Sec. 110-1005. Rehearing and administrative res judicata.

If it is alleged that the city commission, as the case may be, has overlooked or misapprehended some facts or points of law, a rehearing of any decision of the may be granted by the commission either on the motion of any member voting on the prevailing side, or on the motion of any person aggrieved by its decision. The motion shall be in writing, shall be filed with the enforcement offi

cial within ten working days after the rendition of the decision, and shall state its grounds. The movant shall serve it by certified mail or hand delivery upon the mayor and the city manager and all adjoining property owners previously notified of the hearing, together with a notice stating the date, time and place it will be orally presented to the commission.

If the city commission grants such a motion, it shall state its reasons for doing so, and set a time, date and place for another public hearing upon due public notice.

The city commission shall not otherwise rehear a petition based upon the same or similar facts, proposals, or issues until at least one year has elapsed from the date of rendition.

(Ord. No. 24-2005, § 1, 6-6-2005; Ord. No. 19-2011, § 1(Exh. A), 11-7-2011)

Sec. 110-1101. Amendments to official zoning map and comprehensive plan amendments procedure.

(a) An application for amendment of the official zoning map, including planned unit developments, and comprehensive plan amendments, submitted by any person or persons owning 51 percent or more of the subject land, shall be on a form supplied by the department of development services, which shall be filed with said department, together with any applicable fees. The application shall include the following:

(1) Current survey of the property prepared by a registered land surveyor licensed to practice in the State of Florida. The survey shall accurately reflect the current status of the parcel and shall have been completed within the past two years, or in lieu thereof a notarized statement from a title insurance company or attorney that a survey more than two-years old continues to accurately reflect the current boundaries of the parcel.

(2) Legal description of the property.

(3) Notarized authorization of the owner if the applicant is other than the owner or the attorney for owner.

Provided, however, an application for an administrative amendment authorized by the city commission shall be filed by the planning and development services department. This application shall include a copy of the zoning map page depicting the property involved.

(b) The planning and development services department shall review the application. The department has seven days from the date the applicant submits the application to determine if it is complete and correct. If the application is found to be lacking any of the requested information or if the data and exhibits are inaccurate, it will not be considered "filed" for the purpose of processing nor placed on the city commission agenda unless a sufficient application is submitted within seven days after the filing deadline date.

(c) The planning and development services department shall submit a written report containing its recommendations on each application to the commission and to the applicant at least one week prior to the meeting of the commission before which the application is to be heard unless an extension is granted by the city commission.

(d) Reserved.

(e) In its review of each application, the commission shall consider:

(1) Whether it is consistent with all adopted elements of the comprehensive plan.

(2) Its impact upon the environment or natural resources.

(3) Its impact upon the economy of any affected area.

(4) Notwithstanding the provisions of chapter 86, Code of Ordinances, as it may be amended from time to time, its impact upon necessary governmental services such as schools, sewage disposal, potable water, drainage, fire and police protection, solid waste or transportation systems.

(5) Any changes in circumstances or conditions affecting the area.

(6) Any mistakes in the original classification.

(7) Its effect upon the use or value of the affected area.

(8) Its impact upon the public health, welfare, safety or morals.

(f) The city commission shall hold a public hearing after due public notice on all recommendations from the planning and development services department. The city commission shall consider those standards as

contained in section 110-1101(e) (1) through (8) in making its determination. It may accept, reject, modify, return or seek additional information on those recommendations. No approval of an amendment to the official zoning map shall be made unless, upon motion, four members of the city commission concur. Amendments to said map shall be by ordinance.

(Ord. No. 24-2005, § 1, 6-6-2005; Ord. No. 19-2011, § 1(Exh. A), 11-7-2011)

Sec. 86-27. Certificate of capacity.

(a) Each non-exempt (for exemptions see section 86-32) development application subject to the provisions of chapter 106 or 74 of this Code and require a development order as defined in this chapter shall apply for and receive a certificate of capacity on a form provided by and processed through the planning and development services department.

(b) Concurrency and level of service standards per section 86-27(c)(1)—(7) are established within the comprehensive plan.

(c) A determination of adequate capacity shall be provided for the following designated public facilities and services prior to the issuance of a development order for final site plans, master development plan (MDP), and residential plats:

(1) Thoroughfare road system;

(2) Potable water facilities;

(3) Sanitary sewer facilities;

(4) Stormwater management facilities;

(5) Solid waste facilities;

(6) Parks and recreational facilities (for residential uses only);

(7) Public school facilities (for residential uses only).

(d) A determination of adequacy shall be satisfied through written correspondence received from the department or agency responsible for providing volume/capacity data stating that the designated public facilities or services are currently adequate to support the proposed development or redevelopment.

(Ord. No. 96-25, § 1(1402), 3-4-1996; Ord. No. 19-2011, § 1(Exh. A), 11-7-2011; Ord. No. 04-2013, § 1, 5-20-2013; Ord. No. 04-2016, § 1(Exh. A), 4-4-2016)

Sec. 86-34. Vested rights.

(a) Based upon the following four-part test for vested rights:

(1) Upon some act or omission of the city;

(2) A property owner relying in good faith;

(3) Has made such a substantial change in position or has incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the rights acquired; and

(4) That the development has commenced and is continuing in good faith.

(b) Only the following developments are hereby determined to be vested for the purpose of this article:

(1) Developments of regional impact as currently authorized under F.S. § 380.06, on or before the effective date of this article.

(2) Physical on-site construction if a building permit has been issued on or before the effective date of this article.

(3) Applications for final site plans submitted to the planning and development services department on or before effective date of this article shall be vested for a period of one year from the date of approval or one year from the effective date of this article, whichever time period is less. Any amendments or modifications to site plans that would adversely affect the previous concurrency determination shall be tested for concurrency under the provisions of this article.

(4) Where a building permit has been issued and it remains valid on or before the effective date of this article.

(5) Any activity exempted under chapter 106, section 106-27(a)(1), (6)and (10) of this Code.

(6) Any application which has received ODP approval on or before the effective date of this article shall have one year from the date of approval to obtain a preliminary plat approval under the provisions of this chapter and shall have one additional year within which to obtain final plat approval. Thereafter, such ODP application shall be tested for concurrency in accordance with this article.

(7) Any commercial or business planned unit development under the city's zoning ordinance, as amended, [chapter 110, Code of Ordinances], which was reviewed and approved under the provisions of this chapter and has commenced and is continuing in good faith as of the effective date of this ordinance.

(8) The planning and development services director or his/her designee shall choose and develop a methodology for informing owners of above-described vested properties under this section of the expiration of said vested rights under this section. Such methodology may include, but not be limited to, newspaper notice, individual notice or notice in the public records. Once that methodology is chosen, the planning and development services director or his/her designee shall proceed to implement such methodology.

(Ord. No. 96-25, § 1(1409), 3-4-1996; Ord. No. 19-2011, § 1(Exh. A), 11-7-2011; Ord. No. 04-2013, § 1, 5-20-2013)

The 2022 Florida Statutes (including 2022 Special Session A and 2023 Special Session B)

163.3180 Concurrency.—

(1) Sanitary sewer, solid waste, drainage, and potable water are the only public facilities and services subject to the concurrency requirement on a statewide basis. Additional public facilities and services may not be made subject to concurrency on a statewide basis without approval by the Legislature; however, any local government may extend the concurrency requirement so that it applies to additional public facilities within its jurisdiction.

(a) If concurrency is applied to other public facilities, the local government comprehensive plan must provide the principles, guidelines, standards, and strategies, including adopted levels of service, to guide its application. In order for a local government to rescind any optional concurrency provisions, a comprehensive plan amendment is required. An amendment rescinding optional concurrency issues shall be processed under the expedited state review process in s. 163.3184(3), but the amendment is not subject to state review and is not required to be transmitted to the reviewing agencies for comments, except that the local government shall transmit the amendment to any local government or government agency that has filed a request with the governing body and, for municipal amendments, the amendment shall be transmitted to the county in which the municipality is located. For informational purposes only, a copy of the adopted amendment shall be provided to the state land planning agency. A copy of the adopted amendment shall also be provided to the Department of Transportation if the amendment rescinds transportation concurrency and to the Department of Education if the amendment rescinds school concurrency.

(b) The local government comprehensive plan must demonstrate, for required or optional concurrency requirements, that the levels of service adopted can be reasonably met. Infrastructure needed to ensure that adopted level-of-service standards are achieved and maintained for the 5-year period of the capital improvement schedule must be identified pursuant to the requirements of s. 163.3177(3). The comprehensive plan must include principles, guidelines, standards, and strategies for the establishment of a concurrency management system.

(2) Consistent with public health and safety, sanitary sewer, solid waste, drainage, adequate water supplies, and potable water facilities shall be in place and available to serve new development no later than the issuance by the local government of a certificate of occupancy or its functional equivalent. Prior to approval of a building permit or its functional equivalent, the local government shall consult with the applicable water supplier to determine whether adequate water supplies to serve the new development will be available no later than the anticipated date of issuance by the local government of a certificate of occupancy or its functional equivalent. A local government may meet the concurrency requirement for sanitary sewer through the use of onsite sewage treatment and disposal systems approved by the Department of Environmental Protection to serve new development.

(3) Governmental entities that are not responsible for providing, financing, operating, or regulating public facilities needed to serve development may not establish binding level-of-service standards on governmental entities that do bear those responsibilities.

(4) The concurrency requirement as implemented in local comprehensive plans applies to state and other public facilities and development to the same extent that it applies to all other facilities and development, as

provided by law.

(5)(a) If concurrency is applied to transportation facilities, the local government comprehensive plan must provide the principles, guidelines, standards, and strategies, including adopted levels of service to guide its application.

(b) Local governments shall use professionally accepted studies to evaluate the appropriate levels of service. Local governments should consider the number of facilities that will be necessary to meet level-of-service demands when determining the appropriate levels of service. The schedule of facilities that are necessary to meet the adopted level of service shall be reflected in the capital improvement element.

(c) Local governments shall use professionally accepted techniques for measuring levels of service when evaluating potential impacts of a proposed development.

(d) The premise of concurrency is that the public facilities will be provided in order to achieve and maintain the adopted level of service standard. A comprehensive plan that imposes transportation concurrency shall contain appropriate amendments to the capital improvements element of the comprehensive plan, consistent with the requirements of s. 163.3177(3). The capital improvements element shall identify facilities necessary to meet adopted levels of service during a 5-year period.

(e) If a local government applies transportation concurrency in its jurisdiction, it is encouraged to develop policy guidelines and techniques to address potential negative impacts on future development:

1. In urban infill and redevelopment, and urban service areas.
2. With special part-time demands on the transportation system.
3. With de minimis impacts.
4. On community desired types of development, such as redevelopment, or job creation projects.

(f) Local governments are encouraged to develop tools and techniques to complement the application of transportation concurrency such as:

1. Adoption of long-term strategies to facilitate development patterns that support multimodal solutions, including urban design, and appropriate land use mixes, including intensity and density.
2. Adoption of an areawide level of service not dependent on any single road segment function.
3. Exempting or discounting impacts of locally desired development, such as development in urban areas, redevelopment, job creation, and mixed use on the transportation system.
4. Assigning secondary priority to vehicle mobility and primary priority to ensuring a safe, comfortable, and attractive pedestrian environment, with convenient interconnection to transit.
5. Establishing multimodal level of service standards that rely primarily on nonvehicular modes of transportation where existing or planned community design will provide adequate level of mobility.
6. Reducing impact fees or local access fees to promote development within urban areas, multimodal transportation districts, and a balance of mixed-use development in certain areas or districts, or for affordable or workforce housing.

(g) Local governments are encouraged to coordinate with adjacent local governments for the purpose of using common methodologies for measuring impacts on transportation facilities.

(h)1. Local governments that continue to implement a transportation concurrency system, whether in the form adopted into the comprehensive plan before the effective date of the Community Planning Act, chapter 2011-139, Laws of Florida, or as subsequently modified, must:

a. Consult with the Department of Transportation when proposed plan amendments affect facilities on the strategic intermodal system.

b. Exempt public transit facilities from concurrency. For the purposes of this sub-subparagraph, public transit facilities include transit stations and terminals; transit station parking; park-and-ride lots; intermodal public transit connection or transfer facilities; fixed bus, guideway, and rail stations; and airport passenger terminals and concourses, air cargo facilities, and hangars for the assembly, manufacture, maintenance, or storage of aircraft. As used in this sub-subparagraph, the terms "terminals" and "transit facilities" do not include seaports or commercial or residential development constructed in conjunction with a public transit facility.

c. Allow an applicant for a development-of-regional-impact development order, development agreement, rezoning, or other land use development permit to satisfy the transportation concurrency requirements of the local comprehensive plan, the local government's concurrency management system, and s. 380.06, when applicable, if:

(I) The applicant in good faith offers to enter into a binding agreement to pay for or construct its proportionate share of required improvements in a manner consistent with this subsection.

(II) The proportionate-share contribution or construction is sufficient to accomplish one or more mobility improvements that will benefit a regionally significant transportation facility. A local government may accept contributions from multiple applicants for a planned improvement if it maintains contributions in a separate account designated for that purpose.

d. Provide the basis upon which the landowners will be assessed a proportionate share of the cost addressing the transportation impacts resulting from a proposed development.

2. An applicant shall not be held responsible for the additional cost of reducing or eliminating deficiencies. When an applicant contributes or constructs its proportionate share pursuant to this paragraph, a local government may not require payment or construction of transportation facilities whose costs would be greater than a development's proportionate share of the improvements necessary to mitigate the development's impacts.

a. The proportionate-share contribution shall be calculated based upon the number of trips from the proposed development expected to reach roadways during the peak hour from the stage or phase being approved, divided by the change in the peak hour maximum service volume of roadways resulting from construction of an improvement necessary to maintain or achieve the adopted level of service, multiplied by the construction cost, at the time of development payment, of the improvement necessary to maintain or achieve the adopted level of service.

b. In using the proportionate-share formula provided in this subparagraph, the applicant, in its traffic analysis, shall identify those roads or facilities that have a transportation deficiency in accordance with the transportation deficiency as defined in subparagraph 4. The proportionate-share formula provided in this subparagraph shall be applied only to those facilities that are determined to be significantly impacted by the project traffic under review. If any road is determined to be transportation deficient without the project traffic under review, the costs of correcting that deficiency shall be removed from the project's proportionate-share calculation and the necessary transportation improvements to correct that deficiency shall be considered to be in place for purposes of the proportionate-share calculation. The improvement necessary to correct the transportation deficiency is the funding responsibility of the entity that has maintenance responsibility for the facility. The development's proportionate share shall be calculated only for the needed transportation improvements that are greater than the identified deficiency.

c. When the provisions of subparagraph 1. and this subparagraph have been satisfied for a particular stage or phase of development, all transportation impacts from that stage or phase for which mitigation was required and provided shall be deemed fully mitigated in any transportation analysis for a subsequent stage or phase of development. Trips from a previous stage or phase that did not result in impacts for which mitigation was required or provided may be cumulatively analyzed with trips from a subsequent stage or phase to determine whether an impact requires mitigation for the subsequent stage or phase.

d. In projecting the number of trips to be generated by the development under review, any trips assigned to a toll-financed facility shall be eliminated from the analysis.

e. The applicant shall receive a credit on a dollar-for-dollar basis for impact fees, mobility fees, and other transportation concurrency mitigation requirements paid or payable in the future for the project. The credit shall be reduced up to 20 percent by the percentage share that the project's traffic represents of the added capacity of the selected improvement, or by the amount specified by local ordinance, whichever yields the greater credit.

3. This subsection does not require a local government to approve a development that, for reasons other than transportation impacts, is not qualified for approval pursuant to the applicable local comprehensive plan and land development regulations.

4. As used in this subsection, the term "transportation deficiency" means a facility or facilities on which the adopted level-of-service standard is exceeded by the existing, committed, and vested trips, plus additional projected background trips from any source other than the development project under review, and trips that are

forecast by established traffic standards, including traffic modeling, consistent with the University of Florida's Bureau of Economic and Business Research medium population projections. Additional projected background trips are to be coincident with the particular stage or phase of development under review.

(i) If a local government elects to repeal transportation concurrency, it is encouraged to adopt an alternative mobility funding system that uses one or more of the tools and techniques identified in paragraph (f). Any alternative mobility funding system adopted may not be used to deny, time, or phase an application for site plan approval, plat approval, final subdivision approval, building permits, or the functional equivalent of such approvals provided that the developer agrees to pay for the development's identified transportation impacts via the funding mechanism implemented by the local government. The revenue from the funding mechanism used in the alternative system must be used to implement the needs of the local government's plan which serves as the basis for the fee imposed. A mobility fee-based funding system must comply with s. 163.31801 governing impact fees. An alternative system that is not mobility fee-based shall not be applied in a manner that imposes upon new development any responsibility for funding an existing transportation deficiency as defined in paragraph (h).

(6)(a) Local governments that apply concurrency to public education facilities shall include principles, guidelines, standards, and strategies, including adopted levels of service, in their comprehensive plans and interlocal agreements. The choice of one or more municipalities to not adopt school concurrency and enter into the interlocal agreement does not preclude implementation of school concurrency within other jurisdictions of the school district if the county and one or more municipalities have adopted school concurrency into their comprehensive plan and interlocal agreement that represents at least 80 percent of the total countywide population. All local government provisions included in comprehensive plans regarding school concurrency within a county must be consistent with each other and the requirements of this part.

(b) Local governments and school boards imposing school concurrency shall exercise authority in conjunction with each other to establish jointly adequate level-of-service standards necessary to implement the adopted local government comprehensive plan, based on data and analysis.

(c) Public school level-of-service standards shall be included and adopted into the capital improvements element of the local comprehensive plan and shall apply districtwide to all schools of the same type. Types of schools may include elementary, middle, and high schools as well as special purpose facilities such as magnet schools.

(d) Local governments and school boards may utilize tiered level-of-service standards to allow time to achieve an adequate and desirable level of service as circumstances warrant.

(e) A school district that includes relocatable facilities in its inventory of student stations shall include the capacity of such relocatable facilities as provided in s. 1013.35(2)(b)2.f., provided the relocatable facilities were purchased after 1998 and the relocatable facilities meet the standards for long-term use pursuant to s. 1013.20.

(f)1. In order to balance competing interests, preserve the constitutional concept of uniformity, and avoid disruption of existing educational and growth management processes, local governments are encouraged, if they elect to adopt school concurrency, to apply school concurrency to development on a districtwide basis so that a concurrency determination for a specific development will be based upon the availability of school capacity districtwide.

2. If a local government elects to apply school concurrency on a less than districtwide basis, by using school attendance zones or concurrency service areas:

a. Local governments and school boards shall have the burden to demonstrate that the utilization of school capacity is maximized to the greatest extent possible in the comprehensive plan and amendment, taking into account transportation costs and court-approved desegregation plans, as well as other factors. In addition, in order to achieve concurrency within the service area boundaries selected by local governments and school boards, the service area boundaries, together with the standards for establishing those boundaries, shall be identified and included as supporting data and analysis for the comprehensive plan.

b. Where school capacity is available on a districtwide basis but school concurrency is applied on a less than districtwide basis in the form of concurrency service areas, if the adopted level-of-service standard cannot be met in a particular service area as applied to an application for a development permit and if the needed capacity for

the particular service area is available in one or more contiguous service areas, as adopted by the local government, then the local government may not deny an application for site plan or final subdivision approval or the functional equivalent for a development or phase of a development on the basis of school concurrency, and if issued, development impacts shall be subtracted from the contiguous service area's capacity totals. Students from the development may not be required to go to the adjacent service area unless the school board rezones the area in which the development occurs.

(g) The premise of concurrency is that the public facilities will be provided in order to achieve and maintain the adopted level-of-service standard. A comprehensive plan that imposes school concurrency shall contain appropriate amendments to the capital improvements element of the comprehensive plan, consistent with the requirements of s. 163.3177(3). The capital improvements element shall identify facilities necessary to meet adopted levels of service during a 5-year period consistent with the school board's educational facilities plan.

(h)1. In order to limit the liability of local governments, a local government may allow a landowner to proceed with development of a specific parcel of land notwithstanding a failure of the development to satisfy school concurrency, if all the following factors are shown to exist:

a. The proposed development would be consistent with the future land use designation for the specific property and with pertinent portions of the adopted local plan, as determined by the local government.

b. The local government's capital improvements element and the school board's educational facilities plan provide for school facilities adequate to serve the proposed development, and the local government or school board has not implemented that element or the project includes a plan that demonstrates that the capital facilities needed as a result of the project can be reasonably provided.

c. The local government and school board have provided a means by which the landowner will be assessed a proportionate share of the cost of providing the school facilities necessary to serve the proposed development.

2. If a local government applies school concurrency, it may not deny an application for site plan, final subdivision approval, or the functional equivalent for a development or phase of a development authorizing residential development for failure to achieve and maintain the level-of-service standard for public school capacity in a local school concurrency management system where adequate school facilities will be in place or under actual construction within 3 years after the issuance of final subdivision or site plan approval, or the functional equivalent. School concurrency is deemed satisfied when the developer tenders a written, legally binding commitment to provide mitigation proportionate to the demand for public school facilities to be created by actual development of the property, including, but not limited to, the options described in sub-subparagraph a. The district school board shall notify the local government that capacity is available for the development within 30 days after receipt of the developer's legally binding commitment. Options for proportionate-share mitigation of impacts on public school facilities must be established in the comprehensive plan and the interlocal agreement pursuant to s. 163.31777.

a. Appropriate mitigation options include the contribution of land; the construction, expansion, or payment for land acquisition or construction of a public school facility; the construction of a charter school that complies with the requirements of s. 1002.33(18); or the creation of mitigation banking based on the construction of a public school facility in exchange for the right to sell capacity credits. Such options must include execution by the applicant and the local government of a development agreement that constitutes a legally binding commitment to pay proportionate-share mitigation for the additional residential units approved by the local government in a development order and actually developed on the property, taking into account residential density allowed on the property prior to the plan amendment that increased the overall residential density. The district school board must be a party to such an agreement. As a condition of its entry into such a development agreement, the local government may require the landowner to agree to continuing renewal of the agreement upon its expiration.

b. If the interlocal agreement and the local government comprehensive plan authorize a contribution of land; the construction, expansion, or payment for land acquisition; the construction or expansion of a public school facility, or a portion thereof; or the construction of a charter school that complies with the requirements of s. 1002.33(18), as proportionate-share mitigation, the local government shall credit such a contribution, construction, expansion, or payment toward any other impact fee or exaction imposed by local ordinance for public educational

facilities, on a dollar-for-dollar basis at fair market value. The credit must be based on the total impact fee assessed and not on the impact fee for any particular type of school.

c. Any proportionate-share mitigation must be directed by the school board toward a school capacity improvement identified in the 5-year school board educational facilities plan or must be set aside and not spent until such an improvement has been identified that satisfies the demands created by the development in accordance with a binding developer's agreement.

3. This paragraph does not limit the authority of a local government to deny a development permit or its functional equivalent pursuant to its home rule regulatory powers, except as provided in this part.

(i) When establishing concurrency requirements for public schools, a local government must enter into an interlocal agreement that satisfies the requirements in ss. 163.3177(6)(h)1. and 2. and 163.31777 and the requirements of this subsection. The interlocal agreement shall acknowledge both the school board's constitutional and statutory obligations to provide a uniform system of free public schools on a countywide basis, and the land use authority of local governments, including their authority to approve or deny comprehensive plan amendments and development orders. The interlocal agreement shall meet the following requirements:

1. Establish the mechanisms for coordinating the development, adoption, and amendment of each local government's school concurrency related provisions of the comprehensive plan with each other and the plans of the school board to ensure a uniform districtwide school concurrency system.

2. Specify uniform, districtwide level-of-service standards for public schools of the same type and the process for modifying the adopted level-of-service standards.

3. Define the geographic application of school concurrency. If school concurrency is to be applied on a less than districtwide basis in the form of concurrency service areas, the agreement shall establish criteria and standards for the establishment and modification of school concurrency service areas. The agreement shall ensure maximum utilization of school capacity, taking into account transportation costs and court-approved desegregation plans, as well as other factors.

4. Establish a uniform districtwide procedure for implementing school concurrency which provides for:

a. The evaluation of development applications for compliance with school concurrency requirements, including information provided by the school board on affected schools, impact on levels of service, and programmed improvements for affected schools and any options to provide sufficient capacity;

b. An opportunity for the school board to review and comment on the effect of comprehensive plan amendments and rezonings on the public school facilities plan; and

c. The monitoring and evaluation of the school concurrency system.

5. A process and uniform methodology for determining proportionate-share mitigation pursuant to paragraph (h).

(j) This subsection does not limit the authority of a local government to grant or deny a development permit or its functional equivalent prior to the implementation of school concurrency.

History.—s. 8, ch. 93-206; s. 12, ch. 95-341; s. 3, ch. 96-416; s. 1, ch. 97-253; s. 5, ch. 98-176; s. 4, ch. 99-378; s. 2, ch. 2002-13; s. 6, ch. 2002-296; s. 5, ch. 2005-290; s. 11, ch. 2005-291; s. 18, ch. 2006-1; s. 3, ch. 2006-220; s. 3, ch. 2006-252; s. 11, ch. 2007-196; s. 2, ch. 2007-198; s. 3, ch. 2007-204; s. 5, ch. 2009-85; s. 4, ch. 2009-96; s. 17, ch. 2010-5; s. 1, ch. 2010-33; s. 4, ch. 2011-14; s. 15, ch. 2011-139; s. 7, ch. 2012-99; s. 1, ch. 2013-78; s. 4, ch. 2019-165; s. 28, ch. 2020-150; s. 1, ch. 2022-122.

329 So.2d 10
Supreme Court of Florida.

The HOLLYWOOD BEACH HOTEL COMPANY, an Ohio Corporation, et al., Petitioners,

v.

The CITY OF HOLLYWOOD, a Municipal Corporation, organized and existing under the laws of the State of Florida, Respondent.

No. 44642.
|
Jan. 21, 1976.
|
Rehearing Denied April 13, 1976.

Synopsis

Landowners brought action to enjoin city from rezoning property and from applying proposed density ordinance to it and to compel return of building permit fee. The Circuit Court for Broward County, Lamar Warren, J., rendered judgment in favor of landowners, and city appealed. The District Court of Appeal, 283 So.2d 867, reversed and remanded, and petition for writ of certiorari was granted. The Supreme Court held that in view of plaintiffs' good faith reliance on rezoning for multiple family use and their expenditure of considerable funds on preliminary planning plaintiffs had acquired a vested right in continuation of the multiple use zoning and continuance of building permit, that plaintiffs did not forfeit such rights either by failure to build or their request for return of permit fee until economic conditions improved where city's actions in delaying for approximately one year question of lower density zoning and repeal of motion which had extended life of building permit until completion of litigation and, instead, mandating that construction proceed within 90 days were arbitrarily taken and plaintiffs actively proceeded with litigation.

Affirmed in part and reversed in part.

England, J., dissented and filed opinion, in which Overton and Sundberg, JJ., concurred.

West Headnotes (7)

[1] **Appeal and Error** Substitution of Reviewing Court's Discretion or Judgment

Appeal and Error Retrial on review in general

An appellate court cannot reevaluate the evidence and substitute its judgment for that of the trial court.

[2] **Zoning and Planning** Questions of fact; findings

District Court of Appeal violated rule that an appellate court cannot reevaluate the evidence and substitute its judgment for that of the trial court where chancellor found that because of delays caused by city in connection with rezoning the developer was unable to build within required 90 days due to economic conditions which precluded same whereas district court, in its reevaluation, stated that the developer "elected not" to proceed and "surrendered" his building permit.

1 Case that cites this headnote

[3] **Estoppel** Municipal corporations in general

Doctrine of equitable estoppel may be invoked against a municipality as if it were an individual.

19 Cases that cite this headnote

[4] **Zoning and Planning** Waiver or estoppel

Mere fact that actual physical construction has not yet begun does not bar application of doctrine of equitable estoppel so as to preclude a municipality from exercising its zoning power.

20 Cases that cite this headnote

[5] **Zoning and Planning** Rights of objecting owners; continuity of regulation

Zoning and Planning Vested or property rights

Where property developer obtained building permit from city and without actual or constructive knowledge of any impending zoning change spent almost $200,000 on a site plan, models, architect's plans and specifications and building permits and such money was spent in good faith reliance on city's rezoning of the land for multiple-family use, city was equitably estopped from changing the zoning from multiple family; developer had a vested property right in continuation of multiple-family zoning.

13 Cases that cite this headnote

[6] **Zoning and Planning** Change of regulations as affecting right

Developers did not forfeit vested rights which they had acquired under building permit and multiple-family zoning when they did not proceed with construction or when they requested return of permit fee until economic conditions improved where developers were kept in limbo for almost a year while city considered action on petition to rezone to lower density use, the city, without notice, repealed motion which had extended life of permit to completion of litigation and mandated that construction was to proceed within 90 days and it could reasonably be inferred that city knew that owners could not proceed until matter of rezoning was definitely decided and developers did not delay in pressing their rights through litigation.

7 Cases that cite this headnote

[7] **Zoning and Planning** Power to modify or amend in general

While a city commission possesses prerogative of deciding to defer action on a rezoning proposal over a long period of time, it must assume the attendant responsibility for the adverse effects it knows or should know its deliberate inaction will have on the parties with whom it is dealing.

2 Cases that cite this headnote

Attorneys and Law Firms

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J. Bart Budetti, City Atty., and Myron H. Burnstein, Special Asst. City Atty., for respondent.

Opinion

PER CURIAM.

This cause is before us on a petition for writ of certiorari to review the decision of the Fourth District Court of Appeal.[1] We have jurisdiction pursuant to Article V, s 3(b)(3), Fla.Const.

As a general rule, an outline of the sequence of events in chronological order is not of vital importance. However, the instant case represents a significant exception to this rule.

***12** Petitioners-plaintiffs owned a 105 acre plot of real property in the City of Hollywood which was zoned RA—5 (golf course use) except for a 40 400-foot portion in the southwestern corner of same which was zoned RC—12 (multiple family). In late 1968, the petitioners decided to develop the property into a 6,000 unit complete community and petitioned the Hollywood Planning and Zoning Board to zone the entire plot as RC—12 (multiple family). This change was recommended to the Hollywood City Commission by the Planning and Zoning Board, whereupon the City Commission adopted Ordinance 0—69—46, hereinafter referred to, with the preamble reading in part, as follows:
WHEREAS, the City Commission, after several public hearings and only after an independent investigation and study, recognizes that The character of the neighborhood has gone through a series of changes so as to require the granting of the change of zone as hereinafter provided in order to properly preserve and protect the public interest, and

WHEREAS, The City Commission, after careful study of all aspects of the petitioner's application, including traffic patterns, population density, aesthetic considerations, effect upon single family residences in the area, as well as the effect upon the business establishments in the downtown area, Considers that the public interest not only justifies but requires that the change of zone be granted so as to

permit construction of the complex in accordance with the circumstances recited herein and as the same appears on the site development plan, attached hereto and made a part hereof as though fully recited herein.' (Emphasis supplied.)

On April 2, 1969, after numerous public hearings and conferences between the City and the petitioners, a comprehensive site plan was approved and the City Commission by a 4 to 1 vote adopted Ordinance 0—69—46 which rezoned said property to RC—12 uses. In early December of 1969 in a City election, two commissioners who voted for the ordinance were defeated by candidates publicly opposed to same. On December 17, 1969, at the second meeting following their election, the two newly elected commissioners joined with the commissioner who had originally voted against the ordinance and passed a motion to petition the Zoning Board to reevaluate the rezoning affected by the foregoing ordinance. This petition did not contain and was not grounded upon Any allegations necessitating rezoning.

On December 30, 1969, petitioners obtained a building permit from the State for the construction of the first five million dollar building. The Zoning Board met on January 12, 1970, and considered the Commission's petition to reevaluate the zoning affected by the above ordinance. At this meeting, the Board stressed the need for zoning stability and stated that the Commission had never ‘come back’ with a request for a change in a duly enacted zoning ordinance. The motion was tabled and the Board at its February 9th meeting requested clarification from the Commission.

In the meantime, on January 23, 1970, the City issued a building permit for same. At this point, it must be noted the uncontroverted testimony established that it had taken some nine or ten months (April 1969—Jan. 1970) for the petitioners to complete the necessary preparations to begin construction. During this period and subsequently, petitioners expended some $191,269.66.

On February 18, 1970, the Commission in response to the request for clarification by the Zoning Board passed a motion to petition the Zoning Board to rezone the western one-third of the tract to multiple family and the eastern two-thirds to single family golf course use. On February 19 the City filed this petition with the Zoning Board.

***13** On February 21, the petitioners brought an action for a permanent injunction with an accompanying request for a temporary injunction against the City. At the hearing on the temporary injunction and the City's motion to dismiss on March 4, the following pertinent testimony was given: The architect for the project testified that the entire site plan would be destroyed by rezoning part of the property; a member of the Zoning Board testified that the City's petition for rezoning did not contain any allegations that a change in the area where the property was situate necessitated rezoning; and the petitioner, Ben Tobin, testified as to the amount of money expended and that all activities had been brought to a halt because of the City's petition to rezone.

The trial court denied the temporary injunction on the grounds that the application was premature on March 5th. On March 13th, the City's Motion to Dismiss was denied. The City then voted to file an interlocutory appeal on March 16th and such appeal was filed on March 19th.

On March 23rd, the Zoning Board denied the petition to rezone.

The Commission next voted on March 25, 1970, to appeal this denial to the Zoning Board of Appeals, the members of which were comprised solely of the City Commissioners. Such appeal was filed but no definitive action was taken by the Board of Appeals until Feb. 17, 1971. However, at its April 5, 1970, meeting, the Board of Appeals voted to table the appeal for thirty to sixty days. On June 17th, the Board of Appeals discussed the tabled appeal and voted that it be tabled no longer than the first meeting in August.

On July 15th, the City Commission, in response to a request for an extension of the building permit, Voted to extend the building permit indefinitely until the litigation was completed.

At the August 8th meeting of the Board of Appeals, the appeal was left tabled due to the possibility that the City might purchase the property in dispute.

Then, on August 21st, the District Court affirmed the trial court's denial of the City's motion to dismiss.

At its September 2nd meeting, the City Commission voted to petition the District Court for rehearing and if unsuccessful, to petition the Supreme Court for certiorari. Prior to the taking of this vote, one of the Commissioners who voted in the majority, stated that these actions should be taken since ‘the City could operate with more leverage as to the purchase of the property if the case remains in Court.’ The District Court denied rehearing on September 29, 1970; this Court denied

certiorari on January 7, 1971; and the City filed its answer to petitioner's complaint on February 17, 1971.

On the same day the Board of Appeals (City Commissioners) Without prior notice to the petitioners, affirmed the Zoning Board's denial of petition to rezone; and then the (same people sitting as) City Commissioners rescinded its motion of July 15, 1970 which had extended the permit until the end of the litigation between the parties and mandated that the petitioners exercise their rights under the building permit within ninety days.

Prior to the vote on the petition for rezoning and the ninety-day motion, one of the Commissioners who voted for the petition by the City to rezone, stated that he would 'now vote' to affirm the Zoning Board's denial since he did not think the project would ever be built without deviations which would have to come before the Commission for approval. On March 17th, the petitioners requested the return of the permit fee until building conditions improved. This was denied.

In regard to the City's repeal of the building permit allowing an extension to the end of the litigation, it is important to note that during the ninety-day period referred to above, the injunction suit was ***14** actively prosecuted by both parties, to-wit: on March 12, 1971, petitioners moved to strike parts of City's Answer; on March 29, 1971, the petitioners moved to amend Complaint; on April 12, City moved for judgment on the pleadings; and on April 20, City's motion for judgment on pleadings was denied and the petitioners' motion for leave to amend was granted.

From June 23, 1971 to January 5, 1972, the City negotiated with the petitioner for the purchase of the property. In the December 1971 City elections, the remaining two Commissioners who had voted for Ord. 0—69—46 were defeated by candidates publicly opposed to it. At its January 5, 1972 meeting, the Commission voted not to buy the property even though a verbal understanding had been reached as to both price and method of financing. The Commission again then passed unanimously a motion requesting the Zoning Board to reconsider the zoning implemented by Ord. 0—69—46, and, in addition thereto, to recommend suitable rezoning (a matter which was not raised in its first request for re-evaluation). The Commission also then took the first vote on a new density ordinance which would have the effect of rendering the petitioners' site plan useless. Petitioners sought a 'temporary injunction' (incorporating all prior pleadings before the court) on February 12. On February 14, the Zoning Board approved a rezoning plan and recommended same to the City Commission.

It is significant to note that at the Zoning Board meeting there was no allegation of a change in the neighborhood as basis for the rezoning.

At the hearing on the temporary injunction, the petitioners submitted testimony: that during the almost one year that the Commission had considered action on the petition to rezone, this delay coupled with newspaper coverage of same made it impossible to obtain financing and discouraged investors; that no prior notice had been given of the City's decision on January 5, 1972, not to purchase the property; and that due to these prolonged negotiations, the development had been kept in limbo; that the proposed new density ordinance destroyed the site plan and rendered the building permit useless.

The temporary injunction filed on February 12, 1972, was denied on February 18, 1972. The density ordinance received final passage on March 1, 1972, and on March 15, the Commission voted unanimously to petition the Zoning Board to rezone the property in question. The Zoning Board approved same on April 17 and on June 28, the Commission enacted the rezoning ordinance.

On April 27, the trial court held a hearing at which the petitioners submitted the following testimony: $191,269.66 had been expended in reliance on the rezoning and the permit; that the density ordinance and proposed rezoning completely destroy the site plan; and that if the injunction was granted, the petitioners intended to build if financing and the market were suitable. The City Planner testified that the disputed ordinances did not destroy the site plan; however, at the continuation of the hearing on May 11, the City Planner then admitted that said ordinances did destroy the petitioners' site plan.

On July 19, the trial court issued a permanent injunction enjoining the City from enforcing both the density and subsequent rezoning ordinances against the petitioners and ordered that the City return the building permit fee.

The District Court of Appeal, Fourth District, reversed and remanded with instructions and this Court granted certiorari.

Three issues require our attention: First, whether the Fourth District Court of Appeal reevaluated the evidence and substituted its judgment for that of the chancellor; Second, whether the principle of equitable estoppel precluded the City of Hollywood from enacting the disputed ordinances;

and Third, whether the chancellor *15 erred in finding as a matter of law that the City's retention of the petitioners' permit fee constituted a forfeiture? All three queries must be answered in the affirmative. Accordingly, the decision of the Fourth District Court of Appeal is quashed as to the first and second issues and affirmed as to the third.

[1] [2] It is the prevailing rule in this jurisdiction that an appellate court cannot reevaluate the evidence and substitute its judgment for that of the trial court. Westerman v. Shell's City, Inc.;[2] Greenwood v. Oates.[3] After comparing the chancellor's findings with the recital of facts by the Fourth District, it is only too clear that the District Court violated this rule. The chancellor found that because of the delays caused by the City the developer was unable to build within the required ninety days due to the economic conditions which precluded same. Whereas, the District Court in its reevaluation stated that the developer 'elected not' to proceed and 'surrendered' his building permit.[4]

'To elect' is defined as to choose by preference a course of action.[5] In turn, 'choice' is defined as the 'voluntary and purposive or deliberate action of picking, singling out, or selecting from two or more that which is favored or superior.'[6] Petitioners 'chose' not to build within the ninety-day period; correspondingly, it is undisputable that the trial court found this 'choice' to be due to the unstable economic and financial conditions which faced the petitioners because of the delays caused by the City, and not because of a 'voluntary choice' by the petitioners. The petitioners' situation is best described in the proverbial terms of being put between a 'rock and a hard spot' by the City. The trial court also found that the petitioners had not surrendered the permit, whereas the District Court in effect found that such a surrender had been made on the basis of its reevaluation. Thus, the principles enunciated by this Court in Westerman, supra, and Greenwood, supra, require reversal on this point alone.

[3] [4] The doctrine of equitable estoppel may be invoked against a municipality as if it were an individual, Salkolsky v. City of Coral Gables;[7] Texas Co. v. Town of Miami Springs;[8] City of North Miami v. Marguiles;[9] and the City's contention that the doctrine is inapplicable where actual physical construction has not yet begun, is without merit. Salkolsky, supra; Bregar v. Britton;[10] Frink v. Orleans Corporation;[11] Marguiles, supra; City of Hollywood, supra; City of Gainesville v. Bishop.[12] As correctly stated by the Fourth District in City of Hollywood, supra, at 869, the doctrine of equitable estoppel will preclude a municipality from exercising its zoning power where

'. . . (A) property owner (1) in good faith (2) upon some act or omission of the government (3) has made such a substantial change in position or has incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the right *16 he acquired. Salkolsky v. City of Coral Gables, 151 So.2d 433 (Fla.1963).'

This Court has never had the occasion to decide if the exception to the Salkolsky rule alluded to, but not invoked, by the Fourth District should be established, i.e., that a city may revoke a building permit even after good faith reliance by the landowner on the zoning law and even after a substantial change has been made in his position or incurring extensive obligations, '. . . if the municipality can show that some new peril to the health, safety, morals, or general welfare of the municipality has arisen between the granting of the building permit and the subsequent change (in) zoning . . .'[13]

While we cannot preclude the adoption of such an exception in the future, we have no reason to consider it in the instant case.

[5] [6] In applying the Salkolsky rule, the Fourth District found that,

'. . . (T)he plaintiffs obtained a building permit from the City of Hollywood on January 23, 1970. Without actual or constructive knowledge of any impending zoning change, the plaintiffs spent almost two hundred thousand dollars on a site plan, models of the community, architect's plans and specifications and building permits. This money was spent in good faith reliance on the city's rezoning of the plaintiffs' land to RC—12 multiple family. Under these circumstances the City of Hollywood was equitably estopped from changing the zoning of the plaintiffs' land from RC—12. The plaintiffs had a vested property right in the continuation of the RC—12 zoning.'[14]

With this conclusion we agree. However, the District Court then held that

'. . .

'. . . (W)hen the city commission decided not to change the zoning classification of the plaintiffs' property and notified the plaintiffs that they could start construction under their building permit and the plaintiffs having elected not to

proceed or initiate construction on the land and voluntarily surrendering their building permit to the city in March 1971, the plaintiffs thereby relinquished and forfeited their vested right under the building permit and in the continuance of the RC—12 zoning classification of their land. The city could then validly rezone plaintiffs' property from RC—12 to another classification.'[15]

It would be unconscionable to allow such a holding to endure since it fails to take into account the unique facts which dominate the instant case. First, it is undeniable that the only circumstance which necessitated the ultimate rezoning was the adverse political climate which wrought the defeat of every commissioner who had voted for Ord. 0—69—46. Second, the delays caused by the City Commissioners in having allowed the appeal from the Zoning Board's denial of its rezoning petition to its own members sitting as the Board of Appeals to languish in limbo for some eleven months, were countenanced with a full understanding that any immediate rezoning would meet with adverse legal consequences. This conclusion is borne out by the City attorney's repeated warnings to the Commission that any such ordinance would be invalidated under this Court's decision in Salkolsky, supra. Thus, it is ***17** clear that the City sought to accomplish by delay that which it could not effect by an immediate rezoning. Indeed, we must agree with the conclusion of the Fourth District that the City affirmed the Zoning Board's denial of its rezoning petition on February 17, 1971, only

'. . .

'After it became apparent to the city commission that the plaintiffs could not profitably carry out their project because of the prevalent poor economic conditions . . ..'[16]

It is only too clear that the City was aware of the adverse effects that the resulting delays were having on the petitioners' projects in light of the testimony adduced at the trial court's March 4, 1970, hearing on the City's motion to dismiss, i.e., that all activities had been brought to a halt until the City made up its mind; that a partial rezoning of the property would destroy the petitioners' site plan; and that a one-year delay in construction would add three quarters of a million dollars to the cost of the first building. It must, therefore, be assumed in light of this and other testimony that the Commission knew that the petitioners could not proceed to build or attract financing from potential investors until the matter of rezoning was definitely decided. It is also reasonable to assume that the City was aware that with each day it deferred action that the building market and the national economy were constantly deteriorating into a recessionary state.

It must also be remembered that at its February 17, 1971, meeting the Commission in one fell swoop Without prior notice to the petitioners: affirmed after an eleven month delay the Zoning Board's denial of its petition to rezone; repealed its motion of July 15, 1970, which had extended the life of the permit until the Completion of the litigation between the parties, and mandated that the petitioner proceed with construction within ninety days.

Under the circumstances, these actions were arbitrarily taken. The affirmance of the Zoning Board's decision had the dual effect of lifting the petitioners out of limbo but casting them into the depths of the inferno. This is especially true when the affirmance is coupled with the repeal of the motion extending the permit. Such an indefinite extension was a municipal action upon which the petitioners in good faith had substantially altered their position from one of readiness to build to one of necessarily dismantling their construction organization in order to actively assert their rights in the prosecution of their suit against the City. Such an action and reliance thereon satisfies the requirements of the Salkolsky rule.

The City's contention that the Commission intended this extension to remain in effect only until the end of the litigation on its interlocutory appeal is without merit. The motion was not so worded, but clearly stated that the permit was to be extended until the litigation between the parties was completed. If the City intended to limit this extension, it should have worded the motion accordingly. On this point, the applicable analogy must be drawn to the doctrine of statutory and constitutional interpretation of Expressio unius est exclusio alterius. Furthermore, if the motion was so limited, its repeal would have been automatically affected when this Court notified the parties that we had denied certiorari, and there would have been no need for the Commission to expressly repeal the motion.

As noted previously, the suit was actively prosecuted by both parties during the ninety-day period and litigation thereon has continued up until the present time.

The mandated ninety-day period was an unreasonable lack of time in view of the above arbitrary actions by the City and its knowledge that it had taken the petitioners some nine or ten months to complete the necessary preparations to achieve a state of readiness to begin construction on January ***18**

23, 1970, when they paid some $15,000.00 for the building permit. Under these circumstances the petitioners' failure to build and even their request for the return of the permit fee, until economic conditions improved did not constitute a surrender of their permit or a relinquishment of their vested right in the continuance of the RC—12 zoning.

This Court would be undeserving of its equitable powers if we did not enjoin the two disputed ordinances. Indeed, as this Court stated in Texas Co., supra, at 809, we find the petitioners' cause to be 'pregnant with equity.' The arbitrary action by the City Commission sub judice has not even produced an embryo and thus will not be countenanced by this Court. Salkolsky, supra; Texas Co., supra.

[7] Every citizen has the right to expect that he will be dealt with fairly by his government. Marguiles, supra, at 425—26. 'Unfair dealing' by a municipality can also serve as the basis for the invokement of equitable estoppel. City of Jacksonville v. Wilson.[17] While a City Commission certainly possesses the prerogative of deciding to defer action on such a proposal over a long period of time, it must assume the attendant responsibility for the adverse effect it knows or should know its deliberate inaction will have upon the parties with whom it is dealing. In the instant case, the course of Inaction chosen by the City and its subsequent arbitrary actions must necessarily be equated with 'unfair dealing.' Wilson, supra; Marguiles, supra.

For the reasons expressed in its opinion the District Court correctly reversed the chancellor's finding as a matter of law that the retention of the building permit fee by the City would constitute a forfeiture. City of Hollywood, supra, at 871. The case of City of Miami v. Miller,[18] relied upon by the petitioners, is inapplicable to the cause now before us. The record does not reveal whether or not the City has returned the fee to the petitioners. In the event the fee is in the petitioners' possession, it must be returned to the City, and in this regard the District Court is affirmed.

In other respects the opinion of the Fourth District Court of Appeal is quashed and this cause is remanded for entry of an opinion consistent with the views hereinabove expressed.

Affirmed in part and reversed in part.

It is so ordered.

ADKINS, C.J., ROBERTS and HATCHETT, JJ., and McCRARY, Circuit Judge, concur.

ENGLAND, J., dissents with an opinion, with which OVERTON and SUNDBERG, JJ., concur.

ENGLAND, Justice (dissenting).

I dissent. There is no direct conflict between the district court's decision and the decision of any other Florida appellate court. The majority below carefully analyzed the decisions alleged by petitioners as a basis for the exercise of our jurisdiction. It found, however, that they did not appropriately apply to command the result which petitioners there sought.

I view our constitutional role as being more narrow than providing litigants with a second appeal in select cases, as is done here, and I would discharge the writ of certiorari.

OVERTON and SUNDBERG, JJ., concur.

All Citations

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Footnotes

1 City of Hollywood v. Hollywood Beach Hotel, 283 So.2d 867 (Fla.App. 4th 1973).

2 265 So.2d 43 (Fla.1972).

3 251 So.2d 665 (Fla.1971). e.g. First Atlantic National Bank v. Cobbett, 82 So.2d 870 (Fla.1955); In Re Baldridge's Estate, 74 So.2d 658 (Fla.1954); Povia v. Melvin, 66 So.2d 494 (Fla.1953); Ford Motor Co. v. Waters, 273 So.2d 96 (Fla.App.3d 1973); Nixon Construction Co. v. Dover, 218 So.2d 458 (Fla.App.1st 1969); St. Paul Mercury Ins. Co. v. Conley, 201 So.2d 618 (Fla.App.4th 1967); 2 Fla.Jur. Appeals, s 346 (1963).

4 City of Hollywood, supra, at 868—870.

5 Webster's Third New International Dictionary 731 (1961).

6 Id. at 395.

7 151 So.2d 433 (Fla.1963).

8 44 So.2d 808 (Fla.1950).

9 289 So.2d 424 (Fla.App. 3d 1974).

10 159 Fla. 646, 75 So.2d 753 (Fla.1954).

11 32 So.2d 425 (Fla.1947).

12 174 So.2d 100 (Fla.App.1st 1965).

13 City of Hollywood, supra, at 870 interpreting Texas Co., supra, at 809—810. It seems clear that this Court in Texas Co., supra, was speaking of the exception in the City's charter for the procedure of enacting emergency ordinances and not to an exception to the rule now under consideration.

14 City of Hollywood, supra at 870. (Emphasis added.)

15 Id.

16 City of Hollywood, supra, at 868. (Emphasis added.)

17 157 Fla. 838, 27 So.2d 108 (1946).

18 148 Fla. 349, 4 So.2d 369 (1944).

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