IN THE SUPREME COURT OF FLORIDA

MARTIN COUNTY,

Petitioner,

v.

MELVYN R. YUSEM,
Trustee,

Respondent.
_____/

Case No. 87, 078
District Court of Appeal
4th District - No. 93-3025

RESPONDENT'S ANSWER BRIEF

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Quasi-Judicial Rezoning, Journal of Land Use & Environmental Law, Volume 9, Number 2 (Spring 1994) of Florida State University, pages 282-283.

INTRODUCTION AND NATURE OF THE CASE

This matter is before the Court under Rule 9.030(a)(2)(A)(v), Fla. R. App. P., for discretionary review of a decision of the Fourth District Court of Appeal, which on rehearing, certified the following question to the Court as being of great public importance:

> **CAN A REZONING DECISION WHICH HAS LIMITED IMPACT UNDER SNYDER, BUT DOES REQUIRE AN AMENDMENT OF THE COMPREHENSIVE LAND USE PLAN, STILL BE A QUASI-JUDICIAL DECISION SUBJECT TO STRICT SCRUTINY REVIEW?**

The Martin County, a political subdivision of the State of Florida (the "County") was the Appellant below, and Defendant in the trial court. Melvyn R. Yusem, Trustee ("Mr. Yusem") was the Appellee below, and Plaintiff in the trial court.

The transcript will be referenced as "T" and a page number. The record on appeal will be referenced as "R" and a page number. Evidence will be referred to as "Pl." or "Def." and an exhibit number, with a page number where appropriate. Copies of documents in the appendix filed with this answer brief will be referenced as "A" and a page number.

STATEMENT OF THE FACTS AND STATEMENT OF THE CASE

The Statement of the Facts and Statement of the Case of the County do not fairly or accurately represent (and in some instances affirmatively misrepresent) the facts and the actions taken by the trial court below. The County argues the facts in its brief because it apparently disagrees with the factual findings of the trial court. The County has omitted relevant information and many of the County's factual representations are unsupported by the record or taken out of context. A detailed description of the County's misstatements and misrepresentations is included in the last section below.

Mr. Yusem's Statement of the Facts and Statement of the Case

This case involves Mr. Yusem's application to the County to develop 64 single family residential lots on 54 acres of undeveloped land in Martin County, Florida. (T,436) Mr. Yusem's property (the "Property"), is located on Salerno Road, approximately 1 1/2 miles west of U.S. 1, and 3/4 of a mile east of State Road 76. (R,434) The Property is located in the Port Salerno planning area for the Capital Improvement Element of the County's Comprehensive Growth Management Plan (the"Plan"). This planning area is a large area bordered on the north by Indian Street; to the south by Cove Road; to the east by the Intracoastal Waterway; and to the west by the St. Lucie River. (T,490-91) This area includes a major shopping center, other significant commercial areas, a community college, a hospital, an elementary school, a large residential development of regional impact, and several other residential developments, including condominiums and subdivisions. (T,83-93)

To develop the Property, Mr. Yusem requested rezoning from A-1 (Agricultural) to PUD (Residential) and a land use change under the Plan from Rural Density (.5 units per acre) to Estate Density (up to 2 units per acre). (T,435,436) Although at the time of the application the Plan designated Mr. Yusem's Property as Rural Density, the Property was in the Plan's Primary Urban Service District[1]. (R,434;435) The Primary Urban Service District is reserved for residential densities of two units per acre and up and its purpose, among other things, is to cluster residential development in areas where capital facilities already exist or

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[1]In February of 1990, the County divided its Urban Service District into two categories, Primary and Secondary, and placed Mr. Yusem's Property in the Primary Urban Service District. (R,435)

where they can be placed most efficiently. (A, 22; R,434; Page 4-40 of Def. 62) The Plan articulates the following Objective for Primary Urban Service Districts:

> "1. OBJECTIVE
>
> Martin County **shall concentrate** higher densities and intensities of development within strategically located **Primary Urban Service Districts**, as delineated including commercial or industrial uses, as well as **residential development exceeding a density of two (2) units per acre**, by this Growth Management Plan, where all forms of public facilities are available or are programmed to be available, at the base levels of service adopted in the Capital Improvement Element." (Page 4-40 of Def. 62)(Emphasis added.)

Mr. Yusem filed his application for the rezoning and land use amendment in September of 1989 and asserted that he met the standards for a land use amendment under the Plan (T,79; R,435; Pl. 7). The Plan provides for amendments if: "past changes in uses in the general area make the proposed use logical and consistent with those uses, and if there are adequate public services available" or "if growth in the area has altered the character of the area such that the proposed land use is reasonable and consistent with the uses in the area." (Page 1-9 of Def. 62).

In support of his application for rezoning and a land use change, Mr. Yusem established the following facts regarding changes in uses, character, and development in the general area of his Property (which all occurred after his Property was designated Rural Density):

1) Pinewood Elementary School was constructed approximately 3/4 of a mile east of the Property; (R,436)

2) An I-95 interchange was opened on State Road 76; (R,437)

3) Salerno Road was reconstructed to meet County standards and designated as a

major arterial road on the Thoroughfare Plan, providing access to I-95; (R,437)

4) Indian River Community College is located approximately 3/4 of a mile from the Property; the college has 2000-3000 students and expects to double in size; (T,376)

5) The County approved the Willoughby development, which is a large residential DRI with densities more intense than Yusem was seeking, and which lies north of the Mr. Yusem's Property between Indian Street and Salerno Road; (R,437)

6) Martin Memorial Hospital obtained a Certificate of Need and had begun construction of a 100 bed hospital on Salerno Road, approximately 1/2 mile east of the Property (future plans include an office building for doctors, a 120 bed nursing home, a 60 bed rehab hospital, and the site for the county library; (T,376; R,437)

7) A major shopping center was located at the intersection of U.S. 1 and Salerno Road, approximately 1 1/2 miles east of the Property; (R,437)

8) Several residential subdivisions are on Salerno Road between U.S. 1 and State Road 76 which have densities of 2 units per acre and up (Martin Meadows, The Woodlands, Myers' Estates, Paramount Estates, Hibiscus Park, Coral Gardens). (R,438)

The County staff report to the Local Planning Agency (the "LPA"), and to the Board of County Commissioners, concluded that Mr. Yusem's proposed project "was consistent with all development criteria in the Martin County Code and the Approved Comprehensive Growth Management Plan; that it was consistent with the level of services and the concurrency requirements for Category A and C type facilities in the Capital Improvement Element of the Comprehensive Plan." (T,72) However, the staff recommended denial on the alleged basis that there had been no change in any of the surrounding property and no change in neighborhood

character. (Page 2 of Pl. 29)

The LPA reviewed and approved Mr. Yusem's applications after a public hearing and forwarded them to the County with a favorable recommendation. (T,73) At its meeting of May 1, 1990 (and despite staff recommendation of denial) the County voted to approve the LPA's favorable recommendation of the requested rezoning and land use amendment and directed that the amendment be sent to the Department of Community Affairs (the "DCA") for its statutory review. (Page 79 of Pl. 31; R,438)

The County forwarded Mr. Yusem's proposed land use amendment, along with proposed Plan amendments for other properties throughout the County, to the DCA for its review. (R,438) However, the County staff did not send the DCA any data or analysis in support of Mr. Yusem's requested land use amendment. (T,255,500,504,524; R,439; Pl. 84) The County staff did send DCA their own report recommending denial and several letters of protest from some citizens in the area. (T,113-14,521) In response, the DCA issued its Objections, Recommendations and Comments report ("ORC Report"), with the following comment on Mr. Yusem's Property:

> "The proposed amendment does not include an analysis which demonstrates that the more intense development requested is the logical extension of a more intense land use designation in the nearby area. The County should consider abandoning this, **or alternatively, revise the data and analysis to demonstrate that the proposed amendment is a logical extension of a more intense land use designation in a nearby area.**" (Pl. 56; T,108)(Emphasis added.)

The County staff did not supply the revised data or analysis to the DCA prior to the application coming back to the County for final approval on October 16, 1990. (T,500,504; R,439)

At the October 16th County meeting, no additional evidence or data was supplied to the

County (other than the ORC Report) and there were no changes in circumstances which occurred since the County's favorable vote on May 1,1990. (T,716-720) The County reversed its prior decision and voted (3 to 2) to deny Mr. Yusem's requested land use amendment and PUD (Residential) rezoning application on the basis that the proposed development would constitute "**leap frog development.**" (Pl. 64, page 36) The County then passed a resolution, *sua sponte*, to rezone Mr. Yusem's Property to RE-2A (Rural Estate District) which restricts density to .5 units per acre (the "Rezoning Resolution"). (R,439)

A transcript of the October 16, 1990 meeting of the County reveals the basis for the denial of Mr. Yusem's applications: "leap frog" development. (Pl. 62) On page 26 of the transcript, Mr. King (the County's Planning Administrator) stated:

> "The information we have currently available, and the policies within the Comprehensive Plan re (sic) the issues we're addressing here, and the responses that we have on these pages 8 and 9, if you want I can go into those in detail, are specifically on the basis of those **DCA objections** that have been filed, and **the critical one**, yes is the issue of the potential **leap frog development** in this development approval." (Pl. 62)(Emphasis added.)

Also, the following are "comments" of Commissioners at the October 16, 1990 hearing as they appear in the transcript:

> On page 30, Commissioner Dawson: "The **leap frog** question is still the same question it was months ago." (Pl. 62)
>
> On page 31, Commissioner Dawson: "... I think their big issues - to the urban sprawl, **leap frog development** issue is a very big issue to the State." (Pl. 62)
>
> On page 31, Commissioner Hurchalla: "I think that the sprawl or **frog** or whatever, it is when you are the hole in the donut, with one or other little piece like it out there, but everything surrounding you is one per two acre, **is the real problem**." (Pl.

62)

> On page 36, Commissioner Thom: "Well, I think the whole thing boils down to what we're talking about is the uh rural density residential land use, and I think the DCA would consider that in this particular instance, probably **leap frog development** in spite of the fact it is whether it is or not, in the urban area in this particular case...." (Pl. 62)

These are the three Commissioners who voted to deny Mr. Yusem's application. (Page 41 of Pl. 62)

During the trial, the trial court asked Mr. King the following questions and received the following answers:

By the Court:

Q "I have heard some testimony, I have heard some testimony that their reason for doing it was **leap frog development**."

By Mr. King:

A "The overall issue of urban sprawl was brought up at the meeting. I think it was pertinent within the staff analysis early on within the original public hearing."

By the Court:

Q "Did staff urge that it be denied because it would be **leap frog development**?"

By Mr. King:

A "**Yes**, as I recall."

(T, 526)

Finally, there was an additional significant fact presented in the evidence to the trial court. As required, the staff prepared a formal response to the ORC Report and sent it to the DCA. (T,705) Aside from the comments on Mr. Yusem's Property, the ORC report contained DCA comments on the other requested land use amendments on various properties throughout the County, all of which required a response from the County. (Pl. 67; T,705) Apparently overlooking the fact that the County voted to deny Mr. Yusem's application at the hearing on October 16,1990, the County staff prepared and included the following justification for the requested land use amendment on Mr. Yusem's Property in its overall formal response to the DCA:

> "Considerable growth has occurred along Salerno Road in recent years. Numerous residential subdivisions and the Indian River Community College, the IRCC campus have been built, and additional institutional growth may occur along Salerno Road with the development of a planned hospital facility. Residential densities similar to the proposed amendment are located west of the parcel south of Salerno Road. The subject parcel is also located in the Primary Urban Service Area and through the PUD agreement establishes a density at 1.3 units per acre. **These factors indicate that this amendment would represent a logical and timely extension of a more intense nearby land use within the immediate vicinity.**" (T,705-6; Pl. 67)(Emphasis added.)

On January 3, 1991, Mr. Yusem filed an action in the Circuit Court against the County for declaratory judgment and injunctive relief. (R,1) The case was tried before the court on December 21, 1992, on Mr. Yusem's Amended Complaint and the County's Answer (R,215, 235). Mr. Yusem alleged, *inter alia*, that his application was consistent with the Plan; in compliance with applicable standards and regulations; and was "a logical and timely extension of more intense land use designations in nearby areas." (R,215; A, 4) Mr. Yusem also alleged that the County's denial of his application and the subsequent re-zoning of his Property was

inconsistent with the Plan; not supported by substantial evidence; denied him due process and equal protection; was arbitrary and unreasonable; and that the Plan and Rezoning Resolution as applied to Mr. Yusem was contrary to law and unconstitutional. (R,215; A, 12-16)

After receiving the evidence and having heard the arguments of counsel, the trial court made the following findings of fact:

1. Plaintiff, MELVYN R. YUSEM, as Trustee, owns a 54 acre parcel of undeveloped land in Martin County.

2. In 1989, YUSEM filed an application with Martin County seeking an amendment to the County's comprehensive land use designation of his land from rural density (.5 units per acre) to estate density (2 units per acre). Simultaneously with the application to amend the land use designation, Plaintiff filed a petition to rezone the property to PUD (r).

3. The application for the land use amendment was reviewed by the Martin County staff and presented to the local planning agency. After reviewing the requested amendment, the local planning agency recommended approval.

4. The application came before the County Commission on May 1, 1990. The staff recommended denial of the application on the grounds that the application for land use amendment was premature. The Commission, by a vote of three to two, moved recommendation of the requested amendment and directed that the amendment be sent to the Department of Community Affairs (DCA) for its statutory review of comprehensive land use amendments.

5. Martin County staff sent the recommendation to the DCA without sending any of the findings of the Commission that justified the request.

6. The DCA reviewed the proposed amendment and submitted its Objections, Recommendations and Comments (ORC) to the County. The ORC stated that the proposed amendment did not include an analysis that demonstrated that the more intensive development requested was a logical extension of a more intense land use designation in the nearby area. The ORC stated that according to the data and analysis presented, the area is predominantly rural and agricultural. The DCA recommended that the County either abandon the amendment or revise the data and analysis to demonstrate that the proposed amendment is a logical extension of a more

intensive land use in the nearby area.

7. The application came to the County Commission on October 16, 1990, for its final hearing. Again the staff recommended denial. This time the County Commission denied the requested amendment on the basis of "leap-frog-development." The County changed Plaintiff's zoning designation from A-1 to RE-2A in Resolution No. 90-10.43.

8. Plaintiff timely filed this action for review of the County's denial.

9. At the time of the application and at both County Commission meetings on May 1, 1990, and October 16, 1990, Plaintiff's property was located in the Primary Urban Service District(PUSD). Under Martin County's Comprehensive Plan, the PUSD is reserved for residential densities of two units per acre and up. Also at the same time period the County's available public services in that area were operating at acceptable levels of service.

10. Adjacent to Plaintiff's land was a development called Fern Creek with a designation of estate density, the same density sought by Plaintiff.

11. One-half mile from Plaintiff's property is the campus of Indian river Community College and the site of a new branch of Martin Memorial Hospital.

12. A new interchange on I-95 was opened and Plaintiff's property had frontage on Salerno Road, a major arterial road between U.S. 1 and State Road 76 which gave direct access to the new interchange and I-95.

13. Also approximately one-half mile from Plaintiff's property is a new elementary school and also nearby, a large residential PUD, Willoughby, was approved.

14. The intersection of Salerno Road and U.S. 1, approximately one and one-half miles from Plaintiff's property, is developed commercially.

15. Located on Salerno Road between State Road 76 and U.S. 1, are several residential communities with zoning or land use densities of two acres(sic) or more.

16. When Plaintiff's land use amendment came before the County Commission on October 16, 1990, for final hearing, these same factors and developments existed as they did on May 1, 1990.

The trial court noted (A, 24) that "Leap-frog" development is defined in the Plan, as follows:

> "LEAP-FROG DEVELOPMENTS are developments located **beyond the fringe** of **urban development** shown on **Figure 4-5** where the planned provision of urban services cannot be assured in a cost effective manner and where community planning goals would be adversely affected." (Emphasis added.)

The trial court made specific findings that Mr. Yusem's Property was located in the Primary Urban Service District ("PUSD") at the time of the application and at all relevant times thereafter, and that under the Plan, the Primary Urban Service District is reserved for residential densities of two units per acre and up. (A, 22) Furthermore, the trial court found that at all relevant times, the County's public services in the area of Mr. Yusem's Property were operating at acceptable levels of service. (A, 22)

The trial court concluded that there was "**no substantial competent evidence to support the County's denial of the requested land use amendment**" on the basis of "**leap frog development.**" (A, 27) The trial court also recognized that the issue in the case was whether or not Mr. Yusem's requested land use amendment was consistent with the Plan and a logical and timely extension of present uses in the general area of Mr. Yusem's property. (A, 20) In considering those standards, the trial court made specific findings of fact which showed that Mr. Yusem's application was consistent with the Plan and a logical and consistent extension of present uses in the general area. (A, 20) The trial court then referred to the criteria in the County's Plan for a land use amendment:

> "Section 1-11.C.2 of the County's Comprehensive Plan provides that amendments to land use designations can be granted if past changes in uses in the general area make the proposed use logical and consistent with those uses and if there are adequate services available. The Plan also allows for amendments if the growth in the area has altered the character of the area such

that the proposed land use amendment is reasonable and consistent with the uses in the area." (A, 23-24)

The trial court stated that it used this standard and the standard of review by strict judicial scrutiny, and found that there was "**no substantial competent evidence to support the County's denial of the requested land use amendment**." (A, 24) (Emphasis added.)

The trial court entered Final Judgment (the "Final Judgment") for Mr. Yusem and against the County on Count I (Declaratory Relief), Count II (Arbitrary and Unreasonableness), and Count IV (Inconsistency with the Comprehensive Plan)(R,554-60; A, 25). The trial court set aside the Rezoning Resolution which rezoned Mr. Yusem's property to Rural Density (.5 units per acre). (A, 25) The trial court also enjoined the County from enforcing any land use or zoning designation on Mr. Yusem's Property more restrictive than two units per acre or from objecting to Mr. Yusem's PUD (Residential) application if he chose to resubmit it, without changes. (R,560; A, 25)

The County appealed the Final Judgment to the Fourth District Court of Appeal. The appellate court determined that the issue was whether the County was making a legislative or quasi-judicial decision when it denied Mr. Yusem's request to amend the future land use map of the Plan. (A, 26) Relying primarily on Snyder v. Board of County Commissioners of Brevard County, 627 So. 2d 469 (Fla. 1993), the appellate court concluded that the County's decision was quasi-judicial, "which is reviewable only by common law certiorari." (A, 31) Since suit in the trial court was for declaratory judgment, and it was not filed within 30 days of the County's "denial of the amendment", the appellate court reversed the Final Judgment and,

sua sponte, held that the trial court had no jurisdiction[4] to review the County's action. (A, 32) However, the County never raised this point on appeal, and there was nothing in the record before the Fourth District Court of Appeal to indicate **when** the County's denial of the amendment was "rendered." In fact, the County's denial of the amendment has never been "rendered", because no signed, written order of denial ever existed, and thus no such order has ever been filed with the Clerk of the County Commission.

Mr. Yusem filed a Motion for Rehearing on the appellate court decision and asserted that the appellate court overlooked his constitutional claims. (A, 42) The appellate court granted rehearing and agreed that it had overlooked the constitutional claims. (A, 42) The appellate court remanded the case to the trial court for further proceedings to consider those claims, and also certified the following question of great public importance:

> **CAN A REZONING DECISION WHICH HAS LIMITED IMPACT UNDER SNYDER, BUT DOES REQUIRE AN AMENDMENT OF THE COMPREHENSIVE LAND USE PLAN, STILL BE A QUASI-JUDICIAL DECISION SUBJECT TO STRICT SCRUTINY REVIEW?** (A, 43)

The Court accepted the certified question on the County's request.

Misstatements, Misrepresentations, and Unsupported Statements of Fact by Martin County

The County's Statement of the Facts and Statement of the Case contain the following misstatements, misrepresentations, or statements unsupported by the record on the pages of the County's brief, as noted:

1. On pages 2, 3, & 4, the County refers to the area surrounding Mr. Yusem's

[4]The Court cited Rule 9.100(c) and 9.040(c) of the Fla. R. App. P.

property as a "triangular tract of 900 acres of rural and undeveloped land." **No citations to the record are provided.** Citing Section 4-2A(5) of the Plan, the County further states: "The Plan states that this **tract** is not an area presently intended to be available for urban densities" and "**It** is **expressly described** as a 'potential reserve area for future urban/suburban development'. (Emphasis added.) The Plan does not describe or refer to the alleged 900 acre area around Mr. Yusem's Property at all, nor is "It" referred to as a "potential reserve area"; nor does the Plan make any statement about this specific area not being presently intended to be available for urban densities. (Def. 62). Furthermore, the testimony at trial was that the "general area" or planning area around Mr. Yusem's Property would be the area within a one to two mile radius, not the immediate 900 acres surrounding Yusem. (T, 490) This "triangular tract" exists only on an exhibit prepared by the County for trial, which is an aerial map with red lines drawn on it. (T, 429) Although there are various parcels and tracts of land near Yusem that have rural zoning or land use densities, there is no expressly described 900 acre tract of land in the Plan. (Def. 62)

2. On pages 3, 4, & 5, the County asserts: (1) that the so called 900 acre tract is "rural and undeveloped land"; (2) "there had been no development in this area for several years" ; and (3) there was "little or no change in the character of the area." (T, 433-37.) This completely contradicts the findings of fact by the trial court and the overwhelming evidence in the case, and misrepresents the character of the "general area" around Mr. Yusem's Property. (T, 367) Furthermore, the County's own witness testified (T, 435-442) that: (1) there were changes, including construction of an elementary school (T,437), the Southwood Development (T,442), Willoughby Boulevard, and the Willoughby PUD (T,439-440); and (2) most of the

uses were not agricultural and the nurseries were commercial businesses. (T, 442)

Even restricting the view to the immediate 900 acres adjacent to Mr. Yusem's Property, (which is not appropriate for planning purposes, see testimony of Harry King at T, 490), the "area" contains churches, a salvage yard, two residential subdivisions of similar or greater land use density than requested by Mr. Yusem, an elementary school, and commercial nurseries. (T, 435-442) However, the general planning area was a much larger area which included the intersection of Salerno Road and U.S. 1, 1.2 miles from Mr. Yusem's property. (T, 490-492) The "area" of Mr. Yusem's Property was bordered on the south by a large tract of land owned by Mobil Land Development, which was in the planning stages of a large residential and commercial Development of Regional Impact (T, 680); on the north by the Willoughby development, a large residential Development of Regional Impact (T, 90; Page 5 of Pl. 62); on the east by commercial development along U.S.1 (T, 492); and on the west by the I-95 interchange and other development. (T, 490) The trial court determined that Mr. Yusem's requested PUD (Residential) zoning and land use amendment were logical and consistent with past changes in uses in the general area (R, 558,559) and made specific findings to support that determination. (A, 21-23)

3. On page 5, the County asserts that "Minimal infrastructure exists in the area, and it is of the type which is compatible with rural uses." **The County does not cite any reference to the record.** However, the County Staff report to the LPA, and to the County Commissioners, concluded that Mr. Yusem's proposed project "was consistent with all development criteria in the Martin County Code and the Approved Comprehensive Growth Management Plan; **that it was consistent with the level of services and the concurrency**

requirements for Category A and C type facilities in the Capital Improvement Element of the Comprehensive Plan." (T,72) (Emphasis added.)

4. On page 3, the County asserts that "This case is a landowner's challenge to the... County Commissioner's decision not to amend the...Plan to authorize higher densities of development...." **The County does not cite any reference to the record.** The County fails to mention that the County also denied Mr. Yusem's PUD(Residential) zoning request and then, through the Rezoning Resolution, *sua sponte*, rezoned his Property to rural density (.5 units per acre). The County also fails to mention that Mr. Yusem, among other things, challenged the Rezoning Resolution as being inconsistent with the Plan, contrary to law, and unconstitutional. (A, 12-17)

5. On page 3, the County states that it adopted its Comprehensive Plan in February of 1990, "in accordance with the 1985 Local Government Comprehensive Planning and Land Development Regulation Act." **The County does not cite any reference to the record.** While this is technically true, it is also misleading in the context of this case. The County originally adopted its Plan, including the land use designation maps, in 1982. (T,452) The importance of this comes to light on page 6 of the County's brief, where the County states:

> "In September of 1989 (**four months before the Plan was adopted**) Yusem applied to the County to change the Plan's future land use map designation for the property...."(Emphasis added.)

It is obvious that the County is trying to assert (falsely) that Mr. Yusem could not have properly applied in 1989 for a land use change, based on changes in uses in the area, if the Plan was not adopted until 1990. As noted above, the original Plan and land use maps were adopted in 1982. (T, 452)

6. On page 4, the County discusses the "ARDPP" concept and policies regarding the timing of urban development, in fill, and the prevention of "sprawl." The citation to the record was to Henry Iler's testimony at T, 565-574. The transcript at 565-574 does not reflect testimony on this issue. In fact, Mr. Iler testified that the Urban Service District was the primary tool used to prevent urban sprawl. (T, 591) Furthermore, the "ARDPP" provisions of the Plan were not in effect when Mr. Yusem made his application to the County and were not a consideration of the County. (T,644; Pages 31-31 of Pl. 62)

7. On page 7, the County discusses in general terms Mr. Yusem's contentions as to why he was justified in asking for a land use change from the County. **The County does not cite any reference to the record.** This portion of the County's brief misrepresents Mr. Yusem's position and is misleading because it omits all of the specific items of justification set forth in Mr. Yusem's application which met the criteria for change under the Plan. (Pl. 7) Furthermore, the County fails to disclose that Mr. Yusem's application was reviewed by the LPA at a full hearing prior to the County Commission hearing, and that the LPA recommended approval of Mr. Yusem's application. (Pl. 65)

8. On pages 7 and 8, the County refers to the May 1, 1990 hearing before the County Commission as only a "transmittal" hearing and tries to imply that the County only voted to "transmit" Mr. Yusem's application to the DCA. **The County does not cite any reference to the record.** This, again, is a misrepresentation and misleads the Court. The County does not transmit requests for land use changes unless it approves them at the initial stage as in this case. (See Page 40 of Pl. 31 where initial motion failed to "deny" the land use change) On May 1, 1990, the County voted (3 to 2) to approve the LPA's favorable

recommendation for the requested land use change and request for PUD (Residential) zoning and to forward the proposed change to the DCA. (Pl. 32)

9. One of the grossest examples (but by no means the only) of an outright misrepresentation by the County occurs on page 8, where the County purports to quote the DCA's ORC Report on Mr. Yusem's requested amendment as follows: " The County should consider abandoning the amendment." (Citing, Exhibit 56, P.4) Please note the "." after the word "amendment". The actual quote from the ORC report is:

> "The County should consider **abandoning this, or** alternatively, **revise the data and analysis** to demonstrate that the proposed amendment is a logical extension of a more intense land use designation in a nearby area." (Pl. 56; T,108)(Emphasis added.)

10. On page 9, the County states that it never made a decision on Mr. Yusem's request for rezoning to PUD (Residential). (Citing, T,153-154) This is patently false. The County stipulated at trial that it denied Mr. Yusem's rezoning request. (R,439) Also, the County voted, *sua sponte*, at the October 16, 1990 meeting to rezone Mr. Yusem's property to RE-2A (Rural Estate District, which is rural density, one unit for every two acres). (R,439)

11. On page 9, the County falsely states that the "comments of the Commissioners themselves, or the evidence at trial" is not consistent with the trial court's finding that the County denied Mr. Yusem's application on the basis of "leap-frog development." **There is no reference to the record as to these specific comments.** Again on page 10, the County states that "No reference was made to the term leap frog development in either the staff report or the Board's Motion." **There is no reference or citation to the record.** While this is technically true, it also misrepresents the case and the evidence. The transcript of the October 16, 1990

meeting of the County Commission (Pl. 62) reveals the following:

Mr. King (the County's Planning Administrator) made the following statement to the Commission (referring to the DCA's comments in the ORC report on Mr. Yusem's application):

> "The information we have currently available, and the policies within the Comprehensive Plan re the issues we are addressing here, and the response that we have on these pages 8 and 9, if you want I can go into those in detail, are specifically on the basis of those **DCA objections** that have been filed, and **the critical one**, yes is the issue of the potential **leap frog development** in this development approval." (Emphasis added.)

In addition, the following are "comments" of Commissioners at the October 16, 1990 hearing as they appear in the transcript:

> On page 30, Commissioner Dawson, "The **leap frog** question is still the same question it was months ago." ;
>
> On page 31, Commissioner Dawson, "... I think their big issues - to the urban sprawl, **leap frog development** issue is a very big issue to the State." ;
>
> On page 31, Commissioner Hurchalla, "I think that the sprawl or **frog** or whatever, it is when you are the hole in the donut, with one or other little piece like it out there, but everything surrounding you is one per two acre, **is the real problem.**" ;
>
> On page 36, Commissioner Thom, "Well, I think the whole thing boils down to what we're talking about is the uh rural density residential land use, and I think the DCA would consider that in this particular instance, probably **leap frog development** in spite of the fact it is, whether it is or not, in the urban area in this particular case...."

Finally, during the trial, the court asked Mr. King (Martin County's Planning Administrator) the following questions and received the following answers:

By the Court:

> Q "I have heard some testimony, I have heard some testimony that their reason for doing it was **leap frog development**."

By Mr. King:

> A "The overall issue of urban sprawl was brought up at the meeting. I think it was pertinent within the staff analysis early on within the original public hearing."

By the Court:

> Q "Did staff urge that it be denied because it would be **leap frog development**?"

By Mr. King:

> A "**Yes**, as I recall."

12. Again on page 11, the County refers to lack of services in the area of Mr. Yusem's Property (citing testimony of Mr. Yusem's land planner, Mr. Lucido: T,224,225). This testimony is taken out of context and does not fairly represent to the total of Mr. Lucido's testimony. In response Mr. Yusem repeats the following:

> "The **County Staff report** to the Local Planning Agency, and to the Board of County Commissioners, **concluded that Mr. Yusem's proposed project "was consistent with all development criteria in the Martin County Code and the Approved Comprehensive Growth Management Plan**; that it was consistent with the level of services and the concurrency requirements for Category A and C type facilities in the Capital Improvement Element of the Comprehensive Plan." (T,72)(Emphasis added.)

13. On page 11 (Citing, T,611-675; T,739-744), the County purports to highlight the testimony of two of its witnesses, Henry Iler and Robert Pennock, in an attempt to justify the

County's denial of Mr. Yusem's application. The County only picks out parts of their direct testimony and omits the cross examination and questions by the trial court. In regard to Mr. Iler, the County specifically omits mention of his testimony about the large Mobil Land Development DRI, immediately to the south of Mr. Yusem's Property (T,680-687); that the planning area around Mr. Yusem's property is not 900 acres, but a very large part of the County, which includes intense residential and commercial development (T, 681-689); and that the County included the intersection of US 1 and Salerno Road (1.2 miles from Mr. Yusem's property) in its review of his application and its impacts (T,693-695).

In regard to Mr. Pennock's testimony, the County omits to mention his testimony that: the area around Mr. Yusem's Property was already heavily indicative of urban sprawl (T, 763-5); that "in fill" was appropriate (T,765); that urban development need not be contiguous (T,766); and that rural land use densities in an urban service district would be **inconsistent**. (T, 753-5) See also, Mr. Pennock's deposition testimony which was read during Mr. Yusem's case in chief at trial. (T,264-297)

SUMMARY OF ARGUMENT

The certified question presented to the Court should be answered in the affirmative. In accordance with the criteria set forth in Board of County Commissioners of Brevard County v. Snyder, 627 So. 2d 469 (Fla. 1993), the character of the hearing before the County Commission on Yusem's application for PUD (Residential) rezoning and a land use amendment to the Plan was clearly quasi-judicial. Furthermore, Section 163.3194, Florida Statutes (1995) requires that local government actions in regard to development orders be "strictly scrutinized" to determine whether those actions are consistent with the comprehensive plan. Synder, supra., at 475.

However, the question of greatest importance to Mr. Yusem, and to many other interested parties, is what *judicial remedies* are available to a land owner whose rights have been adversely affected by a county's denial of a development order, where the actions of the county violate the comprehensive plan, statutory law, and constitutional requirements? This question is especially ripe for resolution in this case where the trial court made findings that Mr. Yusem's applications were consistent with and met the criteria for a land use amendment under the Plan, determined that there was no substantial competent evidence to support the County's denials, and held that the County's actions were inconsistent with the Plan and were arbitrary and unreasonable.

Mr. Yusem asserts that while a petition for common law certiorari may be one vehicle for review, it is not the *exclusive* method of review, nor the most appropriate or effective. The most appropriate and effective method of relief and review is an original suit, such as an action for declaratory judgment, regardless of the character of the hearing before a

governmental entity.

The basis for Mr. Yusem's argument is that common law certiorari in the trial court provides only a limited review of: (1) whether procedural due process is accorded; (2) whether essential requirements of law are observed; and (3) whether the decision is supported by substantial competent evidence. However, the trial court's duty to apply "strict scrutiny" to determine whether the County's action on a development order is consistent with the Plan, is a statutory requirement which limits a county's discretion and authority (and eliminates any deferential standard of review), regardless of whether the County's decision is quasi-judicial, legislative, administrative, or executive. The requirement of strict scrutiny review for consistency is independent of, and not included within, the standards for common law certiorari review.

There is also no provision for an evidentiary hearing under common law certiorari, (Rule 9.030(c)(3) and 9.100, Fla. R. App. P.), yet it may be necessary for the trial court to go outside the record to determine whether a local government's action is consistent with its plan. Since a plan amendment must be reviewed by the Department of Community Affairs before it can become final, another agency is involved whose actions are outside the record. In this case, it was necessary to go outside the record to show through testimony and evidence that the purported basis for the County's denial, "leap frog development", was not supported by the facts or the law, and that it was arbitrary and unreasonable. Furthermore, will a trial court be able to determine in every case, that a county's rezoning action has an impact on only a "limited number of persons or property owners, on identifiable parties or interests," as opposed to a "comprehensive rezoning affecting a large portion of the public"? Snyder, supra. at 474.

Next, while the **character of the hearing** may be quasi-judicial, a county commission is not a court and its actions (granting, denying, or granting with conditions) on development orders (including land use amendments) may have attributes which are quasi-legislative (large scale comprehensive rezonings), administrative (subdivision approval), or executive[5] (certification). Some of these, regardless of their classification, may violate constitutional requirements of substantive due process or equal protection, as was alleged in this case, requiring independent proof. Common law certiorari, which is a type of appellate review, does not provide authority for a court to grant affirmative relief. Injunctive relief may be necessary to correct actions which violate the plan, statutory requirements, or constitutional standards (which may also justify damages).

Finally, as in this case, a **denial** of a development order or a land use change may not result in an order "rendered", which provides the basis to invoke a circuit court's jurisdiction under common law certiorari.

In contrast, an original suit, such as declaratory judgment, is clearly contemplated and authorized by law, and provides the most appropriate vehicle for court review of a local government's actions on development orders, including land use amendments. The trial court can consider not only the character of the hearing, but also the various types of decisions and actions taken; whether the actions violate the Plan, applicable statutes, or constitutional requirements; apply appropriate standards of review, burdens of proof, and other provisions of law to each; and grant appropriate and adequate relief.

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[5]Or, even appellate in nature, such as when there is an appeal to the county commission from a decision of the building department.

In conclusion, a land owner **may** use common law certiorari to seek a limited review of a local government's order rendered in a quasi-judicial proceeding, where there is no issue of consistency with the Plan. However, where consistency is an issue, or where there are alleged violations of statutory or constitutional law, an original suit, (including declaratory judgment), would not only be proper, but the most appropriate method for review and relief.

I. THE COUNTY'S ACTIONS ON YUSEM'S APPLICATIONS FOR P.U.D. (R) REZONING AND A LAND USE AMENDMENT UNDER THE COMPREHENSIVE PLAN WERE QUASI-JUDICIAL AND NOT LEGISLATIVE, AND IN ANY CASE WERE SUBJECT TO STRICT SCRUTINY REVIEW TO DETERMINE WHETHER THOSE ACTIONS WERE CONSISTENT WITH THE COMPREHENSIVE PLAN.

"It is the character of the hearing that determines whether or not board action is legislative or quasi-judicial." Board of County Commissioners of Brevard County v. Snyder, 627 So.2d 469, 474 (Fla. 1993), citing, Coral Reef Nurseries, Inc. v. Babcock Co., 410 So.2d 648 (Fla. 3d DCA 1982). "Generally speaking, legislative action results in the formulation of a general rule of policy, whereas judicial action results in the application of a general rule of policy." Synder, supra. Applying this criteria to the instant case, it is clear that the County's actions in reviewing and denying Mr. Yusem's applications were quasi-judicial. The fact that Mr. Yusem's application for PUD (Residential) rezoning included a request for a land use amendment under the Plan does not distinguish this case from Snyder, supra. The County Plan specifically recognizes that amendments in land use designations for specific properties may be appropriate, and the Plan further provides procedures and standards to determine when and how such amendments should be made. (Page 1-9 of Def. 62)

Yusem specifically asserted in his application that he was eligible for a land use amendment under either of two standards set forth in the Plan:

That past changes in land use designations in the general area make the proposed use logical and consistent with these uses and there is adequate availability of public services; or

That the growth in the area, in terms of development of vacant land, redevelopment and availability of public services, has altered the character of the area such that the proposed request is now reasonable and consistent with area land use characteristic[s] (Page 1-9 of Def. 62)

Yusem was required to set forth detailed factual information in his application to support the requested land use change. (Pl. 7) Yusem had to demonstrate that there was full compliance with all applicable Code provisions (T,69-70); that public facilities and services were available and adequate; that concurrency requirements were met (T,69-70); and that his request was consistent with the Plan (T,72). Just as a court does, the County reviewed the facts at public hearings (R,438-39), and applied the facts to the standards in the Plan. Furthermore, the County's review and decision was directed at one specific property owner and one small 54 acre parcel of property. (R,435) Thus, there is no legal or factual reason to distinguish this case from Snyder, supra, even though it involved an amendment to the land use map under the Plan. City of Melbourne v Puma, 616 So. 2d 190 (Fla. 5th DCA 1993); *See also*, Quasi-Judicial Rezoning, Journal of Land Use & Environmental Law, Volume 9, Number 2 (Spring 1994) of Florida State University, pages 282-283.

Regardless of whether the County's actions were quasi-judicial or legislative, (or anything else), "strict scrutiny" is the proper standard of review in all cases involving actions on development orders. Board of County Commissioners of Brevard County v. Synder, 627 So.2d 469 (Fla. 1993). The term "strict scrutiny" arises from statutory requirements that zoning decisions and other development orders must be in strict compliance with provisions of a county's comprehensive plan. Snyder, supra., at 474; Section 163.3194, Florida

Statutes.

Section 163.3164(7), Florida Statutes (1995) defines "development order" as "any order granting, denying, or granting with conditions an application for a *development permit*." (Emphasis added.) Section 163.3164(8), Florida Statutes (1995) defines "development permit" as "any building permit, zoning permit, subdivision approval, **rezoning**, certification, special exception, variance, or **any other action of local government** having the effect of permitting the development of land." (Emphasis added.) Finally, Section 163.3194(1), Florida Statutes provides that all actions taken in regard to development orders by local government shall be *consistent* with the comprehensive plan. In this case, the County denied Mr. Yusem's request for PUD (Residential) zoning; denied his application for a land use amendment to permit the development; and, *sua sponte*, rezoned his property to rural density. These actions are development orders and require "strict scrutiny" to determine whether they were consistent with the Plan. Thus, it is clear that "strict scrutiny"[6]

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[6]In its brief, the County relies on Sections 163.3184(9) and 163.3184(10), Florida Statutes, for the proposition that all local government decisions regarding the comprehensive plan are legislative and should be tested by the "fairly debatable" standard. However, **at trial, the County informed the trial court that "strict scrutiny" was the proper standard to apply in this case**. (T,36,895). Furthermore, the County's reliance is misplaced. These sections of the statute apply only to the original adoption of a comprehensive plan (or an amendment to a pre-1985 plan to bring it into compliance with the statute). Mr. Yusem agrees that the original adoption of the Plan was legislative. Nevertheless, it is interesting that Section 163.3184(10), Florida Statutes, which refers to the state issuing a notice that the plan is "not in compliance", provides that a local government's determination of "compliance" will be sustained, unless it is shown by a "preponderance of the evidence" that it is not in "compliance". Finally, these sections of the statute do not apply to a denial of a requested land use amendment to the plan, arising out of a quasi-judicial hearing; the state does not review such denials. Thus, if a comprehensive plan requires amendment to its land use map by its own standards and criteria due to the passage of time and changes in circumstances, and the local government refuses to amend, there is no statutory standard to apply to the County's actions, other than "consistency" in regard to a development order. See Sections 163.3164(7) and (8), Section 163.3187 and

was the proper standard of review employed by the trial court to determine whether Mr. Yusem's applications and the County's actions were consistent with the Plan.

II. COMMON LAW CERTIORARI IS NOT THE MOST APPROPRIATE VEHICLE FOR REVIEW OF COUNTY ACTIONS IN REGARD TO DEVELOPMENT ORDERS

Common law certiorari in the trial court provides a basis for only a limited discretionary review of a County's quasi-judicial actions: (1) whether procedural due process is accorded; (2) whether essential requirements of law are observed; (3) whether the decision is supported by substantial competent evidence. Haines City Community Development v. Heggs, 658 So. 2d 523 (Fla. 1995).[7] These standards for review are separate and apart from a trial court's duty to apply "strict scrutiny" to determine whether a county's action is consistent with its comprehensive plan. Board of County Commissioners of Brevard County v. Synder, 627 So.2d 469, 475 (Fla. 1993). Strict scrutiny to determine consistency is a statutory requirement which limits a county's discretion and authority in regard to actions on development orders (and eliminates any deferential standard of review), regardless of whether a county's decision is quasi-judicial, legislative, administrative, or executive. Section 163.3194, Florida Statutes; Snyder, supra. at 472, 473; *See also*, Judge Sharp's dissent in Gilmore v. Hernando County, 584 So. 2d 27 (5th DCA Fla. 1991). Thus, "strict scrutiny"

163.3194, Florida Statutes, (1995).

[7]Mr. Yusem generally agrees with the learned and scholarly opinion of the Court in Haines City, supra. However, the Court erroneously refers to **discretionary** review under common law certiorari as being a review as a matter of right, under Rule 9.030(c)(3), Fla. R. App. P. Id. at 530. Furthermore, there is little support in the Constitution of the State of Florida (1968), the statutes, or the case law, for the proposition that a county, as a subdivision of the state, is an "inferior tribunal" subject to the certiorari jurisdiction of the circuit court, not withstanding De Groot v. Sheffield, 95 So. 2d 912 (Fla. 1957).

review can directly conflict with the certiorari standard of whether there is substantial competent evidence to support the county's decision.

In some cases, it may be necessary to go outside the record to determine whether a county's action in regard to a development order is consistent with its plan, yet there is no provision for an evidentiary hearing under common law certiorari. Rule 9.030(c)(3) and 9.100, Fla. R. App. P. Since a plan amendment must be reviewed by the Department of Community Affairs before it can become final, another agency is involved whose actions are outside the record. Sections 163.3187 and 163.3184, Florida Statutes (1995). In this case, it was necessary to go outside the record to show, through testimony and evidence, what happened during the DCA review and that the basis for the County's denial, "leap frog development", was not supported by the facts or the law, and was arbitrary and unreasonable. Finally, how can a trial court determine, in every case and without taking evidence and testimony, that a county's action has an impact on only a "limited number of persons or property owners, on identifiable parties or interests," as opposed to a "comprehensive rezoning affecting a large portion of the public"? Snyder, supra. at 474. An old school children's riddle asks: "What's the difference between a duck?" The answer is: "One of his feet are both alike." Without an evidentiary hearing, a trial court reviewing a county development order will be hard pressed to come up with a better answer.

Next, while the **character of the hearing** may be quasi-judicial, a County Commission is not a court and actions (granting, denying, or granting with conditions) on development orders or land use amendments may also have attributes which are quasi-legislative (large scale comprehensive rezoning), administrative (subdivision approval), or

executive[8] (certification). Section 163.3164(8), Florida Statutes (1995). As the record shows in this case, such decisions may violate constitutional requirements of substantive due process or equal protection, requiring proof independent of, and in addition to, the record before the county commission. Common law certiorari is an appellate review, which does not provide authority for a court to grant affirmative relief. Rule, 9.100, Fla. R. App. P. However, injunctive relief or damages may be necessary to correct actions which violate the plan, statutory requirements, or constitutional standards. Restigouche, Inc. v. Town of Jupiter, 59 F.3d 1208, 1212 (11th Cir. 1995)(*setting out the elements for a property owner to state a cause of action for damages resulting from a denial of substantive due process*).

Finally, in some cases a **denial** of a development order may not result in an order "rendered", which provides the basis to invoke a circuit court's jurisdiction under common law certiorari. Rule 9.030(c)(3), Fla. R. App. P. Rule 9.100(c), Fla. R. App. P. provides that certiorari jurisdiction is invoked by filing a petition "within thirty (30) days of **rendition** of the order to be reviewed." (Emphasis added.) Rule 9.020, Fla. R. App. P., provides the following definitions: "Order. A decision, order, judgment, decree, or rule of a lower tribunal, **excluding minutes and minute book entries**. (Emphasis added.); Rendition (of an order). An order is rendered when **a signed, written order is filed** with the clerk of the lower tribunal." (Emphasis added.)

In Mr. Yusem's case, there is no signed written order denying Mr. Yusem's request for a land use amendment (therefore, no order was ever filed with the clerk). Furthermore,

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[8]Or, even appellate in nature, such as when there is an appeal to the county commission from a decision of the building department.

there was nothing in the record before the Fourth District Court of Appeal to indicate that Yusem's action (petition) was not timely. Thus, in this case, there was no event to invoke the common law certiorari jurisdiction of the circuit court, and the appellate court was wrong to determine that the trial court had no jurisdiction to consider Mr. Yusem's suit for declaratory judgment.

III. COMMON LAW CERTIORARI IS NOT THE EXCLUSIVE METHOD TO SEEK RELIEF FROM A COUNTY'S ACTIONS IN REGARD TO DEVELOPMENT ORDERS, AND AN ORIGINAL SUIT, SUCH AS DECLARATORY JUDGMENT, PROVIDES A MORE APPROPRIATE AND EFFECTIVE VEHICLE.

An original suit, such as declaratory judgment, is clearly contemplated and authorized by law to challenge a county's actions on development orders, including denials of requested land use amendments to permit development. Chapter 86, Florida Statutes (1995); See, White v. Metropolitan Dade County, 563 So. 2d 117 (3rd DCA Fla. 1990). Section 163.3161(9), Florida Statutes, (1993), provides that "Full and just compensation, **or other appropriate relief**, must be provided to **any property owner** for a governmental action that is determined to be an invalid exercise of the police power which constitutes a taking, as provided by law." (emphasis added). While this section refers to a taking and was not enacted until 1993, it is in harmony with Section 163.3194(4)(a), Florida Statutes, which clearly anticipates litigation between property owners and local government in regard to actions on development orders. This section provides for "court review" of "local government action" which goes beyond the limited review under common law certiorari: the court "may consider, among other things, the **reasonableness of the comprehensive plan**....related to the **issues justiciably raised** or the appropriateness and completeness of the comprehensive plan...in relation to the **governmental action taken** ...." Section 163.3194(4)(a), Florida Statutes (1985).

Mr. Yusem agrees that Parker v. Leon County, 627 So. 2d 476 (Fla. 1993), stands for the proposition that Section 163.3215, Florida Statutes, (1989), does not create a cause of action or a procedure for landowners to challenge a denial of a development order. This Court's opinion in Parker, supra. correctly points out that Section 163.3215, Florida Statutes provides standing and a cause of action for third parties to challenge the consistency of a county's action on a development order, and does not apply to land owners. However, there is nothing in Chapter 163, Florida Statutes which precludes an independent suit for constitutional claims or declaratory judgment by a land owner, and as noted above, several sections of the statute clearly contemplate litigation between land owners and local government over actions on development orders. Sections 163.3194(4)(a) and 163.3161(9), Florida Statutes (1993). Even in Snyder, supra.,this Court recognized the existence of traditional remedies as alternatives to certiorari. Board of County Commissioners of Brevard County v. Snyder, 627 So.2d 469, 476 (Fla. 1993), citing, Burrit v. Harris, 172 So. 2d 820, (Fla. 1965) and City of Naples v. Central Plaza of Naples, Inc., 303 So. 2d 423 (2d DCA Fla. 1974).

Chapter 86 of the Florida Statutes provides jurisdiction to the circuit court to entertain suits to declare rights under statutes and ordinances, including challenges to their validity, and make counties or municipalities parties to the action. Sections 86.011; 86.021; 86.091, Florida Statutes (1995). The enumeration of specific matters subject to declaratory judgment is not exclusive or limiting on the court's power, and the existence of other remedies does not preclude such actions. Sections 86.051 and 86.111, Florida Statutes (1995).

A suit for declaratory judgment gives the court full authority and flexibility to remedy the short-comings of common law certiorari review. The trial court can consider not only the character of the hearing, but also the various types of decisions and actions taken; whether the actions violate the Plan, applicable statutes, or constitutional requirements; apply appropriate standards of review or burdens of proof to each; and grant appropriate relief. There is no reason that a trial court in an action for declaratory judgment cannot apply standards of procedural due process, essential requirements of law, and substantial competent evidence to those actions arising from a quasi-judicial hearing, as well as strict scrutiny for consistency and appropriate constitutional standards.

Thus, it may be appropriate in some cases for a land owner to use common law certiorari to seek a limited review of a local government order rendered in a quasi-judicial proceeding, where there is no issue of consistency (in regard to the application or the local government's actions). However, where consistency is an issue, or where there are alleged violations of statutory or constitutional law, an original suit, (including declaratory judgment), would not only be proper, but the most appropriate and effective vehicle for review and relief.

CONCLUSION

The County's actions in this case were quasi-judicial and the trial court properly applied strict scrutiny to determine whether those actions and Mr. Yusem's applications were consistent with the Plan. However, common law certiorari is not the exclusive or most appropriate method of review of a local government's action on a development order.

Respectfully submitted,

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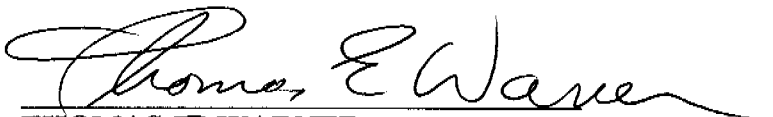

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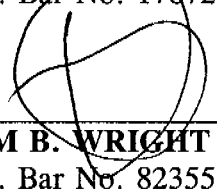

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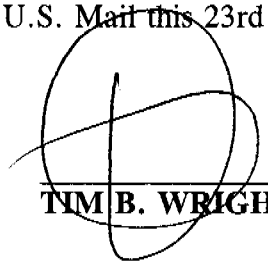
CERTIFICATE OF SERVICE

I certify that this document was sent by U.S. Mail this 23rd day of May, 1996, to the persons listed below.



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