SUPREME COURT OF FLORIDA

CASE NO.: SC 06-1204

On Certification from the United States Court of Appeals
For the Eleventh Circuit
Case No. 04-13610

ELIZABETH J. NEUMONT, et al.,

Plaintiffs/Appellants,

v.

STATE OF FLORIDA and MONROE COUNTY, FLORIDA,

Defendants/Appellees.

ANSWER BRIEF OF APPELLEE, MONROE COUNTY, FLORIDA

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I. PRELIMINARY STATEMENT

This matter is before this Court on a Certified Question from the Eleventh Circuit Court of Appeals. The Certified Question addresses the validity of an ordinance adopted by Monroe County in February 1997 and was framed by the Eleventh Circuit as follows:

> Whether, for purposes of Florida Statutes section 125.66(4)(b), a "substantial or material change" in a proposed ordinance during the enactment process (that is, the kind of change that would require a county to start the process over) is confined to a change in the "original general purpose" of the proposed ordinance, or whether a substantial or material change includes (1) a change to the "actual list of permitted, conditional, or prohibited uses within a zoning category," or (2) a change necessary to secure legislative passage of the ordinance?

Appellee, Monroe County, Florida, was the Defendant in the trial court (a class action lawsuit brought in the United States District Court, Southern District of Florida styled *Elizabeth J. Neumont, et al. v. Monroe County, Florida,* Case No. 99-10054-CIV-PAINE) and the Appellee in the Circuit Court (an appeal of the trial court's Final Judgment to the Eleventh Circuit Court of Appeal, styled *Elizabeth J. Neumont, et al. v. State of Florida, et al.*, Case No. 04-13610-EE), and will be referred to herein as "Monroe County" or "the County".

Appellants, Elizabeth J. Neumont, *et al.*, were the plaintiffs in the trial court, appellants in the appeal, and will be referred to herein as "Plaintiffs".

References to the Record Excerpts filed in the Eleventh Circuit case are cited as "Tab.__, p. __". References to the Plaintiffs' Appendix are cited as "Pltfs. App. Tab __, p.__". References to Monroe County's Appendix are cited as "Def. App. Tab __". References to the trial court Docket Entries are cited as "D.E. ___."

II. STATEMENT OF THE CASE AND FACTS

A. Background/Rationale Of The Ordinance.

Due to its unique natural environment and character, the presence of a number of endangered species, and limited buildable land for work force housing, Monroe County and the Florida Keys were designated by the Florida Legislature as an Area of Critical State Concern in 1979. *See*, § 380.0552, Fla. Stat. (1997). The designation carries with it a requirement that the Florida Department of Community Affairs (the "Department") oversee and approve all County land use decisions to ensure, *inter alia*, that such decisions are consistent with the Principles for Guiding Development outlined in § 380.0552(7)(a)-(1), Fla. Stat. (1997).

One of these Principles for Guiding Development requires the County to make available adequate affordable housing for all sectors of the population of the Florida Keys. § 380.0552(7)(j), Fla. Stat. (1997). Hence, beginning in the early 1990's and continuing through the February 1997 adoption of Ordinance 1997-004 challenged in the instant case ("the Ordinance" or "the subject Ordinance"), Monroe County officials, along with the Department, endeavored to preserve the existing Monroe County housing inventory for residents by expanding further the then-existing prohibition on tourist housing in residential districts, thus protecting

more homes from being used as transient rental properties. (*See, e.g.* Tab B, p. 16).

The growing trend of transient use of residential dwellings (i.e. homeowners renting homes on a short-term, transient, basis as hotel rooms) was exacerbating the County's affordable housing problem. (*See, e.g.* Tab B, p. 16).

During public workshops on the proposed Ordinance, it became apparent to County staff that the County's expanded regulation of these "residential transient" units would not only protect affordable housing, but would also advance several other Principles for Guiding Development in Monroe County, to-wit: strengthening local government land management, limiting the adverse impacts on water quality, enhancing the unique historic character of the Florida Keys, assisting in the preparation of a post-disaster reconstruction plan, and protecting shoreline and marine resources. § 380.0552(7)(a), (b), (e), (f), (k), Fla. Stat. (1997). *See, e.g. Rathkamp v. Dep't of Community Affairs*, 740 So. 2d 1209 (Fla. 3d DCA 1999), *rev. denied*, 762 So. 2d 917 (Fla. 2000).

B. Ordinance Adoption Process.

On or about September 17, 1996, the first draft of the proposed Ordinance, drafted by County staff , was made available to the public. (Tab F, page 5). Because the proposed Ordinance affected "permitted, conditional, or prohibited

uses" within Monroe County, the two-hearing requirement and the explicit newspaper requirement of § 125.66(4)(b), Fla. Stat. (1997) were triggered.[1]

Therefore, pursuant to § 125.66(4)(b)(1) and (2), on November 7, 8, and 9, 1996, Monroe County published notice of the first public hearing of the Monroe County Board of County Commissioners (hereinafter "BOCC") to be held on December 10, 1996 ("the first hearing") (Tab F, pp. 4-5) (Def. App. Tab 1).

As required by § 125.66(4)(b)(2), the first hearing notice identified the proposed measure by its title: "modifying the existing prohibition on tourist housing use including vacation rentals in residential districts." (Tab F, p. 13; Def. App. Tab 1). The first hearing notice met all the requirements of § 125.66, Fla. Stat. (1997). (Tab F, pp. 11-14).

The first hearing, televised locally, lasted approximately 2-1/2 hours and 32 members of the public spoke to the issue. As is obvious from the transcript of the first hearing, the subject of the Ordinance was well known to those participating at the hearing.[2]

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[1] For clarity and ease of reference, proposed ordinances which change the actual list of permitted, conditional or prohibited uses within a zoning category so as to trigger the requisites of § 125.66(4)(b) shall be referred to herein as "land development ordinances" or "proposed land development ordinances."

[2] Transcripts and videotapes from the television broadcasts of both hearings were judicially noticed by the District Court. (Tab F, p. 5). *See*, Plaintiffs' Motion for Judicial Notice of Certain Monroe County Public Records and Memorandum of Law, Tab A, D.E. 153.

As a result of the public input at the first hearing, the BOCC directed staff to make certain changes in the draft Ordinance.

On January 11, 12, and 16, 1997, Monroe County published notice of the second hearing of the proposed ordinance (Tab F, p. 6) to be held February 3, 1997 ("second hearing"). (Def. App. Tab 2). As required by § 125.66(4)(b)(2), the second hearing notice identified the proposed measure by its title: "modifying the existing prohibition on tourist housing use including vacation rentals in all land use districts." (Tab F, p. 14). The second hearing notice met all requirements of § 125.66. (Tab F, pp. 11-14).

The second hearing, televised locally, lasted approximately 4-1/2 hours, and 48 members of the public spoke at the hearing. The Ordinance passed by a vote of 3 to 2 and, therefore, was officially enacted by the BOCC at the second hearing. (Tab F, p. 7).

The changes to the Ordinance occurring between the December 10, 1996 draft (considered by the BOCC at the first hearing) and the version adopted by the BOCC at the second hearing are summarized as follows:

A. The December 10, 1996 draft permitted vacation rentals in Sparsely Settled Residential Districts while the Ordinance as enacted prohibits vacation rentals in Sparsely Settled Residential Districts (Tab F, p. 7);

B. The December 10, 1996 draft addressed vacation rentals in most of the 22 (out of a total of 23) Commercial Fishing Districts, while the Ordinance as enacted omits reference altogether to those Commercial Fishing Districts (Tab F, p. 7);

C. The December 10, 1996 draft made no reference to the Commercial Fishing Residential District, while the Ordinance as enacted prohibits vacation rentals in the Commercial Fishing Residential District (Tab F, p. 8).

Collectively, these changes shall be referred to herein as "the Ordinance Changes."

The Ordinance was passed in an environment of litigation against the County for the County's prior attempts to regulate transient rentals. *See, e.g.*, Tab L. That pre-Ordinance litigation was brought by class members in the instant case. (Tab L, pp. 11, 27). In fact, counsel for the plaintiffs in that litigation specifically referenced prior drafts of the Ordinance in an amended complaint in that litigation environment (Tab L., pp. 32-33). As conceded by Plaintiffs in the instant case, the adoption of the Ordinance was to strengthen further and clarify an existing ban by the County on certain vacation rentals. (Tab L, p. 37).

C. Challenges To The Ordinance.

1. Department of Community Affairs Administrative Challenge.

As outlined above, Monroe County has been designated by the Florida Legislature as an Area of Critical State Concern. § 380.0552(3), Fla. Stat. (1997).

Hence, all of Monroe County's land development ordinances must be approved by the Department to ensure consistency with the Principles for Guiding Development. § 380.0552(9), Fla. Stat. (1997). The subject Ordinance was no exception.

Section 380.05(6), Fla. Stat. (1997) (governing Areas of Critical State Concern) provides a mechanism for an administrative challenge to the Department's approval of any local land development ordinance enacted by a governing body in an Area of Critical State Concern.

After the BOCC's adoption of the Ordinance, the Ordinance was submitted to the Department for review as required by § 380.05(6). (Tab E, p. 4). The Department approved the Ordinance. (Tab E, p. 5).

Pursuant to § 380.05(6) and § 120.57, Fla. Stat. (1997), a Chapter 120 Administrative Procedures Act challenge was filed challenging the Department's approval of the Ordinance (Department Case No. 98-3383/R). After prevailing in this Chapter 120 review, the Department issued its Final Order approving the

Ordinance. (Tab E, pp. 4-5). The Department's Final Order was issued on December 4, 1998, almost 2 years after the adoption of the Ordinance.[3]

Monroe County began enforcing the Ordinance on or about December 15, 1998. (Tab E, p. 5).

2. The Instant Litigation.

On or about May 21, 1999, the instant case was filed in the United States District Court for the Southern District of Florida (*Neumont, et al. v. State of Florida Department of Community Affairs and Monroe County, Florida*, Case No. 99-210054 (Tab A, D.E. 2)). The Honorable James Paine was the trial court judge.

On or about November 2, 1999, the Department was dismissed from the action. (Tab A, D.E. 62). On December 6, 2000, Plaintiffs filed their Second Amended Class Action Complaint (the "Complaint") upon which the case proceeded. (Tab A, D.E. 143; Tab B).

Plaintiffs' Complaint essentially alleged six claims against Monroe County. The only claim relevant to the instant appeal is Count X – seeking declaratory relief against the County. (Tab B, pp. 37-39). Count X alleged that Monroe

[3] The Department's Final Order was appealed to Florida's Third District Court of Appeal, which affirmed the Department's Final Order. *Rathkamp v. Dep't of Community Affairs*, 740 So. 2d 1209 (Fla. 3d DCA 1999). This Court denied review of the Third District's opinion. *Rathkamp v. Florida Dep't of Community Affairs*, 762 So. 2d 917 (Fla. 2000).

County enacted the subject Ordinance ". . . in violation of the strict notice and mechanical requirements of § 166.041, Florida Statutes[4] and Florida law, thereby rendering the ordinance void ab initio." (Tab B, p. 37). The gravamen of Plaintiffs' claim in Count X is that changes made to the Ordinance by the BOCC at the second hearing were "substantial or material changes" requiring the enactment process to begin anew and, thus, rendering the Ordinance void. (Tab B, p. 38).

On or about May 21, 2003, Judge Paine entered a summary judgment order in the County's favor on Count X. (Tab A, D.E. 372; Tab F).[5]

Judge Paine's summary judgment order recites 27 undisputed facts (Tab F, pp. 3-8), and contains a detailed analysis of what type of amendment to a land development ordinance would require a Florida county to begin its public hearing process anew. (Tab F, pp. 10-11).

Citing Op. Att'y Gen. Fla. 82-93 (1982), Judge Paine concluded that only an intra-enactment change altering the "original general purpose" of an ordinance

[4] This error in Plaintiffs' Complaint – – identifying § 166.041 instead of § 125.66 – – was later corrected by the parties. However, it is important to note that § 166.041, Fla. Stat. (governing municipalities' adopting of ordinances), is virtually identical to § 125.66, Fla. Stat. (governing counties' adopting of ordinances).

[5] Judge Paine's summary judgment order is reported at *Neumont v. Monroe County*, 28 F. Supp. 2d 1367 (S.D. Fla. 2003).

constitutes the type of substantial and material change that would require a Florida county to begin the legislative process anew. (Tab F, p. 11).[6]

Judge Paine further held that none of the County's intra-enactment changes – individually or collectively – altered the original intent of the Ordinance: the regulation of vacation rentals. (Tab F, p. 11).

Citing *City of Hallandale v. State*, 371 So. 2d 186, 189 (Fla. 4th DCA 1979), Judge Paine reiterated Florida's standard for sufficiency of notice: whether the published title fairly gives such notice as will reasonably lead to inquiry into the body of the legislation. (Tab. F, p. 15).

Judge Paine concluded that the County's first hearing notice and second hearing notice expressly provided sufficient notice as to the BOCC's intent to regulate vacation rental (i.e. "tourist housing") use in the County's land use

[6] It is important here to clarify that the use of the term "original general purpose" by Judge Paine and the Attorney General (and in the cases cited in Judge Paine's summary judgment order and in Op. Att'y Gen. Fla. 82-93) in describing a proposed ordinance is interchangeable with the terms "subject" or "basic character". (Tab F, pp. 9-11). The "original general purpose" of a measure (i.e. its *subject*) should not be confused with the "purpose to be accomplished" by a measure (i.e. its *object*). *Franklin v. State*, 887 So. 2d 1063, 1080 (Fla. 2004) (citation omitted). For example, the "original general purpose" of Florida's Three-Strikes law is "sentencing" while its "purpose to be accomplished" is "protecting the public from the class of felons identified in the Act." *Id.* Similarly, in the instant case, the "original general purpose" of the Ordinance is the regulation of vacation rentals (Tab F, p.11), while its "purpose to be accomplished" is protecting the inventory of affordable housing (*see*, Section II.A., *supra*).

districts, and that the notices were sufficient to "prompt further inquiry" by interested persons such as Plaintiffs. (Tab F, p. 15).

Through various dismissal and summary judgment orders, Judge Paine dismissed Plaintiffs' remaining claims, resulting in a Final Judgment in favor of Monroe County entered on June 21, 2004. (Tab A, D.E. 434; Tab D). This Final Judgment was appealed to the Eleventh Circuit Court of Appeals on or about July 15, 2004. (Tab A, D.E. 435; Tab O).

The case was briefed to the Eleventh Circuit Court of Appeals, and the Eleventh Circuit entertained oral arguments.

On June 14, 2006, the Eleventh Circuit certified the following question to this Court:

> Whether, for purposes of Florida Statutes Section 125.66(4)(b), a "substantial or material change" in a proposed ordinance during the enactment process (that is, the kind of change that would require a county to start the process over) is confined to a change in the "original general purpose" of the proposed ordinance, or whether a substantial or material change includes (1) a change to the "actual list of permitted, conditional, or prohibited uses within a zoning category," or (2) a change necessary to secure legislative passage of the ordinance?[7]

On or about June 23, 2006, this Court agreed to hear the Certified Question pursuant to Rule 9.150, Fla. R. App. P.

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[7] *Neumont v. Florida*, 451 F. 3d 1284, 1287 (11th Cir. 2006).

III. STANDARD OF REVIEW

While the standard of review is *de novo* for questions of law, such as the construction of statutes, *Univ. of Florida v. Sanal*, 837 So. 2d 512, 513 (Fla.1st DCA 2003), legislative acts (such as the subject Ordinance) generally enjoy a presumption of validity. *Farabee v. Bd. of Trustees, Lee County Law Library*, 254 So. 2d 1, 4 (Fla. 1971); *Orange County v. Costco*, 823 So. 2d 732, 737 (Fla. 2002). The Certified Question potentially implicates both standards.

IV. SUMMARY OF THE ARGUMENT

Monroe County noticed and adopted the Ordinance lawfully.

Pursuant to § 125.66(4)(b), Fla. Stat., counties are required to advertise proposed land development ordinances *by their title only*. Nothing in § 125.66 requires titles to land development ordinances to contain a list of affected zoning districts.

Section 125.67, Fla. Stat. (1997) requires the original general purpose (i.e. subject) of an ordinance to be briefly expressed in its title. The Legislature has employed the same standards regarding "titles" to ordinances as Art. III, § 6 of the Florida Constitution requires for acts of the Legislature.

Because the statute requires notice of proposed land development ordinances solely by title, only when the changes occurring during the enactment process

render the title inaccurate, misleading or otherwise deficient (i.e. when the *subject* changes), are such changes material and substantial so as to render the ordinance void.

The subject of a proposed land development ordinance is the *use* to be regulated, not the list of zoning categories to be affected.

When a county follows the procedural requirements of § 125.66 and § 125.67 and, during the enactment process, makes changes to the legislation, changes that do not require re-titling, then Florida courts should not strike down such validly enacted legislative measures.

Florida's courts must allow county and municipal legislative bodies to respond nimbly and appropriately to public input, and thereby advance the Legislature's intent in enacting § 125.66. To rule otherwise would defeat the very purpose of public notice of the intended enactment by unduly burdening and restraining those legislative bodies from responding to public input in enacting ordinances.

When a county duly notices its intent to regulate transient rentals in that county's zoning districts, and that county follows the statutorily mandated processes of § 125.66(4)(b) and § 125.67, then a court should not void a duly-enacted ordinance that accomplishes precisely what is noticed.

V. ARGUMENT

A. Introduction.

The Florida Legislature has prescribed the process by which a county may enact ordinances in § 125.66 and § 125.67.[8] Because the Legislature has prescribed a specific statutory framework for adopting ordinances, and because the Certified Question directly addresses this process, § 125.66 and § 125.67 are reproduced in their entirety in the County's Appendix (Def. App. Tab 3). The relevant portions which govern the adoption process for the subject Ordinance are reproduced below:

> **125.66 Ordinances; enactment procedure; emergency ordinances; rezoning or change of land use ordinances or resolutions.—**
>
> * * *
>
> (4) Ordinances or resolutions, initiated by other than the county, that change the actual zoning map designation of a parcel or parcels of land shall be enacted pursuant to subsection (2). Ordinances or resolutions that change the actual list of permitted, conditional, or prohibited uses within a zoning category, or ordinances or resolutions initiated by the county that change the actual zoning map designation of a parcel or parcels of land shall be enacted pursuant to the following procedure:
>
> * * *

[8] Art. VIII, § (1)(f) and (g) of the Florida Constitution, grants both charter and non-charter county governments the power to enact ordinances. (Tab E, p. 7).

(b) In cases in which the proposed ordinance or resolution changes the actual list of permitted, conditional, or prohibited uses within a zoning category, or changes the actual zoning map designation of a parcel or parcels of land involving 10 contiguous acres or more, the board of county commissioners shall provide for public notice and hearings as follows:

1. The board of county commissioners shall hold two advertised public hearings on the proposed ordinance or resolution. At least one hearing shall be held after 5 p.m. on a weekday, unless the board of county commissioners, by a majority plus one vote, elects to conduct that hearing at another time of day. The first public hearing shall be held at least 7 days after the day that the first advertisement is published. The second hearing shall be held at least 10 days after the first hearing and shall be advertised at least 5 days prior to the public hearing.

2. The required advertisements shall be no less than 2 columns wide by 10 inches long in a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be placed in a newspaper of general paid circulation in the county and of general interest and readership in the community pursuant to chapter 50, not one of limited subject matter. It is the legislative intent that, whenever possible, the advertisement shall appear in a newspaper that is published at least 5 days a week unless the only newspaper in the community is published less than 5 days a week. The advertisement shall be in substantially the following form:

NOTICE OF (TYPE OF) CHANGE

The (name of local governmental unit) proposes to adopt the following by ordinance or resolution: (title of ordinance or resolution).

> A public hearing on the ordinance or resolution will be held on (date and time) at (meeting place).
>
> Except for amendments which change the actual list of permitted, conditional, or prohibited uses within a zoning category, the advertisement shall contain a geographic location map which clearly indicates the area within the local government covered by the proposed ordinance or resolution. The map shall include major street names as a means of identification of the general area.

> **125.67 Limitation on subject and matter embraced in ordinances; amendments; enacting clause.** Every ordinance shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title. . . .

The statutory scheme does not in any way limit or restrict legislative changes made during the enactment process – – between the two required hearings. Nor do the relevant statutes require that proposed drafts be made available for public inspection[9] or that proposed drafts or summaries be published. Nor do the relevant statutes require the list of potentially affected zoning districts be included in a proposal's title.

[9] Notwithstanding the fact that nothing in Chapter 125, Fla. Stat., requires a proposed land development ordinance be available for public inspection, Plaintiffs spend a significant amount of space on such irrelevancies in their Initial Brief to this Court. These contentions were rejected by the trial court (Tab F, p. 11), and are not part of the question certified. In any event, as found by the trial court, none of the evolving drafts of the Ordinance changed its original general purpose: the regulation of vacation use.

Florida's explicit statutory scheme, and an unbroken line of well-settled Florida cases,[10] provide the answer to the Certified Question: Because § 125.66(4)(b)(2) requires notice of proposed land development ordinances solely by title, only when the changes occurring during the enactment process render the title inaccurate, misleading or otherwise deficient, are such changes material and substantial so as to render the ordinance void, thereby requiring a county to begin anew the enactment process.

Since Plaintiffs argue that (i) any change of the zoning categories involved or (ii) any change necessary to secure legislative passage of a proposed land development ordinance would render such an ordinance void, the Certified Question and the County's Brief address these two propositions.

The parties are in agreement that a "material and substantial" change made during the enactment process would require the enactment process to begin anew (see Certified Question Order at p. 5).

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[10] *Wright v. Bd. of Public Instruction, Sumter County*, 48 So. 2d 912, 914-15 (Fla. 1950); *Farabee v. Bd. of Trustees, Lee County Law Library*, 254 So. 2d 1, 4-5 (Fla. 1971); *City of Pensacola v. Shevin*, 396 So. 2d 179, 180 (Fla. 1981); *Franklin v. State*, 887 So. 2d 1063, 1073-81 (Fla. 2004).

However, Plaintiffs reject, and ask this Court to reject: Judge Paine's conclusion,[11] the Florida Attorney General's conclusion,[12] the Fourth District Court of Appeal's conclusion,[13] the conclusion of the Florida Association of County and the Florida League of Cities,[14] persuasive precedent from Texas,[15] Tennessee,[16] Kentucky,[17] Maryland,[18] Alaska,[19] North Carolina,[20] Massachusetts,[21]

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[11] Tab F, pp. 11, 15.

[12] Op. Att'y Gen. Fla. 82-93.

[13] *City of Hallandale v. State*, 371 So. 2d 186, 189 (Fla. 4th DCA 1979).

[14] *Amicus* movant in this case.

[15] *B & B Vending Co. v. City of El Paso*, 408 S.W.2d 545, 548 (Tex. Ct. App. 1966).

[16] *Metropolitan Gov't of Nashville and Davidson County v. Mitchell*, 539 S.W.2d 20, 22 (Tenn. 1976).

[17] *Farnsley v. Henderson*, 240 S.W.2d 82, 83-4 (Ky. 1951).

[18] *Ajamian v. Montgomery County*, 639 A.2d 157, 166-67, 99 Md. App. 665, 684-85 (Md. Ct. Spec. App. 1994).

[19] *Jefferson v. City of Anchorage*, 513 P.2d 1099, 1101-02 (Alaska 1973); *Liberati v. Bristol Bay Borough*, 584 P.2d 1115, 1119 (Alaska 1978).

[20] *Heaton v. City of Charlotte*, 178 S.E.2d 352, 359-60, 227 N.C. 506, 518 (N.C. 1971).

[21] *Nat'l Amusements, Inc. v. Comm'r of Inspectional Services*, 523 N.E.2d 789, 793, 26 Mass. App. Ct. 80, 87 (Mass. App. Ct. 1988); *Johnson v. Town of Framingham*, 242 N.E.2d 420, 421-22, 354 Mass. 750, 753 (Mass. 1968); *Town of Burlington v. Dunn*, 61 N.E.2d 243, 245, 318 Mass. 216, 219 (Mass. 1945).

Connecticut,[22] New Jersey,[23] and Virginia,[24] and the County's conclusion, that, for such a legislative change to be "material and substantial" the change must alter the *original general purpose* of the measure.

B. A Change To The "Actual List Of Permitted, Conditional, Or Prohibited Uses Within A Zoning Category" During The Enactment Process Does Not Constitute A "Substantial Or Material Change" Requiring That A County Start The Process Over.

1. The Statutory Scheme Requires Notice of Proposed Land Development Ordinances By Title Only.

Plaintiffs argue that § 125.66(4)(b), Fla. Stat., compelled the County to begin the legislative enactment process anew because the County made intra-enactment changes to the zoning districts affected by the Ordinance (Pltfs. Brief at 12-14).

The Ordinance was duly noticed as ". . . modifying the existing prohibition on tourist housing use including vacation rentals *in all land use districts*."[25] (Tab F, pp. 13-14) (Emphasis added).

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[22] *Neuger vs. Zoning Bd. of Stamford,* 145 A.2d 738, 740-41, 145 Conn. 625, 630-31, (Conn. 1958).

[23] *Wollen v. Borough of Fort Lee*, 142 A. 2d 881, 887-88, 27 N.J. 408, 419-21 (N.J. 1958).

[24] *Ciaffone v. Community Shopping*, 77 S.E.2d 817, 822, 195 Va. 41, 50 (Va. 1953).

There is no dispute that the Ordinance accomplished precisely what was advertised: the Ordinance modified the existing prohibitions on tourist housing in the County's land use districts. As Judge Paine recognized, evolving drafts of the Ordinance never stepped beyond the boundaries of the original general purpose of the Ordinance, i.e. the regulation of short term rentals of residential properties known as vacation rentals. (Tab F, p. 11).

Plaintiffs argue, instead, that § 125.66(4)(b) required the notice to identify precisely which land use districts would be affected by the proposal, and to "lock-in" that noticed list, thereby prohibiting the BOCC from, in any way, altering that list during the enactment process. (Pltfs. Brief at p. 14).

Such an argument, however, fundamentally misconstrues the statutory scheme governing the process. Not only does Plaintiffs' construction unnecessarily put the BOCC in a legislative straightjacket, making it unable to respond to public input resulting from the required public notices, it defies the statute's plain language.

At the outset of this analysis, it is important to understand how § 125.66 works.

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[25] The first hearing notice was identical to the second hearing notice except that, in the first hearing notice, the words "all land use districts" read "residential districts." As Judge Paine noted, this non-material change actually *broadened* the scope of the notice so that ". . . no one was left out of the notice." (Tab F, pp. 14-15, n. 11, 12).

Subsection (2) of the statute governs the "regular enactment procedure" for county ordinances which are not land development ordinances.

Subsection (3) of the statute governs the "emergency enactment procedure."

Subsection (4) of the statute governs the process for adopting land development ordinances, and is bifurcated into subparagraphs based on the size of the affected areas, i.e. less than 10 contiguous acres and more than 10 contiguous acres.

In cases in which the proposed land development ordinance affects parcels of land involving ten or more contiguous acres (e.g. the subject Ordinance), the Legislature has drafted a very specific and precise enactment mechanism.

In summary, for proposed land development ordinances affecting more than 10 acres of contiguous land, where the notice will be by publication rather than mail – – the process applicable to the subject Ordinance– – the Legislature was very careful to clearly, precisely and explicitly prescribe:

(i) the *number* of required hearings (two),

(ii) *when* the hearings must occur (at least 10 days apart),

(iii) *when* the hearing notices must be published (7 days prior to the first hearing and 5 days prior to the second hearing),

(iv) the *size* of the hearing notices (e.g. 2 columns wide by 10 inches long in 18 print type),

(v) the *type* of newspaper (general paid circulation),

(vi) *where* in the newspaper (not in the legal notices section) the notice must appear, and

(vii) the *text* of the notice (by title only).

§ 125.66(4)(b)(1), (2).

Nowhere in the statutory scheme is it stated, expressly or impliedly, that the notice itself must include each and every zoning category or land use district which is to be affected by the proposed land development ordinance.[26]

Certainly, given the precise mandates of § 125.66(4)(b)(1), (2), had the Legislature intended to require any more specificity in either the (i) text of the required notice, or (ii) enactment process, the Legislature would have included such requirements in this carefully constructed statutory scheme.[27] *See*, e.g., *Young v. Progressive Southeastern Ins. Co.*, 753 So. 2d 80, 85 (Fla. 2000) (". . . under the principle of statutory construction, *expressio unius est exclusio alterius*, the mention of one thing implies the exclusion of another . . . . [b]y failing to

[26] Contrast with the Legislature's specific mandate with regard to ordinances changing the zoning map, requiring the inclusion of major street names to identify the area to be rezoned. § 125.66(4)(b)(2). While not required by § 125.66(4)(b), the two hearing notices contained a map of the entire County and stated that the BOCC proposed to "regulate the use of land within the area shown in this map." The notice goes on to read that the proposal would prohibit tourist housing "in certain land use districts." (Def. App. Tabs 1 and 2).

[27] For example, § 120.54(3)(a)(1), Fla. Stat. (2005) requires notice of a proposed administrative rule to provide a short, plain explanation of the purpose and effect of the proposed rule, the full text and a summary of the proposed rule, and specific references to statutes authorizing the proposed rule.

permit self-insured motorist policy exclusions in the list of authorized exclusions, the Legislature has further indicated its intent . . . not to permit self-insured motorist policy exclusions.") (citation and internal quotation marks omitted).

While the subject statute does require two public hearings, the subject statute does not require the measure to remain unchanged between the two hearings.[28]

Nor does the subject statute require the published notice to "clearly explain the proposed" measure (as is required if the notice is merely mailed); nor is the published notice required to "state the substance of the proposed ordinance . . . as it affects (the) property owner(s)" (as is required of mailed notices); nor does the subject statute require notice of where the draft ordinances may be inspected (as is required by the "regular enactment procedure").[29]

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[28] *Compare* with § 120.54(3)(d)(1), Fla. Stat. (2005) which mandates additional notice requirements for state agencies when a proposed administrative rule is modified after initial submission of the proposed rule to the State's Administrative Procedures Committee.

[29] The statute also does not require the notice to contain a "descriptive summary" as did the subject code in the case cited by Plaintiffs: *Glazebrook v. Bd. Of Supervisors of Spotsylvania County*, 587 S.E.2d 589 (Va. 2003) (Pltfs. Brief, p. 24). In fact, Virginia law is consistent with the County's argument herein that the title of a proposed measure need only provide notice of the general subject to be regulated:

> ". . .[t]his statutory provision means only that parties in interest and citizens must be apprised of the proposed changes to be acted upon so they can be present to state their views. It does not require that the notice contain an accurate forecast of the precise action which the

To the contrary, the subject statute requires only that the title of the proposed land development ordinance appear in the prescribed notice.

The reason for these statutory distinctions is obvious: the Legislature determined that land development ordinances affecting 10 or more acres are of such public concern that requiring two public hearings, and large-print notice of the title of such measures appearing in newspapers of general circulation, will spawn adequate inquiry. This is wholly consistent with the holding in *Hallandale* that the notice is sufficient if interested persons will be reasonably led to inquire further. (Tab F, p. 14, citing *Hallandale*, 371 So. 2d 186, at 189.)

Certainly, as evidenced by the public input at the two hearings in the instant case, the County's notice was more than adequate to alert the public of the BOCC's activities.

2. Courts May Not Re-Write Statutes To Compel A Process Not Contemplated by The Legislature.

Plaintiffs, in effect, urge this Court to *re-write* the subject statute, so as to require that notices of proposed land development ordinances include significantly more than a title: a mechanical, rigid, intractable, list of affected zoning districts

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> County Board will take up on the subjects mentioned in the notice of hearing."

Ciaffone, 77 S.E.2d 817 at 822, 195 Va. 41 at 50 (Va. 1953) (citations omitted).

which list cannot be legislatively amended without voiding the legislation. (Pltfs. Brief, p. 14.) Yet the subject statutes simply do not require such rigidity.

As discussed, *supra*, § 125.66(4)(b)(2) requires merely the title of the ordinance be noticed. Per § 125.67, an ordinance's "subject" is to be briefly expressed in the ordinance's title.

An enactment's "subject" is the matter to which an act relates. *Wright v. Bd. Of Public Instruction, Sumter County*, 48 So. 2d 912, 915 (Fla. 1950).[30]

A legislative body is given great deference with respect to the titling of its acts. *Franklin*, 887 So. 2d 1063, 1073 (citations omitted). Legislative titling enjoys a strong presumption of validity, and, to overcome the presumption, the invalidity must appear beyond reasonable doubt. *Id*. (Citation omitted).

Plaintiffs would have this Court conflate the zoning districts affected by an ordinance with the *uses* to be regulated by an ordinance, so that the former would actually be considered an enactment's "subject." Such an effective re-write of the statute would fundamentally alter the local legislative process contemplated by the Legislature and undercut the County's authority to title its own legislative acts.

When a proposed ordinance may affect prohibited, conditional or permitted *uses* in zoning districts, it is the regulation of those *uses* that triggers the requisites

[30] *Wright* interprets Art. III, § 6, Florida Constitution, the provision governing the subject matter and titles for legislative acts. Art. III, § 6, Florida Constitution, is identical to § 125.67, Fla. Stat., the statutory provision governing the title and single subject requirements for county ordinances.

of § 125.66(4)(b). Therefore, only the proposed restriction on the *use* need appear in the title; only when the proposed restriction on the *use* changes during the enactment process has a "substantial or material" change occurred requiring the process to begin anew. Any other construction of the subject statutory scheme would lead to unworkable results.

Requiring counties, such as Monroe County – – with its thousands of zoning districts – – to reference precisely which zoning districts may be affected by a proposal would be unworkable.[31]

If a county were to propose to amend its land development regulations regarding, for example, tattoo parlors, and the proposal affected the list of zoning districts where tattoo parlors would be permitted, then the "subject" of the ordinance – – its original general purpose – – would be the "regulation of tattoo parlors".

The county would advertise, by title, the subject of the proposed ordinance ("regulation of tattoo parlors in land use districts"), and the proposed ordinance would then "open up" each of that county's zoning districts for public discourse regarding the efficacy of tattoo parlors in those zoning districts. Throughout the enactment process, public input, staff recommendations, and political concerns – –

[31] The Monroe County Code refers to its zoning districts as "land use districts."

not the measure's initial title – – would determine in which zoning districts tattoo parlors would be compatible.

During this legislative process, specific zoning districts may be added or subtracted to list of zoning districts where tattoo parlors would be a conditional use, a permitted use, or a prohibited use. Nothing in this rather common, well-established, legislative process inverts the zoning districts into the *subject* of the proposed ordinance. The subject remains "the regulation of tattoo parlors."[32]

This purely legislative process – – first considering, then adding to or subtracting from the proposal various zoning districts – – in no way alters the original general purpose of the measure.

At no point in this example has the *subject* of the county's legislative efforts so morphed so as to mislead or deceive anyone. The measure's title has provided the public fair notice of the county's legislative process and the public has been amply placed on notice as to their commissioners' intentions. This is the precise legislative mechanism contemplated by the statute, currently employed by Florida's counties and municipalities, and undertaken by the County in enacting the Ordinance.

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[32] Presumably, in the instant case, Plaintiffs would prefer a process requiring the enactment of dozens of separate ordinances – – one ordinance for each affected zoning district. Such a burdensome process, however, is not required by the statutes and is disfavored. *See, e.g.*, *Farnsley v. Henderson*, 240 S.W.2d 82, 94 (Ky. 1951).

If county commissions had no flexibility to change the list of affected districts during the process – – for fear of having to start the process anew – – public input would, indeed, be illusory. Once staff drafted an ordinance (or its title), that ordinance would be "set in stone." Commissioners would not make changes based on public input for fear of triggering a never-ending process of "beginning anew," or, worse, fear of having a particular land development ordinance stricken as void.[33]

Yet, Plaintiffs wish to tempt this Court to employ an unworkable legislative template never before visited on any Florida legislative body, where a change in "the list" of affected districts voids the ordinance.[34]

3. Courts May Not Disregard §125.67.

When construing statutes, those statutes must be construed together so as to give force and effect to every provision of the statutes. *See, e.g., Forsyth v.*

[33] Ironically, Plaintiffs assert that Judge Paine's construction would render public input illusory. Pltfs. Brief, pp. 17-18. Plaintiffs' argument is belied by the facts, however, because the public input at the first hearing and the second hearing on the subject Ordinance actually resulted in certain land use districts being added to, and subtracted from, the Ordinance.

[34] Of course, if a county were to notice, for example, a proposed land development ordinance dealing with the regulation of adult entertainment businesses in certain zoning districts, and then, during the legislative process, amend the ordinance to include the regulation of alcoholic beverage establishments, then that change (i.e. a change in *uses* regulated) would obviously be a substantial and material change which would require a separate ordinance.

Longboat Key Beach Erosion, 604 So. 2d 452, 455 (Fla. 1992) ("It is axiomatic that all parts of a statute must be read *together* in order to achieve a consistent whole…(w)here possible, courts must give full effect to *all* statutory provisions and construe related statutory provisions in harmony with one another.") (Emphasis in original) (Citations omitted).

In the instant case, however, Plaintiffs are requesting this Court to abandon the application of § 125.67 altogether.[35]

As referenced above, § 125.67 – – which is identical to Art. III, § 6 of the Florida Constitution – – requires that every county ordinance embrace but one subject, and that this one subject be briefly expressed in the ordinance's title.

Plaintiffs' proposed construction of § 125.66(4)(b)(2) would render § 125.67 virtually meaningless.

Because Plaintiffs argue that any change to the zoning categories appearing in an ordinance's initial draft is a "substantial and material" change, Plaintiffs' argument supposes that the "single subject" of a proposed land development ordinance is not the use being "permitted, conditioned, or prohibited," but, rather, the zoning categories which are contained in the initial ordinance draft. Pltfs. Brief, p. 14.

[35] Plaintiffs' Initial Brief omits any reference to § 125.67.

If an ordinance's title merely referenced zoning categories – – rather than the *use* to be permitted, conditioned, or prohibited by the measure – – it is doubtful that the public would have much notice at all as to the gravamen of the legislative act being considered.

The subject of the Ordinance was the regulation of vacation rentals. (Tab F, pp. 13-14). This "single subject" was not altered or changed during the legislative process. In fact, the enacted Ordinance accomplished precisely what was advertised: the existing prohibition on tourist housing use was modified by the Ordinance.

Hence, as Judge Paine correctly found, the "single subject" of the Ordinance manifested in the Ordinance's title – – as required by § 125.67 – – remained unaltered during the process (Tab F, p. 11)

4. The Legislative Intent Of Chapter 95-310, Amending § 125.66, Supports The County's Argument.

Plaintiffs argue that the legislative history of § 125.66 compels this Court to conclude that adding or subtracting a particular zoning district to a proposed land development ordinance requires the enactment process to begin anew. (Pltfs. Brief at 16-21). The legislative history of § 125.66, amended by Chapter 95-310, Laws of Florida, however, clearly dictates that this Court, in answering the Certified Question, should approve Judge Paine's conclusions.

Prior to its amendment in 1995, the subsection of the predecessor version of § 125.66 (which would have governed the subject Ordinance in the instant case) was § 125.66(6), Fla. Stat. (1993). That subsection is reproduced in its entirety at Def. App. Tab 4.

As Plaintiffs correctly point out, the 1995 Legislature adopted Public Law 95-310 to, among other things, "provide some uniformity regarding the public notice requirements for the enactment of various types of local ordinances." (Pltfs. App. Tab E).

However, the expressed legislative intent of the revisions was to ". . . save local governments money by reducing their advertising expenses *and by reducing the amount of the litigation regarding the validity of ordinances based on defects in the enactment procedures*." (Pltfs. App. Tab E.) (Emphasis added.)

An additional expressed intent was to ". . . reduce the amount and cost of litigation regarding the validity of an ordinance based solely on enactment procedures *or the extent of public notice that preceded the ordinance enactment.*" (Pltfs. App. Tab E.)[36] (emphasis added).

Importantly, in enacting Chapter 95-310, the Legislature omitted the requirements in the prior statute that the notice contain (i) a map, and (ii) ". . . a

[36] Because of this expressed intent, *amicus* movant in the instant case, the Florida League of Cities and the Florida Association of Counties, supported Chapter 95-310. (Pltfs. App. Tab E).

brief explanation of the subject matter of the proposed ordinance . . . ." *See, e.g.*, § 125.66(6), Fla. Stat. (1993).

Instead, the Legislature replaced the old version's notice requirement with a requirement that only the "title of ordinance" be included in the required notice. § 125.66(4)(b)(2), Fla. Stat. (1997).

Against this legislative backdrop, it can hardly be said that the Legislature intended to, in any way, make the notice process for counties and municipalities more burdensome, as Plaintiffs suggest.

Plaintiffs argue that Op. Att'y Gen. Fla. 82-83, relied upon by Judge Paine, "cannot be right." (Pltfs. Brief at p.22.) At the time Chapter 95-310 was adopted, the Legislature had the benefit of Op. Att'y Gen. Fla. 82-93 and the authority cited therein. Had the Legislature so intended, the Legislature certainly could have crafted Chapter 95-310 so as to render AGO 82-93 obsolete or to require more specificity in the required notice.[37]

The Legislature, however, did not do so. The Legislature, rather, relaxed the statute's notice requirement.

[37] The Legislature is presumed to be cognizant of the judicial construction of a statute when making changes to a statute. *Nicoll v. Baker*, 668 So. 2d 989, 991 (Fla. 1996) (citation omitted).

5. The Construction Advanced By The County Is Consistent With Precedent Cited by Plaintiffs.

Plaintiffs do not cite a single case from any jurisdiction where a change in affected zoning districts during the enactment process has voided a validly enacted ordinance. Nor do Plaintiffs cite a single case which requires zoning districts to be included in the titles to land development ordinances.

Plaintiffs, instead, rely on *Webb v. Town Council*, 766 So. 2d 1241, 1244 (Fla. 1st DCA 2000) (striking variance granted upon verbal request without any notice), and *Love Our Lakes Ass'n v. Pasco Cty.*, 543 So. 2d 855, 857 (Fla. 2d DCA 1989) (reversing dismissal of action contesting variance issued without notice). Plaintiffs cite these cases primarily in their attempt to define the word "substantial." (Pltfs. Brief, pp. 12, 13, 23).

Of importance to the instant case, *Webb* and *Love Our Lakes* support the proposition that proposed changes to land use must conform to the proposed changes advertised in the notice. *Webb*, 766 So. 2d at 1244; *Love Our Lakes*, 543 So. 2d at 857. Plaintiffs do not allege any inaccuracy in the advertised notices.

In fact, in the instant case, the changes effectuated by the enacted Ordinance comport with the proposed changes advertised in the notices. Hence, *Webb* and *Love Our Lakes* support the County's argument.

Other cases cited by Plaintiffs similarly support the County's argument. In *McGree v. City of Cocoa*, 168 So. 2d 766 (Fla. 2d DCA 1964) (Pltfs. Brief at 12, 17), the court upheld the defendant city's intra-enactment amendment to a zoning ordinance which changed the zoning categories of seven lots. While the notice referenced the same change to all seven lots, the approved ordinance changed only five of the seven lots' designation as advertised in the notice. The zoning designation of the two other lots were changed differently from that as advertised. *Id.* at 768-9. The court held the modification was ". . . not of such a substantial and material nature as to require new notice . . . ." *Id.* This holding is entirely contradictory to Plaintiffs' argument that <u>any</u> change to the affected districts (in this case, parcels) requires the process to begin anew.

In *Daytona Leisure v. City of Daytona*, 539 So. 2d 597 (Fla. 5th DCA 1989) (Pltfs. Brief at 14-15), the court struck down an ordinance adopted pursuant to "emergency enactment procedures" which rezoned land to prohibit alcohol sales. While the court's decision was based on the subject emergency enactment procedures statute, the court stated: "… [w]here an ordinance substantially affects land use (substantially changes permitted *use* categories) . . . it must be enacted under the . . . procedures that govern zoning." *Id.* at 599 (citation omitted) (emphasis added). The *Daytona Leisure* court noted that the change in land *use* is what implicates the restricted term "substantially."

While Plaintiffs cite these and other cases[38] to define "substantial," none support Plaintiffs' argument that any change in the affected zoning districts invalidates a land development ordinance. Nor do any of these cases require affected zoning districts to be included in a proposed land development ordinance's title.

Plaintiffs cite *Free State Recycling v. Bd. Of County Commissioners for Frederick County, Maryland*, 885 F. Supp. 798 (D. Md. 1994) for the proposition that ". . . [w]here there has been a substantial difference between the proposed zoning text amendment as advertised and as ultimately proposed to be passed by the local legislative body, that body must re-advertise the new and substantially different proposed ordinance and have a 'new' hearing in regard to it." 885 F.Supp. 798 (D. Md. 1994). (Pltfs. Brief, p. 24).

Free State Recycling was decided under Maryland and Frederick County law, which impose substantively different notice and hearing requirements for land development ordinances than does § 125.66(4)(b).

The sharp and controlling difference between Maryland and Florida law, in terms of the statutory notice requirements for land development ordinances, is that

[38] *Coral Gables v. Deschamps*, 242 So. 2d 210 (Fla. 3d DCA 1971) (Pltfs. Brief at 23) (striking resolution that contained faulty notice); *Sanibel v. Buntrock*, 409 So. 2d 1073 (Fla. 2d DCA 1982) (Pltfs. Brief at 13) (invalidating building moratorium that was not properly noticed).

"the Maryland Code (expressly) requires zoning authorities to publish a summary of the proposed legislation, alerting interested parties to the provisions that are to be effected." *Id.* at 807.

Had the Florida Legislature intended for proposed land development ordinances to be referenced by more than simply their title, the Legislature certainly could have codified such a requirement as did the Maryland Legislature *Id*.

Free State Recycling is further distinguishable from the instant case because the notice in *Free State Recycling* made no suggestion that any existing permitted use would be altered by the proposed ordinance. *Id*. at 802-03. The *Free State Recycling* court based its decision on the substantial differences between what was noticed and what was enacted. *Id*. at 805-06. No such argument can be made in the instant case, the subject Ordinance enacted precisely what was noticed.

If *Free State Recycling* has any import to the case at bar, it is based on the following holding recognized in *Free State Recycling:* "[T]he relevant (Maryland) case law does state that substantial changes may be permissible (without additional notice) when such changes were indicated as possible in the original notice." 885 F.Supp. at 808. (citation omitted). *See* note 18, *supra*. In holding that the referenced exception was inapplicable, the *Free State Recycling* court noted the

total absence of any warning that Frederick County would consider or adopt measures not referenced in the advertised notice. *Id*. at 808-809.

In the instant case, however, Monroe County expressly provided notice that Monroe County was contemplating an ordinance that may regulate vacation rental use – – and possibly prohibit such use – – in all Monroe County land use districts. (Tab F, p. 14).

Based on this published notice, Plaintiffs – – and all Monroe County citizens – – were clearly forewarned that Monroe County might prohibit vacation rental use in the Sparsely Settled and Commercial Fishing Residential Districts through the enactment of the Ordinance. Hence, even if *Free State Recycling* were applicable to the instant case (which it is not), the breadth of the notice's text meets *Free State Recycling's* "warning" exception.[39] Hence, Plaintiffs' reliance on *Free State Recycling* is misplaced.

[39] This Court should note that, in *Free State Recycling*, the court specifically found intentional backdating of ordinance text documents, 885 F.Supp. 798, at 804, and an intent by Frederick County to deliberately "disguis(e) the focus of the ordinance until a point at which public comment would be meaningless." *Id.* at 800. There is absolutely no assertion in the instant case that Monroe County, in any way, intentionally attempted to mislead or "disguise" the subject of the Ordinance. In fact, the vast majority of Plaintiffs' allegations in the lawsuit seek damages because the enacted Ordinance accomplished precisely what was advertised.

6. The Construction Advanced By The County Is Consistent With Florida Precedent.

In *Farabee v. Bd. Of Trustees*, 254 So. 2d 1, 4 (Fla. 1971), this Court cited decades of unbroken precedent holding that legislative bodies are allowed wide latitude in the enactment of laws, and courts will strike down a legislative act only where the title is plainly violative of the express requirements of titles to legislative enactments:

> "Where one general subject . . . is expressed in the title of an act, the means and instrumentalities for effecting such subject need not be stated in the title and may be regarded as matters properly connected with the subject which may be properly embraced in the act . . . . Such a result comports with this Court's consistent refusal to resort to critical construction of the titles of acts to exclude parts of the acts as being in violation of the constitutional requirement that the subject should be briefly expressed in the title. . . . The Legislature is allowed wide latitude in the enactment of laws, and courts will strike down the title of an act only where the title is plainly violative of the Constitution." *Id.* (citations omitted).

Importantly, this Court has consistently held that the purpose of the title to a legislative act is to prevent deception, surprise or fraud, and to apprise the people of the subjects of legislation. *Id.*

In fact, this Court has expressly held that a general statement of the subject of legislation is all that is required to be expressed in the title of legislation. *City of Pensacola v. Shevin*, 396 So. 2d 179, 180 (Fla. 1981). This Court has similarly

held that a general statement is actually preferred over a detailed listing or index of all the features of the legislation. *Id.*

The BOCC's adding to or subtracting from the Ordinance particular land use districts during the legislative process to the Ordinance in no way affected the "general statement" of the "subject" of the Ordinance. *City of Pensacola*, 396 So. 2d at 180. In fact, this Court has expressed displeasure when titles of legislation have served as ". . . an index of all the features of the legislation." *Id.*

Such a specified index is what the Plaintiffs argue should be included in the titles to land development ordinances. (Pltfs. Brief, pp. 12-14). No Florida case suggests this type of specificity is required in a legislative act's title.

C. Any Change "Necessary To Secure Legislative Passage" During The Enactment Process Does Not Constitute A "Substantial Or Material Change" Requiring That A County Restart The Process.

Responding to the second part of the Certified Question, Plaintiffs argue that any change made to an ordinance during the enactment process that is necessary to secure legislative passage of the ordinance is a "substantial or material change". (Pltfs. Brief at 20-21).

The legislative process contemplates that municipal and county legislative bodies will make changes and amendments to ordinances, otherwise the public hearing and notice requirements would be meaningless.

Had the Legislature intended for the land development ordinance enactment process to be a static one – – as Plaintiffs argue – – then the Legislature would have required that no changes be made in proposed land development ordinances between the first and second hearings. Again, the Legislature did not do that.

Similar to § 125.66(4)(b)(1)'s two-hearing requirement, Art. III, § 7 of the Florida Constitution requires each bill of the Legislature to be read in each house, by its title, on three separate days. Legislative acts, at all levels of government, are routinely debated and amended between first reading and final passage. Nothing in § 125.66 restricts a county government's ability to debate and amend its legislative acts any differently than the well established method practiced by the Legislature.

Contrary to Plaintiffs' argument, the legislative process is a fluid one, amenable to, and actually encouraging, changes in text so that the text better reflects good public policy.[40]

[40] Of course, the legislative process prescribed to counties is not without limitation. For example, no ordinance can be changed during the legislative process which would render the required title inaccurate, misleading, or otherwise deficient (see note 34, *supra*). Similarly, a single ordinance cannot be split into two or more separate ordinances during the enactment process, *Lamar Advertising of Mobile, Inc. v. City of Lakeland, Florida*, 189 F.R.D. 480, 489-90 (M.D. Fla. 1999), nor may an ordinance encompass more than one subject. § 125.67, Fla. Stat.

Such is the specifically prescribed statutory process for enacting land development ordinances, and such was the process availed by Monroe County in the passage of the Ordinance.

Advancing their argument that "any change that was necessary to secure legislative passage of the ordinance" should require the ordinance process to begin anew, Plaintiffs concede that "proving any particular change was 'necessary' for legislative passage as a matter of fact is conceivably a difficult task. . . ." (Pltfs. Brief at p. 21). Plaintiffs, nonetheless, argue that this Court should employ such a standard.

Such a standard, though, totally misapprehends the legislative process.

The legislative process, especially at the municipal and county level, should be a nimble, dynamic one; the process should be replete with interchange between citizens and their elected representatives. Contrary to Plaintiffs' suggestion, one would hope that, during the legislative process, legislation *would* be amended so that the legislation mustered the necessary public support.

Assume a proposed land development ordinance were to prohibit or condition commercial building heights over 75 feet in a county's zoning districts. To secure passage of the measure, the height was adjusted to 70 feet between first reading and adoption. Such a change could hardly be argued as a "material and

substantial change" merely because the change was required to gain legislative approval.[41]

Yet, this is precisely the "but for" standard argued by Plaintiffs. (Pltfs. Brief at p. 21).

From a practical perspective, such a standard would virtually insure that whatever initial land development ordinance text was drafted by county staff would be the text ultimately approved by the elected legislative body. Under such a "but for" standard, the county would, justifiably, fear that any change would subject the legislative body to judicial "second guessing" as to the particular, subjective, motives of each legislative official voting on the measure.

Additionally, such a standard would turn the separation of powers doctrine on its head: judicial inquiries into the subjective motivations behind every legislative vote, and every ordinance amendment, would be commonplace in an effort to try to void land development ordinances.

This Court should flatly reject any such "but for" standard. Changes "necessary to secure legislative passage" should be encouraged during the enactment process, not used as weapons in lawsuits to void ordinances.

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[41] In this example, the obvious "original general purpose" of the proposed ordinance (briefly expressed in the title) is to regulate heights of commercial buildings. That title clearly puts the public on notice of the commission's legislative agenda. During the legislative process, however, both the precise heights and affected zoning districts may very well change. Such changes should be encouraged, rather than voiding the legislation.

VI. CONCLUSION

This Court should answer the Certified Question by affirming that, for the purposes of § 125.66(4)(b), only intra-enactment changes that alter the original general purpose of an ordinance, so as to render the title inaccurate, misleading or otherwise deficient, are substantial or material, requiring the enactment process to begin anew. Any other standard adopted by this Court would cause an undue hardship on the critical legislative function of Florida's counties and municipalities.

Respectfully submitted,

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I hereby certify that the Answer Brief of Appellee, Monroe County, Florida complies with the font requirements of Rule 9.210(a)(2), Fla. R. App. P., and has been generated in Times New Roman 14-point font.

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