IN THE SUPREME COURT
STATE OF FLORIDA

COASTAL DEVELOPMENT OF NORTH FLORIDA, INC., AND MEADOWS INCORPORATED,

Petitioners,

v.

CITY OF JACKSONVILLE BEACH,

Respondent.

Case No. 95,686

BRIEF OF AMICUS CURIAE FLORIDA HOME BUILDERS ASSOCIATION

On Appeal from the First District Court of Appeal

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INTRODUCTION

Amicus curiae the Florida Home Builders Association ("FHBA") is a not for profit corporation and statewide industry association representing approximately 16,000 members, substantially all of whom are engaged in business operations related to the construction industry in Florida. FHBA recognizes that the issue raised in this appeal concerning the appropriate standard of review of small-scale comprehensive plan amendments is an issue of statewide significance. Substantially all of FHBA's members, by virtue of owning property, residing, or owning or operating a business within the boundaries of a local government, are affected by the comprehensive plan decisions of local governments. Many FHBA members also make applications to local governments for small-scale plan amendments. Thus, FHBA is interested in the Court's disposition of this case.

This Court granted FHBA's Motion for Leave to File Brief as Amicus Curiae on July 21, 1999. FHBA's amicus curiae brief is submitted in support of Petitioners Coastal Development of North Florida, Inc., and Meadows Incorporated ("Petitioners").

STATEMENT OF THE CASE AND THE FACTS

FHBA adopts Petitioners' Statement of the Case and the Facts.

SUMMARY OF THE ARGUMENT

The framework for answering the certified question posed in this case is provided by the two most significant land-use opinions issued by this Court in the 1990s: *Board of County Commissioners v. Snyder*, 627 So. 2d 469 (Fla. 1993) and *Martin County v. Yusem*, 690 So. 2d 1288 (Fla. 1997). *Snyder* involved site-specific rezonings, and *Yusem* involved amendments to local government comprehensive plans. *Snyder* held that site-specific rezonings involve policy application rather than policy formulation; thus, decisions regarding such rezonings are quasi-judicial and should be subject to strict scrutiny. *Yusem* held that comprehensive plan amendments involve policy formulation rather than policy application and are, therefore, legislative in nature and subject to the fairly debatable standard of review. Small-scale plan amendments were specifically exempted from the Court's decision in *Yusem*.

Decisions involving small-scale development amendments are more like site-specific rezonings than like other comprehensive plan amendments. Small-scale plan amendments must involve 10 acres of land or less; they involve only a change to the future land use map, not to the textual goals, objectives, and policies; and they are not subject to the integrated review processes by multiple layers of government that characterize other comprehensive plan amendments. Decisions about small-scale plan amendments involve the application of policy, not its formulation.

A bright-line rule by this Court that small-scale plan amendments are quasi-judicial in nature and subject to strict scrutiny would resolve confusion among the lower courts. Such a rule also would be consistent with this Court's well-understood holdings in *Snyder* and *Yusem*.

ARGUMENT

I. DECISIONS REGRADING SMALL-SCALE DEVELOPMENT PLAN AMENDMENTS INVOLVE THE APPLICATION OF PREVIOUSLY FORMULATED LOCAL GOVERNMENT POLICY; THUS, THEY ARE QUASI-JUDICIAL IN NATURE AND SUBJECT TO STRICT SCRUTINY.

The First District Court of Appeal in the case under review certified to this Court a question of great public importance:

> Are decisions regarding small-scale development amendments pursuant to section 163.3187(1)(c), Florida Statutes, legislative in nature and, therefore, subject to the fairly debatable standard of review; or quasi-judicial, and subject to strict scrutiny?

City of Jacksonville Beach v. Coastal Development of North Florida, Inc., 730 So. 2d 792, 794 (Fla. 1st DCA 1999). Answering the certified question requires analysis of the principles outlined in the most significant decisions involving land-use law issued by this Court in the 1990s: *Martin County v. Yusem*, 690 So. 2d 1288 (Fla. 1997), and *Board of County Commissioners v. Snyder*, 627 So. 2d 469 (Fla. 1993).

A. *Yusem* and *Snyder* provide the framework for answering the certified question.

Yusem involved amendments to local government comprehensive land use plans adopted pursuant to part II of chapter 163, Florida Statutes, the Local Government Comprehensive Planning and Land Development Regulation Act ("Act").[1] *Snyder* involved development

[1] Small-scale plan amendments were specifically exempted from this Court's opinion in *Yusem*. The Court stated:

orders issued under the Act granting or denying rezonings. The ultimate issue for this Court to consider is whether small-scale comprehensive plan amendments are more like site-specific rezonings at issue in *Snyder* or more like comprehensive plan amendments at issue in *Yusem*.

Snyder explored the distinction between legislative actions by local governments and those that are quasi-judicial. "Generally speaking, legislative action results in the *formulation* of a general rule of policy, whereas judicial action results in the *application* of a general rule of policy," this Court stated. *Snyder*, 627 So. 2d at 474. Applying this general criterion, the Court reasoned that comprehensive rezonings affecting a large portion of the public are legislative in nature because they involve the formulation of policy. However, rezoning actions having an impact on a limited number of people or property owners and on identifiable parties and interests involve the application of policy, and are quasi-judicial. *Id*.

This Court in *Snyder* went on to explain that quasi-judicial actions are properly reviewable by petition for certiorari and are

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> We do note that in 1995, the legislature amended section 163.3187(1)(c), Florida Statutes, which provides special treatment for comprehensive plan amendments directly related to proposed small-scale development activities. Ch. 95-396, § 5, Laws of Fla. We do not make any findings concerning the appropriate standard of review for these small-scale development activities.

Martin County v. Yusem, 690 So. 2d 1288, 1293 n.6 (Fla. 1997).

subject to strict scrutiny. Such actions will be upheld only if they are supported by substantial competent evidence. *Id*. Legislative actions, in contrast, are filed as original actions and subject to a much more deferential standard of review. Such actions will be sustained so long as they are fairly debatable. *Id*.

Although *Snyder* noted that rezonings must be consistent with a comprehensive plan, the opinion did not address whether amendments to the plan itself are legislative or quasi-judicial in nature. Following *Snyder*, lower courts used a fact-intensive functional analysis to determine whether the adoption of a comprehensive plan amendment was legislative or quasi-judicial in nature. *Yusem*, 690 So. 2d at 1288. The approach led to considerable confusion and uncertainty concerning the appropriate procedural means of challenging a decision involving a comprehensive plan amendment. *Id*. at 1295.

In *Yusem*, this Court resolved the confusion, holding that amendments to comprehensive land use plans are legislative decisions subject to the fairly debatable standard of review. *Yusem*, 690 So. 2d at 1289. Quoting from the dissent of then-Judge Pariente in the court below, this Court reasoned that amendments to comprehensive plans involve "policy reformulation" and generally require an evaluation of the likely impact of such amendments on a local government's provision of local services, capital

expenditures, and its overall plan for growth and future development. *Yusem*, 690 So. 2d at 1294 quoting *Martin County v. Yusem*, 664 So. 2d 976, 981 (Fla. 4th DCA 1995) (Pariente, J., dissenting).

Underlying the Court's decision that comprehensive plan amendments are legislative in nature were the detailed procedures required under the Act for the adoption of an amendment. Noting that such amendments "are evaluated on several levels of government to ensure consistency with the Act and to provide ordered development," the Court explained the transmittal and adoption procedures that include review by the state Department of Community Affairs and possible referral to the Governor and Cabinet, sitting as the Administration Commission. *Yusem*, 690 So. 2d at 1294. Noting the complexity of this review process, the Court stated:

> The strict oversight on the several levels of government to further the goals of the Act is evidence that when a local government is amending its comprehensive plan, it is engaging in a policy decision. This is in contrast to a rezoning proceeding, which is only evaluated on the local level.

Id.

B. Small-scale plan amendments are not subject to the integrated review processes that characterize adoption of other comprehensive plan amendments.

Small-scale plan amendments are governed by sections 163.3187(1)(c) and (3), Florida Statutes. These small-scale amendments differ in a number of ways from other amendments to a local government comprehensive plan. Differences include:

- Small-scale plan amendments must involve the use of 10 acres of land or less. § 163.3187(1)(c)1., Fla. Stat.

- Small-scale plan amendments cannot involve a text change to the goals, policies, and objectives of the local government's comprehensive plan. Rather, a small-scale plan amendment may only involve a change to the future land use map for a "site specific" small scale development activity. *Id*. at § 163.3187(1)(c)1.d. (Emphasis added).

- Small-scale plan amendments are not subject to the procedures and public-notice requirements normally imposed for comprehensive plan amendments, so long as the local government complies with its general statutory notice requirements for zoning map changes. *Id*. at § 163.3187(1)(c)2.a.

- Small-scale development amendments require only one public hearing before the local governing board. Small-scale plan amendments are not subject to the detailed transmittal and adoption requirements that are required of local governments for other plan amendments unless a local government elects to have the small-scale amendments subject to those requirements. *Id*. at § 163.3187(1)(c)3.

- The state Department of Community Affairs does not review or issue a notice of intent regarding small-scale plan amendments. *Id*. at § 163.3187(3)(a).

- Local governments may amend their comprehensive plans only twice during a calendar year. *Id.* at § 163.3187(1). However, small-scale plan amendments are exempt from the twice-per-year limitation. *Id.* at § 163.3187(1)(c).

The Legislature has enacted a much different statutory scheme for small-scale plan amendments than for other amendments to a local government comprehensive plan. As demonstrated by the provisions outlined above, small-scale plan amendments are not "evaluated on several levels of government," a factor important to this Court in *Yusem* in determining that comprehensive plan amendments are legislative in nature. *Yusem*, 690 So. 2d at 1294. There is no "integrated review process" for small-scale plan

amendments, nor is there "strict oversight on the several levels of government." *Id*. Instead, decisions regarding small-scale plan amendments are made by a local governing board in conformity with the statutory notice requirements that apply to zoning map changes. Small-scale plan amendments involve 10 acres or less of property; thus, they have an impact on a limited number of persons or property owners. Most notably, they must relate to site-specific development activity that involves only a change to the land use map, not to the textual goals, policies, and objectives of the plan itself. This provision concerning site-specific development activity was added by the Legislature in 1995, less than two years after this Court's opinion in *Snyder*, which held that zoning changes involving site-specific parcels are quasi-judicial. Ch. 95-396, § 5, at 2554, Laws of Fla. The Legislature is presumed to be aware of this Court's opinion in *Snyder*, and lawmakers apparently attempted to make clear in the statute that small-scale plan amendments involve policy application, not policy formulation.

In short, the enactment of a small-scale plan amendment does not involve the formulation of policy regarding a local government's overall plan for growth and future development. Rather, it involves the application of that previously formulated policy to a specific site where development activity is proposed. Small-scale plan amendments are more like the site-specific

rezonings at issue in *Snyder* than the general comprehensive plan amendments at issue in *Yusem*.

C. A bright-line rule that small-scale plan amendments are quasi-judicial in nature will resolve confusion among lower courts.

Undersigned counsel has located just three reported decisions addressing the appropriate standard of review for decisions involving small-scale plan amendments.[2] One is the case under review; the others are *Fleeman v. City of St. Augustine Beach*, 728 So. 2d 1178 (Fla. 5th DCA 1998), and *Grondin v. City of Lake Wales*, 5 Fla. L. Weekly Supp. 727 (Fla. 10th Cir. Ct. 1998). In both the case under review and in *Fleeman*, the courts held that decisions regarding small-scale development amendment requests are legislative in nature; however, both courts certified the question as one of great public importance. In *Grondin*, the court found that decisions involving small-scale plan amendments are quasi-judicial in nature. That court reasoned:

> Inasmuch as this change was implementation of stated policy of the plan and was specific in its intent, it appears to this court that this small scale amendment was

[2] A fourth case, *Debes v. Key West*, 690 So. 2d 700 (Fla. 3d DCA 1997), does not include any substantive analysis of the question. Additionally, it is not clear from the opinion whether the future land use map change at issue in *Debes* was processed as a small-scale plan amendment, although that would seem likely. The change is referred to by the court as a "rezoning." The court does state in a footnote that the appropriate standard of review for the local government decision concerning the map amendment is provided by *Snyder*, although the court goes on to say that the standard of review is not dispositive or even important to the resolution of the case. *Debes*, 690 So. 2d at 701 n.4. *Debes* was decided shortly after this Court's ruling in *Yusem*.

> not the broad formulation of policy associated with a legislative decision. Rather, this small-scale amendment was the application of policy associated with quasi-judicial decisions.

Grondin, 5 Fla. L. Weekly Supp. at 728.

Much as confusion existed in lower courts before this Court's opinion in *Yusem* concerning the proper standard of review for decisions involving comprehensive plan amendments, confusion now exists concerning the proper standard of review for decisions involving small-scale plan amendments. A bright-line rule announced by this Court that decisions regarding small-scale development amendments are quasi-judicial, and thus subject to strict scrutiny, would resolve the confusion. Such a rule also would be consistent with *Snyder* and *Yusem*.

The distinctions drawn by this Court in *Yusem* between most comprehensive plan amendments and site-specific rezonings do not apply to small-scale plan amendments. As previously noted, small-scale plan amendments are not subject to oversight by multiple layers of government; nor do they involve overall plans for growth and future development of a particular area. Small-scale plan amendments are like the rezonings at issue in *Snyder* in that they involve "an impact on a limited number of persons or property owners, on identifiable parties and interests." *Snyder*, 627 So. 2d at 474 quoting *Snyder v. Board of County Commissioners*, 595 So. 2d 65, 78 (Fla. 5th DCA 1991). Decisions involving small-scale plan amendments involve the application of a general rule of policy,

rather than the formulation of policy. Thus, they are quasi-judicial, and should be subject to strict scrutiny.

CONCLUSION

For the reasons expressed, FHBA respectfully requests that this Court quash the decision below and hold that decisions regarding small-scale development amendments are quasi-judicial and subject to strict scrutiny.

Respectfully submitted,

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CERTIFICATE OF FONT SIZE

I HEREBY CERTIFY that the text and all footnotes of Brief of Amicus Curiae Florida Home Builders Association was typed using 12 point Courier New font and was fully justified. A three-and-a-half inch disk with a copy of Brief of Amicus Curiae Florida Home Builders Association has been furnished to the Supreme Court of Florida.

_____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Brief of Amicus Curiae Florida Home Builders Association was sent by overnight mail on the ____ day of July, 1999, to the following:

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