IN THE SUPREME COURT OF FLORIDA

SANTA ROSA COUNTY,

Petitioner,

vs.

ADMINISTRATION COMMISSION, DIVISION OF ADMINISTRATIVE HEARINGS, DON W. DAVIS, in his capacity as Hearing Officer for the Division of Administrative Hearings, and DEPARTMENT OF COMMUNITY AFFAIRS,

Respondents.
_____/

CASE NO. 84,545

District Court of Appeal,
1st District - No. 93-659

APPEAL FROM THE DISTRICT COURT OF APPEAL
FIRST DISTRICT

DEPARTMENT OF COMMUNITY AFFAIRS' ANSWER BRIEF ON JURISDICTION AND THE MERITS

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STATEMENT OF THE FACTS AND THE CASE

Pursuant to Rule 9.210(c), Fla. R. App. P., the Department concurs with the statement of the case and the facts presented by Appellant in its Initial Brief, except for the following additions and areas of disagreement, specified below:

1. The Department disagrees with the third sentence on page 4, that, "The motion was granted on the grounds of mootness due to the settlement." The sentence is an overbroad generalization of the finding of the Summary Judgment, R 497-500, which states: "On June 24, 1992, a settlement agreement was entered into between the County and the DCA, which resolved the disputes between the parties arising out of or related to the comprehensive plan adopted by the County.... There is no genuine issue of material fact regarding the validity of such settlement agreement, nor the non-existence of any dispute, as alleged in the complaint, which was the predicate for this action." Furthermore, Appellant's allegation regarding the "rationale" of the court's decision to grant summary judgment is misplaced, when in fact the order states, "There must be a bona fide need for a declaratory judgment based on present, ascertainable facts, or the Court has no jurisdiction to render such relief." R 499.

2. The Department disagrees with the first full sentence on page 5 on two grounds: the existence of a settlement agreement was only one of many grounds raised by the Department in its motion for summary judgment, and was not the "total foundation" for the summary judgment order; also, the Department did not

acknowledge that "even if a settlement has been reached, that is no guarantee that the case is over or that County will avoid sanctions."

3. The Department disagrees with and rejects as legal argument the allegations set forth in the paragraph commencing on page 5 and ending on page 6. The settlement agreement was binding on the County, committed the County to a specific course of action, and resolved the dispute between the parties.

4. The Department disagrees with and rejects as legal argument the allegations on page 6 and the paragraph ending on page 7, except for the quotation from the Order Denying Motion for Rehearing.

5. The Department adds that a final order in the administrative case was issued on August 17, 1994. The Santa Rosa County comprehensive plan, as amended pursuant to the settlement agreement, was determined to be in compliance. Department of Community Affairs v. Santa Rosa County, 16 F.A.L.R. 3331 (Fla. Dept. of Comm. Affairs 1994).

Pursuant to this Court's Orders of October 21, 1994 and December 1, 1994, the Department hereby submits its Answer Brief on Jurisdiction and the Merits.

SUMMARY OF THE ARGUMENT

The Department respectfully asks the Court to decline to accept jurisdiction of this case, because the question certified by the District Court is not one of great public importance, and because the decision of the District Court does not conflict with any prior decision of this Court or of any District Court of Appeal.

Santa Rosa County's challenge is barred by the general rule that public officials must presume legislation affecting their duties to be valid. Contrary to the County's argument, the scope of the general rule is not limited to laws which have little effect, or to laws which affect merely ministerial duties.

The County does not have standing to bring this challenge to the Growth Management Act, because the provisions challenged by the County do not require the County to expend public funds, and the provisions which do require the expenditure of public funds are not challenged by the Complaint filed before the Circuit Court. The County does not have standing to protect the revenue sources which can be affected by sanctions under the Growth Management Act, because the County does not collect or disburse those revenues.

The County's challenge was properly dismissed by the Circuit Court because there exists no underlying case or controversy and the issues presented are moot. Summary judgment was correctly granted because there are no material issues in dispute between the parties. The execution of the stipulated settlement

agreement between Santa Rosa County and the Department brought to a close the underlying administrative challenge regarding whether the County's comprehensive plan is "in compliance" as defined in Section 163.3184(1)(b), Fla. Stat. The settlement agreement clearly specifies the parties' intent to fully resolve all issues between themselves.

ARGUMENT

I. THE SIGNIFICANT CONSTRAINTS IMPOSED ON THE COUNTY PLANNING PROCESS BY THE CHALLENGED PROVISIONS OF THE GROWTH MANAGEMENT ACT[1] DO NOT GIVE THE COUNTY STANDING TO CHALLENGE THE ACT.

The County, in Argument I of the Initial Brief, correctly states that the challenged portions of the Growth Management Act impose significant constraints on comprehensive planning by the County. Regardless of the significance of the constraints imposed by the Act, the general rule in Florida is that "state officers and agencies must presume legislation affecting their duties to be valid, and do not have standing to initiate litigation for the purpose of determining otherwise." Department of Education v. Lewis, 416 So. 2d 455, 458 (Fla. 1982). See also, Davis v. Gronemeyer, 251 So. 2d 1 (Fla. 1971). "Disagreement with a constitutional or statutory duty, or the means by which it is to be carried out, does not create a justiciable controversy...." Department of Revenue v. Markham, 396 So. 2d 1120, 1121 (Fla. 1981).

This Court stated in Barr v. Watts, 70 So. 2d 347, 351 (Fla. 1953), that

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[1] In the interest of brevity, the Department will refer to Part II of chapter 163, Fla. Stat., and rule chapter 9J-5, F.A.C., collectively as the "Growth Management Act" or the "Act." The provisions of rule 9J-5 that are relevant to this case have been approved by the Legislature, §163.3177(10), Fla. Stat. (1993), and should be treated as statutes. Occidental Chemical Agricultural Products, Inc. v. Department of Environmental Regulation, 501 So. 2d 674, 677 (Fla. 1st DCA 1987); State of Florida Department of Environmental Regulation v. C.P. Developers, Inc., 512 So. 2d 258, 261 (Fla. 1st DCA 1987).

> The people of this state have the right to expect that each and every such state agency will promptly carry out and put into effect the will of the people as expressed in the legislative acts of their duly elected representatives. The state's business cannot come to a stand-still while the validity of any particular statute is contested by the very board or agency charged with the responsibility of administering it and to whom the people must look for such administration.

The general rule applies to county commissioners, Graham v. Swift, 480 So. 2d 124 (Fla. 3d DCA 1986); to municipalities, North Bay Village v. Isle of Dreams Broadcasting Corp., 46 So.2d 496 (Fla. 1950); and to county officials, Miller v. Higgs, 468 So. 2d 371 (Fla. 1st DCA 1985), rev. denied, 479 So. 2d 117 (Fla. 1985).

The general rule would be of little use if it applied only to insignificant legislation. However, the rule does apply to important laws. The Florida Courts have applied the rule to legislation concerning standards for admission to the Bar, Barr, supra, 70 So. 2d 347; contraction of municipal boundaries, North Bay Village, supra, 46 So. 2d 496; and to the restriction of funding to schools based upon the expression of unpopular opinions, Department of Educations v. Lewis, supra, 416 So. 2d 455.

The general rule has also been applied to a challenge to an agency rule which imposed significant constraints on a county's exercise of planning discretion. In Graham v. Swift, supra, 480 So. 2d 124, a Monroe County Commissioner sought to challenge a rule of the Administration Commission which revised the Principles for Guiding Development for the Florida Keys Area of

Critical State Concern. Designation as an Area of Critical State Concern, "...provides for Administration Commission supervision and, where deemed necessary, supersession of local government regulation of development...." and "...affects regulation of all development in (the) area of critical state concern...." Cross Key Waterways v. Askew, 351 So. 2d 1062, 1064 (Fla. 1st DCA 1977), aff'd, Askew v. Cross Key Waterways, 372 So. 2d 913 (Fla. 1978). Despite the significant constraints imposed by the rule, the Third District Court of Appeal held that,

> The validity of the law is to be assumed by the public official who is to carry it out. By the same token, that official does not have standing to sue for the purpose of determining that the law is not valid. Graham v. Swift, 480 So. 2d at 125.

The challenged portions of the Growth Management Act do, indeed, constrain the County's exercise of discretion in making substantive planning decisions. The significance of such constraints provides no justification for reversal of the District Court.

II. THE LEGISLATIVE NATURE OF COMPREHENSIVE PLAN ADOPTION DOES NOT GIVE THE COUNTY STANDING TO CHALLENGE THE GROWTH MANAGEMENT ACT.

In Argument II of the Initial Brief, Santa Rosa County argues that the general rule barring challenges by public officials applies only to statutes and rules which affect ministerial or administrative duties. The County correctly states that comprehensive planning is a legislative function of local government. However, the County wrongly contends that the general rule does not extend to such statutes and rules.

As the County admits in its Initial Brief, the recent cases do not limit the general rule to laws which affect only ministerial duties. Department of Revenue v. Markham, 396 So. 2d 1120 (Fla. 1981); Department of Education v. Lewis, 416 So. 2d 455 (Fla. 1982); Miller v. Higgs, 468 So. 2d 371 (Fla. 1st DCA 1985); Branca v. City of Miramar, 634 So. 2d 604 (Fla. 1994).

The Administration Commission rule in Graham v. Swift, supra, 480 So. 2d 124, which revised the Principles for Guiding Development in the Florida Keys Area of Critical State Concern[2], clearly affected legislative duties of the Monroe County Commission. The comprehensive plan and land development regulations adopted by the county commission must comply with the Principles for Guiding Development. §380.05(6), (8), (10) & (14) and §380.0552(9), Fla. Stat. (1993); Askew v. Cross Key Waterways, supra, 372 So. 2d at 915. The First District Court of

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[2] Subsequently revised again, and adopted by the legislature in §380.0552(7), Fla. Stat. (1993).

Appeal stated that the Act which created the Areas of Critical State Concern, "shift[ed] ultimate regulatory authority from the county courthouse and city hall to the Capitol." Cross Key Waterways v. Askew, supra, 351 So. 2d at 1065. Even though the challenged rule affected legislative duties, the Third District Court of Appeal held that

> Because Commissioner Swift has not been prevented from performing his duties under the Florida Administrative Code and because those rules are to be presumed valid, declaratory judgment is inappropriate. Graham v. Swift, 480 So. 2d at 125.

The County suggests that Graham v. Swift is distinguishable from the instant case because designation as an Area of Critical State Concern is "an extraordinary measure," "Santa Rosa County's regulation of development is not inadequate," and "the removal of local planning discretion ... is not warranted here." Initial Brief, at 19. The County's attempt to distinguish Graham v. Swift from the case at hand is flawed for two reasons.

First, the County asks the Court to accept the premise that "the removal of local planning discretion ... is not warranted here." Initial Brief, at 19. To accept that premise, the Court must look beyond the issue of standing, and determine that the Legislature made a policy error by adopting the Growth Management Act. The County cannot support the premise because the wisdom of the Act is not before the Court. Green v. City of Pensacola, 108 So. 2d 897, 899 (Fla. 1st DCA 1959).

Second, the County's analysis implicitly admits that the challenged rule in Graham v. Swift clearly affected a legislative

function of county government. Otherwise, the County could not claim that designation as an Area of Critical State Concern is "an extraordinary measure." Thus, the County asks the Court to disregard Graham v. Swift precisely because the case speaks directly to the County's theory.

The general rule barring challenges to laws which affect the duties of public officials is based on the relationship of those public officials to the Legislature. It is axiomatic that administrative agencies and officials have no authority except that which is delegated by the Legislature. Counties are equally subject to the will of the Legislature.

The Legislature can create, abolish and change counties.[3] Art. VIII, §1(a), Fla. Const. Charter counties "have all powers of local self-government not inconsistent with general law...." Art. VIII, §1(g), Fla. Const. Non-charter counties "have such power of self-government as is provided by general or special law." Art. VIII, §1(f), Fla. Const. Counties of either sort may only enact ordinances which are "not inconsistent with general law...." Art. VIII, §1(f)&(g), Fla. Const.; Davis v. Gronemeyer, supra, 251 So. 2d at 4.

Counties are political subdivisions of the state. Broward County v. Bouldin, 114 So. 2d 737 (Fla. 2d DCA 1959); Dade County v. Florida Association of Workers for the Blind, Inc., 173 So. 2d 160 (Fla. 3d DCA 1965). "It has long been held that counties act

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[3] The Legislature changed the boundary of Santa Rosa County as recently as 1991. Ch. 91-370, §2, Laws of Florida; §7.55, Fla. Stat. (1993).

as arms of the state." Circuit Court of Twelfth Judicial Circuit v. Department of Natural Resources, 339 So. 2d 1113 (Fla. 1976). This Court, in a case which considered the Governor's authority to suspend the Mayor of Jacksonville, has stated that

> Inasmuch as the Legislature has power to create, alter, and abolish both counties and municipalities, we believe it was well within the legislative power to enact Section 112.49, defining what a municipality is and what a county is, for suspension purposes. Advisory Opinion to the Governor Request of July 12, 1976, 336 So. 2d 97 (Fla. 1976).

Concerning a similar constitutional provision which applied to municipalities, this Court stated that

> ...[T]his Court has consistently adopted the generally accepted proposition that municipal corporations have no inherent right of self-government beyond legislative control of the state in the absence of some specific constitutional provision granting it to them.
>
> * * *
>
> ...[T]here [can] be no municipal corporation in the absence of legislative action. In other words, the Legislature creates a municipality. It has the authority to abolish it and certainly has the power to regulate and control its government by statutory amendment. Cobo v. O'Bryant, 116 So. 2d 233, 235 (Fla. 1959).

Counties cannot legislate in a manner inconsistent with general law. Art. VIII, §1(f)&(g), Fla. Const.; Abenkay Realty Corp. v. Dade County, 185 So. 2d 777, 780 (Fla. 3d DCA 1966); Board of County Commissioners of Dade County v. Boswell, 167 So. 2d 866, 867 (Fla. 1964); General Electric Credit Corporation of Georgia v. Metropolitan Dade County, 346 So. 2d 1049, 1054 (Fla. 3d DCA 1977). See also City of Miami Beach v. Frankel, 363 So.2d 555, 558 (Fla. 1978), relating to municipalities.

As the First District Court of Appeal stated in Weaver v. Heidtman, 245 So. 2d 295, 294 (Fla. 1st DCA 1971),

> At the outset, we observe that this is not a contest between a private citizen and the sovereign but is a contest between the sovereign and its child. The respective counties of this State do not possess any indicia of sovereignty; they are creatures of the legislature, created under Art. VIII, Sec. 1, of the State Constitution, F.S.A., and accordingly are subject to the legislative prerogatives in the conduct of their affairs.

Santa Rosa County disagrees with the policy decisions made by the Legislature in the Growth Management Act. Initial Brief, at 24. As a child of the sovereign, the County has no standing to pursue that disagreement in Circuit Court.

III. THE COUNTY'S CHALLENGE DOES NOT FIT THE EXCEPTION FROM THE GENERAL RULE FOR LAWS REQUIRING THE EXPENDITURE OF PUBLIC FUNDS.

Argument III of the County's Initial Brief is directed to the question certified to this Court by the First District Court of Appeal. This Court's Order Postponing Decision On Jurisdiction and Briefing Schedule indicated that the Court has not yet determined whether the District Court's opinion presents a question of great public importance.

The District Court answered the question by stating:

> (T)he statutory and rule provisions in question do not specify any expenditures of public funds other than the ordinary cost of the County doing business, i.e., complying with the growth management laws of the state and preparing a comprehensive plan. While there are certain administrative costs associated with the preparation and approval of a local comprehensive plan, the Act does not mandate the gross expenditures of local government funds in the same manner as the cases on which the County relies. Santa Rosa County v. Administration Commission, 642 So. 2d 618, 623 (Fla. 1st DCA 1994)

Judge Ervin concurred with the main holding of the majority, but dissented from the decision to certify the question to this Court because:

> The majority sets forth impressive authority which clearly establishes that the county has failed to show an exemption from the long-standing rule precluding it from bringing its challenge against the state. There is nothing remarkable or unique in the application of this rule to a county, an arm of the state, forbidding it to sue its head. Santa Rosa County, at 624.

For the reasons stated in Judge Ervin's dissent, the Department asks the Court to decline jurisdiction of this case. In the alternative, if the Court accepts jurisdiction, the Department asks the Court to affirm the District Court's opinion

because the provisions of the Growth Management Act that are challenged by Santa Rosa County do not require an expenditure of public funds other than the ordinary cost of doing business.[4]

A. The provisions of the Growth Management Act which have been challenged by Santa Rosa County do not require the expenditure of County funds.

The County disagrees with policies expressed in the challenged portion of the Growth Management Act. Complaint For Declaratory And Injunctive Relief, R 161-184. The Complaint challenges the constitutionality of: the urban sprawl provisions (Count 1), the requirement of consistency with the applicable Regional Policy Plan (Count 2), the treatment of permit and sovereign land lease applications if a coastal element of the comprehensive plan is not in compliance (Count 4), and the requirement that development in coastal high-hazard areas be discouraged (Count 5).[5] See also, the County's description of the Complaint in the Initial Brief at 3.

The County does not seek to avoid comprehensive planning in general, and states that it "does not object to the requirement that it engage in comprehensive planning." Initial Brief, at 24. The "financial burdens" cited by the County are inherent in all

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[4] Even the ordinary cost of doing business has been partially defrayed by the state. Chapter 91-193, Laws of Florida, authorized the state to assist local governments with grants and in-kind contributions for formulating a comprehensive plan. Santa Rosa County was the recipient of such funding, and was granted $15,150.00 under the terms of the parties' Stipulated Settlement Agreement. R 277-319, at 285.

[5] The remaining count of the Complaint, Count 3, is addressed in Argument III.B., in order to conform to the format of the County's Initial Brief.

comprehensive planning, and are not caused by the policy issues raised in the Complaint. Even if challenged portions of the Act were invalidated, the County would face the same expenses in the pursuit of its planning objectives.

The tasks listed on page 26 of the Initial Brief, and pages 6 and 7 of the Brief on Jurisdiction, would have to be performed by the County even if the Growth Management Act were changed to meet the objections raised in the County's Complaint. Comprehensive planning of any sort cannot occur without the preparation of maps designating future land use and the physical features described in §163.3177(6), Fla. Stat. (1993), and the County does not ask to be relieved of this duty. Common sense dictates that comprehensive planning must be based upon data, analysis, surveys and studies, as required by §163.3177(8), Fla. Stat. (1993)[6], and the County does not argue that its comprehensive plan should be based upon speculation or fantasy. Comprehensive planning in a state surrounded on three sides by water cannot avoid mapping of coastal uses and physical features, as required by §163.3177(2), Fla. Stat. (1993), and the County does not attack this requirement. Nothing in the County's Complaint takes issue with the provisions in the Growth Management Act concerning notice, distribution of copies, hearings and public participation.

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[6] The Growth Management Act does not require local governments to collect original data. §163.3177(10)(e), Fla. Stat. (1993).

The County correctly states that the Florida courts recognize an exception from the general rule for laws which require the expenditure of public funds. However, all of the cases cited by the County involve challenges which, if successful, would have avoided that expenditure.

In Arnold v. Shumpert, 217 So. 2d 116 (Fla. 1968), the county commissioners challenged a special act which authorized the purchase of liability insurance by the county. Since the county had "to expend public funds to pay the insurance premiums," Arnold, at 119, the Court held that the county had standing to challenge the special act. The county's successful challenge to the special act eliminated the expenditure of public funds to pay the premiums.

In City of Pensacola v. King, 47 So. 2d 317 (Fla. 1950), the Railroad and Public Utilities Commission challenged a statute which authorized the Commission to determine the geographical extent of the city's jurisdiction over automobile transportation companies. Since such a determination might involve a hearing requiring the expenditure of public funds, the Court held that the Commission had standing to challenge the constitutionality of the statute. If the Commission's challenge had been successful, the Commission would not have been required to expend public funds in order to hold the hearing.

In State ex. rel. Harrell v. Cone, 177 So. 854 (Fla. 1937), the comptroller challenged a statute which required payment of road construction funds to Washington County. The Court held

that the comptroller's "duty to examine, audit, and settle all claims, and demands whatsoever against the state arising under any law or resolution of the Legislature," gave the comptroller standing to challenge the constitutionality of the statute. Cone, at 857. If the comptroller's challenge had been successful, the payment to Washington County would have been avoided.

In the case at hand, all of the tasks cited by the County as requiring the expenditure of public funds would have been performed even if the County had filed, and won, its lawsuit before commencing the preparation of its comprehensive plan. The provisions of the Growth Management Act which have been challenged by the County do not require the County to expend public funds. The County's challenge does not fit the exception to the general rule barring challenges by public officials to the laws they are duty-bound to apply. The decision of the District Court of Appeal should be affirmed.

B. The County has no standing to protect sources of funding which are not collected by the County, and which are at risk only if the County violates the Growth Management Act.

Count 3 of the County's Complaint, R 161-184, challenges the constitutionality of §163.3184(11), Fla. Stat. (1993), which authorizes the Administration Commission to impose funding sanctions if a comprehensive plan does not comply with the Growth Management Act.

Santa Rosa County does not collect the funds which might be the subject of sanctions under the Growth Management Act. The

"revenue" that the County seeks to protect is not revenue in the sense of taxes or fees collected by the County. The sanctions authorized by §164.3184(11), Fla. Stat. (1993), apply to state funding for infrastructure, state grants, and state revenue sharing.

In Argument III.B. of the Initial Brief, the County argues that it has standing to challenge §163.3184(11) based on the right of public officials to protect sources of revenue. However, in both of the cases cited by the County, the law was challenged by a public official whose chief duty involved collection or disbursement of the revenue in question.

In Green v. City of Pensacola, 108 So. 2d 897 (Fla. 1st DCA 1959), the comptroller sought to require payment of a tax on natural gas imposed by general law. The city claimed that it was exempt from the tax under the provisions of a special act, and the comptroller challenged the constitutionality of the special act. The District Court held that the comptroller had standing to bring the challenge, because the special act "directly" affected the comptroller's duty to collect public funds. Green, at 901.

In Markham v. Yankee Clipper Hotel, Inc., 427 So. 2d 383 (Fla. 4th DCA 1983), rev. den., 434 So. 2d 888 (Fla. 1983), the District Court held that a property appraiser had standing to challenge a statute which required that substantially uncompleted structures be assessed as having no value. The District Court did not explain its holding, but clearly the property appraiser's

main duty is to maximize the collection of revenue, and that revenue was directly diminished by the challenged law.

Department of Education v. Lewis, 416 So. 2d 455 (Fla. 1982), is more analogous to the case at hand than either Green or Yankee Clipper. In Lewis, the Department of Education, the State Board of Education, and the Commissioner of Education sought to challenge a proviso in a general appropriations bill which withheld funds from any school which gave assistance to a group which advocated sexual relations between persons not married to each other. As in the case at hand, the public officials who wished to challenge the proviso faced a loss of funding if they violated the restriction, but did not have a duty to collect or disburse the revenue at issue. This Court held that the public officials in Lewis had no standing to challenge the proviso in their official capacities, and stated that:

> In such a situation, the public officer or agency does not have a sufficiently substantial interest or special injury to allow the court to hear the challenge. Lewis, 416 So. 2d at 458.

The Court contrasted the standing of public officials who receive funding, such as the Department of Education, the State Board of Education and the Commissioner of Education in Lewis and Santa Rosa County in this case, with the standing of public officials who collect and disburse revenue. The Court stated that:

> The comptroller, as the state's chief officer for the disbursement of funds, would have standing to challenge a proviso in an appropriations bill. But the Department of Education, the State Board of Education,

and the Commissioner of Education in his official capacity, do not. Lewis, 416 So. 2d at 459.

There is another distinction between Green, supra, 108 So. 2d 897, and Yankee Clipper, supra, 427 So. 2d 383, on the one hand, and Lewis, supra, 416 So. 2d 455, and the instant case on the other. In Green and Yankee Clipper, the challenged law acted simply and directly upon the revenue source without any intervening act by the public official who challenged the law. In Lewis and in the case at hand, the public officials lose funding only if those public officials violate the non-financial policy directives in the challenged law. Santa Rosa County will lose state funding by operation of §163.3184(11), Fla. Stat. (1993), only if the County affirmatively violates the Growth Management Act by adopting a comprehensive plan or plan amendment that is not in compliance.[7]

In the final analysis, Santa Rosa County's challenge does nothing to protect revenue. Even public officials directly concerned with revenue collection or disbursement do not have standing to challenge laws which redirect, rather than diminish,

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[7] As the situation stands now, the County will be sanctioned only if it brazenly violates the Growth Management Act. Since the original Santa Rosa comprehensive plan has been determined to be in compliance, the only way that the County can be exposed to the possibility of sanctions is to adopt a plan amendment which is not in compliance. Pursuant to §163.3189(2), Fla. Stat. (1993), plan amendments do not become effective until the compliance determination is made. If, after a formal administrative proceeding which may be reviewed by an appellate court, the Administration Commission determines that an amendment is not in compliance, the County may decide to make the amendment effective despite the determination of non-compliance. §163.3189(2)(b), Fla. Stat. (1993). Only then will the County be subject to sanctions.

revenue. In Miller v. Higgs, 468 So. 2d 371 (Fla. 1st DCA 1985), a county property appraiser challenged a statute which provided that leasehold interests in government-owned property which are used for non-government purposes would be taxed as intangible personal property. The effect of the reclassification of the leasehold interest was to "divert[] revenue from local government to state government...." Higgs, supra, 468 So. 2d at 374. The District Court held that the property appraiser had no standing to challenge the constitutionality of the reclassification statute.

Just as in Higgs, the state funds at issue will not be lost to the public. If the County willfully violates the Growth Management Act and is sanctioned, those state funds will be redirected to the Growth Management Trust Fund, §163.3184(11)(c), Fla. Stat. (1993), for use by state agencies, regional planning agencies, and local governments. §186.911, Fla. Stat. (1993). Since the County has no standing to protect revenue sources that it does not collect, the decision of the First District Court of Appeal should be affirmed.

IV. THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL IS CONSISTENT WITH THIS COURT'S DECISION IN CITY OF PENSACOLA V. KING.

In addition to the certified question, Santa Rosa County asks this Court to accept jurisdiction of this case on the ground that the District Court's decision directly conflicts with this Court's decision in City of Pensacola v. King, 47 So. 2d 317 (Fla. 1950). See Petitioner's Brief On Jurisdiction.

In King, the Railroad and Public Utilities Commission challenged a statute which authorized the Commission to determine the geographical extent of the city's jurisdiction over automobile transportation companies. Since such a determination might involve a hearing requiring the expenditure of public funds, the Court held that the Commission had standing to challenge the constitutionality of the statute. If the Commission's challenge had been successful, the Commission would not have been required to expend public funds in order to hold the hearing.

The County argues that the Growth Management Act requires the County to "incur the expenses associated with the mandated hearings, notices, publication, data collection, and analysis, mapping, and plan preparation." Brief on Jurisdiction, at 7. Therefore, the County contends that its situation is on all fours with the Commission's position in King.

As demonstrated in greater detail in Argument III.A. of this brief, the expenses described by the County are inherent in comprehensive planning. The County will incur those expenses

regardless of whether it prevails on the policy issues which it raised in its Complaint. In contrast, in King the challenged law itself imposed the hearing requirement, and the Commission sought to avoid that expense.

In Kyle v. Kyle, 139 So. 2d 885 (Fla. 1962), this Court stated that:

> [J]urisdiction to review because of an alleged conflict requires a preliminary determination as to whether the Court of Appeal has announced a decision on a point of law which, if permitted to stand, would be out of harmony with a prior decision of this Court or another Court of Appeal on the same point, thereby generating confusion and instability among the precedents. We have said that conflict must be such that if the later decision and the earlier decision were rendered by the same Court the former would have the effect of overruling the latter. Kyle, at 887, citing Ansin v. Thurston, 101 So. 2d 808 (Fla. 1958).

In Kincaid v. World Insurance Company, 157 So. 2d 517 (Fla. 1963), this Court stated that:

> The constitutional standard is whether the decision of the District Court on its face collides with a prior decision of this Court or another District Court on the same point of law so as to create an inconsistency or conflict among the precedents. Kincaid, at 518.

The decision of the First District Court of Appeal in this case is not "out of harmony with" this Court's opinion in King, nor does it "collide with" King. Since the decision on appeal is consistent with King, and consistent with all prior precedent, the Department respectfully requests the Court to decline to accept jurisdiction.

V. THE COUNTY DOES NOT HAVE STANDING TO CHALLENGE PROVISIONS OF THE GROWTH MANAGEMENT ACT BECAUSE THERE IS NO UNDERLYING CASE OR CONTROVERSY AND THE ISSUES PRESENTED ARE NOW MOOT.

The jurisdiction of the Supreme Court covers not only the issues raised by a certified question, but all the other issues in the case. This Court recently stated that having "accepted jurisdiction to answer the certified question, we may review the entire record for error." Ocean Trail Unit Owners Association, Inc. v. Mead, ____ So. 2d ____; 19 Fla.L.W. S568 (Fla., Nov. 10, 1994). See also, Feller v. State, 637 So. 2d 911, 914 (Fla. 1994); Bell v. State, 394 So. 2d 979, 980 (Fla. 1981); Lawrence v. Florida East Coast Ry. Co., 346 So. 2d 1012, 1014 (Fla. 1977); Atlas Properties, Inc. v. Didich, 226 So. 2d 684, 685 (Fla. 1969).

The rule is applicable to all classes of cases in which the Supreme Court may exercise its appellate jurisdiction. Compare Cantor v. Davis, 489 So. 2d 18, 20 (Fla. 1986) (constitutionality of statute); Jacobson v. State, 476 So. 2d 1282, 1285 (Fla. 1985) (conflict); Savoie v. State, 422 So. 2d 308, 310 (Fla. 1982) (same).

The judgment of the First District may be affirmed if there is anything in the Record which justifies affirmance. Applegate v. Barnett Bank of Tallahassee, 377 So. 2d 1150, 1152 (Fla. 1979); Raffa Associates, Inc. v. Boca Raton Resort & Club, 616 So. 2d 1096, 1097 (Fla. 4th D.C.A. 1993); Bird Lakes Development Corp. v. Raskin, 596 So. 2d 133, 134-35 (Fla. 3d D.C.A. 1992); Canto v. J.B. Ivey & Co., 595 So. 2d 1025, 1028 (Fla. 1st D.C.A.

1992). According to the Applegate doctrine, the holding of the First District may be affirmed for any reason supported by the Record, regardless of whether the First District relied upon it.

In denying the County's Motion for Rehearing, the Circuit Court stated that in order to establish jurisdiction under the Declaratory Judgment Act, "the plaintiff is required to show a bona fide, actual, present, practical need for the declaration." (Order Denying Motion for Rehearing, R 567-570). The Circuit Court granted Summary Judgment for the Department because the case no longer presented an actual controversy as to the state of facts or a bona fide, present need for the declaration.

The District Court reversed the Circuit Court on the issue of mootness for two reasons: First, that the County has not settled its dispute with the Department; and second, regardless of settlement of the underlying dispute, the County will be harmed because it must continually comply with the provisions of the Growth Management Act. The relevant case law, however, supports the Circuit Court's finding that the County's complaint did not present a bona fide, justiciable issue to be resolved and that summary judgment was proper as a matter of law.

As to the first issue, this Court has explained the effect of settling claims which were pending on appeal. In Robinson v. Croker, 158 So. 123 (Fla. 1934), the Supreme Court distinguished between the effect of settlement on pending appeals and on interlocutory appeals. The Court stated

> A suit that has been settled by compromise or otherwise pending on appeal renders the appeal moot and the ordinary

> course of procedure in such cases, where the decree appealed from is a final decree, contemplates a reversal of the decree appealed from with directions for dismissal of the proceedings below without costs to either party.

Id. at 124. (citations omitted). Florida District Courts have abided by and extended this principle in holding that there are no grounds to hear an interlocutory appeal where appellant and one of the appellees have stipulated for dismissal. Burnett v. Johnson, 183 So. 2d 580 (Fla. 2nd DCA 1966). Applying this principle to the case at bar, it is clear that settlement of the County's administrative action in this case has rendered the issues moot.

This Court has held that to "entertain a declaratory action regarding a statute's validity, there must be a bona fide need for such declaration based on present, ascertainable facts or the Court lacks jurisdiction to render declaratory relief." Martinez v. Scanlan, 582 So. 2d 1167, 1170 (Fla. 1991). This Court has held that such a complaint for declaratory relief cannot stand where there is only a "mere possibility of a dispute in the future" and the question raised is "hypothetical and is too remote in time and too uncertain as to contingency" to be adjudicated. Okaloosa Island Leaseholders Ass'n v. Okaloosa Island Authority, 308 So. 2d 120, 122 (Fla. 1st DCA 1975).

Santa Rosa County has no current, concrete dispute regarding the application of the Growth Management Act. The County has settled with the Department as to the particular facts alleged in its complaint, R 277-319, and that settlement has resulted in a final order determining that the County's comprehensive plan is

in compliance. Department of Community Affairs v. Santa Rosa County, 14 F.A.L.R. 3332 (Fla. Dept. of Comm. Affairs 1994). The County has avoided altogether the possibility of sanctions for its original comprehensive plan by fully complying with the terms and conditions of the Settlement Agreement. The existence and implementation of the Settlement Agreement executed by the County and the Department therefore renders the County's claims moot since the requested declaration is based on no controversy or facts in dispute.

The District Court's second reason is that regardless of the settlement, the County has pled a bona fide controversy because the County must continuously comply with the Growth Management Law and will be continuously subject to sanctions. However, this Court has stated that

> Even though the legislature has expressed its intent that the declaratory judgment act should be broadly construed, there still must exist some justiciable controversy between adverse parties that needs to be resolved for a court to exercise its jurisdiction. Otherwise, any opinion on a statute's validity would be advisory only and improperly considered in a declaratory action. Martinez v. Scanlan, supra, 582 So. 2d 1171.

With the successful resolution of the factual and non-constitutional legal issues concerning the County's comprehensive plan before DOAH, the County's complaint became a request for an advisory opinion. Without the context of an bona fide disagreement concerning a comprehensive plan or plan amendment, the County asks the Circuit Court to review the constitutionality of the challenged portions of the Growth Management Act in the

abstract. If the Summary Judgment, R 497-500, is reversed, the Circuit Court will be required to consider the urban sprawl provisions, the requirement of consistency with the applicable Regional Policy Plan, the treatment of permit and sovereign land lease applications if a coastal element of the comprehensive plan is not in compliance, and the requirement that development in coastal high-hazard areas be discouraged, where the County has complied with these provisions.

The issues raised in this case are similar to Askew v. City of Ocala, 348 So. 2d 308 (Fla. 1977). In Askew v. Ocala, the City filed a declaratory judgment action in order to get a ruling from the Court that it should be allowed to meet with its attorney in private. Although the state attorney advised the local government that any secret meetings would be unlawful, the Court held that the case did not present a justiciable controversy under the declaratory relief statute. The Court reasoned that it has no power to entertain a declaratory judgment action which did not involve a present controversy as to the violation of the statute, and where the judgment sought would not constitute a binding adjudication of the rights of the parties. Id. at 310.

This Court has held that

> [T]he Declaratory Judgments Act . . . should not be invoked to foster frivolous or useless litigation, to answer abstract questions, to satisfy the idle curiosity, to authorize a fishing expedition or to promulgate judgments serving no useful purpose." Overman v. State Board of Control, 62 So. 2d 696 (Fla. 1952).

Santa Rosa County can avoid the possibility that any future plan amendments will be subject to sanctions by delaying the effective date of the plan amendments in accordance with §163.3189, Fla. Stat. (1993). The original Santa Rosa comprehensive plan has been determined to be in compliance. Pursuant to §163.3189(2), Fla. Stat. (1993), plan amendments do not become effective until the compliance determination is made. If, after a formal administrative proceeding which may be reviewed by an appellate court, the Administration Commission determines that an amendment is not in compliance, the County may decide to make the amendment effective despite the determination of non-compliance. §163.3189(2)(b), Fla. Stat. (1993). Local governments may completely avoid the possibility of sanctions by delaying the effective date of plan amendments until such time as they are found in compliance by the Department or the Administration Commission.

In light of the facts, the Circuit Court's Summary Judgment should be affirmed.

VI. SUMMARY JUDGMENT WAS CORRECTLY GRANTED BY THE CIRCUIT COURT BECAUSE, EVEN IN THE LIGHT MOST FAVORABLE TO APPELLANT, NO MATERIAL ISSUE OF FACT REMAINS IN DISPUTE AND SUMMARY JUDGMENT IS REQUIRED AS A MATTER OF LAW.

Santa Rosa County originally requested declaratory and injunctive relief to challenge the constitutionality of portions of the Growth Management Act. Complaint, R 161-184. The Circuit Court granted the County "tenuous standing" based on its present and ongoing dispute with the Department over the Santa Rosa County comprehensive plan, in which an administrative hearing was pending before a DOAH hearing officer. Summary Judgment, R 497-500. The Summary Judgment was granted on the grounds that the requested declaration no longer presented an actual controversy as to the state of facts, since the parties had resolved the underlying dispute raised in the Complaint. That order was correctly entered on the evidence, since the Settlement Agreement resolved all factual disputes between the County and Department, and the County was not entitled to declaratory relief as a matter of law.

The test for reviewing the propriety of a summary judgment is whether there remain genuine issues of material fact; where no genuine issue of material fact is shown to exist, the only question for the appellate court is whether the summary judgment was properly granted or denied under the law. Wesley Constr. Co. v. Lane, 323 So. 2d 649 (Fla. 3rd DCA 1975), cert. denied, 336 So. 2d 1185 (Fla. 1975); Hancock v. Department of Corrections, 585 So. 2d 1068 (Fla. 1st DCA 1991). The Florida courts have

consistently held that unless the trial court has abused its discretion, its determination respecting summary judgment will not be disturbed on appeal. Ocean Villa Apartments, Inc. v. City of Ft. Lauderdale, 70 So. 2d 901 (Fla. 1954).

Viewing the record evidence in the light most favorable to the County, there exists no genuine issue of material fact. The Settlement Agreement entered into on June 24, 1992, R 277-319 stipulated dismissal of the pending administrative hearing regarding the issue of compliance of the County's comprehensive plan (as defined in Section 163.3184(1)(b), F.S.), once the parties performed their respective duties and responsibilities under the Agreement. The Agreement provided that

> The parties enter into Part I of this agreement in a spirit of cooperation for the purpose of avoiding costly, lengthy and unnecessary litigation and in recognition of the desire for the speedy and reasonable resolution of disputes arising out of or related to the plan. R 277-319, at 279.

Yet, the County contended before the Circuit Court that contradicted facts still existed because the Settlement Agreement did not resolve the dispute with the Department, nor with other parties to the comprehensive plan challenge. This contention should be rejected because there is no material fact in dispute regarding the Settlement Agreement -- the Agreement says what it says, the County signed it and is bound by it.

The interpretation of the Settlement Agreement or any other such legal document or instrument is a legal issue for the Court alone. It does not give rise to issues of fact. See Sosa v. Knight-Ridder Newspapers, Inc., 435 So. 2d 821, 826 (Fla. 1983);

Barclays American Mortgage Corp. v. Bank of Central Florida, 629 So. 2d 978, 979 (Fla. 5th D.C.A. 1993); CH2M Hill Southeast, Inc. v. Pinellas County, 598 So. 2d 85, 88-89 (Fla. 2d D.C.A.), rev. denied, 613 So. 2d 7 (Fla. 1992); Leseke v. Nutaro, 567 So. 2d 949, 950 (Fla. 4th D.C.A. 1990); Folwell v. Bernard, 477 So. 2d 1060, 1062 (Fla. 2d D.C.A. 1985), rev. denied, 486 So. 2d 595 (Fla. 1986); Jaar v. University of Miami,474 So. 2d 239, 242 (Fla. 3d D.C.A. 1985), rev. denied, 484 So. 2d 10 (Fla. 1986). This rule derives from the presumption that the best evidence of the intent of the parties is the wording of the document itself. The only exception applies where the meaning of the document is obscured by some textual ambiguity. Santa Rosa County has not contended that there is any ambiguity in the Settlement Agreement.

It is fundamental that settlement agreements are highly favored in the law. Dorson v. Dorson, 632 So. 2d 632 (Fla. 4th DCA 1981); Pearson v. Ecological Science Corp., 522 F. 2d 171 (5th Cir. 1975), cert. denied, 96 S. Ct. 1508 (1976). They are binding upon parties and upon the courts alike. Gunn Plumbing, Inc. v. Dania Bank, 252 So. 2d 1, 4 (Fla. 1971).

As in the case of Dorson, supra, the "settlement . . . agreement in the case at bar is a model of clarity." 632 So. 2d at 633. Part I of the Agreement provided for a "spirit of cooperation for the purpose of avoiding costly, lengthy and unnecessary litigation and recognizes the desire for the speedy and reasonable resolution of disputes arising out of or related

to the plan." (Stip. Settlement Agreement, R 279). Further, the parties stipulated that "it is the intent of this agreement to resolve fully all issues between the parties in this proceeding." R 280. Additionally, the Agreement provided for the dismissal of the proceedings by the Department upon adoption of remedial amendments by the County. R 281. Finally, the agreement sets forth the specific language which the County agrees to adopt, or refrain from adopting, in its comprehensive plan to bring it into compliance. R 280 and 287-319.

The language of the Settlement Agreement, even when viewed in the light most favorable to the County, supports the conclusion that summary judgment was correctly granted because the Settlement Agreement resolved all factual disputes between the County and Department as to the underlying claim upon which the County's request for a declaration, and the Court's finding of "tenuous standing," was based. The plain meaning of the language of the agreement does not give rise to any dispute of material fact.

Moreover, the authority cited by the County below is not controlling. In Westchester Fire Ins. v. In-Sink-Erator, 252 So. 2d 856 (Fla. 4th DCA 1971), the court reversed the entry of summary judgment because the settlement agreement ambiguously referred to provisions in the original contract between the parties. By contrast, the foregoing analysis of the settlement agreement between the County and the Department underscores its specificity, as well as the clarity of the parties' intent.

Therefore, the issue sub judice involves the legal effect of a written instrument which is both specific and clear.

Since there are no material issues in dispute between the County and the Department, Summary Judgment was properly issued by the Circuit Court.

CONCLUSION

The Department respectfully asks the Court to decline jurisdiction of this case. If the Court accepts jurisdiction, the Department asks the Court to affirm the decision of the First District Court of Appeal, and to answer the certified question by stating:

> A county does not have standing to challenge by declaratory action the constitutionality of a statute or rule which only indirectly requires the county to expend public funds, and which further provides for a potential loss of state funding only if the county willfully violates the law.

If the Court reaches the other issues decided by the Circuit Court and the District Court, the summary judgment should be affirmed because there are no material issues of fact in dispute, and the settlement between the County and the Department regarding the underlying administrative proceeding demonstrates that there is no bona fide, actual, present, practical need for the declaration.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and five (5) copies, and a 3 1/2 inch diskette of the foregoing Brief in WordPerfect 5.1 format, have been filed by hand-delivery with the Clerk of the Supreme Court, and that a true and correct copy of the foregoing has been furnished by U.S. Mail to the parties listed below this 21 day of December, 1994.

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