IN THE CIRCUIT COURT
FOR THE FOURTH
JUDICIAL CIRCUIT
IN AND FOR NASSAU
COUNTY, FLORIDA

MICHAEL SHIRK, CHRISTINE A. O'BRIEN, and LEA-ELLAN SCOTT,

Petitioners,

v.

CASE NO.: 2023-CA-0072
DIVISION: A
LT NO. FD22-006

BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FL, and INTACT CONSTRUCTION MANAGEMENT GROUP, LLC, a Florida limited liability company,

Respondents

ON PETITION FOR WRIT OF CERTIORARI FROM THE BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FL

BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY'S RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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PRELIMINARY STATEMENT

Petitioners are three (3) citizens of Nassau County, Florida who reside either in or near the Pirate's Bay subdivision south of Sadler Road (P 10). Their homesteads are nearby, but not adjacent to or abutting, a commercial parcel of real property fronting Sadler Road and Ryan Road in the Sadler Road commercial corridor of central Fernandina Beach, FL. The shape of the subject commercial parcel, and the orientation of it on Sadler Road and Ryan Road, is depicted

in a satellite photo at page 3 of the Petition (P 3), while the parcel's legal description is found at the portion of County Ordinance 2022-005 at page 25 of the Petitioner's Appendix (P-A 25).

The private owners of this commercial parcel took a series of steps to develop it, and in February of 2022, at a noticed BoCC hearing, they applied to have the parcel re-zoned from RS-2 residential to the CG commercial zoning classification through the passage of ordinance 2022-005 (P-A 6). The BoCC conducted a quasi-judicial public hearing on the re-zoning request, and approved the re-zoning application (P-A 23-26). No appeals or petitions for certiorari review, from any quarter, followed this re-zoning of the parcel to the CG commercial classification.

After the change in zoning to CG commercial, the parcel's owners, acting through co-respondent here INTACT CONSTRUCTION MANAGEMENT GROUP LLC, submitted an application for final development plan approval to the County for the development of a travel-trailer campground and park—Breakers RV Resort—that would host a maximum of 19 parked travel trailers for overnight camping and recreational use (P-A 4, 6). The application was submitted in May of 2022 (T 17).

After the application for final development plan approval was submitted, a new ordinance, 2022-020, proposing to amend the County's zoning code to remove travel-trailer parks as a permitted land use within the CG zoning classification, was submitted for the BoCC's consideration, and in July of 2022, at a public meeting of the BoCC, ordinance 2022-020 was voted into approval, thus amending the zoning code as to the CG zoning classification (P-A 335-337).

The application for final development plan approval at the subject parcel continued to be processed by County development staff, with a vote by the Planning and Zoning Board recommending the application's denial, and the County development staff recommending approval, and, on January 23, 2023, proceeded to be heard by the BoCC at a noticed public meeting. Following a fulsome hearing, public comment, and deliberation by the commissioners, a vote of 3-2 approved the application (T 138).

Petitioners seek first-tier certiorari review[1] of the BoCC's *approval of* the final development plan for the 19-spot travel trailer

[1] At page 7, paragraph 8, of the Petition, Petitioners also cite to an opinion, *Education Development Center, Inc.,* as a proffer of an additional basis for this Court's jurisdiction. That opinion is limited to consideration of a different type of claim, which is a claim that a

campground and park at the subject parcel in BoCC proceeding FD22-006.

The three (3) citizens submitting the instant Petition are referred to as "Petitioners." Citations to their Petition to this Court are cited as "P." Citations to the Petitioners' Appendix are cited as "P-A," followed by the cited page number. Citations to the transcript of the quasi-judicial hearing below, which Petitioners have filed separately from their Appendix, are cited as "T."

STATEMENT OF THE CASE AND FACTS

We first discuss the legal framework for the decision under review. We then discuss the particular facts of this case.

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development order is "inconsistent with" a comprehensive plan enacted by local government, which type of claim derives from F.S. 163.3215(3). The content of the Petition makes it clear that the Petition seeks first-tier certiorari review of two of the three *City of Dania* factors set forth in the 2000 Florida Supreme Court opinion, and does not direct the responding parties and this Court to the Nassau County Comprehensive Plan or to Section 163.3215(3), as to any raised issue. As such, Paragraph 8 of the Petition may be regarded as surplus.

A. Legal Framework: Nassau County Land Development Code

The Nassau County Land Development Code[2] is the local body of laws setting forth the "regulations, procedures, and standards for review and approval of all development and use of land in the unincorporated portions of the county. Code at § 1.01. The Code provides that the BoCC is the body with the authority to enforce the Code. *Id.* at § 1.03. The Code states that it is to be construed "liberally ... in favor of the objectives and purposes of the County". *Id.* at § 1.05.

The first section of the Code that specifically governs the application under review here is Section 5.07, which sets forth the rules for the review and approval, or disapproval, of an owner or developer's development plan for a specific site. *Id.* at § 5.07. This section sets forth numeric classifications, "I, II, III, and IV," which

[2] The Nassau County Land Development Code is embodied at Appendix A to the Nassau County Code, and is viewable at (accessed March 20, 2023): https://library.municode.com/fl/nassau_county/codes/code_of_ordinances?nodeId=APXALADECO

specify the procedural steps for the County's review of a development plan for a specific site and project. *Id.*

The second section of the Code that specifically governs the application under review here—which sought approval for a final plan for a travel-trailer campground—is Section 28.09, which section supplies the development guidelines for the review of exactly what the instant applicant here sought—approval for a travel-trailer campground. *Id.* at § 28.09.

On their face, in their plain text, these two sections of the Code work together like this: subsection 28.09(A) provides that a travel-trailer camp developer should submit an application with a site plan that addresses seven (7) enumerated qualitative criteria, and then subsection 28.09(B) combines with subsections 5.07(D) and 5.07(D) to lay out, first, what components or contents are to be included with the application (surveys, plans, tabulations of items like acreage, etc.), and second, what phases or segments of review, recommendation, and finally, approval, an application must proceed through.

Stated in synopsis, Code subsection 5.07(D) provides 'here is *how* an applicant will be reviewed,' 5.07(C) provides 'here is *what* the

applicant must physically submit to have an application that is subject to review,' and 28.09(A) provides 'here are the substantive guidelines the reviewers will use to determine if the application can be approved.'

Neither of these two applicable Code provisions require that a travel-trailer park "be," or "be submitted for approval as," a planned unit development ("PUD"). Nor could they. In the Code, PUDs are found at Article 25 as they are treated elsewhere in Florida local government law, as *a re-zoning mechanism* to allow disparate owners to unify their parcels in a way that allows them to develop disparate parcels together, with a common set of zoning-like rules for roads, open space, parking, sidewalks, and other shared amenities. *Id.* at § 25.01 *et seq.*

Section 5.07 does not set forth substantive development guidelines for a PUD; those are set forth in the Code's Article 25. Moreover, subsection 5.07(D)(4)(a) differentiates between PUD and non-PUD applications within Class III, or rather shows how the Code's intent to allow for both PUD and non-PUD applications within Class III, when it directly provides at the third line, "*in the case of* a final development plan within a PUD, the standards for review *will*

also include subsection 25.05(E)." Code at § 5.07(D)(4)(a)(italic emphasis added).

Likewise, Code Section 28.09 does not state that a travel-trailer campground is a PUD, or that it must be developed as a PUD. Section 28.09 rather states that the submittal and review process requirements for a travel-trailer campground are those set forth for so-called Class III applications in Section 5.07. *Id.* at § 28.09(B). Thus, for purposes of evaluating the Petition, it is important to recognize that the only two applicable sections of the Code governing travel-trailer campground development explicitly do not require inclusion of the substantive (and extensive) PUD requirements of Code Article 25. Nor do Sections 5.07 and 28.09 require, separately or together, that a travel-trailer campground "be" a PUD, or may only exist as a PUD.[3]

[3] Considerations of why single site businesses, whether they are restaurants, pharmacies, gas station / convenience stores, motels, or indeed, campgrounds, are not developed as PUDs, and are not anticipated to be developed as PUDs, within the instant Nassau County Code, or in any similar municipal land development code, are beyond the scope of certiorari review here, and would entail a lengthy exploration of all the benefits of PUDs from the private developer and public regulator points of view, which is unnecessary here. Instead, it suffices to say that such a requirement is not present, and also

B. Facts and Procedural History

The BoCC rejects the statement of facts presented in the Petition at its pages 11-33, much of which consists of argument, lay opinion, or legal conclusion.

The record facts are:

i. this matter arises from the BoCC's approval of a final development plan for CG commercial-zoned development site fronting Sadler Road, BoCC agenda item FD22-006;

ii. the final development plan calls for the development of a 19-spot travel trailer campground, consisting of 19 auto and travel-trailer spaces, a restroom building, and an office/laundry area building (P-A 6-7);

iii. the application for approval of final development plan was submitted and was taken up by the County's development review committee in May of 2022 (T 17), and at the time the application was accepted for processing, travel-trailer parks were a permitted land use for the parcel's CG classification (P-A 335-337 [depicting the date of the

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that Petitioners select an ill-fitting concept to attempt to construe into Sections 28.09 and 5.07 when they contend that a PUD is required.

removal of travel-trailer campgrounds from CG permitted uses as July 25, 2022]);

iv. the application went through the processing and review provided for in the Nassau County Land Development Code, including review by the development review committee (T 17), and review by the Planning and Zoning Board (T 23), and proceeded to a vote of the BoCC at a noticed, public hearing on January 23, 2023;

v. At the January 23, 2023 hearing Petitioners and other citizens objected to the application. One main thrust of the objections was the stated concern that the development of the site would lead to more vehicle entrances and exits at the Sadler Road and Ryan Road streetcorner, which is near to the subdivision entrance of the objectors' subdivision of Pirate's Bay (T *passim*);

vi. Eleven (11) months earlier, in February 2022, the same application site was re-zoned to CG commercial by a vote of the BoCC at a noticed, public meeting of the BoCC (P-A 23-26), and no petition for certiorari review or appeal of the re-zoning to CG was initiated;

vii. Returning to the January 23, 2023 BoCC hearing, a sub-theme of the citizen objections over a development adding more vehicle trips in and out of the Sadler Road/Ryan Road intersection was that certain residents of a residential subdivision that used Ryan Road as one of its two ingress/egress streets—Pirate's Bay—did not want travel-trailers or RVs on Ryan Road, or even on the immediate part of Sadler Road the parcel fronts (T *passim*);

viii. Pointedly, every objector at the hearing, and the Petitioners here, demurred from establishing in the record whether the Pirate's Bay subdivision itself allows the storage of travel-trailers or RVs at the homeowner's lots, such as an allowance of such vehicles in a garage, or behind a visual screen in a backyard (T *passim*, P *passim*);

ix. To be clear, the nature of the fact-based citizen objections to the application using this preponderant sub-theme at the January 23, 2023 BoCC hearing was 'I do not want strangers' travel-trailers or RVs near my neighborhood,' rather than 'part of the character of my neighborhood is that travel trailers and RVs are excluded, and this nearby

development will threaten that character' (T *passim*, P *passim*);

x. At the January 23, 2023 BoCC hearing, the County staff presented their report on the application in written form (P-A 6-7) and with an oral presentation by a county planner, and the staff's recommendation was for approval (P-A 7; T 16-22);

xi. As the County staff explained in their presentation of the application, the application was evaluated under the applicable two criteria provided for in the Land Development Code. First, subsection 5.07(C), which is the Code section listing the submission requirements for an applicant's final development plan. Second, Section 28.09, which is the Code section specifically listing the development guidelines for travel trailer parks or campgrounds (T 22);

xii. Section 28.09, in turn, is divided into subsections (A) and (B). Subsection (A) enumerates the seven (7) development guidelines the Code sets forth for travel-trailer campgrounds, while subsection (B) states that a site plan

must exist, and also that such site plan shall be submitted and processed "in accordance with the Class III requirements of Section 5.07" (Code at 28.09);

xiii. The Class III submission requirements (surveys, plans, tabulations, etc.) in Section 5.07 are set forth at the Code provision just discussed, 5.07(C). The Class III processing steps are set forth at Code provision 5.07(D)(4), and they include a list of meetings, reviews, a PZB hearing, and recommendations, plus the requirement of a BoCC hearing. *Id.* at § 5.07(D);

xiv. The County staff presentation of the staff report at the January 23, 2023 BoCC hearing included an explanation of each of the subsection 28.09(A) development guidelines, as well as "how this [application] meets that criteria (T 18-22);"

xv. The County staff presentation ended with the synopsis that the application met the seven (7) development guidelines for travel-trailer campgrounds set forth in Section 28.09 (T 18-22), and with the report that the County staff recommended approval (T 22);

xvi. Following additional comments by the applicant, the applicant's engineers, and by the Petitioners and others as citizen-objectors, and following deliberation by the Commissioner-members of the BoCC (T 127-138), the application was voted on, and approved, by a vote of 3-2 (T 138);

xvii. The Petitioners' initiation of the instant petition for certiorari proceeding with this Court ensued.

xviii. The Petition raises two of the three potential review criteria for quashal of a local government quasi-judicial decision: "competent substantial evidence," and a failure of the "essential requirements of law " (P 34-36).

SUMMARY OF THE ARGUMENT

The Petition fails to acknowledge that first-tier certiorari review of a local development order rendered at a quasi-judicial hearing is both limited and focused on the decision made, and not on what other decisions might have been made. Petitioners offer over 20 pages of "facts" that are mostly legal argument and lay opinion, of the same manner that was offered during the public comment phase of the hearing below. Petitioners do not offer an analysis of record facts that

point to, much less discuss, whether the BoCC's approval of a final development plan for a travel-trailer campground on the commercial thoroughfare Sadler Road was without competent substantial evidence in support. This type of challenge is not susceptible to certiorari review.

Furthermore, the BoCC's order approving the final development plan for the travel-trailer campground on the commercial thoroughfare Sadler Road did not depart from the essential requirements of law. While Petitioners argue the converse, their argument depends on a strained and unsupported construction of the entire Nassau County Land Development Code, wherein they contend that a campground has to be developed as a planned unit development (PUD), even though the Code's section specifically discussing travel-trailer campground requirements fails to require resort to the substantive PUD requirements of the Code's Article 25 concerning PUDs.

Finally, Petitioners incorrectly maintain that the County and the BoCC were without any discretion to process the subject development application since it was submitted and taken up by the County's development review committee at a time when travel-trailer

campgrounds were a permitted use in the development site's CG commercial zoning class. Petitioners inaccurately argue that a subsequent zoning ordinance amending classification CG to remove travel-trailer parks as an included use should have resulted in the instant application's rejection, mid-process, and that the County and the BoCC were without authority to do aught but reject. In fact, the County and the BoCC, respectively, enjoyed an administrative and a quasi-judicial jurisdiction over the instant development application, with the BoCC having the discretion to interpret and apply the Code and the application's status under the Code. Moreover, the County and BoCC were at all times guided by Florida case authorities that recognize a County's authority when, and propriety in, considering a validly-submitted application in instances where the application complies with the zoning law in existence at the time of the application.

ARGUMENT

I. STANDARDS FOR A WRIT OF CERTIORARI

The method of a circuit court in applying certiorari review to an appealed zoning or land use decision by a board of commissioners is to determine (i) whether procedural due process has been accorded;

(ii) whether the essential requirements of law have been observed; and (iii) whether the decision appealed is supported by competent substantial evidence. *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982). The instant Petition raises two of these three factors, dispensing with the due process factor (P 34-36).

In viewing the record of evidence, the circuit court does not re-weigh the evidence or substitute its judgment for the judgment of the agency making the decision under review. *Haines City Comm. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995). Nor does the circuit court consider whether, from the record, the agency made the best, the right, or the wise, decision. *Dusseau v. Metro Dade County Bd. of County Commnr's*, 794 So. 2d 1270, 1274 (Fla. 2001). And critically, in performing its review for competent substantial evidence, the circuit court does not consider record evidence that would or could support a petitioner's position—evidence seeming contrary to the decision appealed—because it falls outside the scope of certiorari inquiry. *Id.* at 1276. Rather the circuit court looks only for the presence of evidence that supports the decision by the agency of local government, eschewing evidence that would rebut it. *Broward County*

v. G.B.V. Intern. Ltd., 787 So. 2d 838, 846 (Fla. 2001). An opinion of the Second District Court of Appeal put it aptly, thus:

> *The cold fact of the matter, however, is that at some juncture it becomes the unpleasant duty of someone to weigh the disadvantages of rezoning against the disadvantages of not rezoning. That is properly the function of the legislative body charged with responsibility for protecting and enhancing the health, welfare and safety of the public—in this case, the county commissioners. Once their difficult task has been completed, and a decision reached, no court should substitute its judgment for theirs [...]*

Jones v. First Va. Mortg. & Real Estate Inv. Trust, 399 So. 2d 1068, 1073 (Fla. 2d DCA 1981).

II. THE MEANING OF COMPETENT SUBSTANTIAL EVIDENCE IN A PETITION FOR CERTIORARI CHALLENGING A DEVELOPMENT DECISION BY LOCAL GOVERNMENT

Because making decisions on questions of development is the function of the appropriate development authority rather than the courts, a circuit court in reviewing a petition for certiorari is not empowered to disapprove of a development authority's findings unless the record below is devoid of competent substantial evidence to support the decision. *Orange County v. Lust*, 602 So. 2d 568 (Fla. 5th DCA 1992), c*iting Skaggs-Albertson's v. ABC Liquors, Inc.*, 363 So. 2d 1082 (Fla. 1978).

To satisfy the requirement of competent substantial evidence, a circuit court, in its review, merely locates "any" competent substantial evidence in the record supportive of the decision challenged. *City of Dania v. Fla. Power & Light*, 718 So. 2d 813, 815-16 (Fla. 4th DCA 1998). Nothing further is required for this criteria.

Stated differently, "a local government's quasi-judicial decision [...] should be upheld if there is *any* competent, substantial evidence in the record to support it." *Dorian v. Davis*, 874 So. 2d 661, 663 (Fla. 5th DCA 2004). And this means that even if there is also record evidence that would tend to support of the opposite of the challenged decision, and even if that contrary evidence could be said to outweigh the evidence in support, the reviewing circuit court remains obligated to uphold the lower decision. *See City of Ft. Lauderdale v. Multidyne Med. Waste Mgmt.*, Inc., 567 So. 2d 955, 957 (Fla. 4th DCA 1990).

A professional staff recommendation that supports a development application under agency review is probative, and can constitute part of the "competent substantial evidence" the government agency reviewing the application, and a reviewing court on a first-tier certiorari review, will consider. *Vill. Of Palmetto Bay v. Palmer Trinity Private Sch., Inc.*, 128 So. 3d 19, 26-27 (Fla. 3d DCA

2012) *Palm Beach Cnty. v. Allen Morris Co.*, 547 So. 2d 690, 694 (Fla. 4th DCA 1989); *Metro Dade Cnty. v. Fuller*, 515 So. 2d 1312, 1314 (Fla. 3d DCA 1987).

The Petition in this matter uses the certiorari review factor of "competent substantial evidence" incorrectly, at one point, at page 35, paragraphs 76 and 77, in the Petition. There the Petitioners suggest instead that there must be "competent substantial evidence" that the BoCC complied with a fanciful new requirement the Petitioners read into the Code, which is, they argue, that any travel-trailer campground must be at least 10 acres in size, and must also be a planned unit development. (P 35). That argument is a legal argument construing only what Petitioners contend the Code says. As an argument, it fails to discuss any matter of record evidence while offering the veneer of a supposed absence of evidence. It is as if the argument were an appellate argument that a criminal trial over a burglary failed to include evidence of a murder; it is a designed non-sequitur, an incongruity offered to create a false impression of a deficiency.

As for the remainder of the Petitioners' evidence-based arguments, the majority of them focus on portions of the record the

standard of review within this factor deems irrelevant—evidence that, as they argue it, supports their viewpoint that the BoCC decision below went the wrong way. *See Clay County v. Kendale Land Dev., Inc.*, 969 So. 2d 1177, 1181 (Fla. 1st DCA 2007)(evidence other than evidence *supporting* the affirmative decision under challenge is irrelevant to a first-tier certiorari review).

III. THE PROHIBITION AGAINST THE REWEIGHING OF EVIDENCE ON CERTIORARI

In reviewing the Petition as first-tier certiorari challenge to a local government action, the reviewing court will not reweigh any evidence, or any opposed items of evidence. *Blake v. St. Johns River Power Park Sys. Employees Ret. Plan,* 275 So. 3d 804 (Fla. 1st DCA 2019). Because any evidence supporting a petitioner's unsuccessful position under the competent substantial evidence component of review is irrelevant, as not being evidence supporting the local agency's decision, a petitioner's argument urging that such evidence carries the day, or overcomes other factors in the record, or should have been the focus of the decision below, is essentially an improper request that the evidence be reweighed, contrary to law. *See, for example, Marion County v. Priest,* 786 So. 2d 623 (Fla. 5th DCA 2001);

City of Jacksonville Beach v. Car Spa, Inc., 772 So. 2d 630 (Fla. 1st DCA 2000). A certiorari petitioner, whether unintentionally or intentionally, will sometimes urge this prohibited basis for reversing a development order when they invite the reviewing court to weigh in on a question of policy, and use some testimony found at the hearing below as their proof that their preferred policy is the best policy, and the policy that, to them, should have attracted the most votes from the deciding commission. *See, e.g., Town of June Beach v. McLeod*, 832 So. 2d 864, 868 (Fla. 4th DCA 2002).

The instant Petition implicitly requests that the Court reweigh the evidence below, at the seven-page portion of the Petition that argues that Ryan Road, where it intersects with Sadler Road, is a residential street (P 23-30). The Petition there asks the Court to find that the cited citizen testimony, wherein the stated lay opinions[4] of speakers Shirk, Elliot, Kerry, Rutan, and Kirkland are cited as establishing that the part of Ryan Road bounded by nothing but CG-zoned parcels on each side, is "residential," should, by an

[4] An example of lay opinion in the transcribed hearing below, which the Petition asks for certiorari-review recognition of and reweighing with, is "maneuverability." (P 9)(T 83).

outweighing, demonstrate a lack of competent substantial evidence that the site plan's drawn exit onto Ryan Road complied with the guideline at Section 28.09(A)(1). By requesting a reweighing of the evidence, the Petition travels outside of the scope of certiorari review and invites error.

IV. THE MEANING OF THE ESSENTIAL REQUIREMENTS OF LAW IN A CERTIORARI PETITION CHALLENGING A DEVELOPMENT DECISION BY LOCAL GOVERNMENT

If competent substantial evidence is found that is supportive of the local government decision under review, then that decision is presumed to adhere to the essential requirements of law. *State v. Wiggins*, 151 So. 3d 457, 464 (Fla. 1st DCA 2014), *citing Dusseau v. Metro Dade County Bd. of County Commn'rs*, 794 So. 2d 1270, 1276 (Fla. 2001).

Otherwise, a ruling constitutes a departure from the essential requirements of law when it "amounts to a violation of a clearly established principle of law resulting in a miscarriage of justice." *Miami-Dade County v. Omnipoint Holdings, Inc.*, 863 So. 2d 195, 199 (Fla. 2003). The violation of established principle must be so fundamentally erroneous in character as to fatally infect the ruling and render it void. *Haines City Community Dev. v. Heggs*, 658 So. 2d

523, 527 (Fla. 1995). And the problematic nature of the ruling cannot be merely that the deciding body made a choice between two alternative outcomes. *See Marion County v. Priest*, 786 So. 2d 623, 626 (Fla. 5th DCA 2001).

Otherwise, if a body of government that is empowered to make a decision on development makes a decision as to a specific application, and that decision is based on aspects of the application that are consistent with elements of the local regulations that are themselves validly enacted, then the essential requirements of law have been satisfied. *See Mann v. Board of County Commr's*, 830 So. 2d 144, 148 (Fla. 5th DCA 2002).

V. CONSIDERATIONS FOR CONSTRUING THE LAWS AND CODES OF LOCAL GOVERNMENT DURING A CERTIORARI REVIEW

Local government ordinances, like the Code sections discussed here, are subject to the same rules of construction as state statutes. *Great Outdoors Trading, Inc. v. City of High Springs*, 550 So. 2d 483, 485 (Fla. 1st DCA 1989). Such rules of construction include the directive that, to effectuate the legislative intent behind a code of local government, all parts of a code provision must be read together in order to achieve a consistent whole. *See Forsythe v. Longboat Key*

Beach Erosion Control Dist., 604 So. 2d 452, 455 (Fla. 1992). And further, that no part of a law should be rendered meaningless by a proposed construction of two or more components of a body of law. *Am. Home Assur. Co. v. Plaza Materials Corp*, 908 So. 2d 360, 366 (Fla. 2005). Such rules of construction include the charge to give the words of a code of local government their plain meaning, without resort to further interpretation. *See Rinker Materials Corp. v. City of N. Miami*, 286 So. 2d 552, 553 (Fla. 1973). And to prefer a construction that does not render any part of a code superfluous, or without meaning. *Johnson v. Feder*, 485 So. 2d 409, 411 (Fla. 1986). And to not adopt a strained view of a code provision that includes concepts that are absent from the text. *See Surf Works, LLC v. City of Jacksonville Beach*, 230 So. 3d 925 (Fla. 1st DCA 2017)(in a dispute over which sections of a city code applied to a rezoning application, reviewing court on first-tier certiorari review committed reversible error by construing that a code section listing zoning application requirements also required compliance with an additional, separate code provision which the construed text did not mention). Finally, these principles of construction include according deference to the agency that is charged with applying and interpreting the code in the

first instance. *See Ameristeel Corp. v. Clark*, 691 So. 2d 473, 477 (Fla. 1997).

VI. CONSIDERATIONS FOR DISTINGUISHING BETWEEN FACT-BASED TESTIMONY AND STATEMENTS OF SPECULATION OR LAY OPINION

Citizen testimony at quasi-judicial local government hearings is "perfectly permissible and can constitute [...] evidence, so long as it is fact-based." *Metro. Dade Cnty. v. Blumenthal*, 675 So. 2d 598, 607 (Fla. 3d DCA 1995).

On the other hand, statements of lay opinions by, for example, a development applicant's neighbors, are permitted at quasi-judicial proceedings, but do not provide competent substantial evidence that would support the denial of a development application. *See Katherine's Bay, LLC v. Fagan*, 52 So. 3d 19, 30-31 (Fla. 1st DCA 2010) (concluding that where the "County Staff's report indicates that the traffic issue was studied by an expert and determined that increased traffic would not unduly burden the area," that cannot be overcome by generalized complaints about increased traffic); *Pollard v. Palm Beach County*, 560 So. 2d 1358, 1360 (Fla. 5th DCA 1990) ("[O]pinions of residents are not factual evidence and not a

sound basis for denial of a zoning change application." (citing *City of Apopka v. Orange County*, 299 So. 2d 657, 660 (Fla. 4th DCA 1974))).

If a statement or a criticism by a neighboring property owner or concerned citizen is merely their belief-based opinion, also called a lay opinion, the statement is not accepted as evidence that would support the grant or the denial of a development application. *See Apopka v. Orange County*, 299 So. 2d 657, 660 (Fla. 4th DCA 1974). This remains so even if the lay opinion offered concerns a substantial manner of subject, such as, for example, traffic, or pollution of some kind. *See Pollard v. Palm Beach County*, 560 So. 2d 1358, 1359-60 (Fla, 4th DCA 1990).

The record here includes a great amount of public comment testimony, much of which is lay opinion, but some of which includes statements of discrete facts. Those discrete facts, if they support the decision below, may be properly considered as part of the corpus of competent substantial evidence for certiorari purposes, however the opinions that relate to those discrete facts do not ride along.

VII. THE TRANSCRIPT OF PROCEEDINGS BELOW, AND THE GENERAL DUTY OF CANDOR IN PRESENTING THE TRANSCRIBED PROCEEDINGS BELOW

As with most appellate-capacity proceedings, in first-tier certiorari review the transcript of the hearing below is an important part of the record. As with other like proceedings, there is a general duty of candor owed to the tribunal as parties cite to the transcript to support an argument they wish to make, and the fulfillment of that duty is to present passages of the transcript accurately. *Albert v. Dep't of Health & Rehabilitative Services*, 638 So. 2d 195 (Fla. 5th DCA 1994); *see also Hays v. Johnson*, 566 So. 2d 260, 261 (Fla. 5th DCA 1990)(complete candor is especially vital in proceedings where relief is urgently sought and the time for opposing parties to respond is limited).

In the Petition, in order to make a criticism (P. 16 and fn. 1), claiming a supposed restraint of one of the Petitioners, Mr. Shirk, during his public comment opportunity, the Petitioners mislabel or misstate the transcribed comments of the County Attorney. Where the transcript shows at page 62 that the County Attorney was restraining Mr. Shirk, *a non-party* to that proceeding, *only from*

conducting his own cross-examination of a witness,[5] Petitioners mislabel her comments as restraining Mr. Shirk from offering his own public comment, all the while the transcript plainly shows at pages 64 to 67 that Mr. Shirk was allowed his full public comment opportunity, which he concluded on his own impetus and with the sign-off, "thank you for your time." (T 64-67). At the same page of the Petition, page 16, at footnote 1, Petitioners again mislabel the actions of the County Attorney, changing an instruction she was giving to the BoCC members over the scope of their analysis, which was the enumerated development guidelines of Section 28.09, into a directive or a command of restraint to a public commenter then at the podium, Ms. Fornecker.

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[5] In quasi-judicial hearings by local government agencies, cross-examination can be within the due process interests of *a party* to that hearing, *see Jennings v. Dade County*, 589 So. 2d 1337, 1340 (Fla. 3d DCA 1991) but is not a right vesting with any member of the public who may wish to watch the hearing and then conduct their own cross-examination of a testifying witness. *Carillon Cmty. Residential v. Seminole Cnty.*, 45 So. 3d 7 (Fla. 5th DCA 2010)(affirming circuit court denial of certiorari based on disallowance of a neighbor opposing development permitting, a non-party, to cross-examine, and finding that Florida law "has no such requirement [for quasi-judicial hearings]"). Nor could it be. If cross-examination were a right of the general public, of any and every attendee at a county commission hearing, quasi-judicial hearings might never be brought to an end.

VIII. THE BoCC DECISION ON THE APPLICATION FOR FINAL DEVELOPMENT PLAN MEETS THE COMPETENT SUBSTANTIAL EVIDENCE CRITERIA ON FIRST-TIER CERTIORARI REVIEW

A. The Record Reflects that the BoCC Approval of the Application Was Supported by Competent Substantial Evidence

In this proceeding, on first-tier certiorari review, the only question to be addressed as to the "competent substantial evidence" certiorari factor is whether there is *any* competent substantial evidence supporting the approval of the application. And there is.

This evidence probative to and supporting approval includes the contents of the final development plan itself (P-A 8-22), the written report by the County's professional staff (P-A 6-7), the transcribed oral presentment by a County planner of the report and recommendation at the January 23, 2023 hearing (T 17-22), testimony by the applicant's professional engineers, Asa Gillette and Rajesh Chindalur (T 28-35), and testimony by the applicant's professional environmental consultant, Patrick Higgins (T 35-42).

In addition, several of the citizen speakers making presentations against approving the application offered sworn factual statements that can also be considered as record evidence *supporting*

the application, or in some instances, that factually rebut a point of objection, whether theirs or another speaker's, and these include:

- Testimony (by Mr. Leonardi) that there were already RVs using Sadler Road, in that vicinity of Sadler Road proximate to the frontage of the applicant's site (T 57);
- Testimony (by Ms. O'Brien) that the corner of Sadler Road and Ryan Road is part of an area of established recreational transit wherein people travel west past that point to get to the nearby beach (T 69);
- Testimony (by Ms. Fornecker) that the applicant's site plan met the prerequisites for traffic dimensions and road setbacks (T 83);
- Testimony (by Ms. Embrick) that there is a nearby RV camping area at Fort Clinch State Park (T 94);
- Testimony (by Ms. Eliot) that according to the history of the development of the Pirate's Bay subdivision, the subdivision's interest in Ryan Road is that it was granted a *non-exclusive* easement from the County to traverse Ryan Road, for the purpose of accessing Sadler Road (T 97); and

- Testimony (by Mr. Simoneau) that at present egressing from Ryan Road onto Sadler Road presents the motorist with a busy, or public street level of traffic flow, rather than a traffic flow that would be expected from a neighborhood or residential street (T 109).

Petitioners prefer to analyze the competent substantial evidence factor from the focal point of whether or not it can be established from the entire record that the Code subsection 28.09(A)(1) guideline, which is that a site development not discharge exit traffic into a residential district, was met. But as explained above, as the argument is made, this argument is precisely a reweighing of evidence, an analysis asking the Court in its appellate capacity to weigh (A) the testimony and evidence stating that it 28.09(A)(1) is met due to the nature of the egress point at Ryan Road against (B) the citizen testimony that they consider all of Ryan Road to be "residential" in nature. Petitioners' preferred vantage point into the issue of competent substantial evidence is not a basis for challenging the ruling below—again, because the only valid inquiry[6] is to ask,

[6] *Dusseau*, 794 So. 2d 1270, 1276 (Fla. 2001)([t]he law is clear that the only role of the circuit court [on first-tier certiorari review] is to

"was there *any* evidence that did support the voted approval decision?"

B. Petitioners' Argument That There is No Competent Substantial Evidence that the Application Met the Development Guidelines at Code Section 28.09(A)(1) as to Exiting Traffic is Belied by the Actual Contents of the Record [Ref. Petition paras. 78, 40-62]

The record evidence, and the content of the Petition itself, supporting the fact that the instant application presented a final development plan that met the guideline set forth at Code subsection 28.09(A)(1), the pertinent part of which is that "no exit from a [park or campground] shall discharge traffic into any residential district", includes: the staff report, the testimony of the County planner presenting the report, the application and site plan themselves, as well as the graphics or drawings in the Petition (at pages 3, 27, and 28) which clearly show that the location of the site is such that the Ryan Road vehicle exit would only discharge a vehicle onto the stretch of Ryan immediately adjacent to the Sadler Road intersection, and bounded on both sides of Ryan by only CG commercial zoned parcels.

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review the record for evidentiary support for the agency decision ... contrary evidence is irrelevant to the lawfulness of the decision.)

IX. THE BoCC DECISION ON THE FINAL DEVELOPMENT PLAN APPLICATION WAS NOT IN VIOLATION OF THE ESSENTIAL REQUIREMENTS OF LAW

The argument section of the Petition is a little more than two pages long. It raises three primary arguments, (1) the timing of the application and the subsequent ordinance amending the CG classification, (2) the argument that the campground had to be developed as a PUD and had to be at least 10 acres in size, and (3) the question of the "exit into a residential district" guideline found at Code subsection 28.09(A)(1) (P 34-36).

In the preceding part of this Response, we have addressed how the entire BoCC decision, and the specific guideline of exiting vehicles under 28.09(A)(1) are supported by competent substantial evidence. In this part, we will address how Petitioners' arguments as to "the timing of the application and the subsequent ordinance amending the CG classification," and "the argument that the campground had to be developed as a PUD and had to be at least 10 acres in size" do not create a violation of the essential requirements of law.

A. The July 2022 Amendment to the CG Zoning Classification by Ordinance 2022-020 Did Not Require the BoCC to Reject the Instant Application (Ref. Petition at paras. 72-74, 16-24).

The BoCC did not depart from the essential requirements of law by allowing the final development plan for the travel-trailer campground to proceed to a vote by the BoCC.

The criticism underlying this argument is that the application that became BoCC agenda item FD22-006 was submitted to the County in May of 2022, which was before a July of 2022 ordinance amending the CG commercial classification was passed, which amendment to CG removed travel-trailer parks as a use. Petitioners argue broadly that the months-earlier submission of the application to the County's development review committee does not allow the County, administratively, or the BoCC, legislatively or in a quasi-judicial role, to decide that the application could be heard since it was submitted at an earlier time when the applicant and the public were on notice of nothing but that travel-trailer campgrounds were still an allowed use.

This argument is contrary to the Code and to relevant Florida precedents. *See Smith v. Clearwater*, 383 So. 2d 681, 689 (Fla. 2d DCA 1980)(an applicant facing a changed zoning landscape because

of a zoning amendment occurring after its application is submitted may rely on the doctrine of equitable estoppel, but need not, since the applicant may also simply establish that the application "was within the provisions of the existing zoning at the time" of the application.); *see also Occidental Chem. Agr. Prods., Inc. v. State*, 501 So. 2d 674, 679 (Fla. 1st DCA 1987)("the administrative process in this State routinely handles cases in which parties have introduced equitable estoppel issues"); *Harbor Course Club, Inc. v. Dept. of Comm. Affairs*, 510 So. 2d 915, 918-920 (Fla. 3d DCA 1987)(expressing no concern that vested rights were determined administratively); *Compass Lake Hills Development Corp. v. Dept. of Comm. Affairs*, 379 So. 2d 376, 381-382 (Fla. 1st DCA 1979)(expressing no concern that vested rights were determined administratively). *See* Code at §§ 1.01, 1.03 ("the purpose of this Code is to implement … development and use of land [...] the [BoCC] has the authority to prepare, adopt, and enforce this Code [...]"), 3.01 ("It shall be within the powers of the [BoCC] … to regulate the uses of lands [...]").

The BoCC is empowered by the Code, a duly enacted law, to decide if it may hear an application based upon the date of the application as preceding the date of a subsequent zoning

amendment. The BoCC, as to a final decision, and the County planners, and the County design review committee, also act completely within the Code's expectations when they make a decision (in the case of the BoCC) or a recommendation (in the case of staff or the DRC) that an application may proceed notwithstanding a later zoning amendment, either because the applicant is said to be colloquially grandfathered, or because the applicant is said to be equitably "vested," in relation to the zoning law as it existed when application was made. *See Angelo's Aggregate Materials, Ltd. v. Pasco County*, 118 So. 3d 971, 976-77 (Fla. 2d DCA 2013)(Altenbernd, J., concurring)(County Code's empowerment of County BOCC to exercise quasi-judicial authority over development questions includes the authority to determine questions of vested rights). The BoCC's authority to decide also encompasses the authority to *consider*, within its decisions, whether any applicant might have at least a colorable claim to estop a denial of an application on the basis of their application, and their reliance on then-existing zoning at the time of the application, as the reviewing court faulted a commission for not considering in *City of Gainesville v. Bishop*, 174 So. 2d 100, 105 (Fla. 1st DCA 1965).

B. The Proposed Travel-Trailer Campground Did Not Have to Be Developed as a 10 Acre PUD (Ref. Petition paras. 25-39, 75-77)

As stated above, the site at issue was zoned CG commercial. The Code's CG commercial zoning classification provides for a minimum lot requirement of 20,000 square feet in area and 100 feet in width. Code at § 16.05. Nothing in the Code's Article 16, which defines and sets the physical development requirements for the CG commercial classification, and nothing in Section 28.09, which sets the physical requirements for travel-trailer campground development, make reference to or include as a requirement any part of the Code's Article 25, which concerns PUDs. Subsection 5.07(D)(4)(a), which imposes the requirement of a PZB hearing prior to a BoCC hearing, for Class III applications, differentiates between PUD and non-PUD Class III applications, where it states "i*n the case of* a final development plan within a PUD."

The Petitioners' argument to the contrary contends that a travel-trailer campground's minimum size must be 10 acres, and that it can only be developed as a PUD. And the argument proceeds by the Petitioners (i) ignoring the plain text of the lot size language in Code section 16.05, and (ii) seizing on a process-focused element in

subsection 28.09(B), which is that "all site plans [for a travel-trailer campground] shall be submitted and processed in accordance with Class III requirements of [s]ection 5.07," and ignoring the language of differentiation at 5.07(D)(4)(a), to make the strained argument that subsection 28.09(B) requires that a campground "be" a PUD, and not merely have its site plan reviewed under Section 5.07 according to the same procedural steps that a PUD's site plan, e.g., a Class III project's site plan, is reviewed with.

As to Class III projects, Section 5.07 is concerned only with "engineering plans," at 5.07(A)(3), "forms," at 5.07(A)(4), and a set of application components common to, not PUDs, but *to all* Class II, III, and IV projects, at 5.07(C)(1)(a)-(h), and the requirement of a public hearing, at 5.07(D)(4)(b). Section 5.07 is entirely process-focused and procedural, it does not require, as a matter of substance, that a project "be" a PUD in order to be processed. It states the converse, it states that PUDs are hereby labeled as Class III for purposes of review procedure. It also uses language—"in the case of"—that signals that there will be PUD and non-PUD projects designated as Class III. And this leaves room for subsection 28.09(B) to provide that travel-trailer

campgrounds are also to be processed according to Class III requirements.

C. Petitioners' Argument Raises No Incident of a Failure of or a Departure from The Essential Requirements of Law

Generally, for an issue related to a quasi-judicial hearing to rise to the magnitude of a "failure of the essential requirements of law" it must be, as a result, a "gross miscarriage of justice" or an "illegality" that is more than just "legal error." *Haines City Community College v. Heggs*, 658 So. 2d 523, 527-28 (Fla. 1995); *Jones v. State*, 477 So. 2d 566, 569 (Fla. 1985)(Boyd, J., concurring). The arguments just discussed within the Petition raise nothing near to this criteria.

CONCLUSION

For the foregoing reasons, the Court should deny the Petition for Certiorari.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing brief is presented in Bookman Old Style 14-point font, contains a compliant word count of 8,098 words, and complies with the font requirements of Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

By:*/s/ Michael Cavendish*
Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that in accordance with Rule 2.516(b)(1), Florida Rules of General Practice and Judicial Administration, on this 23rd day of March, 2023, a true and correct copy of the foregoing has been furnished via the State of Florida e-filing system, that will complete service by electronic mail to the following counsel of record:

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