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SID J. WHITE

JUL 17 1996

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

BROWARD COUNTY,

CASE NO. 93,115

Petitioner,

-vs-

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

Respondents.

ANSWER BRIEF OF RESPONDENTS ON JURISDICTION

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ARGUMENT

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL IN THE PRESENT CASE IS NOT IN EXPRESS OR DIRECT CONFLICT WITH THE DECISIONS IN GULF OIL REALTY CO. v. WINDHOVER ASSN., 403 **So.2d** 476 (Fla. 5th DCA 1981); ABG REAL ESTATE DEV. v. ST. JOHNS COUNTY, 608 **So.2d** 59 (Fla. 5th DCA 1992); SNYDER v. DOUGLAS, 647 **So.2d** 275 (Fla. 2d DCA 1994); and TAMIAMI TRAIL TOURS, INC. v. RAILROAD COMM., 128 Fla. 25, 174 So. 451 (1937) AND THIS HONORABLE COURT SHOULD OMIT THE EXERCISE OF ITS CERTIORARI DISCRETION.

In the present case, the Fourth District Court of Appeal properly granted certiorari and quashed the Order under review 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. (A2)

In doing so, the **Fourth** District Court provided the ultimate relief required by law and practicality, saving needless hours of administrative and judicial labor. The District Court recognized that the record clearly revealed that the Respondent's application met all of the requirements of the applicable County regulations:

The developer then sought site plan [sic] approval by the County in accord with the County's legal requirements. The County staff recommended approval of the plat, finding compliance with all County regulations for plat approval. The County Commissioners were therefore being asked to review the plat for compliance with the County's own regulations.

Recognizing the uncontested finding that the Respondent's application met "all County regulations for plat approval" and recognizing that once a Respondent had met all of the applicable regulatory requirements, the Respondent was entitled to the approval of the application, Broward County v. Narco Realty, Inc., 359 **So.2d** 509 (Fla. 4th DCA 1978), there

was nothing more to be done but the entry of a Development Order approving the plat as submitted. As the Fourth District Court indicated:

Broward County's land development regulations contain specific requirements for plat approval. The record before the Commission established that the developer had complied with all of these requirements, so that the approval was a ministerial function. (emphasis added)

The Fourth District Court correctly reached the intersection of the remedies afforded by certiorari and mandamus spoken to by Justice Davis in his specially concurring opinion in Tamiami Trail Tours, Inc. v. Railroad Commission, 128 Fla. 25, 174 So. 451 (1937) rehearing denied. Justice Davis pointed out that the findings of the Supreme Court in the review of the denial of Tamiami Trail Tours, **Inc.**'s application for a certificate of public convenience and necessity was decided as a 'matter of law' and the Court's determination therefore became the 'law of the case' binding upon the inferior tribunal, to be enforced by the remedy of mandamus to coerce obedience to the law of the case, should the inferior court depart from the intendment and controlling effect of the law of the case so fixed by the superior court's opinion and judgment. At 454. In this case, since the approval of the Respondent's plat, as submitted, was merely a ministerial function, the Fourth District Court's Order was correct.

It is significant that under Article V of the State Constitution that the issuance of conflict certiorari is discretionary. Scroczyk v. Fritz, 220 **So.2d** 908 (Fla. 1969). The Constitution says that the Court may review cases in direct conflict, not that the Court must make such review. Florida Greyhound Owners Association v. West **Flagler** Association Ltd., 347 **So.2d** 408 (Fla. 1977)(J. England's concurring opinion).

Section **3(b)(3)** of Article V of the State Constitution provides, in pertinent part, that this

Honorable Court:

May review any decision of a District Court of **Appeal...that expressly and directly conflicts** with a decision of another District Court of Appeal or of the Supreme Court on the same question of law. (emphasis added)

Two (2) basic forms of decisional conflict which properly trigger the exercise of this Court's jurisdiction under Article V Section **3(b)(3)** are 1) where an announced rule of law conflicts with other appellate expressions of law or 2) where a rule of law is applied to produce a different result in a case which involves substantially the same controlling facts as a prior case. In this case, the Fourth District Court of Appeal did not announce a rule of law conflicting with other appellate expressions of law, and the Petitioner does not claim that it did. Rather, the Petitioner is complaining about the application and effect of the Fourth District's decision. However, the Petitioner has failed to demonstrate that the allegedly conflicting cases involve substantially the same controlling facts as the facts of this case. Consequently, there is no express and direct conflict and to grant certiorari would be improvident. See, City of Jacksonville v. Florida First National Bank of Jacksonville, 339 **So.2d** 632 (Fla. 1976); see also, among other cases adhering to this formulation, Kyle v. Kyle, 139 **So.2d** 885 (Fla. 1962) and Adams v. Seaboard Coast Line Railroad, 296 **So.2d** 1 (Fla. 1974).

In this case, the Fourth District found that the Circuit Court erred when it reached beyond the Petitioner's stated reasons and decided the case on a basis not raised before the Petitioner's County Commissioners. (A-1). In order to do so, the Circuit Court relied on evidence not presented to the Petitioner's County Commission and not considered by the County Commission in denying the Respondent's code-compliant application. In no case cited by the

Petitioner is it shown that any one of the petitioners in the district courts and before the lower tribunals had submitted a regulatorily compliant application which was rejected because of matters outside the record before the reviewing body. No case cited by the Petitioner showed that the only thing left to do in the administrative process was the ministerial act of issuing the Development Order to which the Respondent was entitled as a matter of law.

In effect, the Circuit Court decided an issue which was neither presented to nor decided by the Petitioner. The District Court found, therefore, that the Circuit Court's decision in this regard was a departure from the essential requirements of law while sitting in certiorari review of the local government's action and, therefore, a denial of procedural due process. Thus, the District Court concluded that under prevailing law, which is not in contest here, the Respondent was entitled to an approval of its plat, as submitted, and that an order thereon was merely a ministerial function. The Petitioner cites no case of such similar factual context against which the District Court's opinion can be contrasted or compared. Thus, the Petitioner fails to meet the second alternative prong of the formulation previously adopted by this Court in Florida National Bank of Jacksonville, supra.

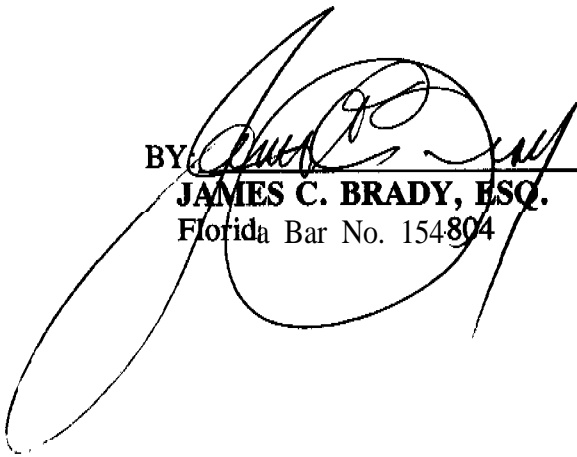
CONCLUSION

This Honorable Court lacks Article V **3(b)(3)** conflict jurisdiction or, in the alternative, the facts and law are such that this Honorable Court should not exercise its discretionary review powers.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed this 15 day of July, 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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