IN THE SUPREME COURT OF FLORIDA
CASE NO. SC00-875

VICKI MINNAUGH AND
ROBERT MINNAUGH,

Petitioners,

v.

COUNTY COMMISSION OF
BROWARD COUNTY, a political
subdivision of the State of Florida,

Respondent.
_____/

Discretionary Proceedings to Review a Decision by the
Fourth District Court of Appeal, State of Florida
Case No.: 4D99-0751

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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QUESTION PRESENTED

WHETHER DECISIONS REGARDING SMALL-SCALE DEVELOPMENT AMENDMENTS PURSUANT TO SECTION 163.3187(1)(c), FLORIDA STATUTES, ARE LEGISLATIVE IN NATURE AND, THEREFORE, SUBJECT TO THE FAIRLY DEBATABLE STANDARD OF REVIEW?

PREFACE

In this brief, Petitioners, VICKI MINNAUGH and ROBERT MINNAUGH, will be collectively referred to as "Petitioners" and Respondent, COUNTY COMMISSION OF BROWARD COUNTY, FLORIDA, will be referred to as the "County Commission."

The appendix to the certiorari petition filed by Petitioners in the Fourth District Court of Appeal will be referred to by the abbreviation "App." followed by the volume number, document tab number or letter, and page number if applicable. Reference to the transcript of the December 22, 1998, hearing before the County Commission, which appears in the appendix at App.2-B, will be by the abbreviation "T." followed by the court reporter's page number.

All emphasis that appears in quoted material is added by the undersigned counsel unless otherwise indicated.

JURISDICTIONAL STATEMENT

The County Commission agrees with the Jurisdictional Statement contained in Petitioners' Initial Brief.

STATEMENT OF THE CASE AND FACTS

Petitioners own a 4.3 acre parcel of property in Pembroke Pines, Florida. (T-13). The parcel is designated on Broward County's Future Land Use Map (the "FLUM") for "Agricultural" use. (App.7-16, p.2). The property is bordered on both the east and the west by property also designated on the FLUM for "Agricultural" use.[1] (App.7-16, p.2). In fact, Petitioner's property sits in the middle of a 110-acre strip, between SW 184th Avenue and SW 196th Avenue (the "Pines Boulevard Corridor"), all of which is designated on the FLUM as "Agricultural."[2] (App.7-16, p.2, 10).

On September 2, 1998, Petitioners filed an application with the Broward County Planning Council (the "Planning Council") for a small-scale amendment to the Broward County Land Use Plan (the "BCLUP"), seeking to change the land use designation on their 4.3 acre parcel from "Agricultural" to "Employment Center." (App.7-10). The Planning Council found Petitioners' proposed amendment was

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[1] The owners of the adjacent 30 acre parcel to the east had filed an application for a land use plan amendment but there had been no final decision on that request. However, the Planning Council had voted to recommend denial of that application. (App.7-18, p.5-7).

[2] The 30-acre parcel on the far western corner of Pines Boulevard Corridor had been "flexed" by the City of Pembroke Pines to permit a commercial use. (App.7-16, p.2). "Flex" was a procedure formerly allowed under the county land use plan that permitted a city to re-designate a limited amount of property. Cities no longer control "flex" under the land use plan.

incompatible with the surrounding land uses (App.7-16, p.5-7) and would create an isolated parcel of "Employment Center" use in an area predominately designated "Agricultural." (T-7; App.7-13, p.33-34; App.7-16, p.5-7). The Planning Council therefore voted to recommend denial of Petitioners' application under BCLUP Policy 14.02.01, which provides that "[t]he compatibility of existing and future land uses shall be a primary consideration in the review and approval of amendments to the Broward County and local land use plans." (App.3, BCLUP, p.II-49).

The matter went before the County Commission on December 2, 1998,[3] and the County Commission, following the Planning Council's recommendation, denied Petitioners' application. (T-98-99).

The BCLUP designation of "Agricultural" permits a wide range of agricultural and related uses, including the cultivation of crops and groves, thoroughbred and pleasure horse ranches, private game preserves, fish breeding areas, tree and plant nurseries, cattle ranches and similar activities. Aside from these core agricultural uses, it also permits recreational uses, open space uses, cemeteries, community facilities and utilities, mining operations, transportation and communication facilities and easements,

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[3] At the beginning of the hearing, the County Attorney indicated that because the Florida Supreme Court had not yet conclusively determined small-scale amendments are legislative, in an "abundance of caution" the County would conduct the hearing in a quasi-judicial manner. (T-6).

and limited residential uses. (App.7- 9, p. IV -37-38).

At the hearings that took place before the Planning Council and the County Commission, Petitioners conceded that their 4.3 acre parcel could be used for a number of permitted uses. (T-52, 87). However, they argued that these uses were incompatible with surrounding uses. (T-87). Petitioners did not contend the "Agricultural" designation of their 4.3 acre parcel was incompatible with its immediate surroundings, which were also predominantly "Agricultural." Rather, Petitioners asked the Planning Council and County Commission to consider whether the "Agricultural" designation on the entire 110-acre Pines Boulevard Corridor was compatible with surrounding uses. They asked the County Commission to consider approval of their application as the first step in an overall "Conceptual Master Land Use Plan" (App.7-5-1) that was being suggested for all of Pines Boulevard Corridor,[4] which proposed the eventual elimination of the "Agricultural" designation on this entire 110-acre strip of land. As part of its deliberation, the County Commission considered the "domino effect" that changing the

[4] At one hearing, Petitioners' counsel stated, "I would hope and assume that the Planning Council would look at [Petitioner's application] not as a singular piece but as a part of the overall conceptual plan." (App.8-20, p.13). Petitioners' land use expert stated, "Our property is one component of this overall master plan [for Pines Boulevard Corridor] that is being brought forward today..." (App.7-14, p.5). Another of Petitioners' witnesses stated that, "We don't think agricultural is appropriate here. We think it will change going east to west and that agricultural land on the larger scale is out of character with the area..." (App.7-13, p.5).

designation on Petitioners' small parcel could have on the entire 110 acres. (T-75).

The County Commission denied Petitioners' application for a "small-scale" amendment, preserving the "Agricultural" designation on Petitioners' property. This decision was consistent with BCLUP Policy 14.02.01 referenced above and with Goal 4.00.00, Objective 4.01.00 and Policy 4.02.02 of the BCLUP, all of which provide for the conservation, protection and retention of agricultural lands and uses designated on the FLUM. (App.3, BCLUP, p.II-12-13).

Petitioners challenged the County Commission's denial by filing a Complaint in the Broward County Circuit Court which included a count for writ of common law certiorari (Count I), a count for writ of mandamus (Count II) and, alternatively, an action for injunctive and declaratory relief. (Count III) (App.1-A-2). The circuit court judge dismissed the petitions for writ of certiorari and mandamus, finding that the County Commission's decision was legislative in nature and should therefore be reviewed only in a declaratory and injunctive action. (App.1-A-1).

Petitioners challenged the Circuit Court's decision by filing a petition for writ of certiorari in the Fourth District Court of Appeal. On March 15, 2000, the Fourth District Court of Appeal denied the petition, and certified the question presently before this Court as one of great public importance. *Minnaugh v. County Commission of*

Broward County, 752 So.2d 1263 (Fla. 4th DCA 2000).

SUMMARY OF ARGUMENT

In *Yusem*, this Court held that all plan amendment decisions are legislative in nature and reviewable under the fairly debatable standard. However, since small-scale plan amendments were not at issue in *Yusem*, the Court expressly reserved ruling on the standard of review applicable thereto.

The *Yusem* rationale is applicable to all plan amendment decisions regardless of parcel size. All plan amendments, including small-scale amendments, involve reformulation of policy, a legislative function. And all plan amendments impact far more than the applicant's parcel.

Petitioners argue that small-scale plan amendments are akin to the type of rezoning decision *Snyder* determined was quasi-judicial. As such, Petitioners believe this Court should establish a rule that, unlike all other plan amendments, small-scale amendments are quasi-judicial decisions subject to strict judicial scrutiny. Petitioners' argument ignores the clear rationale of *Yusem* and has been rejected by all four district courts of appeal that have considered this issue since *Yusem*.

Small-scale plan amendments are every bit as legislative in nature as other plan amendments. They are entitled to the same level of deference and therefore must be

reviewed under the same fairly debatable standard.

ARGUMENT

LOCAL GOVERNMENTAL DECISIONS ON SMALL-SCALE PLAN AMENDMENT REQUESTS ARE LEGISLATIVE IN NATURE AND SUBJECT TO THE FAIRLY DEBATABLE STANDARD OF REVIEW.

In *Martin County v. Yusem*, this Court expressly held that "all amendments to comprehensive plans are legislative activities subject to the fairly debatable standard [of review.]" 690 So.2d 1288, 1295 (Fla. 1997). Since the newly enacted statutory procedure for adoption of small-scale plan amendments was not at issue, the Court reserved ruling on the standard of review for such amendments. *Id*. at 1293, n.6. Footnote 6 notwithstanding, the language and rationale of *Yusem* unqualifiedly support that all plan amendment decisions, including small-scale amendment decisions, are legislative in nature.

Petitioners argue this Court should establish a rule distinguishing small-scale amendments from other plan amendments. Under Petitioners' proposed rule, small-scale plan amendment decisions would be deemed quasi-judicial in nature and subject to strict judicial scrutiny. All other plan amendments would be deemed legislative and upheld if fairly debatable.

Petitioners' argument is based on the premise that small-scale plan amendments

are substantially similar to the site specific rezoning found in *Snyder*[5] to be a quasi-judicial decision, and are substantially different from the plan amendment considered in *Yusem*. This premise is false. Small-scale plan amendments raise fundamentally different considerations than do site specific rezonings. Additionally, the few differences between small-scale amendments and the plan amendment at issue in *Yusem* are inconsequential.

A. All Plan Amendment Decisions, Including Small-Scale Plan Amendments, Differ from the Type of Rezoning Decision *Snyder* Determined was Quasi-Judicial in Nature.

The *Snyder* court adopted a three-part functional analysis to determine the nature of, and resulting standard of review for, rezoning decisions.[6] As recognized in *Yusem*, *Snyder* "plainly did not deal with the issue of the appropriate standard of review for amendments to a comprehensive land use plan. *Yusem*, 690 So.2d at 1293.

In 1995, the Florida Legislature created a new process for local governments to

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[5] *Board of County Commissioners of Brevard County v. Snyder*, 627 So.2d 469 (Fla. 1993).

[6] To be deemed quasi-judicial under *Snyder*, the rezoning decision:

1. Must impact a limited number of identifiable parties and interests;
2. Must be contingent on facts determined from distinct alternatives presented at a hearing; and
3. Must be functionally viewed as policy application rather than policy setting.

Snyder, 627 So.2d at 474.

approve small-scale amendments. Ch. 95-396, §5, Laws of Fla. This process is available to proposed amendments which meet the criteria listed in §163.3187(1)(c), Florida Statutes, including the following criteria central to this matter:

1. The proposed amendment involves a use of 10 acres or less; and

2. The proposed amendment does not involve a text change to the goals, policies and objectives of the land use plan, but only proposes a change to the FLUM.

Sections 163.3187(1)(c)(1)(a) and (d), Fla. Stat. (1998).

Petitioners' entire argument is based on this statutory process. Despite the absence of any supporting legislative history, Petitioners unqualifiedly assert this statutory process constitutes a legislative finding that small-scale plan amendments meeting the parameters of §163.3187(1)(c) are quasi-judicial under *Snyder*.[7] Specifically, Petitioners argue that the 10-acre size limitation meets the "limited impact" prong of *Snyder*, and that changing solely the FLUM meets *Snyder*'s "policy application" prong. Both of these arguments ignore the clear rationale of *Yusem*.

1. The Size of the Parcel is Unrelated to the Impact of the Decision.

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[7] Clearly §163.3187(1)(c) grants greater flexibility to local governments wishing to approve a small-scale amendment. This legislative grant is contrary to Petitioners' argument that the same statutory section constricts a local government's legislative decision authority.

The first prong of the *Snyder* functional analysis states, at least with regard to certain rezoning actions, that impacting a limited number of identifiable persons and interests is indicative of quasi-judicial action. Petitioners argue the 10-acre cap on small-scale amendments legislatively defines them as having a limited impact. This argument disregards the reasoning of *Yusem.*

Yusem involved a 54-acre parcel. However, the Court did not view the proposed amendment's impact as limited to the parcel:

> The county was required to evaluate the likely impact such amendment would have on the county's provision of local services, capital expenditures, and its overall plan for growth and future development of surrounding areas. . . . [This] involved considerations well beyond the landowner's 54 acres.

Yusem, 690 So.2d at 1294, *quoting Martin County v. Yusem*, 664 So.2d 976, 981 (Fla. 4th DCA 1995) (Pariente, J., dissenting).

Thus, the size of the immediately affected parcel is irrelevant. The relevant determination is how the proposed action would affect the legislative plan for growth, the provision of local services, capital expenditures and similar factors. In *Yusem*, the owner's 54 acres were part of a 900-acre tract similarly designated on the FLUM. Thus, even apart from general impacts across the local government's entire jurisdiction, granting the proposed amendment would have had a clear impact on the remainder of

the 900-acre tract.

The situation in the instant case is remarkably similar. Petitioners own approximately 4.3 acres of 110 contiguous acres designated "agricultural" on the FLUM. Petitioners' argument to the County Commission to grant the change was not that its small parcel was improperly designated, but rather the entire 110 acres was inconsistent with surrounding development. The County Commission, in rejecting the proposed amendment, was concerned not only with how this change would generally affect patterns of growth and allocation of resources but also with the immediate fear of a "domino effect" on the entire 110 acres. As in *Yusem*, the County Commission's decision "involved considerations well beyond the owner's [4.3] acres."

When it comes to land use plan amendments, size does not matter. Unlike the type of rezoning at issue in *Snyder*, all plan amendments, including small-scale amendments, raise considerations far beyond the immediately impacted parcel. As such, decisions on small-scale amendments cannot be considered quasi-judicial under the *Snyder* functional analysis.

2. All Comprehensive Plan Amendments, Including Small-Scale Amendments, Involve Policy Formulation.

Unlike the type of rezoning decision at issue in *Snyder*, all plan amendments, just like the initial adoption of the land use plan, involve policy formulation. *Yusem,* 690 So.2d at 1295.[8] The Local Government Comprehensive Planning and Land Development Regulation Act (the "Act")[9] requires each county to prepare a comprehensive land use plan to provide for gradual and ordered future development. *Snyder*, 627 So.2d at 475. Whenever a request to amend the plan is made, even if the amendment is to a small parcel, the local government must consider whether the proposed amendment meets the future land use needs of the community. *Fleeman v. City of St. Augustine Beach*, 728 So.2d 1178, 1180 (Fla. 5th DCA 1999). "In contrast, an application to rezone property from one class to another, both of which are consistent with the comprehensive plan, entails a different set of considerations." *Id*.

Petitioners do not contest that the comprehensive land use plan contains the local government's legislative vision of future development. Nor do they contest that the initial development of the plan is policy formulation. Rather, they assert that all policy

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[8] Thus "there is no reason to treat a county's decision rejecting a proposed modification of a previously adopted land use plan as any less legislative in nature than the decision initially adopting the plan." *Yusem*, 690 So.2d at 1294, *citing Section 28 Partnership Ltd. v. Martin County*, 642 So.2d 609, 613 (Fla. 4th DCA 1994) (Stone, J., concurring), *review denied* 654 So.2d 920 (Fla. 1995).

[9] Chapter 163, Part II, Fla. Stat. (1998).

formulation is contained in the textual portions of the plan and, thus, any amendment to the FLUM is merely policy application. This Court has already rejected this assertion in *Yusem*:

> [In] contrast to the rezonings at issue in *Snyder*, the review of the proposed amendment here required the county to engage in policy reformulation of its comprehensive plan and to determine whether it now desires to retreat from policies embodied in the future land use map for the orderly development of the county's future growth.

690 So.2d at 1294, *quoting Martin County v. Yusem*, 664 So.2d at 981 (Pariente, J., dissenting).

Critically, *Yusem* involved no textual change, but rather only a requested change to the FLUM. This Court recognized that embodied within the FLUM are the county's policies for orderly future development, and that solely changing the FLUM would amount to policy reformulation. Thus, this Court has already expressly rejected Petitioners' argument that amending the FLUM without changing any plan text is merely policy application.

This argument was also rejected by the Fifth District Court in *Fleeman,* the First District Court in *City of Jacksonville Beach*[10], the Third District Court in *Palm Springs*

[10] *City of Jacksonville Beach v. Coastal Development of North Florida, Inc.*, 730

Hospital[11] and the Fourth District Court in the *Minnaugh*[12], all of which courts found the rationale of *Yusem* clearly applicable to small-scale plan amendment requests:

> The [*Fleeman*] court concluded that the bottom-line issue is whether the proposal 'meets the future land use and needs of the community', and that such considerations are policy matters left to the discretion of the [local] legislative body.

Minnaugh, 752 So.2d at 1265, *citing* and *quoting Fleeman*, 728 So.2d at 1180.

The *City of Jacksonville Beach* court agreed, holding:

> It seems to us that *all* comprehensive plan amendment requests necessarily involve the formulation of policy, rather than its mere application. Regardless of the scale of the proposed development, a comprehensive plan amendment request will require that the governmental entity determine whether it is socially desirable to reformulate the policies previously formulated for the orderly future growth of the community. This will, in turn, require that it consider the likely impact that the proposed amendment would have on traffic, utilities, other services, and future capital expenditures, among other things. . . . Such considerations are different in kind from those which come into play when considering a rezoning request.

730 So.2d at 794. (Emphasis supplied by court).

So.2d 792 (Fla. 1st DCA 1999), *rev. granted* 744 So.2d 453 (Fla. 1999).

[11] *Palm Springs General Hospital, Inc. v. City of Hialeah Gardens*, 740 So.2d 596 (Fla. 3rd DCA 1999).

[12] *Minnaugh v. County Commission of Broward County*, 752 So.2d 1263 (Fla. 4th DCA 2000).

Each of these district courts followed the holding of *Yusem* that even a change solely to the FLUM involves the reformulation of significant policy considerations. Contrary to Petitioners' argument, these cases recognized that the FLUM is a central element of the land use plan embodying the plan's policies. The FLUM is not surplusage or in any way subordinate to the textual statement of goals and policies; rather, it is an integral part of the county's constitution for all future development. *Yusem*, 690 So.2d at 1293 (citations omitted). As stated in the Act:

> The proposed distribution, location, and extent of the various categories of land use shall be shown on a land use map or map series which shall be supplemented by goals, policies, and measurable objectives.

Section 163.3177(6)(a), Fla. Stat. (1998). Under the Act, the FLUM is of primary importance, to be supplemented by textual statements of goals and policies. Petitioners' assertion ignores this primacy despite that it has been recognized by this Court in *Yusem* and by every court which has since considered this issue.

Simply stated, the FLUM embodies legislative policy. Changing the FLUM reformulates that policy. Both *Yusem* and *Snyder* recognize policy reformulation as indicative of legislative action.

B. The Different Review Procedure for Small-Scale Plan Amendments Does Not Change the Nature of the Decision.

Unlike other plan amendments, local governmental decisions to approve small-

scale amendments under §163.3187(1)(c) are not subject to prior review by various state and regional agencies (the "Compliance Review"). §163.3187(1)(c)(3), Fla. Stat. (1998). The purpose of the Compliance Review is to determine whether proposed plan amendments transmitted by the local government comply with the Act. Section 163.3184(9), Fla. Stat. (1998). Although not stated in the statute, the reason for eliminating this pre-amendment Compliance Review for small-scale amendments is self-evident; these amendments, due to their size, are less likely to be inconsistent with the state comprehensive land use plan and the Act.

The purpose of local government review of a proposed plan amendment is different. Local governments review to determine the proposed amendment's impact on the legislatively determined pattern of growth. Thus, while *Yusem* mentions the Compliance Review as "further support" for its conclusion that plan amendments are policy decisions, 690 So.2d at 1294, the absence of this review does not change the legislative nature of the local government's review and decision.

Additionally, despite the absence of the pre-amendment Compliance Review, an approved small-scale plan amendment may still be challenged for noncompliance with the Act under §163.3187(3)(a). Thus, a compliance review process, albeit one different from that applicable to other plan amendment proposals, exists regarding small-scale plan amendments.

C. The Absence of State and Regional Prior Review for Small-Scale Plan Amendments Does Not Support a Different Review Standard.

Petitioners argue the absence of the Compliance Review makes strict scrutiny imperative. They assert that, without strict judicial scrutiny, local governments may arbitrarily deny small-scale amendments, signaling a return to the woolly days that preceded *Snyder*. According to Petitioners, such arbitrary denial is not a problem for larger amendments due to the existence of the Compliance Review. *See Minnaughs' Initial Brief* p. 15.

This argument is completely fallacious. The Compliance Review Petitioners argue safeguards proper decision making for larger plan amendments is only available if the local government desires to approve the amendment and transmits it to the state land planning agency. Section 163.3184(3)(a), Fla. Stat. (1998). If the local government decides to deny the larger amendment, no Compliance Review occurs.[13] Under *Yusem*, the denial decision is merely reviewable under the fairly debatable standard.

As such, strict scrutiny is no more necessary for small-scale amendments than it is for larger plan amendment requests. What Petitioners argue is needed to level the

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[13] The reason for this is obvious. Since the local government land use plan complies with the Act, a decision not to amend the plan cannot affect compliance.

playing field would actually provide stricter scrutiny for denials of small-scale amendments than for other amendments.

Additionally, contrary to Petitioners' argument, even the fairly debatable standard of review remedies arbitrary decision making. *Yusem*, 690 So.2d at 1295. The governmental decision will be upheld only if reasonable persons could differ as to its propriety. *Id*. Thus, either standard of review, fairly debatable or strict scrutiny, would correct arbitrary and unreasonable denials of plan amendments.[14]

While either standard would prevent arbitrary denials, Petitioners correctly note the fairly debatable standard is much more deferential to local governmental decisions. Petitioners' assert a highly deferential standard is inadequate since it may permit the politicalization of decisions. This assertion is nothing short of an indictment of the entire legislative process. Voters voice their opinions on the full spectrum of legislative

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[14] For example, in *Debes v. City of Key West*, a plan amendment was initiated by the city's own planner and planning board to correct what they characterized as their own mistake in designating property as residential, instead of commercial, on the plan. 690 So.2d 700, 701, n.2. (Fla. 3rd DCA 1997). The opinion contains dictum that *Snyder* provides the proper standard of review for small-scale plan amendments. The *Debes* court noted that the issue of the proper standard of review is not important to the decision since the city's arbitrary and unreasonable denial of the plan amendment would violate either standard. *Id*. at n.4.

Besides *Debes*' statement of the proper standard being dictum, *Debes* has also been superseded by *Palm Springs General Hospital*.

proposals. Separation of powers precludes courts from ruling on the wisdom of legislation. Petitioners' argument confuses the nature of the decision with an incident of the legislative process.

D. Other Considerations Supporting a Bright Line Rule Applicable to All Plan Amendment Decisions.

As stated in *Fleeman*, there is no "good reason for the courts to treat small-parcel amendments differently than any other amendments or adoption of comprehensive land use plans." 728 So.2d at 1180. It would be absurd to argue, for example, that a local governmental decision affecting a 10-acre parcel is merely policy application while a decision affecting a neighboring parcel, identical in every respect except 10 square feet larger, is policy formulation. The nature of the local government's decision in these cases is exactly the same, yet Petitioners advocate different standards of review.

If this Court created a different rule for small-scale amendments, developers could structure their ownership to facilitate development. A 15-acre parcel could be divided into two 7.5 acre parcels, each owned by a different corporation controlled by the developer. A 150-acre parcel could be divided into twenty 7.5 acre parcels. Once one parcel obtained its FLUM change, the domino effect could sweep in change for remaining parcels. Thus, reviewing small-scale development amendments under a less

deferential standard would permit clever developers to significantly limit, if not eliminate, the local government's ability to legislatively manage growth in its community, thus vitiating the central purpose of the Act.

In terms of the land use plan amendment process, the only difference between Petitioners' parcel and *Yusem*'s parcel is size. Clearly, had the owner in *Yusem* divided his 54 acres into six 9-acre parcels, each owned by a separate corporation, and each of the new parcel owners had requested the same amendment, the nature of the local government's decision would have been exactly the same. Since the nature of the decision would have been the same, the standard of review must be the same.[15]

CONCLUSION

All plan amendment requests, including small-scale amendments, ask local governments to change their legislative vision of the community's future growth and development. Amending the plan involves policy reformulation. That includes amending the FLUM, which embodies significant legislative policies.

Yusem supports a single standard of review, fairly debatable, for all plan

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[15] Although not directly at issue, even assuming, arguendo, some small-scale amendments could functionally be considered quasi-judicial decisions, jurisprudential concerns support a bright-line rule instead of extending the *Snyder* functional analysis. *Yusem* rejected the *Snyder* test in favor of predictability and the resulting benefits to litigants and the court system. *Yusem*, 690 So.2d at 1295.

amendment decisions, including small-scale amendments. *Yusem*'s support for that standard of review is stated in "particularly strong, unequivocal language . . .." *City of Jacksonville Beach*, 730 So.2d at 794. Given the unambiguous logic of *Yusem*, Petitioners have clearly read too much into footnote 6.

Broward County respectfully requests that the decision of the Fourth District Court of Appeal be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify a true copy of the foregoing was mailed this 26th day of June, 2000, to: Counsel for Petitioners, **NANCY LITTLE HOFFMAN, ESQUIRE,** 440 East Sample Road, Suite 200, Pompano Beach, Florida 33064 and **WILLIAM S. SPENCER, ESQUIRE,** Emerald Hill Executive Plaza, Suite 505, 4601 Sheridan Street, Hollywood, Florida 33021; and Counsel for Amicus Curiae, **KAREN BRODEEN, ESQUIRE**, Assistant General Counsel, Florida Department of Community Affairs, 2555 Shumard Oaks Blvd., Tallahassee, Florida 32399-2100.

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