IN THE SUPREME COURT OF FLORIDA

BROWARD COUNTY,

Petitioner,

-vs-

G.B.V. INTERNATIONAL, LTD., etc., et al.,

Respondents.
_____/

CASE NO. 93,115

ANSWER BRIEF OF RESPONDENTS ON THE MERITS

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CERTIFICATE OF TYPE SIZE AND STYLE

Pursuant to Chief Justice Major B. Harding's Administrative Order date July 13, 1998, relating to font requirements for briefs filed in this Court, the undersigned counsel certifies that the type size and style used in this brief is 14 points Time New Roman, proportionately spaced.

INTRODUCTION

Petitioner, Broward County, was the respondent in both the Circuit and District Courts. G.B.V. International, Ltd. and Ashok Patel, Petitioners below, are the Respondents herein. Petitioner will be referred to in this Brief as "the County" or "Broward County". Respondents will be referred to collectively as "G.B.V. International". The symbol "A," followed by a number, will constitute a reference to a numbered item from the appendix filed by G.B.V. International in the District Court. The symbol "T" will constitute a reference to the transcript of the proceedings held on November 12, 1996, before the Broward County Commission and to other transcripts of various hearings as identified in the applicable appendixes.

STATEMENT OF THE CASE AND FACTS

G.B.V. International submitted an application for plat approval to Broward County. The application, as submitted, provided for a density of three hundred (300) dwelling units on the portion of the property which was zoned for multi-family use. The density of three hundred (300) units was consistent with both the Broward County and the City of Coconut Creek land use plans the latter being the city having jurisdiction over the property.

Both the Broward County and the City of Coconut Creek land use plans provide for the concept of flexibility units. "Flexibility units" is a concept where, upon the approval of the applicable governmental entity, the City in this case, the density otherwise applicable to a property (six [6] units per acre under the County Land Use Plan) can be increased (up to ten [10] units per acre in this case), without violating the applicable land use plans.

G.B.V. International enjoyed the benefits of the application of the flexibility unit concept. At the time of the plat application, Broward County took offense at the multi-family density and, contrary to the advice of its own County Attorney, imposed a note on the face of the plat which limited the density to something substantially below the three hundred (300) units legally authorized by the City. In the discussions regarding the review of the plat, Broward County's staff made it clear that the plat complied with all legal requirements, and the County Attorney made it clear that the City of Coconut Creek had the authority to apply the flex units to raise the density from six (6) units an

acre to ten (10) units an acre. Nevertheless, Broward County failed to approve the plat as submitted and, instead, it took a unilateral, illegal action to reduce the density permitted on a multi-family parcel.

G.B.V. International filed a complaint in certiorari to the Circuit Court (coupled with a second count for mandamus relief). The Circuit Court declined to grant certiorari or the mandamus relief. G.B.V. International sought common law certiorari at the Fourth District Court of Appeal, and the same was granted. The Fourth District Court of Appeal found that the decision of the Circuit Court relied on matters outside the record quasi-judicial proceeding and, therefore, was inconsistent with the essential requirements of law and it denied G.B.V. International's due process of law. In its Order, the Fourth District Court of Appeal directed the Circuit Court to enter an order which, in turn, would direct Broward County to approve G.B.V. International's plat as submitted, the Fourth District having found that Broward County had no more than an administrative function to perform relative to G.B.V. International's plat application.

The County applied to this Court for certiorari relief, based upon an express conflict with this Court's and other district courts' prior opinions with regard to the question of whether or not the lower tribunal, under the circumstances, can be directed to perform a specific act.

SUMMARY OF ARGUMENT

With regard to Argument I, the record reveals that the lower court's denial of certiorari relief was a departure from the essential requirements of law and a denial of due process. The Fourth District Court of Appeal properly applied the law, recognizing that the Circuit Court went beyond the record before the Broward County Commission. Concomitantly, the Fourth District Court of Appeal properly determined that upon the record before the Broward County Commission, in connection with the review of the Respondents' plat application, the Broward County Commission, as the lower administrative tribunal, failed to accord the Respondents the due process of law that was due them. Accordingly, Fourth District Court of Appeal properly quashed the decision of the Circuit Court and directed the Circuit Court to render an order to the Broward County Commission requiring the approval of the Respondents' plat, as submitted.

With respect to Argument II, the Respondents concede that there is a facial conflict between the Fourth District Court's Order directing the Circuit Court to direct the County Commission to approve the Respondents' plat, as submitted, and this Court's holding in Tamiami Trail Tours, Inc. v. Railroad Comm., 128 Fla. 25, 174 So. 451 (1937). The Respondents contend, however, that under the facts of this case and the law with respect to the quasi-judicial procedures respecting the processing of plats and site plans, the Fourth District Court's opinion is not in error and does not violate the principles upon which certiorari jurisdiction is based.

The proceedings before the administrative tribunal were quasi-judicial respecting the approval of a plat, pursuant to very specific regulatory standards. There is no question that the Respondents' plat, as submitted, met all legal requirements. Consequently, the Respondents were entitled to the approval of the plat, as submitted, based upon Broward County v. Narco Realty, Inc., 359 So.2d 509 (Fla. 4th DCA 1978).

The Fourth District Court of Appeal properly recognized that upon the Respondents' showing that they complied with all of the objective legal requirements with respect to the plat, the County Commission was left with only the administrative function and duty of approving the plat, as submitted. No further discretion was reserved to the County Commission.

Accordingly, it was appropriate for the Fourth District Court of Appeal to require that Broward County be directed to approve the Respondents' plat, as it had done in Narco Realty, supra, some twenty (20) years ago. No error is shown by the Fourth District Court's opinion.

ARGUMENT I

THE DISTRICT COURT DID NOT ERR IN GRANTING CERTIORARI.

The Fourth District Court of Appeal made its high sensitivity to this Honorable Court's pronouncements in Haines City Community Development v. Heggs, 658 So.2d 523 (Fla. 1995) abundantly clear:

> Under Haines City Community Development v. Heggs, 658 So.2d 523, 528 (Fla. 1995), certiorari correction of a Circuit Court's appellate decision should be made "only when there has been a violation of [a] clearly established principle of law resulting in a miscarriage of justice". We find that kind of rare occasion in this case in which we should use our review function to correct a miscarriage of justice. G.B.V. International, Ltd. v. Broward County, No. 97-2448, (Fla. 4th DCA 1998) (Appendix 1)

The Fourth District recognized that the County Commission's decision was based upon "incompatibility." G.B.V. International, Ltd., supra, at 1. The District Court found that the Circuit Court reached beyond the Commission's stated reasons and decided the application on a basis not raised before the County Commissioners in the quasi-judicial proceedings. Thus, the Fourth District found that the Circuit Court impermissibly went outside the record of these proceedings and outside the evidentiary record presented to the Commissioners. Accordingly, the District Court found that the Circuit Court's decision, in that regard, was a departure from essential requirements of law and a denial of procedural due process. G.B.V. International, Ltd., at 1.

The Fourth District's per curiam opinion is consistent with Haines. There was no reweighing of the record evidence of a review of the Circuit Court's review of the competent, substantial evidence component. The Fourth District finding that the Circuit

Court's opinion was based upon a review of matters outside the record, in this case, warranted its decisions under Haines.

The Fourth District recognized that the matters to be determined in a quasi-judicial proceeding are to be determined according to the evidentiary record established in the proceeding. City of Miramar v. Amoco Oil Company, 524 So.2d 52 (Fla. 4th DCA 1989). Neither the lower tribunal or the Circuit Court can make a decision on non-record material.

In the proceedings in the Circuit Court, at the time of filing its Response to the Order to Show Cause [sic], Broward County attached pages from its December 12, 1995, and May 1, 1996 agendas, together with summary minutes of the meetings concerning those items.(A4) Thereafter, Broward County filed a complete transcript of the May 1, 1996 County Commission hearing before the Circuit Court. These materials were not part of the November 12, 1996 proceedings.

G.B.V. International moved to strike the same from the Circuit Court record. At the oral argument, G.B.V. International renewed their prior motions and objected to and moved to strike Broward County's filing of the minutes of the December 12, 1995 and May 1, 1996 meetings on the basis that these minutes were not made part of the record of the November 12, 1996 meeting (A2, Transcript, pgs. 1-62) on the review of G.B.V. International's plat application. The Circuit Court did not grant G.B.V. International's motion, and the Circuit Court then relied on the December and May minutes in its Order of July 1, 1997.(A1)

A review of the November 12, 1996 proceedings is limited to the record

established at such proceedings. It is axiomatic that the appellate review is confined to the record on appeal. C. F. Sheldon v. Tiernan, 147 So.2d 593 (Fla. 2nd DCA 1962). The appellate court (in this case the Circuit Court) may not consider matters outside the record. Mann v. State Road Department, 223 So.2d 883 (Fla. 1st DCA 1969). In this case, Broward County impermissibly sought to supplement the record by adding the summary minutes of December 12, 1995 and May 1, 1996, as well as the transcript of the May 1, 1996 hearing. That effort brought before the Circuit Court matters beyond the evidentiary record before the County Commission and the Circuit Court relied on such non-record materials, all in violation of G.B.V. International's procedural due process rights. City of Miramar v. Amoco Oil Company, supra.

Whether the issues are characterized within the realm of estoppel or within the realm of incompatibility, the Fourth District was clear that the Circuit Court's analysis was based upon matters beyond the envelope of the quasi-judicial proceedings before the County Commission. Consequently, the Fourth District Court's finding that the Circuit Court departed from the essential requirements of law and denied procedural due process is correct. Broward County has failed to show error.

A

THE DISTRICT COURT'S CONCLUSION THAT THE COMMISSION BASED ITS DECISION ON INCOMPATIBILITY IS SUPPORTED BY THE RECORD AND THE DISTRICT COURT'S ANALYSIS CONSTITUTES A BASIS TO QUASH THE ORDER OF THE CIRCUIT COURT.

Broward County's argument ignores the essential requirements of law and the

essential requirements of due process that Broward County's decision with respect to the Respondent's plat application must be based upon the record established in the quasi-judicial proceeding. City of Miramar v. Amoco Oil Company, supra. Procedural due process, in this regard, requires Broward County to base its decision upon the quasi-judicial record, and it requires the Circuit Court to determine whether or not Broward County's denial of the plat application was supported by competent substantial evidence shown in such record. City of Deerfield Beach v. Valliant, 419 So.2d 624 (Fla. 1982). In this case, both Broward County and the Circuit Court failed to accord with these principles.

In order to reach its decision, the Circuit Court proceeded along two (2) erroneous paths: First, it reviewed the non-record hearings of December 12, 1995 and May 1, 1996, both of which were the records of proceedings concerning a land use plan amendment, not a plat approval; second, the Circuit Court found that the proceedings before Broward County were legislative in nature and decisions flowing therefrom were, therefore, subject to the fairly debatable rule. Both decisions were erroneous under the prevailing law.

With respect to the latter, it is beyond question that a plat approval is a quasi-judicial process. Broward County v. Narco Realty, Inc., 359 So.2d 509 (Fla. 4th DCA 1978), see also, Park of Commerce v. City of Delray Beach, 636 So.2d 12 (Fla. 1994) (regarding the process of site plan approval). When notice and a hearing are required and a judgment of the board is contingent upon a showing made at the hearing, then the judgment becomes judicial or quasi-judicial, as distinguished from being purely

executive or legislative. DeGroot v. Sheffield, 95 So.2d 912 (Fla. 1957).

The Circuit Court simply misconstrued the test in Board of County Commissioners of Brevard County v. Snyder, 627 So.2d 429 (Fla. 1993) that distinguishes legislative action from quasi-judicial action. The test is whether the board's decision on the petition formulates a "general rule of policy" and, thus, will effect many people, or whether it merely applies an existing general rule of policy to a specific parcel. Snyder, 627 So.2d at 474; Section 28 Partnership, Ltd. v. Martin County, 642 So.2d 609 (Fla. 4th DCA 1994) (If the action formulates a general rule of policy, it is legislative; if the action applies a rule, it is quasi-judicial).

In this case, the record reflects that item number 61 on the regular County agenda for the meeting of November 12, 1996, was subject to the "quasi-judicial hearing" procedure (A2, Complaint Ex. 1). The County staff comments in item number 61 speak to "findings"(A2, Complaint Ex. 2); the transcript reflects that Mr. Laystrom, the primary witness for G.B.V. International, was sworn on his oath as a witness (A2, Transcript pg. 2, lines 6-13, pg. 3 lines 14-18); and, the Chairman of the Commission opened the meeting and announced it as a quasi-judicial procedure (A2, Transcript pg. 18 lines 2-6). Most importantly, Broward County was applying its codified standards in the Broward County Land Development Regulations to the plat application.

Against this backdrop, the Circuit Court's finding that the proceeding on the Respondent's application for plat approval were legislative in nature, not quasi-judicial in nature, was a misapplication of the essential requirements of law and a denial of G.B.V. International's procedural due process rights before the Circuit Court.

In its argument, Broward County makes much of the fact that "the Commissioners are not judges" or lawyers. Broward County's Brief page 25. Besides being totally irrelevant, these observations are not supported by any record. What is shown by the record is that the County Attorney, in his role as advisor to Broward County, advised the County Commission that their actions were not supported in the law.

The County Attorney addressed by first calling Broward County's attention to the fact that G.B.V. International's Plat was consistent with the County's [land use] plan. He then went on to answer Commissioner Rodstrom's question:

0014

MR. COPELAN: An indication, I think, from the standpoint of the flex and your question, I think that probably would be less than 50 percent of chances of upholding a decision based on solely on flex.

CHAIRMAN RODSTROM: Our chances of prevailing would be less than 50 percent --

MR. COPELAN: Yes. (T. p. 14, lines 18-25.)

County Attorney Copelan went on to confirm that his opinion directly addressed Commissioner Parrish's motion to limit the Plat by opposing the flex units:

0015

CHAIRMAN RODSTROM: If it was based on Commissioner Parrish's motion.

MR. COPELAN: As I understood it was only addressing the flex.

CHAIRMAN RODSTROM: Only addressing the flex issue.

MR. COPELAN: Yes, yes. (T. p. 15, lines 1-7.)

After Commissioner Parrish clarified her motion as directed toward deleting the

120 residential units (T. p. 17, lines 19-21.), the County Staff through Mr. Auerhahn and Mr. Laystrom, on behalf of G.B.V. International, made the presentation on the matter. Mr. Auerhahn made the following presentation:

> **0018**
> **15 MR. AUERHAHN: The Sawgrass Exchange Plat is proposed. It's located at the Northwest corner of Lyons Road and the Sawgrass Expressway in the City of Coconut Creek. The proposed use is for 102 detached, single-family units, 300 garden apartments, and 317,000 square feet of commercial. It is the entirety of an approved developmental impact.**
> **24 COMMISSIONER COWAN: I'm sorry. One more time on that.**
> **0019**
> **1 MR. AUERHAHN: It's an entirety of an approved development of regional impact or DIR. Staff recommends approval with the recommendations and conditions that are attached to your report.** (T. p. 18, lines 15-25 through p. 19, lines 1-5.)

In searching for ways to deny or defer the Plat, Commissioner Hart asked the County Staff whether or not the Staff had carefully scrutinized the impacts of the development as proposed by G.B.V. International, including the 300 garden-type dwelling units. Mr. Auerhahn answered as follows:

> **0045**
> **13 MR. AUERHAHN: The report before you includes all the units that they applied for included those that are flexed.** (T. p. 45, lines 1-15.)

Commissioner Hart then asked the County Attorney whether or not the County Commission could disapprove the Plat because of "our dislike or a majority of our dislike for the Flex Application by the City of Coconut Creek." (T. p. 45, lines 21-25 through p. 46, lines 1-2.)

County Attorney Copelan answered as follows:

> **0046**
> **3 MR. COPELAN: Commissioner, the question of flex at the current time I would add notwithstanding what might occur later today, does not give you the application of flex. The application of flex is exercised as the record reflects and is as noted by the city here because as you've noticed in the report, you have in part of your record with the Broward County Planning Council, the city did exercise eh ability of flex and the subsequent result of that was that seems to have solved that inconsistency. So what has been before you based upon flex is not inconsistent in the record.** (T. p. 46, lines 3-16.)

Commissioner Hart then asked whether or not the County Commissioner could approve or disapprove the Plat in connection with the perceived school-crowding problem.

> **0046**
> **17 COMMISSIONER HART: What about the stages of the implementation of a concurrency issue regarding schools? What can we do with regards with the school issue as it relates to our land development code?** (T. p. 46, lines 17-21.)

County Attorney Copelan responded as follows:

> **0046**
> **22 MR. COPELAN: Commissioner, at this time that process is ongoing and not complete and that should not be basis for your determination.** (T. p. 46, lines 22-25.)

Finally, Commissioner Poitier asked the County Attorney "[w]hat authority do we have over a local City Commissioner in exercising their Code?"

County Attorney Copelan responded to Commissioner Poitier as follows:

> **0058**
> **7 MR. COPELAN: The answer is that is under the**

> **current system up to the city. They have the ability to exercise their flexes within their ability.** (T. p. 58, lines 7-10.)

Commissioner Poitier pressed her concern that the Petitioner appeared not to have any authority over the City. County Attorney Copelan explained that Broward County was not in a land use approval process but in a planning process and that the questions regarding flex units were the prerogative of the City:

> **0059**
> **15 MR. COPELAN: You do not under the current arrangement have any authority to rethink their flex, determination under the code. It's their determination.** (T. p. 58, lines 17-25 through p. 59, lines 1-18.)

Broward County's own attorney told its Commission that it could not do what they eventually did. No mention was made of estoppel or incompatibility. Mr. Copelan told Broward County that G.B.V. International had a right to the density achieved by one City's flex units and that it was beyond the County's jurisdiction to question the allocation. The Fourth District has said the same thing.

Finally, Broward County argues that even if Broward County based its decision on incompatibility or estoppel, the Circuit Court could nevertheless find that Broward County's denial of the plat was justified under the Circuit Court's application of the estoppel theory to the facts as the Circuit Court saw them. This is a position not only contrary to law, but one contrary to logic as well. In effect, it would permit the reviewing Court to sustain the erroneous decision of the quasi-judicial panel based upon non-record evidence, completely foreign to the quasi-judicial proceeding and the law, based on a doctrine of estoppel.

This approach is wrong legally and makes for bad judicial policy. It creates the spectre of a trial, where no trial exists and it attacks G.B.V. International's position where the Respondent was unaware that the issue was even the subject of a trial. Equitable estoppel presents a fact-centered inquiry. See Hollywood Beach Hotel v. City of Hollywood, 329 So.2d 10, 15-16 (Fla. 1976). To test G.B.V. International's case against a record established in a proceeding to determine plat compliance, when G.B.V. International was unaware that the issue (the issue of estoppel, usually set up as an affirmative defense) was being tried is simply unfair and far removed from the realm of due process.

Nevertheless, if that avenue is to be pursued, Broward County's view of the record is a distortion of the facts. The only time that G.B.V. International's attorney, Mr. Laystrom, agreed not to apply for "flex units" was relative to the application for the land use change which sought ten (10) units an acre (A4, Exs. 1 and 2). The County declined to change the County land use plan to ten (10) units an acre (thus, thwarting any suspected effort that G.B.V. International would then apply flexibility units to achieve something greater than ten (10) units an acre). Instead, Broward County changed the land use plan to allow six (6) units an acre. At that point, the issue with respect to which G.B.V. International's attorney made his comments concerning the use of flex units was concluded.

The issue before Broward County on November 12, 1996 was whether the plat application met all applicable legal requirements. The application did meet all legal requirements. Thus, it was entitled to approval. Broward County v. Narco Realty,

Inc., supra. Broward County has failed to show error.

B

THE DISTRICT COURT PROPERLY APPLIED THE STANDARDS REGARDING PLATTING ISSUES.

Broward County is simply wrong in the application of Snyder. The law with respect to the approval of plats is stated in Broward County v. Narco Realty, Inc., supra and in Park of Commerce v. City of Delray Beach, supra. This unassailable law was recognized by the Fourth District:

> All persons similarly situated should be able to obtain plat approval upon meeting uniform standards. Otherwise, the official approval of a plat application would depend on the whim or caprice of the public body involved. Broward County v. Narco Realty, Inc. at 510.

The record before Broward County established that G.B.V. International had complied with all of the applicable legal requirements, so that the approval was a "ministerial function". G.B.V. International, Ltd., at 2. Procedural due process, in this regard, requires Broward County to base its decision upon the quasi-judicial record, and it requires the Circuit Court to determine whether or not Broward County's denial of the plat application was supported by competent substantial evidence. When notice and a hearing are required and a judgment of the Board is contingent upon a showing made at the hearing, then the judgment becomes judicial or quasi-judicial, as distinguished from being purely executive or legislative.

The Fourth District emphasized this legal principle in Park of Commerce:

> We specifically held in Narco Realty, Inc. that where all legal requirements for platting had been met there is no residual discretion to refuse approval...Park of Commerce, at 635.

The principle has been restated in City National Bank of Miami v. City of Coral Springs, 475 So.2d 984 (Fla. 4th DCA 1995). An approval of a conforming plat application, meeting the objective criteria set forth in the regulatory ordinance cannot be denied or based on the condition that the density not exceed a specific number of units per acre where the applicable zoning regulations or, in this case flex unit regulations, allow for a greater density and the application comports with such regulations. Cf. Colonial Apartments, L. P. v. City of Deland, 577 So.2d 593 (Fla. 5th DCA 1991).

Broward County's argument confuses the land use plan amendment process, which concluded on the previous May, with the plat application processes which concluded on November 12, 1996. Broward County justified this blending of process on a "public interest" argument that suggests that Broward County should have discretionary say so over matters for which there are already complex and extensive governing regulations, not to mention jurisdictional issues. Broward County argues that "land owners who have the resources to hire counsel and to take the steps recommended by counsel will be able to force commissions to grant their land use requests. Major developers like G.B.V. International will have those necessary resources and, as a result, more and more large-scale developments will have to be allowed without regard to the effect on the quality of life or the problems created for the community." Of course, this argument is wholly lacking in any record support or, for that matter, intellectual support. Nothing in the record suggests that G.B.V. International is a "major developer" or that with substantial resources to hire counsel,

the Respondent can somehow "force commissions to grant their land use request." The only way that any land owner, major or minor, can force a commission to grant a land use request is if the denial of such request is contrary to law. Even then, the land owner faces substantial road blocks in terms of lost time and lost money, or both, before it can use its land in a way that is lawful under the applicable regulations.

Broward County argues that there should be one more hurdle along the way and that is the hurdle of the public hue-and-cry. Broward County is saying that even when a land owner meets each and every legal requirement which has been established to implement published land use policies, Broward County should nevertheless have the opportunity to work its political will against the land owner, depending upon the whim or caprice of the public body involved. This is precisely what the Narco Realty, Inc. Court told Broward County it could not do some twenty (20) years ago. Broward County has failed to show error.

C

THE PLAT APPROVAL DID NOT REQUIRE AN AMENDMENT OF THE CITY OF COCONUT CREEK'S LAND USE PLAN

Broward County misreads the record and misunderstands the law with respect to whether or not there was an amendment to the City of Coconut Creek's land use plan. There was no such amendment. The City of Coconut Creek merely exercised an element of its plan allowing for the attribution of flex units. Thus, no amendment was a condition precedent to the approval of the plat. See footnote 1, G.B.V. International, Ltd. page 1.

However, even if one assumes that some principle enunciated in Martin County v. Yusem, 690 So.2d 1288 (Fla. 1997) would apply if Coconut Creek had amended its land use plan, it has no bearing here. Assuming the incorrect legal presumption that the City's application of flex units was an "amendment of the land use plan", the amendment occurred, therefore the condition precedent to the approval of the plat occurred. The City of Coconut Creek favors G.B.V. International's position. In Yusem, it was the amendment to the land use plan that was the legislative action, not the request for rezoning. But one does not have to linger in the thicket of that argument, the facts simply are not there to make the argument applicable. Therefore, no error is shown.

D

BROWARD COUNTY'S ARGUMENT HERE IS SIMPLY WRONG ON THE RECORD AND IT IS WRONG LEGALLY.

As Broward County points out in its Brief, the Broward County Planning Counsel found that the plat was "considered in compliance with the permitted uses and densities of the effective land use plan". Referring to September 27, 1996 memorandum from Susan M. Tramer to Elliot Auerhahn. As the Fourth District pointed out in its footnote 1, both Broward County's and the City of Coconut Creek's land use plan feature a concept referred to as "flex units". The application of the flex units, in this case, was done within the authority of the City and under the County land use plan. G.B.V. International, Ltd. at page 2. Therefore, no error is shown.

ARGUMENT II

THE DISTRICT COURT DID NOT ERR WHEN, IN GRANTING THE CERTIORARI, IT WENT BEYOND QUASHING THE ORDER UNDER REVIEW AND ISSUED DIRECTIONS TO THE CIRCUIT COURT.

The Fourth District Court of Appeal did not err when it entered an Order providing, in pertinent part, as follows:

> We therefore grant review by certiorari, quash the Order of the Circuit Court *and remand for entry of an order directing Broward County to approve the plat as requested.* (emphasis added)

The Fourth District's Order is consistent with law and good judicial sense. Under these circumstances, to conclude that the Fourth District erred is to invite additional and needless judicial labor, as well as administrative obfuscation in the face of the Respondent's clear property rights and the policies of the State respecting such property rights.

G.B.V. International came before the Broward County Commission, sitting in its quasi-judicial role in the review of an application for plat approval to determine whether the plat met all applicable legal requirements. Broward County v. Narco Realty, Inc., 359 So.2d 509 (Fla. 4th DCA 1978). The Fourth District Court has held that where an applicant for plat approval shows that the plat meets all of the duly promulgated clear and objective standards, the applicant is entitled to approval of the application. Broward County v. Narco Realty, Inc., at 511-512. See also Park of Commerce v. City of Delray Beach, 636 So.2d 12 (Fla. 1994). In this case, there is no issue as to whether or not the plat met all of the clear and objective standards. It did.

In 1976, Broward County, refused to approve the plat submitted by a developer

named Narco Realty, Inc., even though the plat met all of the requirements for platting land. In the face of those stipulated facts, the court ordered, through the Honorable Judge Downey, that

> upon remand the County shall approve the plat in question in accordance with the Preemptory Writ of Mandamus issued August 16, 1976, and such approval shall not contain any conditions relative to this litigation as were contained on the plat approval in the Resolution of the County Commission dated March 1, 1997...

Broward County v. Narco Realty, Inc., at 511. Once again, Broward County finds itself in the same position requiring a court to tell it to follow the law.

The instant case can be distinguished from Narco Realty in that the remedy sought by Narco was mandamus whereas in this case, G.B.V. International filed their complaint for Certiorari relief in the Circuit Court, with a companion claim for mandamus relief. The result in this case should, nevertheless, be the same, as in Narco Realty where the only question is whether G.B.V. International met all of the uniform standards and legal requirements for platting of its land.

The district court cases are cited by Broward County to illustrate conflict can be put aside. There is only one case with which this Honorable Court has to deal: Tamiami Trail Tours, Inc. v. Railroad Comm., 128 Fla. 25, 174 So. 451 (1937). All of the other cases are distinguishable as involving special exceptions or conditional uses or some other development order, the consideration and granting of which involve the application of more complex regulations. The instant case presents a clear opportunity for a re-examination of the principle enunciated in Tamiami, uncluttered by the nuances of the regulatory scheme.

Sixty-one years ago, this Court reviewed an order of the Railroad Commission

denying an application to operate a bus system as a common carrier of passengers and light express over certain state highways. Tamiami at 451. On review, this court found that

> on certiorari, the appellate court only determines whether or not the tribunal or administrative authority whose order or judgment is to be reviewed has in the rendition of such order or judgment departed from the essential requirements of law and upon that determination either to quash the writ of certiorari or to quash the order reviewed.

On its face, the Final Order of the Fourth District Court is inconsistent with Tamiami, Id. However, on closer look, the Fourth District's Order is consistent with law and practicality. And now is the time for the judiciary to address the gap between the quasi-judicial process and the judicial process.

In these kinds of proceedings the applicant for plat approval appears before the quasi-judicial body (the Petitioner Broward County in this case) and if an applicant presents a code-compliant plat, the applicant is entitled to an approval. Narco Realty, at 511. This is a yes or no proposition. There is no residual discretion vested in the quasi-judicial body after it is determined that the legal requirements for plat approval have been met. Thus, there is no reason for a result that puts the plat application back before the quasi-judicial commission, except to provide a forum for the ministerial act of approval. That is exactly what the Fourth District's Order does. It compels the Circuit Court to correct its erroneous decision and then to direct the quasi-judicial body, the County of Broward, to approve G.B.V. International's plat, because G.B.V. International are entitled to such an approval. The Fourth District Court's Order directing the Circuit Court to direct the County Commission to approve G.B.V. International's plat, as submitted, is consistent with the teachings of this Court in

Haines. In the Court's lengthy review of the historical basis for certiorari, the Court recognized the evolving policies to which the remedy of certiorari attached. In the Court's review, beginning with the English common-law writ of certiorari which issued out of chancery or the King's Bench, the remedy has been redefined, as well as refined, in order to accord with assumed principles of constitutional due process and judicial economy. The Fourth District Court's opinion, in question here, recognizes this limited organic nature of the remedy and, in applying it to the case in point, having found that the record revealed that Broward County had no more than an administrative act to conclude, directed that it be done. This is the same result occasioned in Narco Realty. It would appear that Narco Realty came before the Court on a complaint for mandamus relief. Since Narco, however, we know that the proceeding to bring the quasi-judicial decision before the Court is through the remedy of certiorari. That distinction does not change, however, the necessary and appropriate end result, and this Court's teachings Tamiami Trail Tours, Inc. and Haines does not prohibit such a result.

The law of the case in this matter is that the Respondent's plat met all the legal requirements and therefore was entitled to approval. The Fourth District concluded that Broward County was left with only a "ministerial function" to be completed. A "ministerial function" or duty is "some duty imposed expressly by law, not by contract or arising necessarily as an incident to the office, involving no discretion in its exercise by mandatory and imperative." State ex re. Allen v. Rose, 123 Fla. 544, 167 So. 21, 22-23 (1936); Escambia County v. Bell, 717 So.2d 85 (Fla. 1st DCA 1998). Directing the quasi-judicial body to do the obvious and what is legally required does not violate the principles underlying the remedy of certiorari.

Broward County has failed to show error.

CONCLUSION

G.B.V. International respectfully submits that certiorari relief sought by Broward County should be denied. The Opinion of the Fourth District Court of Appeal is consistent with law in determining that the Circuit Court, sitting in its appellate/certiorari capacity, failed to accord with the essential requirements of law and denied G.B.V. International due process of law, because the Circuit Court relied on matters outside the record established at the quasi-judicial proceedings.

On the conflict question, the Fourth District properly entered an Order directing the Circuit Court to direct, in turn, Broward County to approve G.B.V. International plat as submitted. Under the teachings of Narco Realty, Inc. and Park of Commerce, upon the demonstration that G.B.V. International plat met all of the legal requirements, Broward County was left with no more than a ministerial function to perform, namely, the approval of the plat, as submitted. There was no residual discretion left with Broward County.

Recognizing the organic nature of certiorari relief and the sound policies of judicial economy, it was appropriate for the Fourth District Court to quash the opinion of the Circuit Court and to require that the Circuit Court direct Broward County to approve the plat, as submitted.

As for the non-conflict arguments, Broward County should fail. The record is clear that G.B.V. International was entitled to an approval of their plat, as submitted. There is no record evidence of fraud or overreaching such as to nullify G.B.V. International's constitutionally property rights. Broward County has failed to show any substantial reason for the reversal of the District' Order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed this ___ day of November , to: ANTHONY C. MUSTO, ESQ., Chief Appellate Counsel, SHARON L. CRUZ, ESQ., Interim County Attorney, Broward County Governmental Center, Suite 423, 115 South Andrews Avenue, Ft. Lauderdale, FL, 33301.

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