

IN THE SUPREME COURT FOR THE STATE OF FLORIDA

DENIS POTIRIS,

CASE NO.: SC07-238

Petitioner,

L.T. Case No.: 4D05-3134

v.

DEPARTMENT OF COMMUNITY AFFAIRS and
THE VILLAGE OF WELLINGTON, FLORIDA,

Respondents.

RESPONDENTS' JURISDICTIONAL BRIEF

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TABLE OF CONTENTS

TABLE OF CITATIONS..... ii

PREAMBLE 1

STATEMENT OF THE CASE AND OF THE FACTS..... 1

SUMMARY OF ARGUMENT..... 1

ARGUMENT..... 2

**I. *Potiris* and *St. Joe* Applied §164.3184(1)(a), Florida Statutes(2004)
Without Relying on Conflicting Interpretations of that Statute..... 3**

II. Alternatively, *St. Joe* was Adopted in *Potiris*4

CONCLUSION..... 10

CERTIFICATE OF SERVICE..... 11

CERTIFICATE OF COMPLIANCE..... 12

TABLE OF CITATIONS

CASES:

Brasfield & Gorrie General Contractor, Inc. v. Ajax Construction Company, Inc. of Tallahassee, 627 So. 2d 1200 (Fla. 1st DCA 1993) 7

St. Joe Paper Co. v. Dep’t of Cmty, Affairs, 657 So. 2d 27 (Fla. 1st DCA 1995).....2-6, 8, 10

Potiris v. Department of Community Affairs, 947 So.2d 598 (Fla. 4th DCA 2007) 1-6

Reaves v. State, 485 So. 2d 829 (Fla. 1986)..... 1

The Florida Star v. B.J.F., 530 So. 2d 286 (Fla. 1988)..... 3, 4

Weiss v. Johansen, 898 So. 2d 1009 (Fla. 4th DCA 2005) 7

STATUTES AND CONSTITUTION:

§120.57, Florida Statutes (2004)..... 9

§163.3184(1)(a), Florida Statutes (2004)..... 2-9

Article V, §3(b)(3), Florida Constitution..... 3, 10

PREAMBLE

The Petitioner, Denis Potiris, is referred to herein as “Potiris”. Respondent, Village of Wellington, Florida is referred to herein as “Wellington”. Respondent, Florida Department of Community Affairs, is referred to herein as “Department”. This Jurisdictional Brief is being submitted on behalf of Wellington and the Department.

STATEMENT OF THE CASE AND OF THE FACTS

Potiris’ Statement of the Case and Facts violates the four corners rule applicable to Jurisdictional Briefs seeking review based on conflict jurisdiction. *Reaves v. State*, 485 So. 2d 829, 830 (Fla. 1986). Therefore, Wellington and the Department request that this Court confine itself to the Fourth District Court of Appeal’s two paragraph Opinion (“Opinion”) in *Potiris v. Department of Community Affairs*, 947 So.2d 598 (Fla. 4th DCA 2007) for the facts which may be considered in determining whether the requisite conflict exists and, if so, whether this Court should exercise its discretion to resolve the conflict.

The Opinion states the following as to Potiris’ allegation of standing: “Potiris is a land planner who does not live, own property, or have a business address or business license in Wellington.” *Id.* at 598.

SUMMARY OF ARGUMENT

The Fourth District Court of Appeals decision in *Potiris* does not contain a

point of law that is in conflict with the First District Court of Appeal decision in *St. Joe Paper Co. v. Dep't of Cmty, Affairs*, 657 So. 2d 27 (Fla. 1st DCA 1995). *Potiris* and *St. Joe* are two cases applying the definition of an “affected person” in §163.3184(1)(a), Florida Statutes (2004), in which Florida’s legislature included a “person . . . owning or operating a business within the boundaries of the local government whose plan is the subject of the review”, to the facts of the respective cases without making conflicting statements as to how that portion of the statute should be construed. In both instances, the district courts concluded there was no standing.

Alternatively, this Court should determine that the Fourth District adopted *St. Joe* and relied on the First District’s conclusions that an “incidental and transient presence” in the locale is not sufficient to confer standing and that §163.3184(1)(a)’s provision regarding owning or operating a business contemplates “a more substantial local nexus, of a type which might make *the business* potentially subject to the constraints of the local comprehensive plan.” If the courts are applying the same interpretation of §163.3184(1)(a), then there is no conflict jurisdiction.

ARGUMENT

Confining itself to the four corners of the Opinion, this Court should determine that there is no conflict to trigger this Court’s discretionary jurisdiction.

The single case cited by the Fourth District in *Potiris* is *St. Joe Paper Co. v. Dep't of Cmty, Affairs*, 657 So. 2d 27 (Fla. 1st DCA 1995). As argued below, either (i) the two decisions represent separate application of the same statute based on different facts without creating a conflict on a point of law regarding the meaning of §163.3184(1)(a) or (ii) the Fourth District aligned itself with the point of law announced by the First District in *Potiris*. In either case, there is no conflict to support the discretionary jurisdiction of this Court.

According to *The Florida Star v. B.J.F.*, 530 So. 2d 286, 289 (Fla. 1988), this Court refuses “to exercise our jurisdiction where the opinion below establishes no point of law contrary to a decision of this Court or another district court.” *Potiris* has not pointed to, nor can he point to, a conflicting point of law in *St. Joe* and the case at bar. Thus, this Court should conclude it lacks conflict jurisdiction under Article V, §3(b)(3) of the Florida Constitution.

I. *Potiris* and *St. Joe* Applied §164.3184(1)(a), Florida Statutes(2004) Without Relying on Conflicting Interpretations of that Statute.

In §163.3184(1)(a), Florida Statutes (2004), the Florida Legislature included within the definition of an “affected person” “*persons* owning property, residing, or owning or operating a business within the boundaries of the local government whose plan is the subject of the review.” (Emphasis added.) Applying the emphasized language of the statute, the Fourth District determined that the Florida

Department of Community Affairs (“Department”) correctly applied §163.3184(1)(a) and affirmed the Department’s conclusion that Potiris had not alleged standing as an owner or operator of a business within the boundaries of Wellington.

The factual distinction between the case at bar and *St. Joe*, pertaining to Potiris from time to time providing land use related services for properties in Wellington versus 1000 Friends only showing involvement with the comprehensive plan process at issue in *St. Joe*, does not demonstrate the existence of conflicting interpretations as to the scope of §163.3184(1)(a). In each case, the appellate court reasoned that the allegations of standing via ownership or operation of a business did not fit within §163.3184(1)(a). The fact that 1000 Friends was seeking a broader interpretation of §163.3184(1)(a) in that its business activity related only to the Walton County comprehensive plan at issue in the proceeding, as opposed to Potiris who alleged performance of land use services for properties in Wellington unrelated to the comprehensive plan amendment he was challenging, does not mean that the First and Fourth Districts made conflicting statements of law upon which each decision rests. *B.J.F.*, 530 So. 2d at 288. As such, there is no conflict on which to base a request for discretionary review by this Court.

II. Alternatively, *St. Joe* was Adopted in *Potiris*.

Alternatively, this Court should view the Fourth District’s Opinion as adopting the

First District's ruling in *St. Joe* by citation to that case. In *St. Joe*, the court concluded that it was beyond the authority of the Administration Commission to expand the definition of "affected person" because a legislative enactment would be necessary. 657 So. 2d at 28. The First and Fourth Districts both utilized the "conducting some business activity" language¹ in concluding that the alleged basis for standing was insufficient to satisfy the "owning or operating a business within the boundaries of the local government" prong of the "affected person" definition in §163.3184(1)(a).

Potiris arguably does not contain an express statement establishing a point of law upon which the decision rests, which is an impediment to conflict jurisdiction. The Fourth District did not provide an explanation for its conclusion or expressly state that it was adopting the standard from *St. Joe*. Instead, it merely cites to the prior decision in *St. Joe* and provides a parenthetical reference to the facts which caused the First District to conclude 1000 Friends had no standing. The Fourth District's citation to *St. Joe* could be viewed as merely providing an example of another case in which an appellate court concluded that the alleged business activity did not satisfy §163.3184(1)(a). However, the citation to *St. Joe* coupled with the similar use of the "conducted some business activity in

¹ *Potiris*, 947 So. 2d at 599 (utilizing "conducted some business activity in Wellington"); *St. Joe*, 657 So. 2d at 29 (utilizing "merely conducting some

Wellington” language more likely suggests that the Fourth District was adopting the standard announced in *St. Joe*.

St. Joe rejected standing based on “incidental and transient presence” and stated that §163.3184(1)(a) contemplates “a more substantial local nexus, of a type which might make *the business* potentially subject to the constraints of the local comprehensive plan.” *St. Joe*, 657 So. 2d at 29 (emphasis added). *Potiris* and *St. Joe* are consistent in that neither *Potiris* nor 1000 Friends alleged a nexus of a type which might make their respective businesses directly subject to the constraints of the respective local comprehensive plans.

While it may be true that *Potiris* alleged a more substantial nexus to Wellington than 1000 Friends had to Walton County, because *Potiris* alleged that he served others from time to time in a land use planning capacity regarding their properties in Wellington unrelated to the particular comprehensive plan amendment at issue, both interests are incidental and transient, and neither *Potiris* nor 1000 Friends stood to be constrained by the respective comprehensive plans. Instead, *Potiris*’ land planning customers with properties in Wellington and property owners in Walton County whose interests 1000 Friends generally represents are the ones who would be potentially subject to the constraints of the comprehensive plan. Neither factual basis for standing is included within

business activity in connection with the comprehensive planning process”).

§163.3184(1)(a). Hence, there is no conflict.

The Fourth District's reference to Potiris' lack of a business license in the first paragraph of the Opinion also does not create the required conflict. Potiris erroneously argues to this Court that the Fourth District has created a business license condition on standing for a person relying on the owning or operating a business subclass of affected persons. Potiris Jurisdictional Brief at p. 5-6. The four corners of the Opinion do not reveal that the Fourth District applied a business license condition to §163.3184(1)(a). In fact, after the initial reference to business license, in what should be construed as the Fourth District's brief factual background statement, no further reference to a business license is made. Therefore, the Opinion should not be read as stating a point of law regarding the effect of a business license on the standing issue.²

On page 6 of his Jurisdictional Brief, Potiris raises an issue about courts being required to accept a plaintiff's allegation of standing as true. Potiris fails to acknowledge that an allegation of standing must fall within the applicable legal standard of who may be a petitioner or plaintiff for the particular cause of action.

See Weiss v. Johansen, 898 So. 2d 1009 (Fla. 4th DCA 2005); *Brasfield & Gorrie*

² To the extent that this Court construes the Opinion as stating a point of law regarding a business license as a condition to standing, the Opinion does so for the first time and without creating conflict with a prior decision of this Court or of another district court of appeal. *St. Joes* does not address the issue of a business

General Contractor, Inc. v. Ajax Construction Company, Inc. of Tallahassee, 627 So. 2d 1200 (Fla. 1st DCA 1993). The Florida Department of Community Affairs and the Fourth District determined that Potiris' allegation of standing as one owning a business, through which he from time to time represents property owners in Wellington, taken as true, did not constitute "owning or operating a business within the boundaries of the local government whose plan is the subject of the review." Thus, Potiris did not fall within the "affected person" definition in §163.3184(1)(a). Since his allegation did not fit within the statutory standard for standing to contest a Florida Department of Community Affairs comprehensive plan amendment "in compliance" decision, Potiris lacked standing to file a petition and it was not necessary to treat the allegation as true in the context of a motion to dismiss.

The time period argument made by Potiris on pages 6 and 7 of his Jurisdictional Brief also does not reveal decisional conflict to support review by this Court. Potiris incorrectly suggests that the Fourth District based its decision on the facts in *St. Joe*, i.e. that Potiris was alleging standing solely based on his participation in the public hearings on the subject comprehensive plan amendment. There is nothing in the four corners of the Opinion to suggest that the parenthetical contained in the *St. Joe* citation, which refers to 1000 Friends' business activity in

license.

connection with the planning process, was used by the Fourth District as the facts of the case at bar. The four corners of the Opinion do not indicate that the Fourth District was of the belief that Potiris' only alleged participation in the planning process was for the particular comprehensive plan amendment at issue. Instead, the Fourth District applied Potiris' allegation of standing and reasoned: "We do not agree with Potiris that, because, from time to time, he provides land use related services for properties in Wellington, he had standing. The fact that Potiris [who does not live, own property, or have a business address or business license in Wellington] conducted some business activity in Wellington is not the same as 'owning or operating a business' in Wellington." *Potiris*, 947 So.2d at 599. Hence, the Fourth District rejected Potiris' broader allegation of business activity as not fitting within the statutory definition.

Finally, even if there was conflict, this case is not of significance such that this Court should intervene to resolve the conflict. Given that it is the Florida Legislature's province to determine by statute which individuals or entities will have standing to participate in §120.57 proceeding challenging the consistency of a comprehensive plan amendment, it should be left to the Florida Legislature to amend §163.3184(1)(a) if it deems it necessary to expand the definition of "affected persons". Section 163.3184(1)(a) unambiguously sets out the exhaustive list of those which may raise a challenge to the consistency of a comprehensive

plan amendment. Potiris was simply ineligible to bring the consistency challenge because he is not within the class of people that the Florida Legislature determined to have substantial interests which would be directly impacted by a comprehensive plan amendment. Therefore, the case at bar does not warrant review by this Court.

CONCLUSION

Given the lack of decisional conflict between *Potiris* and *St. Joe*, Wellington and the Department respectfully request that this Court deny Potiris' request that this Court invoke its discretionary jurisdiction under Article V, §3(b)(3) of the Florida Constitution.

Respectfully submitted this ____ day of April 2007.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been served upon **Denis Potiris**, Petitioner, 134 Greymon Drive, West Palm Beach, Florida 33405 and **Jonathan M. Streisfeld, Esq.**, Counsel for Village of Wellington, Brinkley, Morgan, Solomon, Tatum, Stanley, Lunny & Crosby, LLP, 200 East Las Olas Boulevard, Suite 1900, Fort Lauderdale, FL 33301 by U.S. Mail this ____ day of April 2007.

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CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certifies compliance with the font requirements of Fla.R.App.P. 9.100(1). This Respondents' Jurisdictional Brief was prepared using Times New Roman 14-point font.

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