SUPREME COURT OF FLORIDA

MARTIN COUNTY, a political subdivision of the State of Florida,

Petitioner,

v.

MELVIN R. YUSEM, Individually and as Trustee,

Respondent.
_____/

CASE NO. 87,078
4DCA CASE NO. 93-3025

BRIEF OF AMICUS CURIAE BROWARD COUNTY ON BEHALF OF PETITIONER MARTIN COUNTY

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STATEMENT OF THE FACTS AND THE CASE

Broward County adopts and relies upon the statement of the facts and the case set forth by Appellant Martin County.

SUMMARY OF ARGUMENT

Broward County defers to Martin County's presentation of issues related to procedural matters and evidentiary rulings. Broward County addresses herein the proper standard to be utilized in reviewing local government comprehensive plan and plan amendment decisions made pursuant to Chapter 163, Part II, Florida Statutes, The Local Government Comprehensive Planning and Land Development Regulation Act.

A county's decision not to amend its properly adopted comprehensive land use plan is not a quasi-judicial decision subject to strict scrutiny review. It is a legislative decision reviewable under the "fairly debatable" rule that is applied to all challenges to legislative actions. The Fourth District Court of Appeal's decision that the proceeding in question was quasi-judicial should be reversed and the case should be remanded with instructions to proceed accordingly.

ARGUMENT

A REZONING DECISION WHICH HAS LIMITED IMPACT UNDER SNYDER, BUT DOES REQUIRE AN AMENDMENT TO THE COMPREHENSIVE LAND USE PLAN, IS A LEGISLATIVE DECISION SUBJECT TO THE "FAIRLY DEBATABLE" STANDARD OF REVIEW.

A comprehensive plan is a finely crafted balance of competing and complimentary ideas, interests, and principles. It is the result of an intricate web of compromises and tradeoffs. All interested parties--developers, environmentalists, politicians, citizens groups, and others--give up certain things in return for concessions in other areas. This process produces a uniquely crafted product that is a reflection of the special needs and goals of the community.

The decision of the Fourth District Court of Appeal in the present case allows any property owner to unravel the delicate tapestry that this process produces. This is because the comprehensive plan amendments that can be forced on a county under the decision may very well change aspects of the plan that were the direct result of the procedure of negotiating, bargaining and compromise.

The density of an affected area, for instance, may have been established as the result of an agreement to restrict or increase density in another area. Decisions as to traffic flow, the locations of schools, police presence, and many other factors, would likely have been based on the assumptions created by such an agreement. Thus, to allow property owners to dictate that the plan

must be amended to accommodate their interests is to set in motion scenarios that can impact on many factors, such as those listed above. Under such circumstances, plan amendments can require the reallocation of resources in manners that disrupt, or even destroy, the pattern that was established by the plan.

Indeed, the implications of such a rule of law are so far-reaching that counties will no longer be able to rely on their comprehensive plans as "plans," since they will be subject to change at any time on the initiative of any individual. That individual's interests will be given priority over the county's need for long-term stability and managed growth. There will be no assumptions about the future that can be safely relied upon. There will be no road map to follow. Rather, counties will be pulled in whatever directions are determined by outside forces. Comprehensive plans will in effect become nothing more than comprehensive statements of existing conditions.

This case therefore presents an issue of great significance to all counties--that is, whether a county's board of commissioners is making a legislative or quasi-judicial decision when it considers and denies a landowner's request to amend the county's future land use map. The outcome determines not only the standard applied to review such decisions, but ultimately decides the balance of power between the judiciary and local and state land use authorities in matters pertaining to future growth management planning.

A "judicial act" is one which interprets existing law and determines the rights of parties in the application of that law,

while a legislative act is one that prescribes what the law will be in the future. Board of County Commissioners of Brevard County v. Snyder, 627 So.2d 469 (Fla. 1993). The creation of substantive law which defines and regulates rights, including those rules and principles which fix and declare the primary rights of individuals with respect towards their persons and property, is an act which falls squarely within the legislative domain. Haven Federal Savings & Loan Association v. Kirian, 579 So.2d 730, (Fla. 1991).

The enactment of laws regulating the use and development of land is clearly a legislative function, Florida Land Co. v. City of Winter Springs, 427 So.2d 170 (Fla. 1983); Gulf & Eastern Development Corp. v. City of Fort Lauderdale, 354 So.2d 57 (Fla. 1978), and in fact Florida courts have specifically recognized that comprehensive planning is a legislative function of local government. Machado v. Musgrove, 519 So.2d 629 (Fla. 3rd DCA 1987).

There is therefore no question that Martin County's initial adoption of its comprehensive land use plan pursuant to the provisions of Chapter 163, Part II, Florida Statutes, was a legislative act and proceeding. Martin County's land use plan was the result of a carefully crafted compromise by its drafters and the commissioners who adopted it, which took into consideration the various policies of Martin County for the orderly development of the county's future growth. The creation and adoption of any future land use map by a county is the formulation of future policy.

As Judge Pariente stated in her dissenting opinion in the instant case, if Mr. Yusem had challenged the County's initial action in adopting the future land use map, the County's action would have been recognized as legislative and thus reviewed under the highly deferential "fairly debatable" standard of review. Martin County v. Yusem, 20 Fla.L.W. D1967 (Fla. 4DCA, August 30, 1995). The result should be no different simply because Mr. Yusem asked Martin County to amend the county's comprehensive land use plan. Mr. Yusem sought to change the existing law to accommodate his development desires, rather than an application of the law as it currently existed. Legislation changes existing law. Lee County v. Sunbelt Equities II, Ltd. Partnership, 619 So.2d 996 (Fla. 2d DCA 1993).

As Judge Pariente pointed out in her dissent to the majority opinion of the Fourth District Court of Appeal in this case, an amendment to a county's comprehensive land use plan is no different to an initial challenge to the plan at its inception, and there is no reason to treat a commission decision rejecting a proposed modification of a previously adopted land use plan any less legislative in nature than the decision initially adopting the plan. Section 28 Partnership, Ltd. v. Martin County, 642 So.2d 609 (Fla. 4th DCA 1994), review denied, 654 So.2d 920 (Fla. 1995)(Stone, J. concurring).

In the instant case, Martin County's review of Mr. Yusem's proposed amendment to the future land use map required the county to evaluate whether allowing him to build more residential units on

his property was a logical and timely extension of a more intense land use designation in a nearby area, consider existing and anticipated land use development patterns, consistency with the goals and objectives of the Comprehensive Growth Management Plan, availability of supportive services, including improved roads, recreation amenities, adequate school capacity, satisfactory allocations of water and wastewater facilities and other needed supportive facilities. (Martin County's Growth Management Plan, Policy M.1.a(2). The considerations were the same at the time when Martin County was constructing its future land use map as when it decided not to amend that map as Mr. Yusem requested.

The County's necessary consideration of the likely impact the proposed amendment would have on the county's provision of local services, capital expenditures and its overall plan for the managed growth and future development of the surrounding area demonstrates that the County's decision whether to allow the proposed amendment to the land use plan involved considerations that extended well beyond Mr. Yusem's 54 acres of land.

In fact, the decision of whether to amend Martin County's land use plan had an impact on the entire 900 acre tract of land of which Mr. Yusem's land was only a small part. Had the county approved the amendment, it would have opened the door to other landowners requesting the same amendment to the land use plan concerning their property, and thereby result in the development of the tract of land in question far beyond and well before what

Martin County ever intended when it adopted its future land use plan.

The Fourth District Court of Appeal focused on Board of County Commissioners of Brevard County v. Snyder, 627 So.2d 469 (Fla. 1993) in holding that Mr. Yusem's request for an amendment to the land use plan is quasi-judicial in nature. The court's reliance on Snyder is misplaced. First, Snyder deals with a zoning matter and the application of already existing law. The instant case deals strictly with a planning decision and a proposed change in the existing law. Second, the requested amendment of the land use plan affected far more than Mr. Yusem's small tract of land. As discussed above, the request necessitated the county's reconsideration of the policies behind the future land use map, and the effects the proposed change would have on the entire tract of land.

The question certified by the Fourth District Court of Appeal (Can a rezoning decision which has limited impact under Snyder, but does require an amendment to the comprehensive land use plan, still be a quasi-judicial decision subject to strict scrutiny review) must be answered in the negative. Pursuant to the Growth Management Act, it is a county's legislative function to determine and plan for its own future development and growth. The decision of the Fourth District Court of appeal that a county's decision not to amend its land use plan is a quasi-judicial act subject to strict scrunity review in effect gives the state judicial branch the authority to micro-manage long-range planning decisions made by

locally elected officials. This was clearly not the intent of the Growth Management Act.

CONCLUSION

The question certified by the Fourth District Court of Appeal should be answered in the negative, and this case remanded to the trial court to apply the "Fairly debatable" standard of review to Martin County's legislative decision not to amend its future land use plan.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished this 22nd day of February, 1996 to: Gary Oldehoff, Assistant County Attorney, Martin County, 2401 S.E. Monterey Road, Stuart, Fl, 34996 and Deborah Beard, Esquire, Thomas E. Warner, Esquire and Tim B. Wright, Esquire, 1100 South Federal Highway, P.O. Drawer 6, Stuart, Fl 34995-0006.

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