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SUPREME COURT OF FLORIDA

CASE NO. SC 95217

CHARLES DUSSEAU, et. al.,

Petitioners,

v.

MIAMI-DADE COUNTY, and UNIVERSITY BAPTIST CHURCH,

Respondents.
_____/

MIAMI-DADE COUNTY'S BRIEF ON THE MERITS

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PREFACE

THIS COURT HAS ACCEPTED JURISDICTION TO CONSIDER THE PETITION FILED BY CHARLES DUSSEAU AND OTHERS ALLEGING *MIAMI-DADE COUNTY V. DUSSEAU,* 725 SO. 2D 1169 (FLA. 3D DCA 1998), CONFLICTS WITH *HAINES CITY COMMUNITY DEVELOPMENT V. HEGGS*, 658 SO. 2D 523 (FLA. 1995); *BOARD OF COUNTY COMMISSIONERS V. SNYDER,* 627 SO. 2D 469 (FLA. 1993); *EDUCATION DEVELOPMENT CENTER V. CITY OF PALM BEACH*, 541 SO. 2D 106 (FLA. 1989); AND *CITY OF DEERFIELD BEACH V. VAILLANT*, 419 SO. 2D 624 (FLA. 1982).

FOR CONVENIENCE THIS RESPONSE BRIEF WILL REFER TO MIAMI-DADE COUNTY AS "THE COUNTY" OR "THE BOARD," UNIVERSITY BAPTIST CHURCH AS "THE CHURCH," AND CHARLES DUSSEAU AND THE OTHERS WHO OBJECTED TO THE CHURCH'S ZONING APPLICATION AS THE "NEIGHBORS." REFERENCES TO THE FIVE-VOLUME RECORD PREPARED BY THE THIRD DISTRICT CLERK WILL BE AS "[R. VOL. ___ AT ___]" THIS BRIEF DEALS WITH THE ZONING PROVISIONS CONTAINED IN CHAPTER 33 OF THE CODE OF MIAMI-DADE COUNTY AND WILL REFER TO THEM AS "THE ZONING CODE," AND THE COMPREHENSIVE DEVELOPMENT MASTER PLAN AS "THE CDMP," OR "THE COMPREHENSIVE PLAN."

FINALLY, THIS BRIEF HAS SUPPLIED ALL EMPHASIS UNLESS OTHERWISE INDICATED.

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[2] The Neighbors appear to have abandoned their jurisdictional contention that *Dusseau* conflicted with *City of Dania v. Florida Power & Light Company*, 718 So. 2d 813 (Fla. 4th DCA 1998), *review granted*, 727 So. 2d 905 (Fla. 1998); *Martin County v. City of Stuart,* 736 So. 2d 1264 (Fla. 4th DCA 1999) (receding from *City of Dania*); *Manatee County v. Kuehnel*, 542 So. 2d 1356 (Fla. 2d DCA), *review denied*, 548 So. 2d 663 (Fla. 1989); *St. John County v. Ownings*, 554 So. 2d 535, 536-537 (Fla. 5th DCA 1989), *review denied*, 564 So. 2d 488 (Fla. 1990) and *Stilson v. Allstate Insurance Company*, 692 So. 2d 979 (Fla. 2d DCA 1997).

[3] References to a subsequently transmitted supplemental record will be as "[Supp. Vol. at __.]"

STATEMENT OF THE CASE AND FACTS

HAVING OUTGROWN ITS LOCATION WHERE IT HAD BEEN SINCE 1926, THE CHURCH SOUGHT TO MOVE TO A TWENTY-ACRE LOT NEAR THE PALMETTO EXPRESSWAY ON SUNSET DRIVE, A MAJOR EAST-WEST THOROUGHFARE IN MIAMI-DADE COUNTY. THE SITE IS ZONED EU-1 WHICH, ALONG WITH EU-M, APPLIES TO ALL THE CONTIGUOUS PROPERTY. A NATURAL FOREST PRESERVE BORDERS IT ON THE SOUTH, AND TO THE WEST ABUTS A CHURCH WITH A HOME FOR ADOLESCENT CHILDREN. IN MAY 1996, THE CHURCH APPLIED TO THE COUNTY TO DEVELOP THE SITE IN TWO PHASES. FIRST, IT WOULD BUILD AN "ALL-PURPOSE" BUILDING THAT COULD SEAT UP TO 1,500 PERSONS, A DAY CARE AND ADMINISTRATIVE OFFICES. IN THE SECOND PHASE, THE CHURCH WOULD CONSTRUCT ITS PERMANENT SANCTUARY FOR 2,190 PERSONS, A CLASSROOM BUILDING, A CHAPEL, A MAINTENANCE BUILDING. THE CHURCH WOULD THEN USE ITS 1,500-SEAT "ALL-PURPOSE" BUILDING AS A HALL. [R. VOL. I AT 22-37.]

THE ZONING APPEALS BOARD

THE COUNTY'S ZONING APPEALS BOARD ("ZAB") FIRST CONSIDERED THE APPLICATION ON OCTOBER 16, 1996. THE COUNTY'S PROFESSIONAL ZONING AND PLANNING DEPARTMENTS REPORTED THEY WERE UNSATISFIED WITH THE CHURCH'S APPLICATION. THE ZONING

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[4] "EU-1" is one acre estate density. "EU-M" is modified estate density which requires 15,000 sq. ft. lots. §§ 33-226 and 33-224, Zoning Code, respectively. The EU-1 designation would allow, as of right, development of 20 homes on this site.

[5] These two independent professional staff recommendations were required and governed by § 33-310, Zoning Code (1996), and generally speaking, advised the Board from two different perspectives. The Planning Department is responsible for the County's CDMP and thus looks at each application from a macro perspective. The Zoning Department, by contrast, is usually responsible for site-

DEPARTMENT RECOMMENDED DENIAL OR DEFERRAL OF THE APPLICATION, EXPLAINING THAT IT DID NOT "CONCEPTUALLY OPPOSE A RELIGIOUS AND DAY NURSERY FACILITY ON THIS PROPERTY," BUT COULD NOT SUPPORT THE APPLICATION AND SITE PLAN AS SUBMITTED. "[T]HE SIZE, SCALE AND LOCATION OF THE BUILDINGS ON THE SITE IS NOT ACCEPTABLE. . . .IN KEEPING WITH OTHER EXISTING RELIGIOUS FACILITIES LOCATED ON SUNSET DRIVE, INCLUDING ST. MATTHEW..., A MORE ACCEPTABLE SITE PLAN WOULD ORIENT ANY PROPOSED BUILDINGS CLOSER TO SUNSET DRIVE. . . .IN ADDITION, ANY USES SHOULD

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specific issues.

be spaced from neighboring properties by at least 50', with extensive landscaping buffering . . ." [R. Vol. I at 39.] The ZAB deferred the application so the Church could revise its site plan.

On December 4, 1996, the ZAB held its second public hearing on the Church's application. [R. Vol. II.] Based on considerable changes to the site plan, the Zoning Department recommended approval of the Church's first revised application. [R. Vol. I at 41-43.] The Planning Department recommended approval of the first phase and deferral of the second. [R. Vol. I at 44-49.] The Public Works Department and the Department of Environmental Resources Management ("DERM"), among others, also recommended approval. [R. Vol. I at 50-59.] At the hearing, the Church relied on the County's professional staffs' favorable recommendations [R. Vol. II at 93-106.] and added the testimony of its experts – an architect, traffic engineer, and real estate appraiser. Each was sworn and subjected to extensive cross-examination. The Church's architect, Mr. Henser, explained how he designed the Church to minimize its impact on the surrounding residences. [R. Vol. II at 107-125.] The Church's traffic engineer, Mr. Finade, testified that at peak traffic hours, Sunset Drive traffic would experience delays of only 30-35 seconds. [R. Vol. II at 129.] The commercial real estate appraiser, Mr. Gallagher, concluded the Church would not lower the market value of the surrounding residences. On cross-examination he

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[6] The Neighbors' Statement of Facts quotes mainly from this preliminary analysis of the initial site plan. That October 1996 recommendation was *not* the advice the Zoning Department ultimately gave the ZAB or Board when action was taken on the *revised* site plans. (Brief at 4.)

conceded the comparison churches he looked at were smaller but argued they were nonetheless sufficiently comparable to reach a valid conclusion. [R. Vol. II at 140-173.] Also because its site plan would avoid the 20 homes allowed under the Zoning Code, the Church pointed out that its application had the added benefit of preserving three acres of original pineland, as DERM had requested. [R. Vol. II at 100, 110.]

The Neighbors objected that the Church was too large for their neighborhood and questioned whether the Church's facilities were consistent with a religious purpose. [R. Vol. II at 191-206.] One Neighbor and former County commissioner, Charles Dusseau, alleged the Church's facilities were designed for commercial activity, which would be inconsistent with his neighborhood's "rural character." He also opined that the Church would lower the value of his home. [R. Vol. II at 207-219.] A second Neighbor, Mr. Rodriguez, complained of the nearby development of the Dadeland Shopping Mall, an office building and a Metrorail station and asked the Board to curtail development. [R. Vol. II at 220.] A third Neighbor asserted, without a study, that each home in the vicinity would lose a minimum of $100,000.00 in value. [R. Vol. II at 220-223.] Other Neighbors argued that the proposed project was not really a church. [R. Vol. II at 224-228.]

After considerable discussion among the ZAB that included one member's sharp criticism of religious institutions generally and of this Church, in particular [R. Vol. II at 246-249,] JR. Vo the ZAB denied the Church's application, by a six-to-two vote. [R. Vol. II at 260-262.]

The Board of County Commissioners

THE CHURCH APPEALED THE ZAB DECISION TO THE BOARD OF COUNTY COMMISSIONERS ("BOARD"), WHICH INITIALLY DEFERRED THE MATTER SO THAT THE CHURCH COULD MEET WITH THE COUNTY DEPARTMENTS AND FURTHER IMPROVE ITS SITE PLAN. AT THE BOARD'S FEBRUARY 20, 1997 PUBLIC HEARING, THE COUNTY DEPARTMENTS AGAIN RECOMMENDED APPROVAL OF THE CHURCH'S SECOND REVISED APPLICATION. [R. VOL. III.]

THE PLANNING DEPARTMENT'S LENGTHY AND DETAILED FEBRUARY 20, 1997 RECOMMENDATION DID NOT CHANGE SIGNIFICANTLY FROM THE ONE IT PRESENTED TO THE ZAB ON DECEMBER 4, 1996. IT READS AS FOLLOWS:

> [WE ARE] RECOMMENDING APPROVAL OF THE PROPOSED CHURCH FACILITY. THE CHURCH CAMPUS WILL BE DEVELOPED IN TWO PHASES. . . . *STAFF IS CONDITIONING THIS REQUEST TO PROHIBIT THE SIMULTANEOUS USE OF THE SANCTUARY AND FELLOWSHIP HALL DURING WORSHIP SERVICES*. . . . THE PROPOSED DAY CARE FOR 98 CHILDREN WILL BE LOCATED ON THE SOUTHEAST CORNER OF THE MAIN BUILDING. THE DAY CARE WILL CONFORM TO ALL PRIVATE SCHOOL REQUIREMENTS AND WILL MAINTAIN ITS OWN SEPARATE DROP-OFF AREA AND OUTDOOR PLAY AREA. ORIGINALLY, THE MAJORITY OF THE PARKING WAS LOCATED IN FRONT OF THE CHURCH AND THE CHURCH WAS SITED ON THE REAR OF THE LOT. *THE [CHURCH] HAS REVISED [ITS] SITE PLAN SHIFTING THE CHURCH CLOSER TO THE FRONT PROPERTY LINE AND RELOCATING THE PARKING CLOSER TO THE ENTRANCES TO THE CHURCH. FURTHER, THE [CHURCH] HAS REDESIGNED THE CHURCH'S MOTIF INCORPORATING A MORE RESIDENTIAL CHARACTER… AS WELL AS SHIFT OF THE MAXIMUM HEIGHT OF THE BUILDING TO THE CENTER OF THE STRUCTURE. THIS WILL HELP ALLEVIATE THE IMPACT OF THE HEIGHT VARIANCE REQUESTED ON ADJOINING PROPERTIES. THE CHURCH IS INTERNAL TO ITSELF. MOST CHURCHES OF THIS SCALE AND SCOPE ARE CONSTRUCTED IN A POD DESIGN, SUCH AS OUR LADY OF HOLY ROSARY, LOCATED AT 9500 SW 184 STREET.* THIS CHURCH WILL BE ENTIRELY INTERNALLY ORIENTED. PARKING, AS PROPOSED, WOULD LIMIT THE IMPACT OF THE USE ON ADJOINING NEIGHBORS. COUPLED WITH STAFF'S RECOMMENDED LANDSCAPING, BERM AND TREES, SUCH NEGATIVE ASPECTS AS GLARE, NOISE AND FUGITIVE DUST SHOULD BE REDUCED CONSIDERABLY.
>
> THE [CHURCH] IS PROVIDING 1,010 PARKING SPACES, WHEREAS 650 PARKING SPACES ARE REQUIRED BY CODE. FURTHER, THE [CHURCH] IS PROVIDING PARKING

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[7] The Neighbors have misperceived the appeal to the Board to be of limited scope. (Brief at 7, 9.) The Board's review of a ZAB decision has long been both *de novo* and plenary. § 33-314, Zoning Code.

> ON NATURAL TERRAIN. SAID PARKING WILL BE LOCATED AROUND THE PERIPHERY OF THE SITE AND WILL BE UTILIZED ONLY DURING CERTAIN CHRISTIAN HOLIDAYS. . . . (DERM) HAS REVIEWED THIS REQUEST AND RECOMMENDS APPROVAL . . . SUBJECT TO THE PRESERVATION OF THE APPROXIMATE 4 ACRE NATURAL FOREST COMMUNITY LOCATED ON THE SOUTHEAST CORNER OF THE SITE. THE PUBLIC WORKS DEPARTMENT . . . VOICED NO OBJECTION TO THE PARKING VARIANCE TO PERMIT CERTAIN PARKING SPACES ON NATURAL TERRAIN. THE [CHURCH] MUST, HOWEVER, TREAT THE AREA TO PREVENT DUST FROM SETTLING ON THE NEARBY HOMES. THE ONLY PORTION OF THE SITE PLAN THAT STAFF RECOMMENDS BE ELIMINATED IS THE MAINTENANCE BUILDING LOCATED ON THE SOUTHEAST CORNER OF THE SITE. THIS IS ADJACENT TO RESIDENTIAL NEIGHBORS AND COULD, VERY WELL, BECOME A NUISANCE TO THE NEIGHBORS.
>
> *IN SUMMARY, THE PLANNING DIVISION RECOMMENDS APPROVAL OF PHASE 1 . . . . THE [CHURCH] HAS MODIFIED [ITS] ORIGINAL SITE PLAN. THE REVISED SITE PLAN IS FAR MORE SENSITIVE TO THE SURROUNDING NEIGHBORS, THAN THE ONE ORIGINALLY SUBMITTED. THE LOCATION OF THE FACILITY HAS BEEN SHIFTED MORE TO THE FRONT OF THE PROPERTY, CLOSEST SUNSET DRIVE AND THE HIGHEST POINT OF THE BUILDING IS NOW LOCATED AT THE APEX OF THE STRUCTURE. COUPLED WITH A LANDSCAPE CAMPUS-LIKE ENVIRONMENT, THE NEW MODIFICATIONS SHOULD NEGATE ANY ADVERSE IMPACT ON ADJOINING RESIDENTIAL PROPERTIES.*

THE PLANNING DEPARTMENT'S RECOMMENDATION ALSO INCLUDED 10 SUGGESTED CONDITIONS ON APPROVAL RANGING FROM ELIMINATING AN EXISTING BUILDING ON THE SITE TO ADHERENCE TO A LANDSCAPING PLAN. [R. VOL. I AT 64-66.] THE ZONING DEPARTMENT'S FEBRUARY 20, 1997 RECOMMENDATION MIRRORED ITS DECEMBER 4, 1996 REPORT AND READ AS FOLLOWS:

> *STAFF SUPPORTS THE ESTABLISHMENT OF A RELIGIOUS AND DAY NURSERY FACILITY ON THIS PROPERTY. THE REVISED SITE PLAN IS ALSO ACCEPTABLE AS IT HAS ADEQUATELY ADDRESSED STAFF'S ORIGINAL CONCERNS ….* THE 2000-2010 CDMP DESIGNATES THE SUBJECT PROPERTY FOR ESTATE DENSITY RESIDENTIAL USE, UP TO 2.5 DWELLING UNITS PER GROSS ACRE .... [AND] STATES THAT COMMUNITY SERVING USES, INCLUDING SCHOOLS, DAY CARE CENTERS AND HOUSES OF WORSHIP, ARE PERMITTED IN [SUCH] AREAS ... WHEN CONSISTENT WITH OTHER GOALS, OBJECTIVES AND POLICIES OF THE PLAN AND WHEN COMPATIBLE WITH THE NEIGHBORHOOD. FURTHER, THE CDMP STATES THAT DAYTIME SERVICES USES SUCH AS DAY CARE CENTERS, ARE BEST LOCATED ON MAJOR OR MINOR ROADWAYS, ADJACENT TO COMMERCIAL OR INSTITUTIONAL AREAS, TO PUBLIC USES OR TO OTHER AREAS OF HIGH ACTIVITY OR ACCESSIBILITY. *IN THIS REGARD, THE REQUESTED USES ARE*

> *CONSISTENT WITH THE PLAN, IN THAT THEY WILL SERVE THE SURROUNDING COMMUNITY, ARE LOCATED ON SUNSET DRIVE, A MAJOR EAST-WEST ROADWAY WHICH OFFERS GOOD ACCESSIBILITY TO THE PALMETTO EXPRESSWAY TO THE WEST AND US-1 TO THE EAST, AND WHERE CHURCH FACILITIES ABOUND, INCLUDING AN EPISCOPAL CHURCH WHICH ABUTS THE SUBJECT PROPERTY TO THE WEST. IN THIS REGARD STAFF FEELS THAT THE REQUESTED USES ARE COMPATIBLE WITH THE AREA.*
>
> **IN KEEPING WITH OTHER EXISTING RELIGIOUS FACILITIES LOCATED ON SUNSET DRIVE, INCLUDING ST. MATTHEW EPISCOPAL CHURCH TO THE WEST, THE REVISED PLAN ORIENTS THE PROPOSED BUILDINGS CLOSER TO SUNSET DRIVE WITH THE REMAINDER OF THE PROPERTY TO BE USED AS PARKING AND PASSIVE OPEN SPACE. THE [CHURCH IS] REQUESTING ... PARTIAL PARKING ON NATURAL TERRAIN SO THAT THE PERIPHERY OF DEVELOPMENT CAN BE MAINTAINED IN A MORE NATURAL STATE IN ORDER TO MINIMIZE THE IMPACT ON THE SURROUNDING RESIDENTIAL AREA. THIS IS ACCEPTABLE ... SINCE THE MAJORITY OF THE REQUIRED PARKING WILL BE ON HARD SURFACE. THE MAIN BUILDING AND MAINTENANCE BUILDING AT THE REAR OF THE PROPERTY ARE SETBACK AT LEAST 75' FROM THE PROPERTY LINES AND THE 25' LANDSCAPE BUFFERING PROPOSED BETWEEN THE HOMES AND THE FACILITY WILL SERVE TO BUFFER THE RESIDENTS FROM ANY VISUAL AND AUDIBLE IMPACTS SUCH AS NOISE, LIGHT AND GLARE WHICH WOULD BE GENERATED.**

THUS THE ZONING DEPARTMENT RECOMMENDATION, INCLUDING 12 CONDITIONS, WAS ALSO FOR APPROVAL. [R. VOL. I AT 60-63]

AT THE BOARD HEARING, THE CHURCH AND NEIGHBORS PRESENTED ESSENTIALLY THE SAME EVIDENCE THEY HAD PRESENTED TO THE ZAB, EXCEPT THAT THE CHURCH ALSO PRESENTED RELIGIOUS LEADERS TO ADDRESS THE CRITICISM BY NEIGHBORS AND THE ZAB MEMBER OF THE LAW'S FAVORABLE TREATMENT OF RELIGIOUS INSTITUTIONS AND THE CHARGE THE CHURCH WAS NOT A LEGITIMATE RELIGIOUS INSTITUTION. [R. VOL. III, AT 284-294, 301-305, 349-361] THE NEIGHBORS ALSO ADDED TESTIMONY FROM RECENTLY HIRED EXPERTS THAT DISPUTED THE OPINIONS PROFFERED BY THE COUNTY'S PROFESSIONAL STAFF AND THE CHURCH'S EXPERTS. [R.

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[8] **The Neighbors barely mention these February 20, 1997 favorable professional staff recommendations, instead quoting only portions of the October 16, 1996 Zoning Department's report on the initial site plan which was never voted on. (Brief at 4.) Also, as discussed below, they incorrectly claim the Board "rejected" the**

VOL. III AT 390-415] AFTER CONSIDERABLE DISCUSSION, INCLUDING FURTHER BOARD QUESTIONS OF ITS PROFESSIONAL STAFF AND CONSISTENT WITH ITS PROFESSIONAL STAFF RECOMMENDATIONS AND CONDITIONS, THE BOARD APPROVED THE CHURCH'S APPLICATION, BY A VOTE OF 6-2 AND ENACTED A RESOLUTION THAT READ AS FOLLOWS:

> THAT THE REQUESTED [APPLICATION] WOULD BE COMPATIBLE WITH THE AREA AND ITS DEVELOPMENT AND WOULD BE IN HARMONY WITH THE GENERAL PURPOSE AND INTENT OF THE REGULATIONS AND WOULD CONFORM TO THE REQUIREMENTS OF THE ZONING PROCEDURE ORDINANCE, THAT THE APPLICATION BE APPROVED WITH CONDITIONS AND THE REVISED PLANS SHOULD BE ACCEPTED ....

[R. VOL. I AT 67-72.] THE RESOLUTION ALSO IMPOSED ALL THE ZONING AND PLANNING DEPARTMENTS' 21 SUGGESTED CONDITIONS.

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final Zoning Recommendation. (Brief at 42.)

[9] In response to Board inquiry, the County's Director of Planning, Guillermo Olmedillo, and its Public Works Director, Russell Kelly, rebutted the conclusions made by the Neighbors' experts. [R. Vol. III at 490-515]

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT

THE NEIGHBORS PETITIONED THE CIRCUIT COURT FOR CERTIORARI, ARGUING THAT NO COMPETENT SUBSTANTIAL EVIDENCE SUPPORTED THE BOARD'S APPROVAL AND THAT THE CONDITION BARRING SIMULTANEOUS USE OF TWO BUILDINGS FOR WORSHIP WAS UNCONSTITUTIONAL. A MAJORITY PANEL (2-1) QUASHED THE BOARD'S APPROVAL, EXPLAINING AS FOLLOWS:

> . . . IT WAS NECESSARY FOR [THE CHURCH AND COUNTY] TO SHOW BY COMPETENT SUBSTANTIAL EVIDENCE THAT THE APPLICATION FOR THE SPECIAL EXCEPTION MET THE REQUIREMENTS OF § 33-311(D) OF THE [ZONING] CODE. . . . THE COMMISSION HEARD TESTIMONY FROM A VARIETY OF SOURCES ON [THIS] ISSUE. THE CHURCH'S ARCHITECT . . . TESTIFIED THAT CHURCH BUILDINGS WOULD BE LOCATED CENTRALLY WITHIN THE 19.7 ACRE SITE, VEGETATION WOULD BE PLANTED AND [CERTAIN] EXITS WOULD BE ELIMINATED, LEAVING THE [C]HURCH WITH THREE EXITS, ALL FRONTING ONTO SUNSET DRIVE. [HIS] TESTIMONY FAILED TO ADDRESS THE TRAFFIC SITUATION, WHICH IS A FACTOR UNDER § 33-311(D) . . . . TESTIMONY REGARDING THE TRAFFIC SITUATION WAS MARKEDLY DIVERGENT. . . . [T]HE CHURCH'S EXPERT WITNESS ON TRANSPORTATION TESTIFIED THAT WITH 'CLOSE TO 800 VEHICLES EXITING' THE CHURCH, 'YOU CAN EMPTY THAT OUT IN LESS THAN 15 MINUTES AND WITH ONLY IMPACTING SUNSET DRIVE TRAFFIC. THE AVERAGE MOTORISTS ... WOULD ONLY BE DELAYED BY ABOUT 30 SECONDS. IN CONTRAST, THE TESTIMONY OF THE [NEIGHBORS'] TRAFFIC EXPERTS ... WAS THAT APPROXIMATELY 18 CARS PER MINUTE COULD EXIT . . . SO THAT IT WOULD TAKE 27 MINUTES TO CLEAR . . . 500 CARS, ASSUMING [THEY] WOULD NOT HAVE TO STOP FOR EXISTING TRAFFIC ON SUNSET DR.
>
> [THE NEIGHBORS] PRESENTED THE TESTIMONY OF A LAND PLANNER MATTHEW SCHWARTZ, WHOSE OPINION WAS THAT THE PROPOSED . . . [FACILITY] WAS NOT COMPATIBLE WITH THIS . . . NEIGHBORHOOD. . . . NONE OF [THE CHURCH'S] EXPERTS REFUTED THIS TESTIMONY. THEREFORE, UNDER *METROPOLITAN DADE COUNTY V. FULLER* . . . , THE COMMISSION SHOULD HAVE DENIED THE APPLICATION . . . *BECAUSE SCHWARTZ'S TESTIMONY SHOWED THAT THE CHURCH AS PLANNED WAS INCOMPATIBLE WITH THE SURROUNDING AREA*. [CITATIONS OMITTED]

THE COURT CONTINUED IN THIS FASHION TO COMPARE THE EVIDENCE PRESENTED BY CLERGY AND LAY CITIZENS AND FOUND THOSE OPPOSING THE APPLICATION TO BE COMPETENT SUBSTANTIAL EVIDENCE. THE DISSENTING OPINION FOUND THE COUNTY'S TWO PROFESSIONAL STAFF RECOMMENDATIONS ALONE WERE SUBSTANTIAL COMPETENT EVIDENCE TO SUPPORT THE

BOARD'S CONCLUSION THAT THE CHURCH MET THE RELEVANT ZONING CRITERIA. [R. VOL. I AT 73-85]

THE COUNTY AND CHURCH PETITIONS TO THE THIRD DISTRICT COURT

THE CHURCH AND COUNTY PETITIONED THE THIRD DISTRICT COURT, WHICH UNANIMOUSLY REVERSED, EXPLAINING AS FOLLOWS:

> THE ... MAJORITY OPINION CORRECTLY STATES THAT "[I]N ORDER TO SUSTAIN THE ACTION OF THE COMMISSION, UPON REVIEW BY CERTIORARI IN THE CIRCUIT COURT IT MUST BE SHOWN THAT THERE WAS COMPETENT SUBSTANTIAL EVIDENCE PRESENTED TO THE COMMISSION TO SUPPORT ITS RULING." [CITATIONS OMITTED] HOWEVER, IN FINDING THAT THE COMMISSION'S RULING WAS NOT SUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE, THE CIRCUIT COURT PRIMARILY FOCUSED ON THE TESTIMONY PRESENTED BY THE NEIGHBORS' ATTORNEY AND THEIR EXPERT WITNESSES.
>
> WE FIND THE CIRCUIT COURT DEPARTED FROM THE ESSENTIAL REQUIREMENTS OF LAW WHEN IT RE-WEIGHED EVIDENCE AND COMPLETELY IGNORED EVIDENCE THAT SUPPORTED THE COMMISSION'S RULING. *SEE METROPOLITAN DADE COUNTY V. BLUMENTHAL*, 675 SO. 2D 598 (FLA. 3D DCA 1995) (EN BANC). FURTHER, A REVIEW OF THE EVIDENCE CLEARLY DEMONSTRATES THAT THE COMMISSION'S RULING WAS SUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE -- THE RECOMMENDATIONS OF THE ZONING AND PLANNING DEPARTMENTS, AND THE TESTIMONY OF THE PROJECT ENGINEER, AN INDEPENDENT REAL ESTATE APPRAISER, AND A TRAFFIC ENGINEER. ACCORDINGLY, WE GRANT THE PETITION.

725 SO. 2D AT 1171.

THIS PETITION ENSUED.

SUMMARY OF THE ARGUMENT

THIS COURT SHOULD DISMISS THIS PETITION AS THE THIRD DISTRICT COURT PROPERLY APPLIED THIS COURT'S RULE THAT A CIRCUIT COURT MAY NOT RE-WEIGH THE EVIDENCE BEFORE A LOCAL ADMINISTRATIVE BOARD TO A CIRCUIT COURT OPINION THAT EXPRESSLY DID JUST THAT. *HAINES CITY COMMUNITY DEVELOPMENT V. HEGGS*, 658 SO. 2D 523 (FLA. 1995); *EDUCATION DEVELOPMENT CENTER V. CITY OF PALM BEACH*, 541 SO. 2D 106 (FLA. 1989). THE NEIGHBORS' PETITION HOPES TO AVOID THE PLAIN READING OF THE CIRCUIT AND DISTRICT COURT OPINIONS BELOW BY PRESENTING ALTERNATIVE HYPOTHETICAL READINGS OF WHAT THOSE COURTS "ACTUALLY" DID, AND BY IMPROPERLY REARGUING ISSUES THAT ARE NOT PART OF THE THIRD DISTRICT'S COURT'S OPINION AND THUS NOT BEFORE THIS COURT. *REAVES V. STATE,* 485 SO. 2D 829, 830 N. 3 (FLA. 1986). THERE IS NO TEXTUAL CONFLICT BETWEEN *DUSSEAU* AND ANY DISTRICT OR SUPREME COURT OPINION. IN STRAINING TO CREATE AN IMAGINED CONFLICT, THE NEIGHBORS' ARGUMENTS ARE LOGICALLY FLAWED AND CONSISTENTLY AT ODDS WITH THE TEXT OF THESE OPINIONS, THE FACTS, AND THE LAW.

FINALLY, TO THE EXTENT THIS COURT CONSIDERS *DUSSEAU* IN LIGHT OF *CITY OF DANIA V. FPL*, 718 SO. 2D 813 (FLA. 4TH DCA 1998), *REVIEW GRANTED,* 727 SO. 2D 905 (FLA. 1998) REGARDING THE SCOPE OF DISTRICT COURT REVIEW OF CIRCUIT COURT DECISIONS, *DUSSEAU* IS DISTINCT AS IT DOES NOT ADDRESS WHETHER A DISTRICT COURT SHOULD LOOK BEYOND A CIRCUIT COURT OPINION'S TEXT TO DETERMINE IF THE CIRCUIT COURT *IMPLICITLY* RE-WEIGHED THE EVIDENCE BEFORE THE BOARD. THE CIRCUIT COURT OPINION REVIEWED IN *DUSSEAU EXPRESSLY* RE-WEIGHED THE EVIDENCE BEFORE THE LOCAL ZONING AUTHORITY. AS TO *IMPLICITLY* RE-WEIGHING SUCH EVIDENCE, *METROPOLITAN DADE COUNTY V. BLUMENTHAL*, 675 SO. 2D 598 (FLA. 3D DCA

1995) (EN BANC), *REVIEW DISMISSED*, 680 SO. 2D 421 (FLA. 1996), PRESENTS A THOROUGH AND SOUND ARGUMENT FOR THE DISTRICT COURTS CORRECTING SUCH ERRORS. CIRCUIT COURTS FREQUENTLY MISAPPREHEND THEIR ROLE AFTER *BOARD OF COUNTY COMMISSIONERS V. SNYDER*, 627 SO. 2D 469 (FLA. 1993) AND THE ELEVENTH JUDICIAL CIRCUIT'S SIZE AND CASELOAD ILLUSTRATE THE NEED THROUGHOUT THE STATE FOR SELECTIVE DISTRICT COURT APPELLATE REVIEW TO UNIFY THE LAW. SUCH REVIEW SERVES TO PRESERVE A PROPER SEPARATION OF POWERS BETWEEN LOCAL GOVERNMENT AND THE JUDICIAL BRANCH, AND TO AVOID HOPELESSLY MUDDLED ZONING CASE LAW.

ARGUMENT

I. CONSISTENT WITH THIS COURT'S DECISIONS IN *HEGGS*, *EDC* AND *VAILLANT*, *DUSSEAU* CORRECTED A CIRCUIT COURT OPINION THAT EXPRESSLY RE-WEIGHED THE EVIDENCE BEFORE A LOCAL ZONING AUTHORITY.

It is hard to imagine a circuit court opinion in more direct and express conflict with this Court's decisions regarding judicial review of local zoning decisions than the one below. *Dusseau* therefore is an appropriate exercise of a district court's discretionary power to correct egregious errors particularly where it is necessary to set new judicial policy in light of this Court's decision in *Board of County Commissioners v. Snyder* which reformulated judicial review of zoning actions. *Haines City Community Development v. Heggs*, 658 So. 2d 523, 531 (Fla. 1995). *See also Metropolitan Dade County v. Blumenthal*, 675 So. 2d 598 (Fla. 3d DCA 1995) (en banc) (re-articulating this Court's rule that circuit courts may not re-weigh evidence before a zoning board).

A. *DUSSEAU* IS CONSISTENT WITH THIS COURT'S CERTIORARI JURISPRUDENCE WHICH (1) PROHIBITS A CIRCUIT COURT RE-WEIGH EVIDENCE BEFORE A LOCAL ZONING BOARD AND (2) LIMITS DISTRICT COURT REVIEW TO DISCRETIONARY CORRECTION OF EGREGIOUS ERRORS.

Nearly half a century ago, this Court established a circuit court's certiorari review of local agency quasi-judicial decisions not subject to the Administrative Procedures Act. The Court limited such review to the following:

1. **whether procedural due process is accorded;**
2. **whether essential requirements of law have been observed; and**
3. **whether the administrative finding and judgment are supported by competent substantial evidence.**

DeGroot v. Sheffield, **95 So. 2d 912 (Fla. 1957); Fla. R. App. 9.030(c)(3); Article V, Section 5(b), Fla. Const. It also further explained that "competent substantial evidence" is that which will**

> **. . . establish a substantial basis of fact from which the fact at issue can be reasonably inferred. [It is] such relevant evidence as a reasonable mind would accept as adequate to support a conclusion. [T]he evidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. To this extent the 'substantial' evidence should also be 'competent.'** *DeGroot* **at 916 (citation omitted).**

This Court next held that a district court's review of these circuit court cases were not as of right or "appeal," but were discretionary or by "writ." It explained "that where full review of administrative action is given in the circuit court as a matter of right, one appealing [that] judgment is not entitled to second full review in district court .... The district court ... determines whether the circuit court afforded procedural due process and applied the correct law." *City of Deerfield Beach v. Vaillant*, **419 So. 2d 624, 626 (Fla. 1982).**

This Court later addressed the scope of a district court's discretionary review and held that it was not so narrow as to look only at whether the circuit court in effect

denied appellate review. *Combs v. State*, 436 So. 2d 93 (Fla. 1983). In the context of a county court drunk driving conviction, the district court had denied the driver's certiorari petition urging that statements he made to an officer should not have been admissible, and explained

> **whether...the county...and ...circuit court[s]...erre[d]...regarding the admissibility of these statements is not for us to decide. Certiorari is not the vehicle for us to review alleged errors of law...by a circuit judge sitting in review of county court judgments. There is no vehicle for that. . . . The only thing we can take. . .is an alleged departure from the essential requirements of law. . .such as the circuit judge rendering a decision without allowing briefs to be filed and considered, a circuit judge making a decision without a record to support the decision, or dismissing an appeal improperly [citation omitted] *Combs* at 94.**

This Court rejected that explanation as too narrow a view of a district court's jurisdiction and explained:

> **[T]he district courts . . . should not be as concerned with the mere existence of legal error as much as with the seriousness of the error. Since it is impossible to list all [such] possible [serious] legal errors. . .the district courts must be allowed a large degree of discretion so that they may judge each case individually. The district courts should exercise this discretion only when there has been a violation of a clearly established principle of law resulting in a miscarriage of justice. . . .It is this discretion which is the essential distinction between review by appeal and review by common law certiorari. *Combs* at 95.**

Subsequently, in perhaps the most debated decision in this jurisprudence, this Court held that a district court's discretion could not go so far as to allow it to quash a circuit court where it "simply disagreed with the circuit court's evaluation of the evidence." *Education Development Center v. City of West Palm Beach*, 541 So. 2d 106, 108 (Fla. 1989) ("*EDC*"). In reviewing a municipality's denial of a zoning application, this Court there explained that when a circuit court reviews an administrative decision, it "is

not permitted to re-weigh the evidence or substitute its judgment to that of the agency," 541 So. 2d at 108. The Court quoted with approval the following explanation:

> **[t]he circuit court departed from the essential requirements of law by applying an incorrect standard of review. The question is not whether, upon review of. . .the record, there exists substantial competent evidence to support a position *contrary* to that reached by the agency. Instead the circuit court should review the factual determination made by the agency and determine whether there is substantial competent evidence to support the agency's conclusion. *EDC* at 107 [emphasis in original]**

Thus under *EDC, t*he district court's review consists only of the following two discrete inquiries: (1) whether due process was offered, and (2) whether the circuit court applied correct law. A dissenting view argued that a district court should be able to look at whether there was substantial evidence below:

> **I am not willing to accept . . .that inclusion of the magic words ["there was no competent evidence to support the city's denial"] by the circuit judge, particularly when this resulted in a reversal of the zoning board, precluded the appellate court from reviewing his conclusion that no competent substantial evidence supported the zoning board's denial. It is the substance that counts not the form of the pronouncement . . . .I would suggest also that if we narrowly construe *Vaillant* to prevent review of actions of a trial judge in *reversing* zoning board actions, we would clothe trial court judges with powers of absolute czars in zoning matters ... Rather the appellate courts should be able to pass on the issue of whether there was indeed, competent substantial evidence to support . . .the zoning board. *EDC* at 106 [emphasis in original]**

Most recently, this Court addressed the question of whether the broad discretion announced in *Combs* and seemingly narrow one announced in *EDC* were based on that the former emerging from county court and the latter from a

local board. *Haines City Community Development v. Heggs*, 658 So. 2d 523 (Fla. 1995) ("*Heggs*"). After an exhaustive review of certiorari history this Court explained that *Combs* and *EDC* dealt with the same scope of review albeit at the opposite, or "bookend" limits, on such jurisdiction. *Heggs* at 529. This Court reiterated the idea that "the circuit court ... is not entitled to re-weigh the evidence or substitute its judgment for that of the agency," and the district court should not quash in cases where it "simply disagreed with the circuit court's evaluation of the evidence." *Heggs* at 529-530. This Court further explained:

> **This standard, while narrow, also contains a degree of flexibility and discretion. For example, a reviewing is drawing new lines and setting judicial policy as it individually determines those errors sufficiently egregious or fundamental to merit the extra review and safeguards provided by certiorari. This may not always be easy since the errors in question must be viewed in the context of the individual case. It may also be true that review of administrative decisions may be more difficult, since care must be exercised to distinguish between quasi-judicial proceedings and those legislative in nature. There is no complete catalog that the court can turn to in resolving a particular case. *Id.* at 530-531**

In summary, this Court has developed certiorari jurisprudence as follows: one has a *right* to circuit court review of certain local quasi-judicial board decisions although the circuit court may not re-weigh the evidence before the board. Therefore, challenge of the circuit court decision is not by right but only at the *discretion* of the district court. That court should look only to whether

there was due process and whether there were legal errors and should correct only egregious or serious errors. *Dusseau* falls squarely within these narrow parameters. The circuit expressly applied the wrong standard of review by looking to whether evidence *contrary* to the Board's decision was substantial and competent. *EDC* at 108, *Heggs* at 530. The Third District Court did not abuse its discretion in correcting the circuit court's legal error. As will be argued further, this decision is further supported by the need to set a judicial policy that under *Snyder*, a circuit court still may not substitute its judgment for that of the local zoning board.

A. *DUSSEAU* SHOULD BE AFFIRMED AS THE CIRCUIT COURT (1) EXPRESSLY RE-WEIGHED THE EVIDENCE BEFORE THE COUNTY COMMISSION AND (2) IGNORED THE COUNTY'S PROFESSIONAL STAFF RECOMMENDATIONS.

THE CIRCUIT COURT BELOW COMMITTED SEVERAL ERRORS AND AT LEAST TWO STAND OUT FOR CERTIORARI CORRECTION UNDER THIS COURT'S JURISPRUDENCE: (1) THE COURT EXPRESSLY RE-WEIGHED THE EVIDENCE BEFORE THE BOARD, AND (2) IT NEVER ADDRESSED THE COUNTY'S PROFESSIONAL STAFF RECOMMENDATIONS. UNDER THIS COURT'S JURISPRUDENCE, THE FIRST IS INDISPUTABLY A LEGAL ERROR. *HEGGS* AT 530; *EDC* AT 108. THE SECOND IS AS WELL. *METROPOLITAN DADE COUNTY V. BLUMENTHAL*, 675 SO. 2D

598, 608 (Fla. 3d DCA 1996) (en banc), *rev. dismissed*, 680 So. 2d 421 (Fla. 1996); *City of Ft. Lauderdale v. Multidyne Medical Waste Management*, 567 So. 2d 955 (Fla. 4th DCA 1990); *rev. denied*, 581 So. 2d 165 (Fla. 1991).

The Church, County and Neighbors all agree that in deciding whether to approve the Church's application, the Board had to consider whether the application met § 33-311(A)(3), of the Zoning Code, which reads as follows:

> . . . unusual uses which by the regulations are only permitted upon approval after public hearing; provided the applied for exception or use . . . would not have an unfavorable effect on the economy of Dade County, Florida, would not generate or result in excessive noise or traffic, cause undue or excessive burden on public facilities, including water, sewer, solid waste disposal, recreation, transportation, streets, roads, highways or other such facilities, . . . tend to create a fire or other equally or greater dangerous hazards, or provoke excessive overcrowding or concentration of people or population, when considering the necessity for and reasonableness of such applied for exception or use with such area and its development.

The record before the Board contained an abundance of evidence relevant to that criteria:

1. The County's professional staff reports and testimony. [R. Vol. I at 41-59; Vol. III at 490-515.]

2. The Church's experts' testimony and reports. [R. Vol. II at 108-173; Supp. Vol. at 107-110.]

3. The Neighbors' experts' testimony and reports. [R. Vol. III at 390-415.]

4. Site plans, elevation drawings [R. Supp. Vol. at 7-25,] and lay testimony [R. Vol. II, III, *passim*.].

In reviewing this evidence, this Court and the Third District Court have

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[10] The Neighbors incorrectly fault *Dusseau* for not citing to § 33-311(d), Zoning Code (Brief at 2.) *Dusseau* correctly cites to the updated Zoning Code. The

repeatedly explained that the instruction not to re-weigh evidence before a zoning board means the circuit court's review is limited to looking to see whether the evidence that supports the decision actually taken is competent. There is no need to consider evidence that would oppose that decision. *EDC* **at 108;** *Blumenthal* **at 606.**

Remarkably, rather than looking to whether the County's professional staff recommendations and the Church's experts provided substantial competent evidence to support the Board's *approval***, the circuit court expressly and repeatedly looked to the evidence for** *denial* **and compared it to only the evidence the Church provided, never mentioning the County's professional staff recommendations. The circuit court summarized the Church's architect's testimony that the Church met § 33-311(A)(3) but faulted it for not addressing the traffic impact, a remarkable conclusion since the Architect was not asked to address that subject; the Church presented a traffic engineer and the County's Public Works Department's favorable recommendation to address the traffic criteria. The circuit court summarized only the testimony of the Church and Neighbor traffic experts as being "markedly" different and favoring the latter but did not mention the County's Public Works Department's favorable recommendation and testimony. The circuit court then looked at** *the Neighbors'* **land use planner and concluded that the Commission should have denied the application "... because [he]** ***showed that the Church as planned was incompatible*****." Likewise, the majority found the testimony of the clergy opposing the application to "be fact based and competent," but that of those supporting the application not. This finding ignores both that these**

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relevant text is identical.

clergy spoke mainly as to the criticism leveled against churches at the ZAB meeting, and that fostering religious institutions *is* a valid zoning concern. *Encuentro Familiares, Inc. v. Musgrove,* 511 So. 2d 645 (Fla. 3d DCA 1987.) Accordingly, the district court below correctly quashed a decision that expressly committed the legal error this Court defined in *EDC* and *Heggs* – the error of looking to evidence contrary to the Board's decision and substituting its judgment for that of the zoning authority.

Second, the Third District Court also properly reversed the circuit court because it ignored the County's professional staffs' favorable recommendations, which Florida courts have consistently held to be substantial competent evidence

to support a Board's zoning decision. *Metropolitan Dade County v. Fuller,* 515 So. 2d 1313 (Fla. 3d DCA 1987); *Hillsborough County v. Longo,* 505 So. 2d 470, 471 (Fla. 2d DCA 1987); *Allapattah Community v. City of Miami*, 370 So. 2d 387 (Fla. 3d DCA 1980); *Metropolitan Dade County v. United Resources*, 374 So. 2d 1046 (Fla. 3d DCA 1979); *Miles v. Dade County*, 260 So. 2d 553 (Fla. 3d DCA 1972);*Hall v. Korth*, 224 So. 2d 766 (Fla. 3d DCA 1971); *Solomon v. Metropolitan Dade County*, 253 So. 2d 886 (Fla. 3d DCA 1971). The "marked divergence" of opinion between Church and Neighbor experts is not surprising as they were asked to advocate for conflicting interests. Accordingly, the County's Zoning Code required that *two* professional departments *independently* review each application before the Board's action. Recognizing the importance of these decisions, the Code also requires that the Departments provide their recommendations in an open and deliberate manner to maximize the participation for all interested parties. In this case, the professional staff recommendations reflected eight months of careful review of the Church's application and the Neighbors' objections, which

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[11] As noted before, these opinions are mandated by § 33-310(b) of the Zoning Code which reads as follows:

> (b) Applications filed hereunder shall be promptly transmitted to the appropriate board, together with the written recommendations of the Directors of the Building and Zoning Departments. All such recommendations shall be signed and considered final no earlier than thirty (30) days prior to the public hearing to give the public an opportunity to provide information to the staff prior to the recommendations becoming final. This shall not preclude earlier, preliminary recommendations. All documents of the County departments evaluating the application, which documents pertain to the application, are open for public inspection to applicants or other interested persons.

ultimately led to two revised site plans. Furthermore, the staffs' written opinions and testimony at the public hearing addressed in great detail all the relevant land use criteria, including § 33-311(A)(3) of the Zoning Code.

The County's professional staff reports [R. Vol. I at 41-59] state they considered the following issues and arrived at the following conclusions:

(1) "overcrowding" - the Planning Department addressed this possibility and prohibited the simultaneous usage of certain facilities.

(2) parking - the Public Works, Planning and Zoning Departments required several redesigns of the site plan to minimize its impact on neighbors by moving parking away from the lot's periphery.

(3) traffic - Public Works required redesigned entries to front only on Sunset Drive, and a traffic policeman on Sundays. Also the Public Works Director testified the Neighbor's traffic expert's analysis was incorrect.

(4) site plan - Planning and Zoning Departments compared the proposed Church to other churches and required several revisions to the site plan to create a campus-like environmental.

(5) "dust, glare, noise" - Planning required the Church's site plan be redesigned to minimize these impacts and remove one of the existing buildings on the lot.

(6) forest impact - DERM required preservation of 4 acres of a natural forest community.

(7) compatibility with the neighborhood – the Zoning Department concluded the Church was compatible with the neighborhood as required by the CDMP and the Zoning Code since it was on a very large lot located on Sunset Drive, near the Palmetto Expressway, would abut an existing church, and was designed similar to other large churches.

The County's Director of Planning, Guillermo Olmedillo, and its Director of Public Works, Russell Kelly, also testified before the Board explaining their recommendations in favor of the Church's application and their disagreement with the Neighbor's experts' conclusions. [R. Vol. III at 490-515.] The Board also included the twenty-one zoning conditions recommended by both professional departments as part of its resolution. [R. Vol. I at 67-72.]

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[12] The circuit court also erred when it brushed aside the Board's imposition

of a staff-recommended condition the Church not simultaneously use its Sanctuary and Fellowship Hall as "meaningless" because it did not have an enforcement mechanism.

On the contrary, case law and the Zoning Code expressly provide for severe consequences for failure to abide by these conditions. *Dade County v. Fountainbleau Gas & Wash*, 570 So.2d 1006 (Fla. 3d DCA 1990), upheld the County's stop work order against an otherwise legal use that was inconsistent with a condition the County imposed when it rezoned the property. Penalties for violating these conditions including $500 a day fines, revocation of occupancy, and enforcement costs. §§ 33-39, et seq., 33-311, 33-319, Zoning Code. Typically an inspector determines if there is probable cause for violation, which if challenged can be heard by a master and ultimately the courts. § 8CC, Code of Miami-Dade County.

Finally, as will be argued at length below, the Neighbors mischaracterize this condition as "essential" to the Board's approval to defend the circuit court's opinion.

Accordingly, the district court did not abuse its discretion in quashing the circuit court as the latter also ignored the most objective and thorough evidence available to support the Board's decision – the County's professional staff recommendations. The correct law is that such reports alone are substantial competent evidence to support a Board's decision.

I. THE NEIGHBORS' PETITION RESTS LARGELY ON INCORRECT HYPOTHETICAL READINGS OF THE *DUSSEAU* OPINIONS AND FAILS TO DEMONSTRATE A CONFLICT BETWEEN *DUSSEAU* AND ANY DISTRICT OR SUPREME COURT OPINION.

THE NEIGHBORS NEVER ESTABLISH THAT *DUSSEAU* TEXTUALLY CONFLICTS WITH *HEGGS* OR ANY OTHER CASE, NOR DO THEY ADDRESS THE CIRCUIT COURT'S SEVERAL PAGES OF EXPLICIT RE-WEIGHING OF THE EVIDENCE. INSTEAD THEY ASSERT THE CIRCUIT COURT REALLY REVERSED THE BOARD ON THE ALTERNATE GROUNDS THAT: (1) THE CONDITION THE CHURCH COULD NOT SIMULTANEOUSLY USE ITS PRINCIPAL BUILDINGS FOR WORSHIP (THE "SUBJECT CONDITION") WAS ILLEGAL, OR (2) THAT IMPROPER RELIGIOUS TESTIMONY INVALIDATED THE BOARD'S RESOLUTION. SINCE *DUSSEAU* DID NOT ADDRESS EITHER OF THESE GROUNDS, THIS COURT SHOULD DISMISS THE PETITION FOR LACK OF CONFLICT JURISDICTION. *REAVES,* 485 SO. 2D AT 830 N. 3. AS EXPLAINED BELOW, THIS COURT CAN DISMISS THE PETITION CONFIDENT THAT THE NEIGHBORS' ARGUMENTS ARE WITHOUT MERIT.

A. THE NEIGHBORS' PETITION RESTS ON THE FALSE CONTENTION THE "SUBJECT CONDITION" WAS DISPOSITIVE OF THE BOARD'S RESOLUTION, AND OF THE CIRCUIT AND DISTRICT COURT OPINIONS.

THE NEIGHBORS' PETITION RESTS MAINLY ON THEIR CONTENTION THAT, ALTHOUGH NEITHER THE BOARD'S RESOLUTION, NOR THE CIRCUIT COURT, NOR THE DISTRICT COURT EVER STATE AS MUCH, THE CONDITION THE CHURCH NOT SIMULTANEOUSLY USE ITS TWO PRINCIPAL

buildings for worship was actually essential to the Board's approval. Accordingly, they fault the district court for failing to uphold the circuit court's opinion under the "right for any reason doctrine" and finding some error with the subject condition. (Brief at 35 – 42.) This argument is logically flawed as it is flatly contradicted by the text of the court opinions, the facts and the law.

First, the Zoning Department's recommendation indicates the Church complied with § 33-311(A)(3) without the subject condition. In response the Neighbors resort to the fiction that the Board "rejected" that recommendation and cite a commissioner's comments. (Brief at 40 - 42). That is flat out contrary to black letter law that a Board speaks only through its written Resolution, not the comments of individual Board members. *Blumenthal* at 604. Also, far from rejecting the Zoning Department's recommendation, the Board Resolution *incorporated verbatim* all twelve of that Department's suggested conditions, all but one of which were *not* recommended by the Planning Department. [R. Vol. I at 67-72, #1-12 and at 60-63, #1-12]

Second, the circuit and district court opinions do not rely on the subject condition's legality or improper religious testimony. The circuit court did not void the Board's Resolution on any of the constitutional grounds that the Neighbors articulate after the fact. Rather, while the circuit court thought the condition was "meaningless because it was unenforceable," and that the religious testimony was not competent evidence, it stated "the County should have denied the application because "the [Neighbors' expert] showed the Church was not compatible." The Third District

COURT NEVER ADDRESSED THE SUBJECT CONDITION OR RELIGIOUS TESTIMONY, RELYING RATHER ON THE CIRCUIT COURT'S EXPRESS RE-WEIGHING OF EVIDENCE.

FINALLY, THE NEIGHBOR'S CONTENTION THE SUBJECT CONDITION WAS ESSENTIAL TO THE CIRCUIT COURT OPINION OR THE BOARD'S APPROVAL UNDERMINES THEIR ARGUMENT THE

DISTRICT COURT EXCEEDED ITS CERTIORARI SCOPE OF REVIEW SINCE THE CONDITION'S POTENTIAL LEGAL DEFICIENCIES ARE PURELY QUESTIONS OF LAW, AN AREA UNDISPUTEDLY WITHIN THE PROVINCE OF THE DISTRICT COURT. *VAILLANT* AT *626; EDC* AT 108*; HEGGS* AT 530. ALSO THE NEIGHBORS' ARGUMENT THAT A REVIEWING COURT *MUST* FIND SOME POSSIBLE REASON TO AFFIRM THE COURT BELOW IS VERY SELECTIVE. A PROPER APPLICATION OF THAT DOCTRINE WOULD HAVE COMMANDED THE CIRCUIT COURT TO UPHOLD THE BOARD RESOLUTION WHICH IT EXPRESSLY DID NOT DO, AND SHOULD ALSO APPLY HERE. THAT IS, UNDER THE "RIGHT FOR ANY REASON DOCTRINE," THIS COURT SHOULD AFFIRM *DUSSEAU* EITHER BECAUSE THE CIRCUIT COURT FAILED TO APPLY THE "RIGHT FOR ANY REASON" DOCTRINE TO THE BOARD'S ACTION OR THAT THE SUBJECT CONDITION'S VIABILITY IS A MATTER OF LAW WHICH THE DISTRICT COURT COULD HAVE FOUND IT LEGALLY PROPER.

THIS BATTLE OF ALTERNATIVE HYPOTHETICAL READINGS UNDERSCORE THE WISDOM OF THIS COURT'S RULE THAT CONFLICT JURISDICTION MUST BE BASED ON THE *TEXT* OF THE CHALLENGED OPINION AND THAT NO SUCH CONFLICT EXISTS IN THIS CASE.

A. THERE IS NO TEXTUAL CONFLICT BETWEEN *DUSSEAU* AND ANY DISTRICT OR SUPREME COURT OPINION.

ALTHOUGH THIS COURT ACCEPTED CONFLICT JURISDICTION, IT SHOULD DISMISS THIS PETITION SINCE THE NEIGHBORS HAVE FAILED TO SHOW HOW *DUSSEAU DIRECTLY* AND *EXPRESSLY* CONFLICTS WITH ANY OTHER DISTRICT OR SUPREME COURT OPINION. INDEED, THIS COURT HAS DEFINED THIS JURISDICTION NARROWLY SO "EXPRESS" MEANS "TO REPRESENT IN WORDS" AND "TO GIVE EXPRESSION TO," AND IT IS CONFLICT OF *DECISIONS*, NOT CONFLICT OF *OPINIONS* OR *REASONS*, THAT SUPPLIES JURISDICTION FOR REVIEW. *REAVES V. STATE*, 485 SO. 2D 829, 830 (FLA. 1986);

Jenkins v. State, 385 So. 2d 1356, 1359 (Fla. 1980) (emphasis in original). As the Neighbors' hypothetical interpretations of the instant opinions demonstrate, nowhere does *Dusseau* "represent in words" or "give expression to" any conflict with *Heggs*. On the contrary, in both word and effect, *Dusseau* is consistent with that opinion.

First, *Dusseau* does not cite *Heggs* or any of the alleged conflicting cases cited by the Neighbors. Second, *Dusseau* expressly limits itself to the circumstances in which a circuit court ran afoul of existing law by (1) expressly re-weighing evidence and (2) failing to consider the County's professional staff opinions. As such it does not involve the more difficult *City of Dania* issue in which the district court concluded the circuit court may have implicitly re-weighed the evidence. Here, there is no implication, the circuit court's error was express and directly contrary to *Vaillant*. Accordingly, this Court should dismiss the Petition for lack of conflict jurisdiction notwithstanding its initial grant of jurisdiction. *Burns v. State*, 676 So. 2d 1366 (Fla. 1996).

I.

I. *BLUMENTHAL* PRESENTS A SOUND APPROACH TO DISTRICT COURT OVERSIGHT OF CIRCUIT COURT REVIEW OF LOCAL GOVERNMENT LAND USE DECISIONS AFTER *SNYDER*.

DUSSEAU IS DISTINCT FROM *CITY OF DANIA*, SINCE *DUSSEAU* FIRST DEALT WITH THE CIRCUIT COURT'S EXPRESS LEGAL ERROR OF LOOKING TO EVIDENCE THAT SUPPORTED A DECISION *CONTRARY* TO THE BOARD'S DECISION AND RE-WEIGHING IT AGAINST EVIDENCE IN FAVOR OF THE BOARD'S DECISION. IN ALSO LOOKING BEYOND THE TEXT OF THE CIRCUIT COURT OPINION TO CONCLUDE THE COURT ALSO IGNORED THE COUNTY STAFF OPINIONS, *DUSSEAU* SERVES AS AN EXCELLENT EXAMPLE OF THE SOUNDNESS OF *METROPOLITAN DADE COUNTY V. BLUMENTHAL* AND *CITY OF FT. LAUDERDALE V. MULTIDYNE MEDICAL WASTE MANAGEMENT*, 567 SO. 2D 955 (FLA. 4TH DCA 1990); *REV. DENIED*, 581 SO. 2D 165 (FLA. 1991) THESE CASES SERVE AS GUIDES TO IMPLEMENTING THIS COURT'S CERTIORARI JURISPRUDENCE IN LIGHT OF *SNYDER*.

A. *BLUMENTHAL* EXPLAINS HOW *SNYDER*'S SIGNIFICANT REFORMULATION OF JUDICIAL REVIEW OF ZONING DECISIONS DOES NOT EXTEND TO REPLACING THE LOCAL BOARD'S PROPER DISCRETION.

***Blumenthal* appropriately explains how the judiciary's greatly expanded review of zoning decisions under the Growth Management Act and *Snyder* should function. Specifically, *Blumenthal* makes it clear that circuit court review does not extend to replacing the discretion of the local board where the**

board's decision is *undisputedly consistent with the CDMP* and is supported by competent substantial evidence.

Florida led this nation's reform of zoning law with the enactment in 1985 of the Florida Growth Management Act which required that local governments enact a Comprehensive Land Use Plan that contained detailed substantive standards by which to review specific zoning decisions. The Act mandated that each local government enact a comprehensive plan that specifically addresses that community's future land uses, desired densities, conservation goals, and how the timing of development would concur with capital improvements like roads, water and other municipal services. Once these legislatively mandated *substantive standards* were available, this Court abandoned the highly deferential "fairly debatable" standard that had traditionally guided judicial review of local zoning actions. *Snyder* at 472-474. Rather zoning decisions were no longer legislative but quasi-judicial and the courts would determine whether these decisions *strictly complied* with the comprehensive plan standards. If the decision was consistent with those standards then, under a second review prong, the court would then determine whether competent and substantial evidence in the record supports the decision. *Snyder* at 476.

Unfortunately, as the instant case demonstrates, circuit courts appear to have often conflated *Snyder's* two prongs and have applied a sort of "strict scrutiny" to all

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[13] Chapter 163, Florida Statutes. See also Thomas G. Pelham, *Quasi-Judicial Rezoning: A Commentary on the Snyder Decision and the Consistency Requirement*, 9 J. Land Use & Envtl. L. 2, 258 (1994).

[14] Standing was conferred to bring such a challenge pursuant to § 163.3215,

aspects of a zoning authority's decision and have improperly replaced its discretion.

Below, the first test was whether the board's approval was strictly consistent with the CDMP provisions that stated the lots were designated for estate density residential, up to 2.5 dwelling units per gross acre, and the uses such as schools, houses of worship, day care centers were permitted in such residential communities. [Supp. Vol. at 36, 91-106]

As there was no dispute that the Board's approval strictly complied with these CDMP provisions, the circuit court was left to analyze only whether competent substantive record evidence supported the Board's approval, which as the Third District Court has repeatedly explained *with respect only to this second test,* in most cases will be very similar to the old "fairly debatable standard." *Metropolitan Dade County v. Fuller*, 515 So. 2d 1312, 1314 n.4 (Fla. 3d DCA 1987).

That the circuit court never addressed the County's professional staff reports, and instead critically re-evaluated only the Church's testimony as against that of the Neighbors, can perhaps be explained by its misperception that *Snyder* mandated more than determining simply whether the evidence that supported the decision was substantial and competent. Accordingly, *Blumenthal* seeks to correct such circuit court misperceptions of *Snyder*. It thoroughly and clearly explains how a circuit court can violate *Heggs* in reviewing a zoning decision after S*nyder* by (1) announcing the wrong zoning standards, (2) looking to opposing evidence when competent evidence supports the Board's decision, (3) and looking to individual Board member comments rather

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Florida Statutes.

than the collective Board's written resolution, and it explains why a district court should correct these errors. At its heart is the following admonition to a circuit court reviewing a zoning decision:

> Could the County Commission have made a different determination on these same facts? Of course it could . . . .
>
> The point is that when the facts are such as to give the County Commission a choice between alternatives, it is up to the County Commission to make that choice -- not the circuit court. The circuit court's role is restricted to ascertaining whether there is substantial competent evidence to support the decision actually made here -- the disapproval of the developer's application. 675 So. 2d at 606 (citations omitted).

As argued below, this recurrent misperception has significant implications regarding a proper separation of powers and future land use decisions.

A. *BLUMENTHAL* ASSURES A PROPER SEPARATION OF POWERS BETWEEN LOCAL GOVERNMENT AND THE JUDICIAL BRANCH.

The district courts must carefully overview the circuit court's review of county zoning decisions to maintain a proper separation of powers. American jurisprudence has long recognized that land use regulation is a hallmark of state sovereignty. *Village of Euclid v. Ambler Realty*, 272 U.S. 365, 389-90 (1926); U.S. Const. Amend. X. Florida has likewise vigorously recognized that land use regulation is a state and local concern as reflected in its Constitution, Home Rule Charters and case law.

Florida courts have paid considerable deference to citizens' inherent rights of local self-determination in land use matters. For example, although the state sovereign retains authority to enact land use legislation for the benefit of all its citizens, the courts have recognized that transferring any aspect of land use decision-making from the local to the state level:

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[15] Florida's constitution granted the body of its land use law to its local governments as an exercise of citizens' self-determination, or "home rule." FLA. CONST., art. VIII, §§ 1(f), 1(g), 2(b). See also FLA. CONST., art. VIII §6.

> **. . . touches upon sensibilities as old as the Revolution itself, because it affects the right of access to government -- the right of the people effectively 'to instruct their representatives and to petition for redress of grievances' -- on which other cherished rights ultimately depend. The primacy of local government jurisdiction in land development regulation has traditionally been, in this country, a corollary of the people's right of access to government. In a sense, therefore, the jurisdictional claim of local governments in these matters is based on historical preferences stronger than law.**

Cross Key Waterways v. Askew, **351 So. 2d at 1062 (Fla. 1st DCA 1977),** *aff'd,* **372 So. 2d 913 (Fla. 1979).**

It follows *a fortiori* **that if a district court should jealously protect local zoning authority against state legislative encroachment, the court should likewise continually assure that the judicial branch not usurp it. In re-emphasizing the rule a circuit court must defer to a zoning board where competent evidence supports its decision,** *Blumenthal* **recognizes that zoning actions are distinct exercises of self governance unlike other administrative actions like water bills, zoning fines, and unsafe structures orders which are also subject to circuit court review. The pitched debate between the**

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[16] **See e.g.** *Villenueva v. Miami-Dade Water & Sewer Dept.*, **5 Fla. L. Weekly Supp. 206 (Fla. 11th Cir. Ct. App. 1998) (challenge to water bill);** *City of Miami Beach v. Miami-Dade County*, **7 Fla. L. Weekly Supp. 168 (Fla. 11th Cir. Ct. App. 2000) (Board of Rules and Appeals for the Building Code);** *Freer v. Dade County Building & Zoning Dept.*, **5 Fla. L. Weekly Supp. 6 (Fla. 11th Cir. Ct. App. 1997) (Zoning Code violations);** *A-1 Jose Roofing Corp. v. Magdeleno*, **5 Fla. L. Weekly Supp. 210 (Fla. 11th Cir. Ct. App. 1998) (license suspension of contractor by Construction Trade Qualifying Board);** *Pulido v. City of North Miami Beach*, **5 Fla. L. Weekly Supp. 510 (Fla. 11th Cir. Ct. App. 1998) (termination of police officer);** *City of Miami v. Best Value Motel*, **7 Fla. L. Weekly Supp. 244 (Fla. 11th Cir. Ct. App. 2000) (Nuisance Abatement Board);** *Baker v. Miami-Dade County*, **7 Fla. L. Weekly Supp. 383 (Fla. 11th Cir. Ct. App. 2000) (Public housing tenancy);** *Certified Mortgage Bankers v. Metropolitan Dade County*, **4 Fla. L. Weekly Supp.**

Church and some of its Neighbors that runs through *Dusseau* demonstrates that zoning actions affect a community indefinitely and daily and therefore implicate more fundamental constitutive social principles than the fairness of a single water bill or appropriateness of a construction license. Justice McDonald's dissent in *EDC* recognized as much, warning that allowing circuit courts unfettered authority to *reverse* a zoning board smacked of judicial absolutism. 541 So. 2d at 109. Likewise *Heggs* seems to have acknowledged Justice McDonald's warning in insisting that a district court exercise "great care" to determine the exact nature of the decision reviewed. 658 So. 2d at 531

This Court would enhance greater understanding of certiorari jurisprudence if it explained that, while *Snyder* reformulated judicial review of

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823 (Fla. 11th Cir. Ct. App. 1997) (Unsafe Structures Board).

zoning actions, they remain distinct exercises of local self-governance and differentiated it from the circuit court's review of county court judgments, and other administrative matters. In reviewing county court actions, the circuit court assumes the traditional role of a superior court reigning in the action of an inferior court. In reviewing a zoning decision, however, it is reviewing the actions of an equal branch of government and zoning is one of that branch's most fundamental responsibilities.

B. *BLUMENTHAL* IS CONSISTENT WITH *HEGGS*' VIEW THAT DISTRICT COURTS ESTABLISH UNIFORM JUDICIAL POLICY.

GIVEN THE NATURE OF ZONING CASES, ABSENT VIGOROUS DISTRICT COURT REVIEW, THIS JURISPRUDENCE WILL LIKELY BECOME EXCEEDINGLY DIFFICULT TO RECONCILE. AS NOTED ABOVE, ZONING CASES ARE COMPLEX IN THAT SPECIFIC APPLICATIONS OFTEN INVOLVE INTERPRETATION OF SEVERAL PROVISIONS OF A COMPREHENSIVE PLAN AND A SEPARATE LOCAL ZONING CODE WHICH ARE GOVERNED BY TWO SEPARATE BURDENS OF PROOF AND STANDARDS OF REVIEW. ***BOARD OF COUNTY COMMISSIONERS V. SNYDER*****; *MACHADO V. MUSGROVE*, 519 SO. 2D 629, 631-2 (FLA. 3D DCA),** ***REV. DENIED*****, 529 SO. 2D 694 (1988),** ***CITED WITH APPROVAL IN MARTIN COUNTY V. YUSEM*****, 690 SO. 2D 1288, 1293 (FLA. 1997).**

ONCE THE SUBSTANTIVE AND (ZONING) PROCEDURAL ISSUES REGARDING THE APPLICABLE STANDARD ARE SORTED OUT, THE CIRCUIT COURT MUST TYPICALLY ANSWER THE SIMPLER QUESTION OF WHETHER THE RECORD EVIDENCE SUPPORTS THE ZONING BOARDS' CONCLUSIONS REGARDING THAT STANDARD. PROPERLY AND UNIFORMLY ADMINISTERING THIS ASSIGNMENT HAS BEEN TROUBLESOME, PARTICULARLY IN THE ELEVENTH CIRCUIT WHERE A GREAT NUMBER OF JUDGES ARE ASKED TO REVIEW A GREAT NUMBER OF CASES. INDEED, SINCE *BLUMENTHAL,* THE ELEVENTH CIRCUIT COURT HAS ISSUED AT LEAST *THIRTY-EIGHT REPORTED OPINIONS*, INVOLVING NEARLY FIFTY DIFFERENT JUDGES REVIEWING THE ZONING DECISIONS OF MIAMI-DADE COUNTY *ALONE*. THIS NUMBER OF CASES AND JUDGES, WITH DIVERSITY OF OPINION AND EXPERTISE ASSURE THAT CIRCUIT COURT OPINIONS, WHICH ARE NOT BINDING ON A SUBSEQUENT CIRCUIT COURT, ARE EXCEEDINGLY DIFFICULT TO RECONCILE ABSENT CAREFUL DISTRICT COURT SCRUTINY. OF THESE, THE THIRD DISTRICT,

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[17] **In this case that the Church had the burden of showing that it was consistent with the CDMP and that it satisfied the criteria in § 33-311(A)(3) of the Zoning Code.**

[18] **Under Administrative Order 99-41, the Chief Judge has required that all of the 11th Circuit's 70 judges serve on the appellate division. (Attached at Tab A).**

[19] **See attached case list at Tab B. The emergence of Florida Law Weekly Supplement in 1991 erodes the comfort taken by this Court in *Heggs,* that while important, circuit court decisions were not widely reported or used as precedent. 658 So. 2d at 530, fn. 4. As such these opinions are widely available as persuasive authority before the circuit courts.**

INCLUDING THE INSTANT CASE, HAS REVERSED THE CIRCUIT COURT ONLY SEVEN TIMES. IT REINSTATED BOARD DECISIONS IN SIX. *MILLER V. BOOTH,* 702 SO. 2D 290 (FLA. 3D DCA 1997) (CIRCUIT COURT USURPED COUNTY'S APPLICATION OF ADMINISTRATIVE *RES JUDICATA*); *MIAMI-DADE COUNTY V. HERNANDEZ,* 738 SO. 2D 407 (FLA. 3D DCA 1999) (CIRCUIT COURT DISREGARDED COMPETENT EVIDENCE OF SCHOOL OVERCROWDING); *MIAMI-DADE COUNTY V. SPORTACRES*, 698 SO. 2D 281 (FLA. 3D DCA 1997) (CIRCUIT COURT DISREGARDED EVIDENCE IN STAFF REPORTS); *MIAMI-DADE COUNTY V. SECTION 11,* 719 SO. 2D 1204 (FLA. 3D DCA 1998) (CIRCUIT COURT DISREGARDED COMPETENT CITIZEN TESTIMONY AND AESTHETIC OPINIONS BASED ON SITE PLAN DRAWINGS); *MIAMI-DADE COUNTY V. WALBERG*, 739 SO. 2D 115 (FLA. 3D DCA 1999), *REV. DISMISSED*, CASE NO. SC96739 (FLA. 2000) (CIRCUIT COURT DISREGARDED COMPETENT CITIZEN TESTIMONY); *AND MIAMI-DADE COUNTY V. NEW LIFE APOSTOLIC CHURCH,* 750 SO. 2D 738 (FLA. 3D DCA 2000) (CIRCUIT COURT DISREGARDED COMPETENT CITIZEN TESTIMONY AND COUNTY STAFF REPORTS). HOWEVER IN *JESUS FELLOWSHIP V. MIAMI-DADE COUNTY*, 752 SO. 2D 708 (FLA. 3D DCA 2000), THE THIRD DISTRICT COURT REJECTED THE PROPOSITION THAT *BLUMENTHAL* CALLS FOR AN UNCRITICAL DEFERENCE, AND QUASHED THE BOARD'S SCHOOL SIZE LIMITATION WHICH WAS BASED ONLY ON A SUGGESTION FROM THE PUBLIC RATHER THAN SUBSTANTIAL COMPETENT EVIDENCE.

THESE CASES DEMONSTRATE THE THIRD DISTRICT COURT HAS JUDGED EACH CASE INDIVIDUALLY AND CORRECTED ONLY THOSE NECESSARY TO SET A CORRECT JUDICIAL POLICY AFTER *SNYDER* OF APPROPRIATE BUT NOT REFLEXIVE DEFERENCE TO LOCAL ZONING DECISIONS. *HEGGS*, AT 528, 531. PUBLIC POLICY SUPPORTS VIGOROUS DISTRICT COURT REVIEW OF ZONING DECISIONS. THE CIRCUMSCRIBED ROLE URGED BY THE NEIGHBORS WOULD ONLY LEAD TO GREATER CONFUSION

AT THE CIRCUIT COURT AND BOARD LEVEL. PARTIES BEFORE THE CIRCUIT COURT WILL LIKELY MARSHAL A STRING CITE OF CASES SUPPORTING A LIMITED CIRCUIT COURT REVIEW AGAINST ANOTHER STRING OF CASES APPLYING A BROAD REVIEW LEAVING THE COURTS AND THE PUBLIC LITTLE GUIDANCE FROM WHICH SIDE OF THE SCRUM A CASE WILL EMERGE. A BETTER APPROACH WELCOMES THE DISTRICT COURTS' ULTIMATE AND SELECTIVE REVIEW OF THESE CASES TO ASSURE THAT THE CIRCUIT COURTS ADHERE TO A PROPERLY CIRCUMSCRIBED ROLE AND THAT ZONING DECISIONS, WHERE EVIDENCE ADMITS SEVERAL RESOLUTIONS, ARE MADE BY THE LOCAL ZONING AUTHORITY AND NOT THE CIRCUIT COURT.

CONCLUSION

THIS COURT SHOULD DISMISS THIS PETITION FOR LACK OF CONFLICT WITH ANY DISTRICT OR SUPREME COURT OPINION. ON THE CONTRARY, *DUSSEAU* CORRECTED A CIRCUIT COURT OPINION THAT DIRECTLY AND EXPRESSLY IGNORED THIS COURT'S JURISPRUDENCE BY LOOKING AT EVIDENCE CONTRARY TO A BOARD'S DECISION AND WEIGHING IT AGAINST ONLY SOME OF THE EVIDENCE THAT SUPPORTED IT. *HEGGS* AT 530; *EDC* AT 108.

TO THE EXTENT *DUSSEAU* IS CONSIDERED WITH *CITY OF DANIA*, IT AFFIRMS THE WISDOM TO *BLUMENTHAL'S* ELABORATION OF THIS COURT'S CERTIORARI JURISPRUDENCE AFTER *SNYDER*. NAMELY, WHILE ZONING ACTIONS ARE NOW QUASI-JUDICIAL, A CIRCUIT COURT STILL MAY NOT SUBSTITUTE ITS JUDGMENT FOR THAT OF THE BOARD. DOING SO NOT ONLY VIOLATES *VAILLANT*, BUT ALSO UPSETS THE SEPARATION OF POWER BETWEEN LOCAL GOVERNMENT AND THE JUDICIAL BRANCH AND HOPELESSLY MUDDLES LAND USE LAW.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE FOREGOING WAS MAILED THIS _____ DAY OF JUNE, 2000, TO: JEFFREY S. BASS, ESQ., SHUBIN & BASS, P.A., 46 S.W. FIRST STREET, THIRD FLOOR, MIAMI, FLORIDA 33130; ARTHUR ENGLAND, JR., AND ELLIOT H. SCHERKER, ESQ. GREENBERG TRAURIG, 1221 BRICKELL AVENUE, MIAMI, FL 33131; AND STANLEY PRICE, ESQ., 701 BRICKELL AVENUE, SUITE 1850, MIAMI, FLORIDA 33131.

_____
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