

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC02-815

MIAMI- DADE COUNTY,

PETITIONER,

VS.

OMNIPOINT HOLDINGS, INC.,

RESPONDENT.

AMICUS BRIEF

OF THE CITY OF SUNNY ISLES BEACH

LYNN M. DANNHEISSER
CITY ATTORNEY
HANS OTTINOT
DEPUTY CITY ATTORNEY
17070 Collins Ave. Suite 250
Sunny Isles Beach, FL 33160
305-947-0606

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES	3
INTRODUCTION	4
STATEMENT OF THE CASE AND FACTS	4
SUMMARY OF THE ARGUMENT	4
ARGUMENT	5
I. THE DISTRICT COURT EXCEEDED THE PROPER SCOPE OF REVIEW FOR SECOND –TIER CERTIORI REVIEW	5
II. THE DISTRICT COURTS DECISION HAS A CHILLING EFFECT ON LAND USE DECISIONS IN MIAMI-DADE COUNTY	6
CONCLUSION	8
CERTIFICATE OF SERVICE	8
CERTIFICATE OF TYPE SIZE & STYLE	9

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<i>Dusseau v. Metropolitan Dade-County Commissioners</i> , 794 So. 2d. 1270 (Fla. 2001)	5
<i>Florida Power and Light Co. v. City of Dania</i> , 761 So.2d 1089 (Fla. 2000)	5
<i>Haines City Community Development v. Haines City</i> 658 So.2d 523, 530 (Fla. 1995)	5
<i>Community Development v. Heggs</i> , 658 So.2d 523, 530 (Fla. 1995)	4
<i>Harrell’s Candy Kitchen, Inc. v. Sarasota-Manatee Airport Authority</i> , 111 So. 2d 439, (Fla. 1959).	6

INTRODUCTION

The City of Sunny Isles Beach is a municipality that was incorporated in 1997. The City is located on a barrier island in northeast Miami-Dade County. Prior to incorporation of the City, Miami-Dade County was responsible for approving all zoning applications or requests in the Sunny Isles Beach area. Since its incorporation, the City has basically used the standards and criteria established by Miami-Dade County to review zoning applications.

This case is of great importance to the City because the Third District Court's decision has put a hold on the development boom that the City was experiencing since its incorporation. Because the City has acted in reliance in approving zoning applications based on the long-standing criteria established by Miami-Dade County, the City has a direct and substantial interest in this case. Thus, the City is seeking to have a voice in a case that has a devastating impact on the development of the City.

STATEMENT OF THE CASE AND FACTS

The City adopts the statement case and facts of Petitioner, Miami-Dade County.

SUMMARY OF THE ARGUMENT

The decision of the District Court should be reversed because the District Court had no jurisdiction to consider the facial constitutional of the zoning ordinance in a case that came to the Court on certiorari review from a zoning appeals board. Simply stated, the District Court exceeded the proper scope of level-two certiorari review.

Moreover, as matter of policy, the District Court's decision has a "chilling effect" on land use decisions made by local governments in Miami-Dade County. More specifically, the District Court's opinion failed to provide local governments with

adequate guidance to draft an appropriate zoning code that would satisfy the requirements suggested by the District Court in its opinion.

ARGUMENT

1. THE DISTRICT COURT EXCEEDED THE PROPER SCOPE OF REVIEW FOR SECOND-TIER CERTIORARI REVIEW.

When a circuit court reviews a quasi-judicial decision made by a zoning board, the court's review is governed by a "three-part standard of review: (1) whether procedural due process is accorded; (2) whether the essential requirements of law have been observed; and (3) whether the administrative finding and judgment are supported by competent substantial evidence." Haines City Community Development v. Heggs, 658 So. 2d 523 (Fla. 1995). "The standard of review for certiorari in the district court effectively eliminates the substantial competent evidence component." Id. The inquiry is limited to whether the circuit court afforded procedural due process and whether the circuit court applied the correct law. Id. Indeed, "[a]s *a case travels up the judicial ladder, review should consistently become narrower, not broader.*" (emphasis added)

This Court has made it clear in numerous decisions that districts courts must follow the proper standard of review when they review an order of circuit court acting in its review capacity over a quasi-judicial matter. Dusseau v. Metropolitan Dade County Commissioners, 794 So. 2d 1270 (Fla. 2001) (holding that when district court reviews decision of circuit appellate court, standard of review is whether court afforded procedural due process and observed essential requirements of law); Florida Power and Light Co. v. City of Dania, 761 So. 2d 1089 (Fla. 2000) (holding that

district court's review of zoning application was limited to deciding whether the circuit court had made an error of law).

In this case, the District Court not only exceeded the limited scope of review for second-tier certiorari, but it went too far outside the scope of review for any issue in this case. In other words, the District Court's review was so broad that it was in essence a trial on the merits. That is not permitted under the standards of review established by this Court for second tier certiorari review. In fact, the District Court's decision has given local governments reasons to believe that the scope of review for second-tier certiorari established by this Court is no longer the norm. Thus, a reversal of the District Court's decision would reaffirm the scope of review for second-tier certiorari established by this Court.

II. THE DISTRICT COURT'S DECISION HAS A CHILLING EFFECT ON LAND USE DECISIONS IN MIAMI-DADE COUNTY.

"Zoning Regulations duly enacted pursuant to lawful authority are presumptively valid and the burden is upon him who attacks such regulation to carry the extraordinary burden of both alleging and proving that it is unreasonable and bears no substantial relation to the public health, safety, morals or general welfare." Harrell's Candy Kitchen, Inc. v. Sarasota-Manatee Airport Authority, 111 So. 2d 439, (Fla. 1959). Indeed, "*Courts will not substitute their judgment as to reasonableness of a particular rule or regulation where such has been duly adopted pursuant to lawful authority when such reasonableness is fairly debatable.*" Id. (emphasis added)

In this case, the District Court has substituted its judgment for the legislative

body. In fact, the Court's failure to follow the standard of review established by this Court has had a chilling effect on the City's ability to approve zoning application under its regulations. This City and other municipalities have deferred hearings on to zoning applications for single family and multi-family development projects due to the District Court's decision. Simply stated, the applicant faces substantial risk if the City approves his or her zoning application.

Moreover, there are strong public policy reasons for reversing the District Court's decision. First, the opinion of District Court has created uncertainty with respect to the process utilized by local governments in Miami-Dade County to approve zoning applications. The uncertainty has caused development in this City to come to an almost complete halt during the time when the economy in this Country needs a boost. Second, judicial deference, which is inherent in the process of reviewing zoning appeals, was eliminated in this case. Finally, the District Court's decision provided objectors with another avenue to attack legislative decisions made by local government without following the certiorari review process that was established by this Court. For example, the City and other local governments in Miami-Dade County have had lawsuits filed against them based on the District Courts decision. Thus, the policy reasons dictate reversal of the District Court's decision.

CONCLUSION

For the reasons stated above, the decision of the third District Court should be reversed.

Respectfully submitted,

LYNN M. DANNHEISSER, City Attorney
HANS OTTINOT, Deputy City Attorney
City of Sunny Isles Beach, Florida
17070 Collins Ave., Suite 250
Sunny Isles Beach, Florida 33160
Telephone: (305)-947-0606
Facsimile: (305)-949-3113

Hans Ottinot, Deputy City Attorney
Fla. Bar No. 077577

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered via United States Mail to: Robert A. Ginsburg, County Attorney, at 111 N.W. 1st. Street, Suite 2810, Miami, Florida 33128, Jay W. Williams, Assistant County Attorney, at 111 N.W. 1st Street, Suite 2810, Miami, Florida 33128; Deborah L. Martohue, at Hayes & Martohue, 5959 Central Avenue, Suite 104, St. Petersburg, Florida 33710, On this ____ day of February, 2003.

Hans Ottinot

CERTIFICATE OF TYPE SIZE & STYLE

The City of Sunny Isles Beach hereby certifies that the type size and style of the Brief of Amicus Curiae is Times New Roman 14pt.

Hans Ottinot
Florida Bar No. 077577