

O/A 5-6-86

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IN THE SUPREME COURT OF FLORIDA

CASE NO. 67,092

FILED

SID J. VINI

FEB 6 1986

CLERK, SUPREME COURT

STEPHEN B. TRIVINE

Chief Deputy Clerk

Petitioner

v.

DUVAL COUNTY PLANNING COMMISSION
and the CITY OF JACKSONVILLE

Respondents

* * *

PETITIONER'S BRIEF ON THE MERITS

* * *

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TABLE OF CONTENTS

	<u>Page</u>
Table of Citations	ii-iii
Statement of Facts	1-5
Summary of Argument	5a
Issue I	6-12
WHETHER THE PROCESSES OF THE ZONING AUTHORITY IN THIS CASE AFFORDED THE PETITIONER DUE PROCESS OF LAW?	
Issue II	13-19
WHETHER THE CORRECT LAW HAS BEEN APPLIED IN THE FINDING THAT THE PETITIONER DID NOT MAKE A SHOWING SUFFICIENT TO MEET HIS BURDEN?	
Conclusion	20
Certificate of Service	21

TABLE OF CITATIONS

	<u>Page</u>
1. <u>Alachua County v. Eagles Nest Farms, Inc.</u>	18
473 So.2d 257 (Fla. 1st DCA 1985)	
2. <u>City of Apopka v. Orange County</u>	8,9,17
299 So.2d 657,659-660 (Fla. 4th DCA 1974)	
3. <u>Coleman v. Watts</u>	8
81 So.2d 650 (Fla.1955)	
4. <u>Conetta v. City of Sarasota</u>	9,16,
400 So.2d 1051 and at 1052 (Fla. 2d DCA 1981)	17,18
5. <u>Edwards v. Division of Beverage, Board of Business Regulations</u>	7
278 So.2d 659 (Fla. 1st DCA 1973)	
6. <u>Ford v. Bay County School Board</u>	7
246 So.2d 119 (Fla. 1st DCA 1970)	
7. <u>Gentry v. Dept. of Professional & Occupational Regulations, State Board of Medical Examiners</u>	7
283 So.2d 386,387 (Fla. 1st DCA 1973)	
8. <u>Harvey v. Nuzum</u>	7
345 So.2d 1106 (Fla. 1st DCA 1977)	
9. <u>Hickey v. Wells</u>	7
91 So.2d 206,210 (Fla.1957)	
10. <u>Irvine v. Duval County Planning Commission and the City of Jacksonville</u>	10,18
466 So.2d 357, at 359 (Fla. 1st DCA 1985)	
11. <u>Laney v. Holbrook</u>	7
8 So.2d 465,467,468 (Fla.1942)	
12. <u>Lynch-Davidson Motors, Inc. v. Calvin</u>	8
308 So.2d 197 (Fla. 1st DCA 1975)	
13. <u>Manatee County v. Florida Public Employees Relations Commission</u>	12
387 So.2d 446,449 (Fla. 1st DCA 1980)	

	<u>Page</u>
14. <u>McCulley Ford, Inc. v. Calvin</u>	7
308 So.2d 189 (Fla. 1st DCA 1975)	
15. <u>McRae v. Robbins</u>	8,11
9 So.2d 284 and at 291 (Fla.1942)	
16. <u>Peoples Bank of Indian River County v. State Dept.</u> <u>of Banking & Finance</u>	11,12
378 So.2d 328,329 (Fla. 1st DCA 1980) aff'd, 395 So.2d 251 (Fla.1981)	
17. <u>Polar Ice Cream & Creamery Co. v. Andrews</u>	7
150 So.2d 504 (Fla. 1st DCA 1963)	
18. <u>Polyglycoat Corp. v. Hirsch Distributors, Inc.</u>	11
442 So.2d 958 (Fla. 4th DCA 1983) review dismissed, 451 So.2d 848	
19. <u>Powell v. Board of Public Instruction of Levy County.</u>	7,8
229 So.2d 308,311-312 (Fla. 1st DCA 1970)	
20. <u>Rural New Town, Inc. v. Palm Beach County</u>	16,18, 20
315 So.2d 478 and at 480 (Fla. 4th DCA 1975)	
21. <u>Sarasota County v. Purser</u>	18,19
476 So.2d 1359 and at 1361 (Fla. 2d DCA 1985)	
22. <u>Thorn v. Florida Real Estate Commission</u>	11
146 So.2d 907 (Fla. 2d DCA 1962)	

OTHER

23. <u>Florida Statutes</u>	11,19
Chapters 120 and 163.170(6) (1983)	
24. <u>Jacksonville Municipal Code</u>	1,3,6, 13
§704.104(d), §708.101(hh), §708.311	
25. <u>Yokley on Zoning</u> , vol. 2, p. 124	16

STATEMENT OF FACTS

On May 12, 1983, the petitioner, STEPHEN IRVINE, filed an application to obtain a permissible use by "exception" pursuant to §708.311 of the Zoning Regulations of the City of Jacksonville to allow the sale of beer and wine for consumption on premises. The property was zoned "Commercial Neighborhood --CN" pursuant to the cited section, which district is intended to provide a suitable area for the day-to-day shopping needs of the residential neighborhood in which it is located. Service stations, vehicle repair and sales, and similar automotive-oriented activities are prohibited. Retail sales and services permitted without approval or application include:

Food and drugs	Barber
Wearing apparel	Shoe repair
Toys	Restaurant
Sundries and notions	Reducing salon
Jewelry	Self-service laundry
Art	Dry cleaner
Cameras	Tailor
Sporting goods	Laundry package plants
Flowers	Travel agencies
Delicatessens	Business offices
Bake shops	Art galleries
Banks	Beer and wine sales only for off-premises consumption
Churches	

The uses that are permitted by exception in the district, including that applied for by the Petitioner are:

- Antique shops
- Child care centers
- Beer and wine sales for consumption on premises
- Indoor theatre
- Bookstores and newsstands

The nature of an "exception" is set forth in §708.101(h) (h) Jacksonville Municipal Code as a use which would promote the interests of the

neighborhood if controlled in number and location. That is:

An "exception" is a use that would not be appropriate generally or without restriction throughout the zoning division or district but which, if controlled as to number, area, location or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity or general welfare. Such uses may be permitted in such zoning division or district as exceptions, if specific provision for such exception is made in this zoning code.

The petitioner's application (App. 35-42) showed that the requested exception had been permitted to the prior operator of the business by the granting of a zoning exception on May 28, 1981. The present application was reviewed by the Planning Department of the City of Jacksonville in accordance with the code requirement that the Zoning Commission receive and consider the recommendations of the City's professional planning staff.

The department's report noted that the application related to beer and wine service for consumption on premises in a facility having 55 seats and 2 employees, that the exception sought was to be transferrable with the title to the premises, and that the exception had been permitted on four (4) prior applications dated 1973, 1977, 1980, and 1981. The professional planning staff found that the proposed use would be compatible with the existing land use pattern in the area, and it recommended the approval, (App. 45).

On June 16, 1983, the Planning Commission held a duly noticed public hearing to consider the petitioner's application, together with a number of other matters on its agenda. The petitioner appeared in person at the hearing and spoke in behalf of the requested use. The hearing minutes

maintained by the Zoning Commission indicate that the petitioner pointed out that "There has been a bar and sandwich shop there for 40 years," (App. 46). There are no other remarks by the petitioner appearing in the minutes, and no one else appeared before the Commission to speak in opposition to the application. The only other remarks contained in the record are that "The chairman stated he had had telephone calls from neighbors in opposition." The chairman did not specify the number of calls or describe any of the facts related in the objections, (App. 46).

The City Zoning Regulations require that the agency make a record of the proceedings of "sufficient degree to disclose the factual basis for its final determination with respect to such requests and appeals." §704.104(d), Jacksonville Municipal Code, "Procedures for Hearing Zoning Exceptions, Zoning Variances and Appeals." In its response to the order to show cause issued by the Circuit Court, the City alleged that there had been speakers in opposition. Since the only written records were the minutes (that showed no opposition) the petitioner had the secretary to the Commission produce before the Circuit Court the original audio tape recording of the hearing to supplement the record on the Petition for Certiorari. The City objected to the play-back of the tape. The issue of whether to allow the production over this objection was resolved when the City stipulated that no testimony was presented in opposition to the petitioner's application, and allowed that portion of its brief to be stricken, (App. 55-57).

The minutes reflect that after the chairman remarked on the telephone calls he had received, the Commission voted seven (7) to zero (0) to deny the

exception. Thereafter, the Commission entered a formal written order in which it described the nature of the exception applied for, that the Planning Department had considered the application and rendered an advisory opinion thereon, and then concluded:

(A)fter considering the facts as determined by the Commission in its investigation of the application and the facts presented at the public hearing, this Commission makes the following findings:

1. Applicant failed to sustain the burden of showing that the granting of the exception would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity or general welfare of the neighborhood.
2. Proposed use would not be compatible with other uses existing in the district. (App. 47-49)
(emphasis added)

Neither the record nor the formal order refers to any facts or evidence of facts obtained from the Commission's investigation.

The Petition for Writ of Certiorari filed in the Circuit Court of Duval County (App. 26-32) was denied. The only recitation in the order was that, "It does not appear that the Planning Commission departed from the essential requirements of the law," (App. 58). The Circuit Court decision was silent as to whether procedural due process had been afforded or whether the decision of the Commission was supported by competent substantial evidence. The petitioner on rehearing suggested that the Circuit Court may have overlooked the record keeping requirements of the local ordinance (App. 25), but the motion for rehearing was denied without further comment.

In the Petition for Certiorari to the District Court, the facts alleged by the petitioner were again accepted by the respondent City. The petitioner argued that the Circuit Court could not have applied the correct legal principles on such a record, that the burden of qualifying for the use by exception had been misplaced, that the unsupported conclusions of the zoning authority had been accepted, and that the petitioner had been effectively denied due process of the law. The petitioner's arguments to District Court were rejected, and the Circuit Court affirmed with a lengthy dissent by one member of the panel (App. 10-15). The timely application to this Court has followed.

SUMMARY OF ARGUMENT

The petitioner made a proper application for a zoning exception in a Commercial--Neighborhood district. The application was denied without any record of the evidence supporting the conclusions expressed by the respondent Commission. The petitioner submits that the lack of any record supporting the denial renders it impossible for the Commission to have met the essential requirements of the law.

The Planning Department recommended the approval of the application, and no one spoke against the request at the public hearing. However, the chairman stated that he had received calls from neighbors in opposition. No record of the calls or the grounds for the opposition was made, and the petitioner was afforded no means of rebuttal. The petitioner submits that such ex parte communications cannot be a foundation for the exercise of administrative power, and the record therefore remains devoid of competent evidence supporting a denial over the findings and recommendations of the Planning Department.

The Commission's order states that the denial is based on the petitioner's failure to show that granting the exception would promote a long list of public interests. The courts below sanctioned this conclusion absent a record of any adverse evidence adduced, absent an ordinance provision that assigns the burden, and absent any published criteria the petitioner was to meet. The petitioner submits that when there is no contest, requiring him to support a burden beyond merely filling out the application and submitting it to the Planning Department for review is contrary to the presumption created by the ordinance definition and the legal meaning of "exception" as expressed in Florida case law on zoning.

ISSUE I

WHETHER THE PROCESSES OF THE ZONING AUTHORITY
IN THIS CASE AFFORDED THE PETITIONER DUE PROCESS
OF LAW?

By implication, the Circuit Court below found that the City had accorded procedural due process, observed the essential requirements of the law, and supported its findings by substantial competent evidence so as to render the zoning decision reviewable by the courts. However, the only determination actually stated by the Circuit Court was that the Commission had observed the essential requirements of law. The implication that proper evidence was adduced by the Commission to support its decision is contested here as it was contested before the District Court.

The finding of "fact" by the zoning authority in this case is like the appearance of beauty in the emperor's new clothes; neither exists. The closest the respondent City has come to any showing of fact adverse to the application was the statement in the brief to the Circuit Court, that there were speakers in opposition heard at the public hearing. Even this was stricken upon stipulation to avoid the play-back of the audiotape as a supplement to the Commission's meager minutes.

The minutes, or "record" if it may be called that, runs afoul of the respondent's own ordinance requiring a record, not verbatim, but sufficient to show the "factual basis" for its determination, 704.104(d) Jacksonville Municipal Code.

At every level of the proceedings under review, it has been affirmatively shown that the Planning Commission order failed to make any detailed findings of fact explaining its denial of the application, that the Commission failed to record competent evidence sufficient to support its denial of the application, and that the Commission has attempted to justify its denial by merely reciting that the petitioner had failed to carry his burden of proof. It has been repeatedly held that an administrative order purporting to exercise the quasi-judicial functions of an agency must contain specific findings of fact, and that without a factual predicate, the order is fatally defective. Gentry v. Dept. of Professional & Occupational Regulations, State Board of Medical Examiners, 283 So.2d 386, 387 (Fla. 1st DCA 1973); Accord, e.g., Hickey v. Wells, 91 So.2d 206 (Fla.1957); Laney v. Holbrook, 8 So.2d 465, 467 (Fla.1942); Harvey v. Nuzum, 345 So.2d 1106 (Fla. 1st DCA 1977); Edwards v. Division of Beverage, Board of Business Regulations, 278 So. 2d 659 (Fla. 1st DCA 1973); McCulley Ford, Inc. v. Calvin, 308 So.2d 189 (Fla. 1st DCA 1975); Ford v. Bay County School Board, 246 So.2d 119 (Fla. 1st DCA 1970); Powell v. Board of Public Instruction of Levy County, 229 So.2d 308 (Fla. 1st DCA 1970); Polar Ice Cream & Creamery Co. v. Andrews, 150 So.2d 504 (Fla. 1st DCA 1963).

Due process in this context requires that the Commission set out its factual findings so that upon review by the courts it can be determined whether or not the facts constituted lawful grounds for its action, and then, determine whether the evidence supported the findings. Laney v. Holbrook, 8 So.2d at 468; Hickey v. Wells, 91 So.2d at 210; Powell v. Board of Public

Instruction of Levy County, 229 So.2d at 311-312. The findings of the respondent Commission are merely general conclusions in the language of the ordinance. There is no way for the courts to determine whether the conclusions have any foundation in fact. City of Apopka v. Orange County, 299 So.2d 657 (Fla. 4th DCA 1974); Lynch-Davidson Motors, Inc. v. Calvin, 308 So.2d 197 (Fla. 1st DCA 1975).

The rational basis for requiring an adequate record was discussed by this court in its decision of McRae v. Robbins, 9 So.2d 284 (Fla.1942) where at page 291 the court held, "Such administrative orders made without a record of the evidence adduced in support thereof are without legal effect, since it is the evidence adduced and the findings made thereon, and not merely the unsupported orders made, which show the validity or invalidity of the administrative orders made under delegated administrative authority for a governmental purpose." The lack of any record of evidence warranting denial of the petitioner's application combined with the announcement by the chairman of the Commission that he had received undisclosed numbers of ex parte communications runs afoul of this court's dictate in Coleman v. Watts, 81 So.2d 650 (Fla.1955). A decision of an administrative body cannot rest solely upon confidential information to which such credence is given that its effect cannot be overcome by the applicant. Moreover, for the applicant to deny or rebut the assertions, he must know what they are.

The pleas of the petitioner against these violations of due process have been made at every level and before every court which has reviewed the Commission's determination. In his brief to the Circuit Court, the petitioner

made lengthy recitation from the decision of City of Apopka v. Orange County, 299 So.2d 657 (Fla. 3d DCA 1974) where the court found that the order of the zoning authority stated mere conclusions without reference to any detailed findings from the objections of a large number of residents in the affected neighborhood. The decision in Conetta v. City of Sarasota, 400 So.2d 1051 (Fla. 2d DCA 1981) has also been relied upon for the proposition that the purpose of a public hearing on a zoning matter is not merely to conduct a popularity poll. In part, the petition to the Circuit Court argued that:

Not only has the action of the board in the instant case amounted to a "plebiscite" on the exception application, but six members of the Commission, the applicant, and the public were denied the opportunity to know what facts had been presented by interested persons which, when considered in relation to this application, made it reasonably necessary for the public protection and health that the exception be denied. (App. 28)

The majority opinion of the District Court is that the petitioner had not demonstrated that the Circuit Court had departed from the essential requirements of law. The opinion is replete with the indictment that the record is insufficient to show that the essential requirements of the law were not met. Respectfully, the petitioner submits that it is the very same lack of a record, acknowledged by the District Court, that shows the inadequacy of the basis for the Commission's denial of the exception application. The District Court writes that the Circuit Court was provided "only" with the application, a portion of the ordinance, the Planning Department recommendation, the Commission's written order of denial, and a copy of the Commission minutes. The majority opinion then points out that, "No other record or

transcript of the proceedings has been presented, with a footnote that no contention was made that the Circuit Court failed upon request to take judicial notice of "other ordinance provisions", Irvine v. Duval County Planning Commission, 466 So.2d 357, at 359. However, the Circuit Court was presented with every bit of record made before the Commission. Additionally, the Circuit Court had before it the arguments and citations contained in the Petition for Writ of Certiorari which made reference to several parts of the zoning ordinance, with particular emphasis on the City's own requirement for keeping a record sufficient to show the factual basis for the agency's determination.

Upon motion for rehearing before the Circuit Court, the actual text of the record keeping requirement of the ordinance was reproduced rather than merely cited. There has never been any contention by the respondent City that some undisclosed portion of the zoning ordinance alleviated the need for a record, shifted the burden from the City to the applicant, or permitted a member of the Commission to rely on ex parte communications received from undisclosed sources.

The petitioner had not contemplated that after repeated reference to various provisions of the zoning ordinance, it would be necessary to request the Circuit Court to take judicial notice of every part of the ordinance not included for convenience in the original appendix. For ease of reference and for greater emphasis, the record keeping provisions of the ordinance were cited in full upon application for rehearing before the Circuit Court. When issues were raised by the majority opinion in the District (issues never

addressed by the City) the petitioner sought to supplement the record with additional portions of the ordinance which had been before the Circuit Court.

The petitioner respectfully submits that the denial of relief for the lack of some reference to a provision of the ordinance again casts the burden upon the petitioner to not only show the procedural and substantive defects of the Commission's action, but to anticipate and rebut the arguments of the respondent when none have been presented. The respondent bears the same burden as the petitioner to provide the court with material facts and points of law supporting its position, or else allow the court to believe them waived, abandoned, or deemed by counsel to be unworthy, Polyglycoat Corp. v. Hirsch Distributors, Inc., 442 So.2d 958 (Fla. 4th DCA 1983), review dismissed, 451 So.2d 848. In this case, this is no such provision.

As much as it may seem otherwise, the entire record of the facts upon which the Commission based its denial are before this court, and were before the Circuit and District Courts. The record coming from the Commission is, on its face, inadequate to meet the requirements of the local ordinance, the requirements of Chapter 120 F.S. (1983), The Administrative Procedures Act, and the due process requirements long established as Florida law by the Supreme Court in McRae v. Robbins, 9 So.2d 284 (Fla. 1942). It appears that the decision of the Commission was based solely upon its own information or the ex parte comments received by the Chairman. The law of this state and this district is that a quasi-judicial determination cannot be based on secret, concealed, or undisclosed information, Thorn v. Florida Real Estate Commission, 146 So.2d 907 (Fla. 2d DCA 1962); Peoples Bank

of Indian River County v. State Dept. of Banking & Finance, 378 So.2d 328, 329 (Fla. 1st DCA 1980), aff'd, 395 So.2d 521 (Fla.1981); Manatee County v. Florida Public Employees Relations Commission, 387 So.2d 446, 449 (Fla. 1st DCA 1980).

ISSUE II

WHETHER THE CORRECT LAW HAS BEEN APPLIED IN THE FINDING THAT THE PETITIONER DID NOT MAKE A SHOWING SUFFICIENT TO MEET HIS BURDEN?

Beyond the conflicts of the decisions of the lower courts with the well established principles of administrative due process, there lies the issue of what substantive standard of law was to be applied by the Commission in considering the exception application. From the outset, the petitioner has contended that he has followed the specified procedures and that he is entitled to a presumption that the use is proper in the district, until the zoning authority, its professional staff, or the public shows otherwise. The Jacksonville Municipal Code definition of "exception" squarely supports the petitioner's contention:

708.101 (hh) EXCEPTION: An "exception" is a use that would not be appropriate generally or without restriction throughout the zoning division or district but which, if controlled as to number, area, location or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity or general welfare. Such uses may be permitted in such zoning division or district as exceptions, if specific provision for such exception is made in this Zoning Code.

The requested use, having been enumerated as permissible in the Code provision for commercial-neighborhood zones, is by definition and legislative fiat a use that promotes the public interest. All that remains, and the only purpose in distinguishing the use at all, is to regulate the number, area, location and relation to the neighborhood. In this scheme, the qualitative

determination of whether the use should be allowed in the CN district has been made in and by the adoption of the Code.

The Zoning Commission is charged with the administrative task of insuring compliance with the Code. By its decision in this instance, it has substantially revised the Code. Rather than accept a use which "would promote the public health . . . convenience . . . order . . . etc." if controlled as to number, area, location and relation to the neighborhood, the Commission has ruled that it will control the number, area, location or relation to the neighborhood if the applicant cannot "sustain the burden of showing that the granting of the exception would promote the public health . . . convenience . . . order . . . etc." (App. 47-49). The Commission uses the same words to describe what this exception would not do as the ordinance itself uses to describe the effect that the prescribed uses would have when limited in number and location.

That the petitioner has met the application process requirements has never been in issue; he did. Even if it were his burden to show that the use was compatible with other uses in the area, it is submitted that a prima facie case for the use was made by the combined effect of the description of the premises, the number of seats and employees, the petitioner's unrebutted remarks at the public hearing, and the unqualified endorsement of the Commission's own planning staff.

What other showing would the respondent City require of the layman who seeks an exception for a use permitted there for over forty (40) years? This is a query that the respondent has carefully avoided. If the Commission

had some substantive grounds for denial of the application, one would think the grounds would have been presented heretofore. There has been no ordinance provision presented that explains what the applicant must show or that places any burden on him beyond filling out the forms. No fact has been adduced to rebut the prima facie showing that the use is compatible with the neighborhood, and no legal or logical reason for the denial of the exception as approved in the past.

The decisions of the Courts below have redefined the term "exception" as it is used through the zoning industry. In the view of the First District majority, the burden may be placed upon the applicant without any provision on the ordinance that allocates or describes the burden. Not only does the decision revise the Code and conflict with established case law, but it emasculates the legal definition of the term exception. A leading treatise cited in the petition before the Circuit Court and in the dissenting opinion in the District Court below distinguished a "permitted use by special exception" from other forms of zoning change, including rezonings and variances and the different burden of proof with respect to each:

"Occasionally the bar and less often the bench lose sight of the concept that the conditional use or special exception, as it is generally called, is a part of the comprehensive zoning plan sharing the presumption that as such it is in the interest of the general welfare and, therefore, valid The special exception is a valid zoning mechanism that delegates to an administrative board a limited authority to permit enumerated uses the legislature has determined can be allowed, properly albeit prima facie, absent any fact or circumstance negating the presumption."

The term "exception" became more than a term of art when its distinction was applied in the case of Rural New Town, Inc. v. Palm Beach County, 315 So.2d 478 (Fla. 4th DCA 1975), where the court held that:

There is a distinction between seeking rezoning and seeking a special exception; each involves somewhat different considerations. In rezoning, the burden is upon the applicant to clearly establish such right (as hereinabove indicated). In the case of a special exception, where the applicant has otherwise complied with those conditions set forth in the zoning code, the burden is upon the zoning authority to demonstrate by competent substantial evidence that the special exception is adverse to the public interest. Yokley on Zoning, vol. 2, p. 124. A special exception is a permitted use to which the applicant is entitled unless the zoning authority determines according to the standards in the zoning ordinance that such use would adversely affect the public interest. Id. at 480.

315 So.2d at 480
(emphasis from original)

The recitation was made verbatim in the petitioner's application for writ of certiorari made to the Circuit Court. The decision of the First District Court of Appeal in this case not only conflicts with the law in Rural New Town but emasculates it to the extent that not only is the rule of that case put in question, but also the law of the case in the Second District opinion in Conetta v. City of Sarasota, 400 So.2d 1051 (Fla. 2d DCA 1981), wherein Judge Boardman reviewed Rural New Town, supra, and then wrote that "Appellant complied with the terms of the ordinance. This being so, the Planning Board and the City Commission then had the burden of establishing that the use she proposed would adversely affect the public interest." Id. at 1052. In neither of these decisions is any reference made to a particular provision of the

respective zoning ordinances that allocated the burden in exception proceedings outside the meaning of the term itself.

The Conetta decision, supra, has been emphasized by the petitioner in both courts below, not only for its confirmation of "special exception" as a distinctive term, but also because it shed light on the circumstance created when a large number of residents appear to oppose a requested exception or write letters of opposition. These courts cited a portion of the decision in City of Apopka v. Orange County, 299 So.2d 657, 659-660 (Fla. 4th DCA 1974) which portions were also quoted by the petitioner in his application to the Circuit Court, to the effect that a mere poll of the neighboring landowners does not serve to assist the board in determining whether the exception applied for is consistent with the public welfare.

In the instant case, no one spoke against the application, and no letters in opposition from residents of the area were brought to the board's attention. If the comments of the chairman of the Planning Commission of the City of Jacksonville are taken as true, and there were in fact telephone calls in opposition, no facts adduced from the calls were brought before the Commission for their consideration. If it stands, the decision in the District Court below will foster the call-in method of civic participation, and the extent to which a property owner may use his lands will be determined by popularity poll rather than by careful consideration of facts presented at the public forum.

The confusion that will be engendered by the District Court's treatment of these issues is already evident in two recent decisions which cite the

case at bar. The first, decided by a different panel of the First District Court of Appeals is Alachua County v. Eagles Nest Farms, Inc., 473 So.2d 257 (Fla. 1st DCA 1985) where the court writes that an applicant has a right to know what the requirements are that he must comply with in order to implement the permitted use; these requirements must be of uniform application, and once the requirements are met, the governing body may not refuse the application. This holding is remarkable when compared to the case at bar in which the fact of the petitioner's compliance with the application requirements has been wholly undisputed. The confusion engendered by Irvine in the Alachua case, begins when it is cited together with Conetta, supra, and Rural New Town, supra, for the proposition that if the applicant has met the burden established in the zoning ordinance, then it is incumbent upon the board to demonstrate by competent substantial evidence that the exception did not meet the standard of the ordinance and was, in fact, adverse to the public interest. It is impossible to reconcile this scenario with the uncontested fact in this case that the Commission placed upon the petitioner the burden of meeting undefined ordinance standards and of showing that the use would promote public interests.

The Second District decision in Sarasota County v. Purser, 476 So.2d 1359 (Fla. 2d DCA 1985) has distinguished the conflict between the Irvine decision below and the Conetta and Rural New Town cases. The Sarasota decision cast the burden upon the applicant to show that the proposed use of the property would promote the public welfare in spite of the fact that a special exception is defined in the Sarasota zoning code in the

same language that it is defined in the Jacksonville Municipal Code, to-wit:
A use "which if controlled as to number, area, location, or relation to the
neighborhood would promote the public health, safety, welfare, morals,
order, comfort, convenience, appearance, prosperity, or general welfare."
Sarasota County, supra, at 1361, (see also Chapter 163.170(6) F.S. 1983
which defines "special exception" in these same terms). However, the many
other provisions of the Sarasota code noted by the court resulted in the
greater requirements being placed upon the applicant. No such additional
requirements or criteria are enumerated in the Jacksonville Municipal Code.

CONCLUSION

The Planning Commission has made no record of evidence sufficient to support its findings and conclusions. Without a record of the evidence supporting the decision, the zoning authority is free to judge the exception application arbitrarily, free of public scrutiny or effective judicial review. The Commission has successfully denied the petitioner a use which has been approved on four prior occasions, despite the recommendations of their own professional planning staff which had studied the application and found it to be compatible with the existing uses in the district.

By case law and by definition in the Jacksonville Municipal Code, a permitted use by exception serves the public if controlled as to number and location within the prescribed districts. No other criteria, condition, or requirement has been published. The denial of this application is contrary to the definition in the code, contrary to the nature of an "exception" as defined by the case law, and wholly without support in the record. This case signals not merely a departure from the essential requirements of the law, but the wholesale violation of the petitioner's rights to due process and equal protection.

Respectfully submitted,

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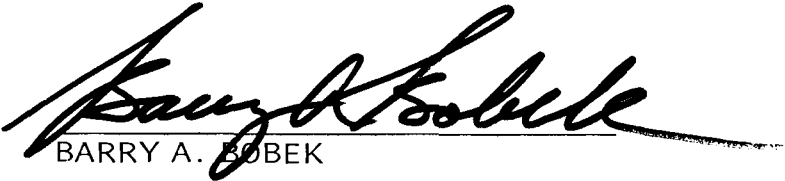
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BARRY A. BOBEK

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to THOMAS E. CROWDER, Esquire, 1300 City Hall, Jacksonville, Florida 32202, by U. S. mail this 5th day of February, 1986.


BARRY A. BOBEK