**IN THE SUPREME COURT OF THE STATE OF FLORIDA**

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**CASE NUMBER SC02-815**
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**MIAMI-DADE COUNTY,**

**Petitioner,**

**v.**

**OMNIPOINT HOLDINGS, INC.,**

**Respondent.**

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**ON PETITION FOR REVIEW OF A DECISION**
**FROM THE THIRD DISTRICT COURT OF APPEAL**

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# REPLY BRIEF OF PETITIONER, MIAMI-DADE COUNTY

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**ROBERT A. GINSBURG**
**Miami-Dade County Attorney**
**Stephen P. Clark Center, Suite 2810**
**111 N.W. 1st Street**
**Miami, Florida 33128-1993**
**Tel: (305) 375-5151**
**Fax: (305) 375-5634**
**By**
Jay W. Williams and
Robert L. Krawcheck
Assistant County Attorneys


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## INTRODUCTION

Omnipoint agrees with the County that the facial constitutionality of the County's zoning provisions is an ongoing issue of great public importance that this Court should decide:

> Irreparable damage to the economy of Miami-Dade County has resulted and will continue until this cloud is lifted. As a result, Omnipoint joins the request of the County and Amici that a decision on the merits of the constitutionality of the subject Ordinances be declared by this Court…. [W]ithout resolution on the merits, the adverse effects of the decision will continue until … the district court … will render the same decision…. One could also reasonably expect local and statewide ramifications resulting from uncertainty regarding what language will constitute sufficiently clear and definite zoning standards in the interim, thus the issue is of *great public importance*.[1]

OB at 11.[2] Omnipoint also agrees that the district court erred in holding the County's ordinances facially unconstitutional. OB at 6, 13-15. Omnipoint, therefore, effectively concedes that this Court has conflict jurisdiction.

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[1] The impact and public importance of the Third District Court's opinion goes beyond "zoning standards." If First Amendment strict scrutiny exactness is now required of "garden variety" zoning legislation, as held by the Third District Court, the same standard will logically be argued to apply to all manner of state and local legislation. This is no small matter. As recognized in *Lady J. Lingerie v. City of Jacksonville*, 176 F.3d 1358, 1362 (11th Cir. 1999), *cert. denied*, 529 U.S. 1058 (2000), this strict scrutiny standard essentially negates any discretion whatsoever on the part of administrative boards or other factfinders: "[T]he cases show that *virtually any amount of discretion beyond the merely ministerial is suspect*." The application of such a standard obviously has far-reaching consequences for state and local governments, and therefore the public, throughout Florida.

[2] The following abbreviations are used: "IB" for County's Initial Brief; "OB" for Omnipoint's Brief; "App." for the Amended Appendix to the County's Initial Brief; and "Supp. App." for the Supplemental Appendix to this Reply Brief. All emphasis herein is supplied or modified unless otherwise indicated and citations within quoted material are generally deleted.

Another matter of great public importance arises out of the circuit court decision. That decision holds, *inter alia*, that discrimination under the Federal Telecommunications Act, 47 U.S.C. § 332 (1996) (the "TCA") must be found by the courts, and approval of an application will effectively be required, based upon the existence of a single communications tower in an area. App. 1 at 7-8. *See* discussion § III.D., *infra*.

## ARGUMENT

### I. THE COUNTY'S ZONING PROVISIONS ARE NOT UNCONSTITUTIONAL EITHER FACIALLY OR AS APPLIED.

Omnipoint concedes that the County Code sections in question are not *facially* unconstitutional. OB at 6, 13-15. Omnipoint argues, however, without any citation of authority, that unless the unusual use provision is "construed" to exclude necessity, reasonableness, and compatibility as independent criteria, the provision is unconstitutionally vague "as applied to Omnipoint and telecommunications facilities in general." OB at 16, 17-27.[3] The County objects to this argument, which was neither raised in nor decided by the lower courts and therefore is not properly before this Court. *See* § II, *infra*. Although page limitations do not permit the

[3] Omnipoint's "as applied" constitutional argument pertains only to the County's unusual use and special exception provision and makes no mention of the County's modification and non-use variance provisions, notwithstanding Omnipoint's heading to § III of its Answer Brief.

County to fully address this new constitutional issue, the County briefly responds in an abundance of caution.

Omnipoint's conclusion that the County's unusual use provision is unconstitutional "as applied" is incorrect for the same reasons that the district court's facial unconstitutionality holding is incorrect. Both conclusions are based upon an out-of-context, isolated view of particular code provisions without considering (a) other provisions of the County Code, (b) controlling provisions of the County's Comprehensive Development Master Plan ("CDMP"), and (c) controlling Supreme Court and other case law. *See* IB 7-13, 17-31.

The County's CDMP and Code provisions demonstrate that it was not the legislative body's intent for the term "compatibility" to be evaluated strictly "within the context of the seven enumerated criteria" of § 33-311(A)(3), as argued by Omnipoint. *See* IB 17-22. To the contrary, the "*when considering … compatibility* [etc.]" language of that section requires that the seven preceding criteria be applied within the context of the compatibility requirement.[4] This is confirmed by *the introductory and concluding provisions* of § 33-311, which

[4] *See, e.g., BellSouth Mobility, Inc. v. Miami-Dade County, Florida*, Case No. 98-2474-CIV-JORDAN (S.D. Fla. 2001) (Order denying Rule 59(E) motion) (rejecting similar construction to that urged by Omnipoint in the instant appeal as "*render[ing] the remaining language of the ordinance superfluous*", and noting that "if the County had intended to *conclusively* permit a proposed use once an absence of burdens [on the seven enumerated criteria] is shown, *it could have written its ordinance in such a manner*"). App. 12, at 2-3.

mandate consideration of other necessity, reasonableness, and compatibility criteria. *See* § 33-311(A) and (F). App. 6. *See also* § 33-310. App. 5. It is also confirmed by the compatibility provisions of the CDMP. Indeed, the provisions of the CDMP are *required* to be incorporated into the County's zoning regulations and *must* be applied by County zoning boards when reaching zoning decisions. *Board of County Comm'rs of Brevard County v. Snyder*, 627 So.2d 469, 473, 475 (Fla. 1993).[5]

Omnipoint also sets up and attacks "straw man" arguments having no basis in either the County Code or the County's Initial Brief. First, Omnipoint equates

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[5] The following compatibility provisions of the County's CDMP are particularly relevant to Omnipoint's application to erect a 148 foot tall communications tower near residential neighborhoods: CDMP Policy 4A of the Land Use Element ("LUE") ("when evaluating ***compatibility*** among *proximate land uses* the County *shall* consider such factors as … *height*, [and] *scale* of architectural elements….") (App. 8, p.I-10); LUE Objective 4 ("County shall … reduce … land uses which are *inconsistent* … *with the character of the surrounding community*") (App. 8, p. I-10); LUE Concept 7 (a "long-standing concept [of the] CDMP" is to "[p]reserve sound and stable residential neighborhoods") (Supp. App. 1, p.I-58); the interpretive text for the "Business and Office" category ("In reviewing *zoning requests or site plans*, the specific … *dimensions*, configuration and *design* considered to be appropriate will depend on *locational factors, particularly* **compatibility** *with both adjacent and adjoining uses.* … Uses should be limited when necessary to *protect* both adjacent and adjoining *residential* uses….") (App. 8, p.I-35); and the specific provision of the LUE addressing unusual uses ("the uses listed as 'unusual uses' in the zoning code [such as Omnipoint's requested tower] … may be granted *only* if the requested use is consistent with the objectives and policies of this Plan [such as Policy 4A and Objective 4, *supra*], and provided that the use would be ***compatible*** and would not have an *unfavorable effect* on the surrounding area … where the character of the buildings, including *height*, … *scale*, … or *design* would detrimentally impact the surrounding area.") (App. 8, p.I-62).

aesthetics to compatibility, arguing that this "creates a standardless zoning approval process." OB at 22. Omnipoint overlooks the distinction between mere aesthetics and the more comprehensive issue of "compatibility," both as that term is commonly understood,[6] and pursuant to the various criteria of the CDMP and County Code, *i.e.*, height, scale and design *in relation to* the surrounding area. *See* n.5, *supra*. Second, Omnipoint argues that because "the area immediately surrounding the Property lacks any tall buildings and towers with structural capability to support additional antennas and equipment …, [t]hese facts demonstrate the necessity and reasonableness of Omnipoint's application. However, if this Court accepts the County's position that the same facts demonstrate incompatibility … a standard is created that could never be satisfied…." OB at 24-25. The county, however, has never so argued. Omnipoint again overlooks the key consideration--the proximity of its proposed 14-story tower to residential neighborhoods and its incompatibility based upon express

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[6] *See*, *e.g.*, *Metropolitan Dade County v. Section 11 Property Corp.*, 719 So. 2d 1204, 1205 (Fla. 3d DCA 1998) (when a zoning board examines the issue of compatibility, it properly considers aesthetics, *as well as* use).

criteria. Omnipoint also makes two non-record arguments that should be stricken or disregarded by this Court. OB at 26-27; and at 46, n.27.[7]

[7] Omnipoint attacks not the substance of the County Code but the identity of the decision makers, stating that the "County [unlike any other county in the state] has institutionalized NIMBYISM (not-in-my-backyard) by delegating the vast majority of final zoning authority in no less than thirteen *neighborhood*-zoning boards." OB at 26-27 (notes omitted). On the present record, neither the County nor Omnipoint can speak to the procedures of the other 65 counties in Florida. However, despite Omnipoint's rhetoric, Miami-Dade County does not zone on a *neighborhood* basis. Rather, the County provides for the making of *certain* interim and *certain* final zoning decisions by both elected and appointed public officials on a "community" basis. § 20-40 - 20-43, County Code, Supp. App. 2; Ord. 02-118, Supp. App. 5, § 33-306, Code, Supp. App. 2; § 33-311 - 33-314, App. 6, Supp. App. 4. These officials serve on some 13 community councils acting, *inter alia*, as Community Zoning Appeals Boards (CZABs) throughout the entire unincorporated area of the county. *Id.*, Supp. App. 5. "The unincorporated area of Miami-Dade County encompasses a vast geographical area and a population of about 1.2 million people [and] can be described as a unique geopolitical jurisdiction…." *Levy v. Miami-Dade County*, 2003 WL 1743738 *5 (S.D. Fla.). The average population within each of the 32 municipalities comprising the County's *in*corporated area, with less than half of the County's population, is 33,739, whereas the average community council population is 92,785, *275% of the average municipal population*. *Id.*, at *2-*4. This is hardly neighborhood zoning, but is responsive to the movement toward incorporation within the county, *see generally Levy*, and is consistent with the restructuring of county government as ordered by the United States Appeals Court pursuant to the Voting Rights Act of 1965, 42 U.S.C.A. § 1973 *et seq*. *Meek v. Metropolitan Dade County*, 908 F.2d 1540 (11th Cir. 1990), *reh'g denied*, 918 F.2d 184 (1990), *cert. denied*, 499 U.S. 907, 111 S.Ct. 1108, 113 L.Ed.2d 217 (1991), *op. after remand*, 985 F.2d 1471 (1993).

Omnipoint also alleges, without any record support, that a) the County has "elected" not to adopt new standards governing the placement of telecommunications facilities, and b) despite this "delay," the wireless industry has not taken advantage of the Third District Court's opinion "in an effort to avoid public hearing approval." OB at 46, n.27. First, contrary to Omnipoint's representation, the wireless industry, including Omnipoint itself, has taken advantage of the district court's opinion to bypass normal zoning considerations on *at least* two occasions since the opinion was rendered. App. 9, 11. This *is* a matter of record. *See* discussion at IB, p. 32-33.

Second, although Omnipoint's argument is outside the record, any "delay" in enacting a new ordinance would simply reflect the near impossibility of drafting an ordinance with the rigid exactness now required of zoning ordinances, while

## II. THE DISTRICT COURT EXCEEDED ITS JURISDICTION.

"It is a fundamental rule that [constitutional] questions which are not presented to the Court and which do not necessarily inhere in those questions which are presented *cannot* be decided by the Court." *Henderson v. Antonacci*, 62 So. 2d 5, 7 (Fla. 1952); *see also State v. Turner*, 224 So. 2d 290, 291 (Fla. 1969). Omnipoint, however, relies upon *Miami Gardens, Inc. v. Conway*, 102 So. 2d 622 (Fla. 1958), to argue for "an exception to the general rule [that] requires disposal of any issues that are fundamental to the decision in the case." OB at 8. *Conway* is inapposite because it (a) did not concern a constitutional issue, (b) did not involve limited second-tier certiorari review, and (c) did involve an issue critical to the case (validity of a deed in blank) that *had been raised before a Special Master in an earlier proceeding in that case*. *Conway*, at 625.

Similarly, the cases cited in support of Omnipoint's argument that the district court had a "duty" to declare statutes unconstitutional (OB, at 9), *did* involve explicit challenges to the constitutionality of such ordinances at the circuit court level, and *did not* involve limited second-tier certiorari. *City of Miami Beach*

simultaneously protecting the public welfare and the stability of residential neighborhoods, all without unduly limiting the wireless industry's opportunities for placement of their facilities. Indeed, the great public importance of this case is further demonstrated by the realization that any "delay" thus far encountered occurred during the drafting for just *one* of approximately 97 listed unusual uses. § 33-13, Code. App. 2. This number does not include "special exceptions" and "new uses" that, under the district court's opinion, must also be governed by standards wherein "virtually any amount of discretion … is suspect." *See* n.1, *supra*.

*v. Lachman*, 71 So. 2d 148, 150 (Fla. 1954); *Waybright v. Duval County*, 196 So. 430, 432 (Fla. 1940); *Florida Home Builders Ass'n v. Div. of Labor*, 367 So. 2d 219, 220 (Fla. 1979); *City of Miami v. Save Brickell Avenue, Inc.*, 426 So. 2d 1100 (Fla. 3d DCA 1983).[8] Moreover, Omnipoint can cite to no case recognizing *certiorari* jurisdiction to decide issues of facial constitutionality, even if such issue had been raised. This Court *has held*, however, that certiorari is not the proper procedural vehicle to attack legislative action. *Martin County v. Yusem*, 690 So. 2d 1288, 1295 (Fla. 1997). *See also Broward County v. GBV Int'l Ltd.*, 787 So. 2d 838, 848 n.30 (Fla. 2001) (Wells, J., concurring) (citing *Yusem*).

The district court also exceeded its jurisdiction in finding a "prohibition" under the TCA. Omnipoint itself recognizes that, "`[T]here is no general rule classifying what is an effective prohibition [under the TCA].' It is a case-by-case determination." OB at 43 (citation omitted). Given this lack of a general rule, the district court could not have found a violation of a "clearly established principle of law" as required for certiorari review. *Haines City Community Dev. v. Heggs*, 658 So.2d 523, 528 (Fla. 1995).[9] In addition, there is no factual basis for the district court's conclusion on this issue. *See* IB at 44-45.

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[8] Omnipoint also relies on *Pollock v. Dept. of Health and Rehabilitative Services*, 481 So. 2d 548 (Fla. 5th DCA 1986), cited by Omnipoint as *In Interest of R.W.* (OB, at 8), which is equally unavailing. *See* IB at 37, n.17.

[9] Of course, ironically, the district court found such "prohibition" while simultaneously "denying" the petition for writ of certiorari. App. A at 8.

**III. THE DISTRICT COURT FAILED TO REVIEW THE CIRCUIT COURT'S DECISION, WHICH DECISION DEPARTED FROM THE ESSENTIAL REQUIREMENTS OF LAW RESULTING IN A MANIFEST INJUSTICE.**

**A. Standard of Supreme Court Review.** As to the standard of review, Omnipoint has again advanced a "straw man" argument. The County never made any "bold assertion … that this Court's standard of review is *de novo* on all of the issues raised, including whether or not the record contains substantial competent evidence." OB at 28. The County merely cited this Court's practice of making *de novo* determinations of whether the *district* court properly performed its second-tier certiorari review. IB at 35. There is no need in the present case to "parse through the record conducting a *de novo* review of the record below." OB at 27. As shown *infra*, the circuit court's departures from essential requirements of law concerning substantial competent evidence appear on the face of the circuit court opinion, just as occurred in *Dusseau v. Metro. Dade Bd. of County Comm'rs*, 794 So. 2d 1270 (Fla. 2001), *GBV Int'l*, 787 So. 2d 838, and *Florida Power & Light Co. v. City of Dania*, 761 So. 2d 1089 (Fla. 2000).

**B. The District Court Did Not "Affirm" the Circuit Court's Decision.** Omnipoint argues that the Third District Court affirmed the circuit court's decision, and that the district court's constitutional analysis was merely an "additional" basis for its ruling. *See, e.g.,* OB at 5, 12, 13, 15. Omnipoint then argues that, because of such "affirmance", there can be no further review of the

circuit court's opinion because the *district court* found no "miscarriage of justice". OB at 15, 28, 30. It is evident, however, that the Third District Court's constitutional analysis was not an "additional basis" for its decision – it was the *sole* basis. *See* IB at 42-43.

**C. Circuit Court Opinion Facially Establishes Departure from Essential Requirements of Law and Miscarriage of Justice.** Relying upon yet another inaccuracy, Omnipoint represents that "the circuit court's opinion *clearly states* that it reviewed the *record in its entirety* to determine only whether or not the record contained *any* substantial competent evidence to support the board's decision (R.62-68)." OB at 32 (underscoring in original). Nowhere at R.62-68 or elsewhere in the circuit court's opinion is there any such "statement." App. 1. Omnipoint further states: " [T]he circuit court concluded … *that the record contained* ***no other competent substantial evidence*** *to support the Board's decision*. (R.66-68)." OB at 32-33 (underscoring in original, note omitted). Once again, nowhere at R.66-68 or elsewhere in the circuit court's opinion is there any such conclusion that the *record* contained *no* evidence to support the zoning board's decision. App. 1. To the contrary, Omnipoint's own correct articulation of the circuit court's duty to review the *entire record* for *any* supportive substantial competent evidence, together with the fact that the circuit court's opinion itself *sets*

*forth* such supportive evidence, establishes the circuit court's departure from the essential requirements of the law.

The *actual* findings in the circuit court opinion are as follows: (1) "[T]he board *relied upon* the testimony of the *objectors* at the two public hearings to deny the application …, [but w]e do not find that *this testimony* rises to the level of substantial competent evidence…." (App. 1 at 5, 7); (2) "[*Omnipoint*] *demonstrated* that the application was … *not incompatible* with the surrounding area" (App. 1 at 6); (3) "[I]t *cannot be argued* that the [proposed] monopole would be out of character for the neighborhood" (App. 1 at 8); and (4) the mere existence of one other communications tower in the area conclusively established discrimination under the TCA (App. 1 at 7, 8). Each of the foregoing findings constitutes a departure from the essential requirements of law.

Finding (1) ignores documentary evidence that by itself could support a finding of incompatibility, and that clearly provides a *factual* basis for testimony by the neighbors that the tower would be incompatible with their neighborhood. App. 1 at 3-4.[10] This is a departure from the requirements of law. *See Dusseau*, 794 So.2d

[10] The following evidence is all taken from the face of the circuit court opinion: "[Omnipoint's] proposed tower would be 148 feet tall, the height of a 14 story building." App. 1 at 2. "[E]vidence submitted into the record was photo simulations, landscape plans, photos of similar (but shorter) monopoles, and plans for antennas…." *Id.*, at 4. Based on these *facts*, neighbors testified that "the height of the tower and its industrial nature [was] incompatible with the surrounding area, … that [while] the electric poles were *not visible* and … the BellSouth tower *could barely be seen*, … [nothing would] block the view of the 148 foot tower." *Id.*, at 3, 4. This disregarded evidence was clearly relevant to the CDMP and Code compatibility criteria for the

at 1275 (upholding district court ruling that circuit court departed from essential requirement of law when it "ignored evidence that support[ed] the [agency's] ruling"). In "finding (2)" the circuit court substitutes its evaluation of the evidence for that of the CZAB and makes a specific factual finding as to what Omnipoint *demonstrated*. This contravenes *GBV Int'l*, 787 So. 2d at 845 (circuit court cannot comb the record to extract its own factual finding), and *Florida Power & Light*, 761 So.2d at 1093 (circuit court could not decide anew what *opponents* of the zoning action had *shown, i.e.*, *demonstrated*).

Finding (3) both repeats the mistake of "finding (2)" and compounds the problem by effectively creating a new irrebuttable presumption negating the County's compatibility requirements ("***it cannot be argued*** that the monopole would be out of character for the neighborhood"). App. 1. The circuit court both substituted its judgment for that of the CZAB and "rewrote" the County's zoning

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review of unusual uses. *See* § 1, *supra.*

code and CDMP to make two factors (a nearby tower and a BU-1A zoning district), standing alone, dispositive of compatibility. Finally, "finding (4)", discussed further *infra,* constitutes not only impermissible fact finding, *see GBV Int'l* at 845, but also *sua sponte* fact finding, given the circuit court's own recognition that Omnipoint "does not state how the board's action" is discriminatory. App. 1 at 7.

**D. <u>Failure to Apply Correct TCA Law</u>.** The circuit court held *de novo* that the CZAB's decision violated the TCA provision that a local government "shall not *unreasonably* discriminate among providers of *functionally equivalent* services". App. 1 at 7 (noting that Omnipoint neither articulated an argument nor provided case law supporting such a conclusion). This discrimination holding necessarily included the following affirmative findings: (a) that the nearby BellSouth tower, constructed in 1982 (App. 1 at 7, n.4), provided "functionally equivalent" services;[11] and (b) that the mere existence of that tower established "*unreasonable discrimination*" against Omnipoint. App. 1 at 7.

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[11] "[T]he term '*functionally equivalent services*' … [refers] *only* to personal wireless services". H.R. Conf. Rep. No. 104-458, 104th Cong., 2d Sess. 208, *reprinted in* 1996 U.S. Code Cong. & Admin. News at 222 (Supp. App. 6). BellSouth's 20-year-old tower could have been used for any number of non-personal wireless services such as paging, two-way private radio communications, or internal corporate communications.

As a matter of law, it is not *unreasonable* to treat facilities that create *different* visual or aesthetic concerns differently, even *if* those facilities provide functionally equivalent services. App. 1 at 7-8 (citing legislative history of the TCA). As disclosed by the circuit court's opinion, the record contains substantial evidence that the *placement* of Omnipoint's proposed tower would create *different visual concerns*, since the BellSouth tower "could barely be seen" from the residential neighborhood, but nothing would block the view of Omnipoint's 148-foot tower. App. 1 at 4. The circuit court's *affirmative* finding of discrimination, especially given the evidentiary support for a finding of *no* discrimination, is the antithesis of the circuit court's duty to review the record for the existence of substantial competent evidence to *support* a zoning decision. *GBV Int'l*, 787 So.2d at 845.

The circuit court opinion creates precedent that the denial of a communication tower near an existing tower must result in a finding of discrimination under the TCA. This precedent will directly impact the CZABs and County Commission, may indirectly impact other zoning authorities, and could result in a proliferation of towers wherever one already exists or may in the future be approved. Because of the legal precedent established and the physical impacts upon the community, the manifest injustice created by the opinion is above and beyond the usual miscarriage of justice that warrants "reversal" of the circuit court

for failing to apply the correct law of substantial competent evidence. *See Dusseau*, *Florida Power & Light*, and *GBV Int'l*, discussed *supra*.[12]

**CONCLUSION**

The Court should grant the relief requested in the County's Initial Brief.

Respectfully submitted,

ROBERT A. GINSBURG
Miami-Dade County Attorney
Stephen P. Clark Center, Suite 2810
111 N.W. First Street
Miami, Florida 33128-1993
Tel: (305) 375-5151
Fax: (305) 375-5634

By:___________________________

Jay W. Williams
Assistant County Attorney

By:___________________________

Robert L. Krawcheck
Assistant County Attorney

[12] The circuit court also found that the CZAB's written decision needed to "contain written findings of fact tied to the evidence of the record", despite that court's recognition that "there is disparity between the courts as to what [the TCA] actually require[s]." App. 1 at 9. The circuit court's remand "with instructions to determine the application in accordance with this opinion" would not require approval of the application, but would enable the County to amend its resolution to comply with the circuit court's requirements. The *district* court, however, improperly converted the circuit court's remand to an express directive to *approve* the zoning application. *See* IB at 43-44. The County disagrees with the conclusion of the circuit court, but does not ask this Court to rule upon the merits of this unsettled issue because it does not constitute a violation of "a clearly established principle of law" as required for certiorari review, just as the circuit court should not have ruled on this unsettled issue. *Heggs*, 658 So.2d at 528. It is the district court's exceeding of its jurisdiction, and its failure to correct the circuit court's departures from the requirements of the law, for which the County seeks relief through the present petition.

Florida Bar No. 379107

Florida Bar No. 128019

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was hand-delivered this _____ day of May, 2003, to: ***Lynn M. Dannheisser***, City Attorney, and ***Hans Ottinot***, Deputy City Attorney for the City of Sunny Isles Beach, Florida, 17070 Collins Avenue, Suite 250, Sunny Isles Beach, Florida 33160; ***Alejandro Villarello***, City Attorney, and ***Joel E. Maxwell***, Deputy City Attorney, City of Miami, City Attorney's Office, Miami Riverside Center, 444 S.W. 2nd Avenue, Suite 945, Miami, Florida 33130-1910; ***William M. Grodnick***, City Attorney, City of Hialeah, 501 Palm Avenue, 4th Floor, Hialeah, Florida 33010; ***Eileen Mehta, Esquire***, 200 South Biscayne Boulevard, Suite 2500, Miami, Florida 33131; ***Elizabeth M. Hernandez***, City Attorney, City of Coral Gables, 405 Biltmore way, Coral Gables, Florida 33134; ***Eileen Mehta, Esquire***, Attorney for Goodwill Industries of South Florida, Inc., 200 South Biscayne Boulevard, Suite 2500, Miami, Florida 33131; and to ***Deborah L. Martohue, Esquire***, Hayes * Martohue, P.A., 5959 Central Avenue, Suite 104, St. Petersburg, Florida 33710.

______________________________
Jay W. Williams
Assistant County Attorney

**CERTIFICATE OF TYPE SIZE AND STYLE**

Undersigned counsel certifies that the type size and style used in this brief is 14 point Times New Roman.

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Jay W. Williams
Assistant County Attorney

**IN THE SUPREME COURT OF THE STATE OF FLORIDA**

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**CASE NUMBER SC02-815**
**======================**

**MIAMI-DADE COUNTY,**

**Petitioner,**

**v.**

**OMNIPOINT HOLDINGS, INC.,**

**Respondent.**

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**ON PETITION FOR REVIEW OF A DECISION**
**FROM THE THIRD DISTRICT COURT OF APPEAL**

**=======================================================**

**SUPPLEMENTAL APPENDIX TO**
**REPLY BRIEF OF PETITIONER,**
**MIAMI-DADE COUNTY**

**=======================================================**

**ROBERT A. GINSBURG**
**Miami-Dade County Attorney**
**Stephen P. Clark Center, Suite 2810**
**111 N.W. 1st Street**
**Miami, Florida 33128-1993**
**Tel: (305) 375-5151**
**Fax: (305) 375-5634**
**By**
Jay W. Williams and
Robert L. Krawcheck
Assistant County Attorneys