further required the local government to substantiate its findings by clear and convincing evidence.

By affirming the trial court's amended judgment in this case, the Fifth District Court of Appeal has extended its ruling in Snyder from zoning cases to a local government's decision whether or not to amend its comprehensive plan. This is a wholly unwarranted extension of Snyder which must be reversed.

Both the Department and the Attorney General have filed amicus briefs in this Court in Snyder urging that zoning and rezoning decisions are properly considered to be legislative functions of local government. However, even if Snyder is upheld, it does not compel the conclusion reached by the trial and appellate courts here. Snyder is a rezoning case. The instant case is not. It involves adoption and amendment of a comprehensive plan on which zoning regulations must be based.

The courts have recognized that comprehensive planning is a legislative function of local government and that there is a distinction between comprehensive planning and zoning:

A local comprehensive land use plan is a statutorily mandated legislative plan to control and direct the use and development of property within a county or municipality. The plan is likened to a constitution for all future development within the governmental boundary.

Zoning, on the other hand, is the means by which the comprehensive plan is implemented, and involves the

exercise of discretionary powers within limits imposed by the plan. It is said that a zoning action not in accordance with a comprehensive plan is ultra vires. [citations omitted; emphasis supplied]

Machado v. Musgrove, 519 So.2d 629, 631-32 (Fla. 3rd DCA 1987); rev. denied, 529 So.2d 694 (Fla. 1988), cited in Gardens Country Club, Incorporated v. Palm Beach County, 590 So.2d 488 (Fla. 4th DCA 1991); accord, Rinker Materials Corp. v. Metropolitan Dade Co., 528 So.2d 904 (Fla. 3rd DCA 1987).

The distinction between legislative and quasi-judicial decisions is an important one in this case. This Court has stated that substantive law, which is that part of the law which creates, defines, and regulates rights and includes those rules and principles which fix and declare the primary rights of individuals with respect towards their persons and property, is within the legislative domain. Haven Federal Savings & Loan Association v. Kirian, 579 So.2d 730, 732 (Fla. 1991) (foreclosure case). In Jennings v. Dade County, 589 So.2d 1337, 1343 (Fla. 3rd DCA 1991), the court opined:

[I]t is the nature of the act performed that determines its character as legislative or otherwise.

A judicial inquiry investigates, declares and enforces liabilities as they stand on present facts and under laws supposed already to exist. That is its purpose and end. Legislation, on the other hand, looks to the future and changes existing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power.

Suburban Medical Center, 597 P.2d at 661 (quoting Prentis v. Atlantic Coast Line Co., 211 U.S. 210, 226, 29 S.Ct. 67, 69, 53 L.Ed. 150 (1908)).

See also Lee County v. Sunbelt Equities, II, Limited Partnership, 18 Fla. L. W. D1260, D1261 (Fla. 2nd DCA, May 14, 1993), where, after quoting the above passage, the court noted that by contrast to a judicial decision, "legislation changes the existing law." (emphasis in original)

In the instant case, the City of Melbourne's adopted comprehensive plan, including its land use maps, defines, regulates, and declares rights to use property within its jurisdiction. It designates Mr. Puma's property for low density residential use. Mr. Puma has asked the City to change its adopted comprehensive plan. That is, he asked the City Council to "look to the future and change existing conditions by making a new rule to be applied thereafter" to him. This is clearly a legislative function.

The hierarchy of planning law in Florida is set out in Chapter 163, Part II, Florida Statutes, the Local Government Comprehensive Planning and Land Development Regulation Act, more commonly known as "The Growth Management Act." It is called a growth management act because it is intended, through its hierarchical structure of mandatory planning documents, to make local governments control and direct the way in which development takes place in this state. It is not intended to give the state executive or judicial branches the authority to micro-manage long-range planning decisions made by locally elected officials. In its intent section, it therefore specifically provides:

Section 163.3131. Short title; intent and purpose.

(1) This part shall be known and may be cited as the "Local Government Comprehensive Planning and Land Development Regulation Act."

(2) In conformity with, and in furtherance of, the purpose of the Florida Environmental Land and Water Management Act of 1972, chapter 380, it is the purpose of this act 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.

(3) It is the intent of this act that its adoption is necessary so that local governments can preserve and enhance present advantages; 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. Through the process of comprehensive planning, it is intended that units of local government can preserve, promote, protect, and improve the public health, safety, comfort, good order, appearance, convenience, law enforcement and fire prevention, and general welfare; prevent the overcrowding of land and avoid undue concentration of population; facilitate the adequate and efficient provision of transportation, water, sewerage, schools, parks, recreational facilities, housing, and other requirements and services; and conserve, develop, utilize, and protect natural resources within their jurisdictions.

\* \* \*

(6) It is the intent of this act that the activities of units of local government in the preparation and adoption of comprehensive plans, or elements or portions therefor, shall be conducted in conformity with the provisions of this act.

Historically, the fairly debatable standard of review has been applied where the local government's action is legislative in nature. The Florida Legislature recognized the legislative function of comprehensive planning by specifically incorporating the "fairly debatable" standard in The Growth Management Act, for

both the adoption of the initial comprehensive plan and for subsequent amendments to the plan such as that requested by Mr. Puma in this case. When a comprehensive plan or amendment is found by the Department to be "in compliance"<sup>1</sup> and is challenged by an affected party, the Act provides that "the local plan or plan amendment shall be determined to be in compliance if the local government's determination of compliance is fairly debatable." Section 163.3184(9), Florida Statutes. Similarly, where the Department finds that a local government's comprehensive plan or plan amendment is not "in compliance," the local government's determination of consistency with the policies and provisions of the plan is presumed to be correct and, again, "[t]he local government's determination that elements of its plans are related to and consistent with each other shall be sustained if the determination is fairly debatable." Section 163.3184(10), Florida Statutes. In this case, the City of Melbourne has determined that maintaining the consistency and integrity of its adopted comprehensive plan, its land use "constitution," is best served by denying the change requested by Mr. Puma. That decision is entitled to the traditional deference afforded to legislative determinations.

Further, The Growth Management Act mandates public participation in the comprehensive plan and plan amendment process.

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<sup>1</sup> "In compliance" means consistent with the requirements of provisions of Chapter 163, the state comprehensive plan, the appropriate regional policy plan, and Rule 9J-5, F.A.C. (the Department's rule implementing Chapter 163's requirements). Section 163.3184(1)(b), Florida Statutes.

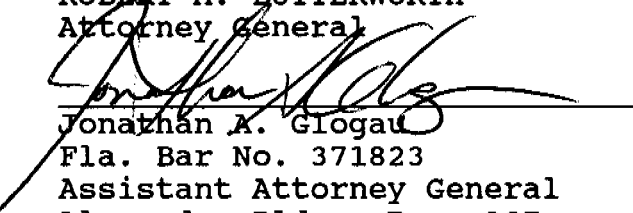
Section 163.3181, Florida Statutes. The degree of public participation allowed in the legislative arena is inconsistent with the concept of quasi-judicial action. For example, in Jennings v. Dade County, 589 So.2d 1337 (Fla. 3rd DCA 1991), the court indicated that ex parte communications on a matter to be heard in a quasi-judicial proceeding could be a due process violation. If established law is to be dramatically changed such that consideration of proposed amendments to a comprehensive plan will hereafter be viewed as a quasi-judicial function, elected officials could be isolated from contact with the voters who elected them. This result was clearly not contemplated by the Legislature under The Growth Management Act.

CONCLUSION


The decision of whether to amend the future land use element of a local government's comprehensive plan is a legislative function of local government, whose decision must be sustained if it is "fairly debatable." Accordingly, the decision of the Fifth District Court of Appeal, which treats a comprehensive plan amendment as a quasi-judicial undertaking, must be reversed.

DATED this 3rd day of August, 1993.

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CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing were furnished to the following persons by U. S. Mail this 3rd day of August, 1993.

  
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