**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA**

KAREN SEIDLER GROSS

Petitioner,

v.

TOWN OF JUNO BEACH, FLORIDA

Respondent.
_____/

CASE NO.: 502009CA026525
CIVIL APPELLATE DIVISION "AY"
NOTICE OF INFRACTION NO.: 3011456

Opinion filed: FEB 02 2010

Appealed from the Code Enforcement Hearing Officer of the Town of Juno Beach, Florida

For Petitioner: Scott Richardson, Esq. and F. Gregory Barnhart, Esq.
2139 Palm Beach Lakes Blvd., P.O. Drawer 3626
West Palm Beach, Florida 33409

For Respondent: Leonard Rubin, Esq.
701 Northpoint Parkway, Suite 209
West Palm Beach, FL 33407

PER CURIAM

GRANTING PETITION FOR WRIT OF CERTIORARI

The Petitioner, KAREN SEIDLER GROSS ("Petitioner"), sought review of a final order of the Code Enforcement Hearing Officer of the TOWN OF JUNO BEACH, FLORIDA ("Town") rendered on July 8, 2009. The final order denied Petitioner's appeal from a Notice of Infraction (the "Notice") issued to Petitioner on March 25, 2009 for exceeding the posted speed limit on a stretch of highway in Juno Beach, Florida. The Notice, which was issued based solely on a photograph taken by an unmanned van equipped with both radar and photo capabilities, cited her for unlawful speed in violation of Chapter 30, Article VI of the Town of Juno Beach Code of Ordinances (the "Ordinance") pursuant to the Town's "Safe Streets Program."

Petitioner filed a timely Petition for Writ of Certiorari (the "Petition") in the Circuit Court, alleging, among other things, that the provisions of the Town's Code which authorize the use of an unmanned van to establish a presumption of liability for unlawful speed are preempted by Florida Statute.[1] This Court possesses the inherent jurisdiction to review the merits of the Petition upon certiorari review. For the reasons set forth below, we find that the provision(s) of the Town's Code pertaining to the authorization and/or utilization of "image capturing technology" for purposes of speed enforcement are preempted by state statute, and reverse.

## I. ANALYSIS

### A. Whether the Court has jurisdiction to address the merits of the constitutional issues raised in the Petition

#### 1. Applicability of Chapter 162, Florida Statutes

The applicability of the state's "Local Government Code Enforcement Boards Act," is expressed at Chapter 162.03, Florida Statutes, which states in relevant part:

> (1) Each county or municipality may, at its option, create or abolish by ordinance local government code enforcement boards as provided herein.
> (2) A charter county, a noncharter county, or a municipality *may, by ordinance, adopt an alternate code enforcement system* that gives code enforcement boards or special magistrates designated by the local governing body, or both, the authority to hold hearings and assess fines against violators of the respective county or municipal codes and ordinances. A special magistrate shall have the same status as an enforcement board under this chapter...

§§ 162.03(1)-(2), Fla. Stat. (2010) (emphasis added). Hence, the purpose of Chapter 162 is not to mandate the means through which a local governing body may administer or enforce its codes; rather, "[i]t is the legislative intent of §§ 162.01-162.12 to provide an additional or supplemental means of obtaining compliance with local codes. *Nothing contained in §§ 162.01-162.12 shall prohibit a local governing body from enforcing its codes by any other means.*" § 162.13, Fla.

[1] Because we hold that the Ordinance is preempted by statute, we do not address the remainder of the arguments raised in the Petition.

Stat. (2010). Florida courts that have squarely addressed the issue have eliminated any ambiguity that may have existed regarding the applicability of the Act, holding that Chapter 162:

> clearly and explicitly confers authority upon the County to adopt, by ordinance, a completely alternative code enforcement system... the legislature did not limit the County's alternative system to the exact procedures set forth in Parts I or II of Chapter 162. Nor did the legislature preclude the County from combining any features of these parts.

Verdi v. Metropolitan Dade County, 684 So. 2d 870, 873 (Fla. 3d DCA 1996), *rev. denied*, 695 So. 2d 703 (Fla. 1997); see also Metropolitan Dade County v. Hernandez, 708 So. 2d 1008 (Fla. 3d DCA 1998). Further, with respect to the Act's discussion of "supplemental" enforcement procedures, the Act once again clearly states that:

> [t]he provisions of this section are additional and supplemental means of enforcing county or municipal codes or ordinances and may be used for the enforcement of any code or ordinance, or for the enforcement of all codes and ordinances. *Nothing contained in this section shall prohibit a county or municipality from enforcing its codes or ordinances by any other means.*

§ 162.21(8), Fla. Stat. (2010) (emphasis added). Thus, it is clear from the explicit language of the statute that a local governing body is not precluded from adopting its own system(s) with respect to either the administrative and/or executive components of its codes and ordinances.

In exercising this inherent authority, the Town adopted the ordinance at issue, thereby exempting itself from the provisions of Chapter 162. See Code of Ordinances, Town of Juno Beach, Fla., ch. 30, art. VI, § 161 (2008) ("The purpose of this article is to authorize the use of Image Capture Technology to promote compliance with traffic control devices proscribed by this article and to adopt a civil enforcement system for traffic control device violations."). Consequently, the mere mention of Chapter 162 within the Town's Ordinance does not automatically require the Town to apply Chapter 162 in lieu of its own codes.[2] As the Town has

[2] The Town references such authority in the adopting language preceding the Ordinance, which states:

elected not to adopt Chapter 162 – but has instead enacted its own independent code enforcement system – there is no statutory right to appellate review of the enforcement board's findings, as there would be under Chapter 162. Compare Code of Ordinances, Town of Juno Beach, Fla., ch. 30, art. VI, § 170(g) (2008) ("All decisions by the Hearing Officer shall be final and *reviewable by the writ of certiorari* to Palm Beach County Circuit Court") (emphasis added); with § 162.11, Fla. Stat. (2009) ("An aggrieved party, including the local governing body, may appeal a final administrative order of an enforcement board to the circuit court.").[3] Therefore, a petition for writ of certiorari was the proper vehicle for appealing the Hearing Officer's ruling in the instant case. See also Fla. R. App. P. 9.100(c)(2) (providing for review by petition for writ of certiorari of "quasi-judicial action of boards of local government, which action is not directly appealable under any other provision of general law but may be subject to review by certiorari"). Nonetheless, although the request (originally filed as a Chapter 162 appeal) was appropriately recharacterized as a petition for writ of certiorari, such a distinction is rendered somewhat academic in light of the Panel's determination that it possesses the inherent authority to address the constitutional issues raised – regardless of whether such issues are raised in the context of an appeal or through a petition for writ of certiorari.[4]

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> WHEREAS, the Town has authority under its Charter and its constitutional and statutory home rule authority to enact an ordinance making the failure to obey traffic control devices a violation of the Town Code of Ordinances and to provide for enforcement of such violations of the Town Code of Ordinances.

See Code of Ordinances, Town of Juno Beach, Fla., Ordinance No. 621, p.2.

[3] The only difference between the Town's Ordinance and Chapter 162 is with regard to *how* a party may appeal. Both the state statute and the local ordinance express that such review/appeal "shall not be a hearing de novo, but rather shall be limited to appellate review of the record created" before the Hearing Officer/enforcement board.

[4] Because the Panel decided unanimously that certiorari jurisdiction does not prohibit the Panel from reviewing the constitutionality of the Ordinance, that issue is not discussed in this memo. However, the issue of jurisdiction will of course be thoroughly addressed in the draft of the final opinion to be circulated to the Panel.

**2. Whether the Court may consider challenges to the constitutionality of the Ordinance upon certiorari review**

The Town argues that Petitioner is precluded from challenging the constitutionality of the Ordinance in a first-tier certiorari review. In support of its position, the Town cites City of Deerfield Beach v. Vaillant, 419 So. 2d 624 (Fla. 1982), which held that first-tier certiorari review is limited to the issues of whether procedural due process was accorded, whether the essential requirements of law were observed, and whether the findings were supported by competent substantial evidence. We disagree, however, with such a preclusive interpretation of the Florida Supreme Court's holding in Vaillant and its progeny and hold that Petitioner's constitutional claims fall within the province of this Court's consideration of whether the essential requirements of law have been observed.

The Town cites several cases in support of its general position that constitutional claims may not be raised in a certiorari proceeding. In Koziara v. City of Casselberry, 239 F. Supp. 2d 1245, 1256 (M.D. Fla. 2002), the Court did in fact note that "[t]he facial constitutionality of an ordinance must be determined in original proceedings before the circuit court." Id. The Court did not state, as the Town argues, that the constitutionality of a municipal ordinance "*cannot* be raised in a certiorari proceeding." Rather, the Court in Koziara – addressing issues that were also the subject of two additional suits between the same parties pending in state court – held that a constitutional challenge to a zoning ordinance could not be raised for the first time on certiorari review because the petitioner had already had the opportunity to raise such issues. Id. at 1257 (internal citations omitted). Hence, the Court in Koziara declined to address the constitutional claims due to the unique factual and procedural circumstances of that case. Thus, Koziara does not stand for a categorical prohibition against any and all constitutional claims in the context of first-tier certiorari review.

The Town also cites Hernandez-Canton v. Miami City Comm'n, 971 So. 2d 829, 832 (Fla. 3d DCA 2008), which seems to state unequivocally that "'[a] petition seeking certiorari review is not the proper procedural vehicle to challenge the constitutionality of a statute or ordinance.' ...A challenge to the constitutionality of an ordinance 'must be determined in original proceedings before the circuit court, not by way of a petition for writ of certiorari.'" (quoting Miami-Dade County v. Omnipoint Holdings, Inc., 863 So. 2d 195, 199 (Fla. 2003)). However, the language quoted in Hernandez-Canton was extracted from the Florida Supreme Court's ruling in Omnipoint, which simply held that the *district court* could not address constitutionality on *second-tier* certiorari review when the issue of the code's constitutionality "was never brought before the circuit court in the proceedings below." Omnipoint at 199 (quoting First Baptist Church of Perrine v. Miami-Dade County, 768 So. 2d 1114, 1115 n.1 (Fla. 3d DCA 2000)). Thus, the Town's argument under Hernandez-Canton is undermined by the legal precedent upon which the Hernandez-Canton rationale is built. Unlike Hernandez-Canton and the cases cited therein, the instant matter is a first-tier review by the circuit court and the constitutional claims could not have been raised in any prior proceeding.[5]

We find the additional cases cited by the Town to be similarly unpersuasive, as they likewise do not squarely address whether a circuit court acting in its appellate capacity may consider the constitutionality of an ordinance in the context of a first-tier review of a petition for

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[5] Moreover, the Town's position that such claims must be raised in an "original proceeding" is misguided. Florida Rule of Appellate Procedure 9.100, which governs all petitions for writ of certiorari, defines "original proceedings" to include matters that invoke the jurisdiction of the court under Rule 9.030(c)(3). Indeed, this Court considers the instant action pursuant to its "original jurisdiction" as provided by Rule 9.030(c)(3). Fla. R. App. P. 9.030(c)(3) ("Circuit courts may issue writs of... common law certiorari"). Thus, the instant matter is an "original proceeding" as defined by the Florida Rules of Appellate Procedure.

No district court has ever held that a circuit court may not review the constitutionality of an ordinance in a petition for writ of certiorari filed pursuant to rule 9.030(c)(3). Such a petition invokes the circuit court's original jurisdiction, not its certiorari jurisdiction. *Compare* Fla. R. App. P. 9.030(b)(2)(b) *with* 9.030(c)(2) *and* 9.030(c)(3). Accordingly, the instant petition *is* an original proceeding before the circuit court and does not run afoul of Omni-Point and its progeny.

writ of certiorari. See Nannie Lee's Strawberry Mansion v. City of Melbourne, 877 So. 2d 793 (Fla. 5th DCA 2004) (holding that a circuit court applied the correct law in determining that a constitutional challenge to a zoning ordinance could not be raised in a certiorari petition) (citing First Baptist at 1115, n.1, *see supra*; Nostimo, Inc. v. Clearwater, 594 So. 2d 779 (Fla. 2d DCA 1992) (holding that a declaratory action was required to review the constitutionality of a zoning ordinance following a quasi-judicial proceeding denying a variance request)). The Town also cites one of Koziara's two state court counterparts, Seminole Entm't, Inc. v. City of Casselberry, 866 So. 2d 1242 (Fla. 5th DCA 2004), *rev. denied*, 880 So. 2d 1210 (Fla. 2004), in support of its contention that "when an aggrieved party asserts a constitutional challenge to the facial validity of an ordinance, an original declaratory judgment action in the circuit court is the proper vehicle." In that case, however, the Court explicitly stated that it would not address certain constitutional attacks to a city's ordinance – despite the fact that such claims had been "properly" initiated via a declaratory judgment action – because the claims had been previously raised in a separate petition for writ of certiorari that was considered and ultimately rejected by the circuit court. Thus, by ruling that any constitutional claims addressed in the "Rachel's II" certiorari proceeding were barred from being litigated in the declaratory action, the Court in Casselberry impliedly held that a circuit court *may* consider constitutional issues raised in a petition for writ of certiorari upon first-tier review of a local code enforcement decision. Id. at 1245 (emphasis added). Accordingly, Casselberry does not bar Petitioner from raising any claims of facial unconstitutionality in this instance.

Finally, as a pure matter of policy, the Florida Supreme Court has expressly rejected the notion that a party cannot challenge the facial constitutionality of a statute on direct review; to the contrary, the Court has consistently sought to "approve a process that would allow all issues

to be decided in the least expensive and time-consuming manner." Key Haven Associated Enters. v. Bd. of Trs., 427 So. 2d 153, 157 (Fla. 1982), *superseded on other grounds*, Bowen v. Fla. Dep't of Envtl. Regulation, 448 So. 2d 566 (Fla. 2d DCA 1984). In Key Haven, the Supreme Court held that once administrative remedies have been exhausted, the reviewing court

> may review both the constitutionality of the rule and the agency action "comprehensively, on all appropriate issues, in a single judicial forum." Key Haven, 406 So. 2d at 69. The basis of this judicial policy is the avoidance of a multiplicity of actions on issues involving administrative decision-making.

Id. at 157-58. Although the Key Haven ruling dealt with an appeal to the district court of a state agency ruling, the Key Haven rationale is nonetheless applicable in instances where, as here, a party seeks relief on constitutional grounds from a ruling by a local board acting pursuant to and in furtherance of a municipal ordinance. Lee County v. New Testament Baptist Church, 507 So. 2d 626 (Fla. 2d DCA 1987), *rev. denied*, 515 So. 2d 230 (Fla. 1987) ("Because the proper forum in this case for review of the County's action was the circuit court, the circuit court lawsuit was the counterpart to the review of administrative agency action in the district court referred to in ... Key Haven"). Other Florida courts interpreting Key Haven have held similarly. See Florida Farm Bureau Casualty Ins. Co. v. De Ayala, 501 So. 2d 1346, 1348 (Fla. 4th DCA 1987), *reversed on other grounds*, 543 So. 2d 204 (Fla. 1989) ("Circuit courts have the power in all instances to consider constitutional issues."); Fla. Dep't of Agric. & Consumer Servs. v City of Pompano Beach, 792 So. 2d 539, 547 (Fla. 4th DCA 2001) ("circuit courts have the power, in all circumstances, to consider constitutional issues."). In Wilson v. County of Orange, 881 So. 2d 625, (Fla. 5th DCA 2004), the Court reasoned that

> In Key Haven... the supreme court held that a party aggrieved by agency action may attack the facial constitutionality of the statute being implemented by the agency in two ways. It may exhaust its administrative remedies and then raise the constitutional challenges in its appeal to the district court of the agency action. Or, it may bypass administrative remedies and raise the constitutional challenge in a separate proceeding in the circuit court.

Wilson at 633 (citing Key Haven at 157). The Court in Wilson juxtaposed the ruling of Key Haven with Seminole Entm't and held that a declaratory judgment action in circuit court is necessary *only* when the facial constitutionality of an ordinance has been previously litigated but additional facial challenges that could have been raised in the prior proceeding remain. Id. Thus, policy considerations weigh in favor of an appellate process that is permissive rather than restrictive, especially with respect to constitutional challenges to a statute or ordinance. See Gulf Pines Mem. Park v. Oaklawn Mem. Park, 361 So. 2d 695, 699 (Fla. 1978) ("The determination of whether the circumstances of a particular controversy warrant judicial intervention, then, is ultimately one of policy rather than power"); See also § 86.011, Fla. Stat. (2010) ("No action or procedure is open to objection on the ground that a declaratory judgment is demanded.").

While a party may properly seek an original declaratory judgment in the circuit court to challenge the facial constitutionality of an ordinance, we do not conclude that a petition for writ of certiorari is thus improper for the same purpose. As the Court noted in Casselberry, constitutional claims are "well within the scope of this court's analysis of whether the trial court applied the correct law." Id. at 1245; See also Wilson v. County of Orange, 881 So. 2d 625 (Fla. 5th DCA 2004) ("Generally speaking, individuals may challenge the validity of a statute in a declaratory judgment action... We do not mean to imply that the Wilsons could not have raised their facial challenges in an appeal to the circuit court of the order imposing fines.") (citing Martinez v. Scanlan, 582 So. 2d 1167 (Fla. 1991)). Accordingly, we hold that the constitutional challenges to the Ordinance are properly before us and are within the Court's scope of review of the Petition for Writ of Certiorari.

**B. Standard of Review**

When addressing a petition for writ of certiorari, the circuit court must determine whether (1) procedural due process is accorded, (2) whether the essential requirements of law have been

observed, and (3) whether the administrative agency's findings and judgment are supported by competent, substantial evidence. See City of Deerfield Beach v. Vaillant, 419 So. 2d 624, 626 (Fla. 1982); Haines City Community Development v. Heggs, 658 So. 2d 523, 530 (Fla. 1995). Because the instant petition attacks neither the process afforded nor the sufficiency of the evidence, the Court's analysis is limited to the issue of whether the Ordinance's application to Petitioner amounts to a departure from the essential requirements of law. Such a consideration is necessarily subject to the Court's obligation "to accord legislative acts a presumption of constitutionality and to construe challenged legislation to effect a constitutional outcome wherever possible." Fla. Dep't of Revenue v. Howard, 916 So. 2d 640, 642 (Fla. 2005) (citing Eastern Air Lines, Inc. v. Dep't of Revenue, 455 So. 2d 311, 314 (Fla. 1984); Chatlos v. Overstreet, 124 So. 2d 1, 2 (Fla. 1960)).

**C. Whether the Ordinance is preempted by Florida statute**

**1. Preemption Generally**

The primary argument for preemption in this case stems from the apparent irreconcilability of the state's statute that provides for the uniform application and enforcement of traffic laws state-wide, and the Town's adoption of a mechanism which regulates and enforces traffic legislation within the Town of Juno Beach only. Chapter 316, Florida Statutes, establishes the "Florida Uniform Traffic Control Law," the stated purpose of which is:

> to make uniform traffic laws to apply throughout the state and its several counties and uniform traffic ordinances to apply in all municipalities. The Legislature recognizes that there are conditions which require municipalities to pass certain *other* traffic ordinances in regulation of municipal traffic that are not required to regulate the movement of traffic outside of such municipalities. Section 316.008 enumerates the area within which municipalities may control certain traffic movement or parking in their respective jurisdictions... *It is unlawful for any local authority to pass or attempt to enforce any ordinance in conflict with the provisions of this chapter.*

§ 316.002, Fla. Stat. (2009) (emphasis added). The statute further states that "no local authority shall enact or enforce any ordinance on a matter covered by this chapter unless expressly authorized." § 316.007, Fla. Stat. (2009). Thus, not only is a local government forbidden to enact an ordinance that *conflicts* with state law (per Chapter 316.002), a local government is further prohibited from enacting or enforcing *any ordinance* regarding *any matter* addressed by the Florida Uniform Traffic Control Law (per Chapter 316.007).

The matter of unlawful speed is the subject of substantial legislation in Chapter 316, with several separate provisions that detail, for example: how "unlawful speed" is defined; the appropriate manner for documenting and/or recording an alleged violation; and the applicable judicial process(es) for determining whether a violation has occurred. Thus, any local ordinance which attempts to regulate unlawful speed or enforce violations for such an offense is likely to be preempted by state statute. Nonetheless, the Town contends that its ordinance does not conflict with the state statute because the issue is not whether the Legislature expressly authorized the Town to enact the Ordinance, but rather whether the traffic ordinance is expressly preempted by, or in direct conflict with, the state statutory scheme. See Respondent's Response to Petition for Writ of Certiorari, p.10. The Town, however, cites no legal authority to support this reframing of the issue. Essentially, the Town argues that it retains the inherent "home rule" authority to enact ordinances regulating traffic, as long as there is no state statute proscribing precisely the same rule sought to be implemented and/or enforced by the Town.

**2. "Home Rule" Authority**

A municipality's constitutional "home rule" authority is memorialized by Florida statute, in which:

> The Legislature recognizes that pursuant to the grant of power set forth in § 2(b), Art. VIII of the State Constitution, the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state

> Legislature may act, except... [a]ny subject expressly preempted to state or county government by the constitution or general law.

§ 166.021(3)(c), Fla. Stat. (2008). The Town relies upon City of Hollywood v. Mulligan, 934 So. 2d 1238, 1243 (Fla. 2006), to support its argument that express preemption "'requires a specific statement; the preemption cannot be made by implication nor by inference.'" Respondent's Response, p.14 (Mulligan at 1243 (citing Fla. League of Cities, Inc. v. Dep't of Ins. & Treasurer, 540 So. 2d 850, 856 (Fla. 1st DCA 1989) (quoting Bd. of Trs. v. Dulje, 453 So. 2d 177, 178 (Fla. 2d DCA 1984))).[6] The Town did not quote the following sentence of the Mulligan opinion, however, which went on to note that "[h]owever, '[t]he preemption need not be explicit so long as it is clear that the legislature has clearly preempted local regulation of the subject.'" Mulligan at 1243 (quoting Barragan v. City of Miami, 545 So. 2d 252, 254 (Fla. 1989) (citing Tribune Co. v. Cannella, 458 So. 2d 1075 (Fla. 1984))).

**3. Doctrine of Implied Preemption**

Although the Court in Mulligan ultimately held in favor of the town's home rule authority, it did so in the context of reviewing a town's ordinance which sought to regulate the forfeiture of contraband for *misdemeanors* in light of a state statute that only applied to *felonies*. Id. at 1245. Thus, the language in Mulligan, to the extent that it is even correctly cited by the Town, is not instructive in this instance. The issue is not whether there is certain precise or magic language to express preemption; the issue is simply whether it is clear from the statute that preemption is intended. In a ruling which arguably expands the scope of the doctrine of preemption, the Florida Supreme Court recently held that:

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[6] As the Court noted in Mulligan, the First DCA held in Fla. League of Cities that express preemption "cannot be made by implication nor by inference." Fla. League of Cities at 856. The First DCA then went on to clarify that, "[a]s explained in Edwards v. State, 422 So. 2d 84, 85 (Fla. 2d DCA 1982), 'An 'express' reference is one which is distinctly stated and not left to inference.'" Id.

> Preemption is implied "when 'the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the state Legislature.'" Phantom, 894 So. 2d at 1018 (quoting Tallahassee Mem'l, 681 So. 2d at 831)... In determining if implied preemption applies, the court must look "to the provisions of the whole law, and to its object and policy." State v. Harden, 938 So. 2d 480, 486 (Fla. 2006) (quoting Gade v. Nat'l Solid Wastes Mgmt. Ass'n, 505 U.S. 88, 98 (1992)). The nature of the power exerted by the Legislature, the object sought to be attained by the statute at issue, and the character of the obligations imposed by the statute are all vital to this determination. Id.

Sarasota Alliance for Fair Elections, Inc. v. Browning, 28 So. 3d 880, 886 (Fla. 2010). Thus, the Florida Supreme Court reaffirmed that the focus of a preemption analysis is not limited to the language of the statute alone; such an analysis must also necessarily include consideration of the breadth of the statutory scheme as well as the intent of the Legislature when enacting it. Id. The Court then borrowed language from the court it was reversing, and recognized that "[a]s even the Second District explained in the instant case, '[i]t generally serves no useful public policy to prohibit local government from deciding local issues.'" Sarasota Alliance at 887. The Court then held that the Florida Election Code did not impliedly preempt local laws regarding the counting, recounting, auditing, canvassing, and certification of votes. Id. at 887-88. Importantly, the Court in Sarasota Alliance reasoned that

> the Legislature clearly did not deprive local governments of all local power in regard to elections. To the contrary, the Election Code specifically delegates certain responsibilities and powers to local authorities, including the choice of voting systems to be used in each locality as long as the system has been approved by the Department of State. This statutory scheme undoubtedly recognizes that local governments are in the best position to make some decisions for their localities.

Id. Unlike the instant case, however, the local authority in Mulligan and Sarasota Alliance legislated in an area not already subject to regulation by the state. In this case, the Town has enacted codes and ordinances which enforce speed limits, a matter that is already covered by state law. Further, although the state statutory scheme recognizes that a locality may adopt

certain traffic enforcement mechanisms as it sees fit, it does so through an enumerated list of specifically-authorized regulatory measures. See § 316.008, Fla. Stat. (2010). The use of a municipality's code enforcement authority is not included in said list of exceptions. Moreover, the underlying policies and objectives of the Florida Uniform Traffic Control Law clearly indicate a design which seeks the consistent and uniform regulation of traffic throughout the state. Thus, because the issue of unlawful speed is so pervasively legislated by state statute, the doctrine of preemption likely precludes any local ordinance on same. The Town's use of its code enforcement authority to impose civil fines for speeding likely cannot legitimize such an otherwise-unconstitutional regulatory scheme.[7]

## II. CONCLUSION AND RULING

Based on the foregoing, we hold that the provisions of Chapter 162, Florida Statutes are inapplicable in the instant proceedings. Nonetheless, this Court possesses the inherent certiorari jurisdiction to address the merits of the constitutionality claims. In light of the clear and unambiguous language of the statute, we hold that any local ordinance attempting to enforce or otherwise regulate unlawful speed is preempted by state law. Therefore, the application of the Ordinance to Petitioner in the instant matter constitutes a departure from the essential requirements of law. Accordingly, the Petition for Writ of Certiorari is **GRANTED** and the final order denying Petitioner's appeal from the Notice of Infraction is hereby quashed.

SASSER, COX, AND McCARTHY, JJ. concur.

[7] Additionally, since the filing of these appeals, the state of Florida has enacted an additional provision to Chapter 316 which states that "[r]egulation of the use of cameras for enforcing provisions of this chapter is expressly preempted to the state." § 316.0076, Fla. Stat. (2010). Such a statute likely makes "express" what was previously implied.