IN THE SUPREME COURT
STATE OF FLORIDA

Case No. SC01-103

CITY OF JACKSONVILLE, et al.

Petitioners,

v.

CHARLES DIXON, JR., et al.

Respondents.

ON PETITION FOR DISCRETIONARY REVIEW
FROM A DECISION OF THE FIRST DISTRICT COURT OF APPEAL

CITY OF JACKSONVILLE'S CORRECTED BRIEF ON THE MERITS

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TABLE OF CONTENTS

TABLE OF CITATIONS

Other Authorities:

EXPLANATION OF REFERENCES

Both the City of Jacksonville and the City Council of the City of Jacksonville will be referred to throughout this brief as the "City." Respondents, Charles Dixon, Jr., Charles Dixon, III, will be referred to as the "Dixons."

References to the trial transcript will be denoted in parentheses by "Tr.", followed by the appropriate volume and page number; e.g., (Tr. Vol. II at 200).

References to the Appendix filed by the City with this Court will be denoted in parentheses by "City's App.", followed by the appropriate Tab letter and page reference; *e.g.*, (City's App. F at 5).

STATEMENT OF THE CASE

The Court has accepted jurisdiction to review the decision below on the basis of an asserted conflict with this Court's previously expressed views on both the proper scope of "strict scrutiny" review of local land use decisions and the long-recognized deference accorded to an agency's interpretation of a law which it administers. Specifically, the City of Jacksonville maintains that the district court misapplied the "strict scrutiny" standard of review announced by this Court in Board of County Commissioners v. Snyder, 627 So. 2d 469 (Fla. 1993), by concluding that it extends to a local government's interpretation of the terms of its Comprehensive Plan for future development and, moreover, authorizes a *de novo* review – *at the district court level* – of the lower court's factual finding of consistency.

The issues presented below were two-fold. The threshold issue concerned an interpretation of the language *of the Plan itself*; namely, whether a hotel is an allowable land use in the "Residential/Professional/Institutional" commercial land use category of the City of Jacksonville's Comprehensive Plan. (City's App. B at 6-7). The City's Director of Planning and Development interpreted the terms of the Plan to mean that such a use could, under the appropriate circumstances, be

permissible. (City's App. E). The trial court agreed, refusing to second-guess the City's general interpretation of its own Plan. (City's App. B at 6-10).

The second issue dealt with the terms of the *development order*; that is, whether the specific development approved by the City's rezoning decision was consistent with the Comprehensive Plan. (City's App. B at 10). Pursuant to the directives of Section 163.3215, Fla. Stat., the trial court presided over a *de novo* trial on this issue. Upon completion of a three-day bench trial consisting of testimony elicited from both the parties and their competing experts as to the consistency of the subject development order with the goals, objectives and policies of the City's Comprehensive Plan, the trial judge found that the rezoning was, in fact, consistent with the City's Plan and therefore denied the request for injunctive relief. (City's App. B at 10-18).

On appeal, however, the First District concluded that the issue of consistency was a pure question of law that is reviewable *de novo*, subject to a "strict scrutiny" standard of review that accords no deference to the local government's interpretation of the terms of its Comprehensive Plan. Dixon v. City of Jacksonville, 774 So. 2d 763, 764-65 (Fla. 1st DCA 2000). Thus, the district court reasoned, this "strict scrutiny" standard of review was not limited to a determination of whether competent substantial evidence supported the trial court's

finding of consistency. Id. Rather, according to the district court, strict scrutiny review also applied to the meaning of the Plan itself, thereby allowing the district court to substitute its interpretation for that of the City's Planning Director, the City Council and the trial judge. Id.

STATEMENT OF THE FACTS

The underlying facts giving rise to this appeal stemmed from the attempts of Charles Dixon, Jr. and Charles Dixon, III – neighboring landowners to a commercial parcel which was rezoned from "Commercial Office" to "Planned Unit Development" – to enjoin the implementation of the rezoning ordinance on grounds that it was inconsistent with the City of Jacksonville's 2010 Comprehensive Plan. (City's App. B at 1-4). The proposed development consisted of a mix of both commercial and office uses – including a hotel – situated on a parcel with a designated land use classification of Residential/Professional/Institutional ("RPI"), one of five commercial land use categories set forth in the City's Comprehensive Plan. (City's App. B at 5-6; City's App. C; City's App. D).

The Dixon's fundamental objection to the development was their contention that the City's Comprehensive Plan did not expressly authorize the siting of a hotel in the RPI land use category. (City's App. B at 5-6). The person charged with exclusive authority for interpreting the City's Comprehensive Plan, however, disagreed. (City's App. B at 7; City's App. E).

A. The Interpretation

Prior to the City Council's consideration of the landowner's rezoning request, the City's Director of Planning and Development (the "Director") issued a written interpretation concluding that the development of a hotel was within the range of potentially permissible uses in the RPI commercial land use category. (City's App. E; City's App. F at 41; Tr. Vol. IV at 533-76). In determining *how* to interpret the City's Comprehensive Plan, the Director looked to the terms of the Plan itself, which provide:

> Each [land use] category has a range of potentially permissible uses, *which are not exhaustive*, but are intended to be illustrative of the character of uses permitted.

(City's App. E; City's App. F at 41) (emphasis added).

The Director then looked to various textual provisions of the City's Plan and concluded that the RPI land use category did not categorically exclude the development of a hotel. Rather, the mix of land uses included in the RPI category is *flexible* and consists of up to fifty percent commercial use; therefore, so long as the commercial development did not exceed fifty percent of the total land area, a hotel could be a permissible commercial use in RPI, so long as the specific development is consistent with the goals, objectives and policies of the Comprehensive Plan and all applicable land development regulations. (City's App. E; City's App. F at 46).

Once the Director opined that the development of a hotel was within the range of potentially permissible uses in the RPI commercial land use category, the proposed rezoning was ripe for review by the City Council for a determination of its overall consistency with the Comprehensive Plan. After a series of public hearings, seventeen of the eighteen City Council members voted to approve the rezoning, concluding that it was, in fact, consistent with the Comprehensive Plan and that it complied with all procedural requirements of the City's zoning ordinance. (City's App. G; Tr. Vol. IV at 576).

B. The *De Novo* Circuit Court Proceeding

Subsequent to the City's approval of the PUD rezoning request, the Dixons filed suit in the circuit court pursuant to Section 163.3215, Fla. Stat., which sets forth a cause of action for challenging a "development order" as being inconsistent with the local government's comprehensive plan for future development. Specifically, the Dixons maintained that the approved development was inconsistent with seventeen separate provisions of its 2010 Comprehensive Plan. For three days, the parties presented the testimony of their respective experts as to the consistency of the subject development order with the goals, objectives and policies of the City's 2010 Comprehensive Plan. After thoroughly considering the various goals, policies, and objectives of the Comprehensive Plan, and having

compared them to the subject development order and the evidence regarding the site as finally adopted, the trial judge ultimately found that the rezoning was, in fact, consistent with the City's Comprehensive Plan and therefore denied the Dixons' request for injunctive relief. (City's App. B at 10-17; Vol. I at 161, 177).

Notably, in his decision, the circuit court judge refused to second-guess the Director's interpretation of the City's Comprehensive Plan:

> Having considered the foregoing extracts [of the Comprehensive Plan] and the City's evidence of similar PUDs which have included uses not specifically listed in the overall land use category, the Court cannot disagree with the City's general interpretation of its own plan that a hotel can be an acceptable use within a PUD in an area designated RPI . . . .

(City's App. B at 10; Vol. I at 169).

Instead, the circuit court assessed the *evidence* presented and analyzed whether the subject PUD, as approved, was consistent with the City's Comprehensive Plan. For example, the court concluded – "*from the evidence*" – that:

> the proposed PUD is compatible with the overall character of the larger area in which this site . . . is located, as well as what appears to be the proposed future development of this area. The Court also notes that *the evidence* establishes that the PUD, as approved, provides for less than 50 percent of commercial use and less than 70 percent of office use on the site.
>
> . . . .

> *From the evidence*, the Court concludes that the PUD in question has been appropriately detailed, that it is a designated secondary use for this site, and that it is consistent with the functional land use classification.

(City's App. B at 9-10; Vol. I at 169) (emphasis added).

In effect, the circuit court properly considered the proceeding to be a *de novo* review of the *facts* relevant to the consistency of the proposed development with the City's Comprehensive Plan. The First District Court of Appeal, however, saw things differently.

C. The *De Novo* District Court Review

Rejecting the City's argument that deference should be given to the City's interpretation of its own Comprehensive Plan, the First District characterized the consistency issue as a pure question of law that is reviewable *de novo* pursuant to a "strict scrutiny" standard of review:

> We cannot agree with the City's argument that the standard [of review] is only one of determining whether there was competent and substantial evidence, which is far more deferential than that which we apply *infra*.
>
> . . . .
>
> Because we conclude that the issue before us is one that is "easily subject to examination for strict compliance with the plan," we apply the standard of strict scrutiny to resolve it, a process which involves a detailed examination of the development order for exact compliance with, or adherence to, the comprehensive plan. We reject, moreover, the City's argument that deference should be given

> to the City's interpretation of a law which it administers, thereby requiring its approval so long as its construction falls within the range of possible interpretations. We are instead presented with a question which is purely one of law, and we are not constrained by more deferential standards from substituting our judgment for that of the lower tribunal.

Dixon v. City of Jacksonville, 774 So. 2d 763, 764-65 (Fla. 1st DCA 2000).

Thus, rather than assess the evidentiary basis for the trial court's finding of consistency, the district court simply re-interpreted the City's Comprehensive Plan to conclude that a hotel was *not* an allowable land use in the RPI land use category under *any* circumstances because it was not expressly enumerated as a permissible use. Therefore, the First District reasoned, the trial judge committed reversible error by virtue of its decision to embrace the City's interpretation of its own Comprehensive Plan. In effect, the district court's opinion concludes that the evidence adduced at trial was neither relevant nor necessary to a determination of whether the development order was consistent with the Comprehensive Plan.

SUMMARY OF ARGUMENT

Although the First District's decision correctly notes that the issue of consistency is subject to "strict scrutiny" review, it erroneously concludes that this

equates to a *de novo* review of the lower court's finding of consistency, which it characterized as a pure question of law. As evidenced by the decisions of every other district court of appeal which has expressly considered this issue, however, the issue of consistency invariably entails a question of law *as applied* to a particular set of facts, given the unique nature of any given parcel of realty and its associated land uses. In other words, consistency is a question of fact, not law.

"Strict scrutiny" review of quasi-judicial land use decisions does not displace the long-recognized deference that this Court has accorded to an agency's interpretation of a law that it administers. A local government's interpretation of the terms of its comprehensive plan is entirely separate and distinct from the fact-specific analysis employed in determining whether a proposed rezoning is consistent with that plan. The former is a question of law, while the latter is one of fact. As such, the strict scrutiny standard of review does not apply; rather, the interpretation should be accorded due deference and remain undisturbed unless shown to be "clearly erroneous."

The need for flexibility in the application and interpretation of a local government's comprehensive land use plan is indispensable to its continued viability. Comprehensive plans have been likened to "constitutions" for local land use development. As such, the very nature of a comprehensive plan demands that

it be given a broad-based application to address a wide range of fact-specific circumstances. The district court below, however, improperly assumed the role of a "roving super agency," effectively rewriting selective portions of the City's Comprehensive Plan to transform a nonexclusive list of permissible uses into a purportedly exclusive list.

In short, the expansive scope of review employed by the First District below has significant implications for local governments throughout the State. Left undisturbed, the decision will undoubtedly engender confusion and further conflict over the respective roles of local governments and the courts in administering and interpreting local land use laws.

ARGUMENT

ALTHOUGH THE "STRICT SCRUTINY" STANDARD OF REVIEW APPLIES IN A *DE NOVO* PROCEEDING CHALLENGING THE CONSISTENCY OF A DEVELOPMENT ORDER WITH THE LOCAL GOVERNMENT'S COMPREHENSIVE PLAN, IT HAS NO APPLICATION TO THE LOCAL GOVERNMENT'S INTERPRETATION OF THE LANGUAGE OF THE PLAN ITSELF.

In 1985, the Florida legislature established a statutory mandate directing all local governments to adopt, implement and adhere to a comprehensive plan for land use. Ch. 86-55, Laws of Fla. In particular, the Growth Management Act requires that every land use decision of local government must be "consistent" with the goals, objectives and policies of its comprehensive plan. § 163.3194, Fla. Stat. (2000). Under the Act, a development order is deemed consistent with comprehensive plan where:

> the land uses, densities or intensities, and other aspects of development permitted by such order . . . are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan, and if it meets all other criteria enumerated by the local government.

§ 163.3194(3), Fla. Stat. (2000).

Soon after the implementation of this consistency mandate, the courts began to re-examine the traditional characterization of local zoning decisions as purely legislative acts subject to a "fairly debatable" standard of review. The seminal

decision in this regard originated not in Florida, but in Oregon. As aptly summarized by one of the leading commentators on Florida land use law:

> The Oregon Supreme Court in Fasano v Board of County Commissioners, 507 P.2d 23 (1973), represents the leading example of judicially-mandated reform. The Fasano court relied upon a provision in that state's traditional zoning and planning enabling act that zoning be "in accordance with" a comprehensive plan. Citing this requirement, the Fasano court held that the comprehensive plan was the principal legislative policy statement, that the zoning of property involved the application of that legislative policy to a specific rezoning request, and that therefore zoning decisions should be viewed as quasi-judicial rather than legislative acts. Accordingly, in Fasano the Oregon Supreme Court imposed new procedural requirements on local governments and held that such local zoning decisions would be subjected to much stricter scrutiny than was afforded by the traditional fairly debatable rule. Subsequently, a number of other state supreme courts adopted some version of the Fasano approach.

Thomas G. Pelham, *Quasi-Judicial Rezonings: A Commentary on the Snyder Decision and the Consistency Requirement,* 9 J. Land Use & Envtl. L. 243, 248-49 (1994).

In 1993, this Court followed suit, abandoning the traditional "fairly debatable" standard of review in favor of the less deferential review of "strict scrutiny. Board of County Commissioners of Broward County v. Snyder, 627 So. 2d 469 (Fla. 1993). What this Court did *not* do, however, is transform the issue of consistency into a pure question of law.

A. Consistency is a question of fact, not law; the issue, therefore, is whether competent substantial evidence supports a finding of consistency.

Section 163.3215 of the Growth Management Act sets forth the procedures by which a third party may challenge a development order[1] approved by the local government as inconsistent with the comprehensive plan:

> Any aggrieved or adversely affected party may maintain an action for injunctive or other relief against any local government to prevent such local government from taking any action on a development order, as defined in § 163.3164, which materially alters the use or density or intensity of use on a particular piece of property that is not consistent with the comprehensive plan adopted under this part.

§ 163.3215, Fla. Stat. (2001).

Contrary to the conclusion of the district court below, this *proceeding* (not the standard of review) is *de novo*. That is, the aggrieved third-party is entitled to a *de novo* evidentiary hearing and is not confined to the record established before the local government. See Poulos v. Martin County, 700 So. 2d 163 (Fla. 4h DCA 1997). The test is one of "competent substantial evidence." See Machado v. Musgrove, 519 So. 2d 629, 632 (Fla. 3d DCA 1987). That is, the circuit court strictly scrutinizes the proposed development against the relevant objectives and

[1] The Act defines a "development order" as "any order granting, denying or granting with conditions an application for a development permit (*e.g.*, the approval of a PUD rezoning request). § 163.3164, Fla. Stat. (2000).

policies of the local comprehensive plan to determine whether there is competent and substantial evidence to support a finding of consistency. Id. The circuit court does this by presiding over a *de novo* trial on the issue of consistency. The court hears evidence, weighs the credibility of competing witnesses and makes findings of fact concerning the development's consistency with the various goals, objectives and policies of the local government's comprehensive plan. This is precisely the approach taken by the circuit court below.

On appeal, the district court correctly stated the appropriate standard of review as one of strict scrutiny. It erroneously *applied* that standard, however, by assuming the role of the trial court and conducting its *own* determination of consistency *de novo* by declaring it to be a pure question of law. This analysis completely distorts the scope of "strict scrutiny" review announced by this Court in Snyder and applied by the other district courts of appeal in reviewing consistency challenges brought pursuant to Section 163.3215.

In Snyder, this Court re-evaluated the traditional standard of review employed by the courts in examining local zoning decisions and embraced the application of a "strict scrutiny" standard of review. Id. This Court then went on to define the parameters of this standard of review, carefully distinguishing it from

the type of strict scrutiny afforded in certain constitutional cases. According to this Court:

> In practical effect, the review by strict scrutiny in zoning cases appears to be the same as that given in the review of other quasi-judicial decisions. *See Lee County v. Sunbelt Equities, II, Ltd. Partnership*, 619 So.2d 996 (Fla. 2d DCA 1993) (The term "strict scrutiny" arises from the necessity of strict compliance with comprehensive plan.).

Id. at 475.

This "review of other quasi-judicial decisions," of course, is limited to a examination of whether competent substantial evidence supports the decision of the lower tribunal, as can be seen in the opinions of both the Fourth and Third District Courts of Appeal that squarely addressed the issue of "strict scrutiny" review in the context of a Section 163.3215 consistency challenge.[2]

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[2] The Fifth District, per Judge Sharp, has also opined that the appropriate standard of review is whether competent and substantial evidence supports the rezoning as being consistent with the land use plan. Orange County v. Lust, 602 So. 2d 568, 576 (5th DCA 1992) (Sharp, J., concurring specially); see also Gilmore v. Hernando County, 584 So. 2d 27, 31 (Fla. 5th DCA 1991) (Sharp, J. dissenting) (discussing the application of a "stricter standard of review in 'consistency' challenges").

Additionally, prior to Dixon, the First District had held that the issue was whether "competent substantial evidence" supported the trial court's finding of consistency. B.B. McCormick & Sons, Inc. v. City of Jacksonville, 559 So. 2d 252 (Fla. 1st DCA 1990).

In Southwest Ranches Homeowners Association, Inc. v. County of Broward, 502 So. 2d 931 (Fla. 4th DCA 1987), the Fourth District Court of Appeal applied strict scrutiny review to affirm the trial court's finding that a rezoning ordinance was consistent with Broward County's Comprehensive Plan. Although the Fourth Circuit employed strict scrutiny review, it nevertheless concluded that "the factual findings of the trial court should be accorded great weight." Id. at 938; see also Palm Beach County v. Allen Morris Co., 547 So. 2d 690, 695 (Fla. 4th DCA) ("The record establishes that the trial court satisfied the stricter scrutiny requirements set forth in Southwest Ranches . . . when it found the County's rezoning of the subject property consistent with the master plan."), *rev. dismissed*, 553 So. 2d 1164 (Fla. 1989).

Similarly, in Machado v. Musgrove, 519 So. 2d 629 (Fla. 3d DCA 1987) – a case relied upon by the First District in its opinion below – the Third District Court of Appeal characterized the strict scrutiny standard at the appellate level as a standard of review, not proof:

> The test in reviewing a challenge to a zoning action on grounds that a proposed project is inconsistent with the comprehensive land use plan is whether the zoning authority's determination that a proposed development conforms to each element and the objectives of the land use plan is supported by competent and substantial evidence. The traditional and non-deferential standard of strict judicial scrutiny applies.

Id. at 632.

Ironically, this is precisely the standard rejected by the First District in the decision below:

> We cannot agree with the City's argument that the standard is only one of determining whether there was competent and substantial evidence, which is far more deferential than that which we apply *infra*.

Dixon v. City of Jacksonville, 774 So. 2d 763, 764 (Fla. 1st DCA 2000).

Instead, the First District redefined the issue of consistency as a pure question of law, reviewable *de novo*, and subject to a strict scrutiny review that accorded no deference to the City's interpretation of its own Comprehensive Plan.

Strict scrutiny review, however, does not elevate the district courts to the role of what this Court has described as "roving super agencies":

> We reiterate that the "competent substantial evidence" standard cannot be used by a reviewing court as a mechanism for exerting covert control over the policy determinations and factual findings of the local agency. Rather, *this standard requires the reviewing court to defer to the agency's superior technical expertise and special vantage point in such matters.* The issue before the court is not whether the agency's decision is the "best" decision or the "right" decision or even a "wise" decision, for these are technical and policy-based determinations properly within the purview of the agency. The circuit court has no training or experience--and is inherently unsuited--to sit as a roving "super agency" with plenary oversight in such matters.

Dusseau v. Metropolitan Dade County Bd. of County Comm'rs, 794 So. 2d 1270, 1275-76 (Fla. 2001).

B. In accord with the long-standing principles of deference due to agency interpretations of laws which they are charged with administering, a local government's interpretation of its own comprehensive plan should not be interfered with by the courts unless "clearly erroneous."

To be sure, both the Growth Management Act and Snyder dramatically transformed the manner in which the courts review local zoning decisions. They did not, however, alter or diminish the well-established principles of deference that this Court has repeatedly accorded to agency interpretations of laws which they are charged with administering. As this Court just recently reiterated:

> An agency's interpretation of the statute it is charged with enforcing is entitled to great deference. See BellSouth Telecommunications, Inc. v. Johnson, 708 So.2d 594, 596 (Fla.1998). Further, a court will not depart from the contemporaneous construction of a statute by a state agency charged with its enforcement unless the construction is "clearly erroneous." PW Ventures, Inc. v. Nichols, 533 So.2d 281, 283 (Fla.1988).

Verizon Florida, Inc. v. Jacobs, 27 Fla. L. Wkly S 137, 2002 WL 220589 (Fla. Feb. 14, 2002).

Similarly, this Court's most recent decisions concerning a reviewing court's role in land use cases have strongly reaffirmed the principle that deference must be accorded to the expertise of local zoning authorities. Broward Conty v. G.B.V.,

Int'l Ltd, 787 So. 2d 838, 843 (Fla. 2001) (noting that certiorari review "is deliberately circumscribed out of deference to the agency's technical mastery of its field of expertise"); Dusseau, 794 So. 2d at 1276 (stating that a reviewing court must "defer to the agency's superior technical expertise and special vantage point in such matters").

Indeed, before the Dixon decision, the First District itself had opined that a local government's legal interpretation of its comprehensive plan was not subject to a non-deferential *de novo* re-examination by the courts:

> Even where review entails "strict scrutiny," *Board of County Commissioners v. Snyder*, 62 So. 2d 469, 475 (Fla. 1993), the circuit court is not authorized to decide questions of zoning policy or comprehensive plan consistency *de novo*. Local government has primary jurisdiction over such questions.

City of Jacksonville Beach v. Marisol Land Dev. Co., 706 So. 2d 354, 355 (Fla. 1st DCA 1998).

This is not to say, however, that the courts should turn a blind eye to a patently erroneous interpretation. The standard, of course, is one of "clearly erroneous." See, e.g., Las Olas Tower Co. v. City of Fort Lauderdale, 742 So. 2d 308, 312 (Fla. 4th DCA 1999) ("[W]hen the agency's construction of a statute amounts to an unreasonable interpretation, or is clearly erroneous, it cannot stand.") (citations omitted); see also St. Johns County v Owings, 554 So. 2d 535, 543 (Fla.

5th DCA 989) (Sharp, J., dissenting) ("If a Comprehensive Plan or zoning ordinance is capable of being interpreted in two or more different ways, it is error for a court not to give the zoning authorities' interpretation deference over its own view.").

Due deference to a local government's interpretation of its own comprehensive plan is neither a new nor novel concept. In fact, the Oregon Supreme Court – the one that initiated the sea of change in the judiciary's approach to reviewing "quasi-judicial" zoning decisions – has expressly declared on numerous occasions that a local government's interpretation of its land use laws is entitled to substantial deference and will not be disturbed unless "clearly wrong." See, e.g., Clark v. Jackson County, 836 P. 2d 710 (Or. 1992). The rationale for this deference, the Oregon Supreme Court reasons, is two-fold:

> First, deference is due a local governing body's interpretation of its own ordinance because that governing body is composed of the politically accountable representatives elected by the community affected by the ordinance. Second, and perhaps more important, deference is due a local governing body's interpretation of its own ordinance because that governing body is the legislative body responsible for enacting the ordinance and may be assumed to have a better understanding than . . . the courts of the intended meaning of the ordinance.

Gage v. City of Portland, 877 P. 2d 1187 (Or. 1994).

In sum, the City respectfully submits that local governments – not the courts – are best situated to interpret the precise scope and meaning of their own laws; accordingly, this Court should reaffirm the due discretion accorded to such interpretations and expressly declare that they are to be respected and affirmed, unless shown to be "clearly erroneous."

CONCLUSION

As more fully set forth in the preceding discussion, the decision of the district court erroneously applied the "strict scrutiny" standard of review to the City's interpretation of its own Comprehensive Plan and, additionally, mistakenly characterized the issue of consistency as a pure question of law subject to *de novo* review by both the trial judge and the appellate court. The City respectfully urges this Court to reverse the decision of the district court and remand with directions to apply the "clearly erroneous" standard of review to the City's interpretation of its Comprehensive Plan and to review – *not re-decide* – the circuit court's decision for competent substantial evidence supporting its finding of consistency.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Paul M. Harden, Esquire, 1301 Riverplace Boulevard, Suite 2601, Jacksonville, Florida 32207; Tracey I. Arpen, Jr., Esq., 117 West Duval Street, Suite 480, Jacksonville, Florida 32202; Robert Leapley, Jr., Esq. 200 W. Forsyth St., #1400, Jacksonville, Florida 32202; Mary Helen Campbell, Esq., Hillsborough County Attorneys Office, 601 E. Kennedy Blvd., #2700, Tampa, Florida 33601; William Birchfield, 9428 Baymeadows Road, Suite 625, Jacksonville, Florida, 32256; Harry Morrison, Jr., Florida League of Cities, P.O. Box 1757, Tallahassee, FL 32302; Keith Hetrick, Florida Home Builders Association, P.O. Box 1259, Tallahassee, FL 32302; Stephen H. Grimes, Holland & Knight, P.O. Drawer 810, Tallahassee, FL 32302; and Terrell K. Arline, 1000 Friends of Florida, P.O. Box 5984, Tallahassee, FL 32314, by overnight mail this _____ day of April, 2002.

_____
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ATTORNEY

CERTIFICATE OF COMPLIANCE

I CERTIFY that the typeface used in this brief is Times New Roman 14-point font, proportionally spaced, and therefore complies with the requirements of Rule 9.210(a)(2), F.R.A.P.

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ATTORNEY

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