

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

CASE NO.: 16-2022-AP-000005
DIVISION: AP-A

ROSE BOGAN, MICHAEL CALENZA, ROBERT
COLEMAN, VICTORIA D'ANGELO, PAUL
FORTE, JIM FRENCH, DOROTHY GILLETTE,
JOHN GILLETTE, KATHY MOORE, CLIFF
PAYNE, LEONARD PAULSON, MICHELLE
PAULSON, BRENDA SMITH, JARED TINTLE,
JOE WAGNER, BELINDA WARDEN, KIM
WHITLOCK, and ROBERT WHITLOCK,

Petitioners,

v.

THE CITY OF JACKSONVILLE, a municipal
corporation,

Respondent.

_____ /

Petition for Writ of Certiorari from a final order of the City of Jacksonville.

April 19, 2023

PER CURIAM.

Pursuant to Article V, Section 5(b) of the Florida Constitution and Fla. R. App. P.
9.030(c)2 and 9.100(c)(2), Petitioners timely invoked this Court's "first-tier" certiorari
jurisdiction to review the February 8, 2022, final order of the Jacksonville City Council
approving Ordinance 2020-0689, which rezoned certain land to a Planned Unit

Development (PUD). *See Florida Power & Light Company v. City of Dania*, 761 So. 2d 1089 (Fla. 2000); *Haines City Community Devel. v. Higgs*, 658 So. 2d 523 (Fla. 1995).

1. Background

In addition to the briefs submitted by the parties, Petitioners' original appendix includes Petitioners' presentation to the City of Jacksonville Planning Commission on July 22, 2021, the Planning Commission Advisory Report dated August 3, 2021, the Written Description of the Broward Key PUD dated September 21, 2020, a preliminary site plan for the PUD, and the final Ordinance 2020-0689, enacted February 8, 2022, establishing the PUD.

The City submitted an appendix including the transcript of the City of Jacksonville Planning Commission meeting on July 22, 2021, and a Broward Key zoning map dated September 17, 2020, which had been submitted in support of the PUD.

Petitioners submitted a supplemental appendix including transcripts of the City of Jacksonville Land Use and Zoning Committee (LUZ) meetings dated September 8, 2021, September 21, 2021, and February 1, 2022, along with a transcript of the City Council meeting on February 8, 2022, at which Ordinance 2020-0689 was voted on and enacted.

Petitioners are individual homeowners who challenge a quasi-judicial order rendered by the City (Ordinance 2020-0689) approving the rezoning of approximately 113 acres of residentially-zoned undeveloped land and an application for a residential PUD to construct up to 243 single-family homes, some of which would be located on the Broward Point

Peninsula. A portion of the residential project exists within a City “Industrial Situational Compatibility Zone.”

The ordinance approves a rezoning and reclassification of the property from Residential Low Density-90 (RLD-90) and Residential Medium Density-A (RMD-A) to a PUD. The City found that the rezoning was consistent with the City’s 2030 Comprehensive Plan, furthered the goals, objectives and policies of the Plan, and was not in conflict with the City’s Land Development Code (“LDC”), including the Industrial Situational Compatibility Zone requirements.

Petitioners all own property near the PUD. All of the Petitioners either spoke at the City Council and LUZ hearings concerning the PUD rezoning application or had a representative speak on their behalf. Petitioners testified and submitted other materials to support their allegations that the proposed PUD would, among other things, affect their safety during a hurricane evacuation, create a danger due to the single entrance road with a railroad crossing, impact drainage and flooding in the area, increase noise in the area, make it difficult for emergency vehicles to access their properties, and negatively impact their property values.

In its staff report, the City’s Planning Department staff evaluated the legality of the proposal. The staff report analyzed the criteria set forth in Section 656.131(c), LDC. Such criteria include whether the proposed zoning district is consistent with the 2030 Comprehensive Plan, whether the rezoning furthers the goals, objectives, and policies of the

2030 Comprehensive Plan, and whether the proposed rezoning conflicts with any of the City's land use regulations. The staff report further evaluated and considered the criteria set forth in Section 656.341(d), LDC, regarding consistency with the 2030 Comprehensive Plan and the concurrency, mobility and management system, allocation of residential land use, internal compatibility, external compatibility, and other factors set forth in the LDC.

The staff report found that the proposed PUD is consistent with the 2030 Comprehensive Plan. The report stated that the proposed PUD furthers the goals, policies and objectives of the Comprehensive Plan, and meets the City's Land Use Regulations under Sections 656.340 and 656.341, LDC, including internal and external compatibility, school capacity, and wetlands composition. The planning department staff recommended approval of the PUD application with the condition that a traffic study be conducted. Several public hearings were held on the proposed PUD application, where many members of the public provided public comment both for and against the development.

The Planning Commission held a meeting and public hearing on the PUD application on January 22, 2021. The Chief of Current Planning for the City explained that the request was to rezone approximately 113 acres of residentially zoned property to a residential PUD for 243 single-family homes. The Planning Department indicated that it considered the proposed PUD to be an overall reduction in the development rights at the site, since the entire site was currently zoned for 380 lots. While that conclusion was challenged during the proceedings, there was competent substantial evidence to support it. Staff also

indicated that while it only added one condition to its recommendation for approval (a traffic study), the applicant had voluntarily included numerous other concessions. The applicant representative testified regarding the meetings he had with residents of nearby properties and the conditions he placed on his application to lessen the impact on surrounding properties. He also indicated that many hurdles remained until the PUD could move forward, including approvals from the Florida Department of Transportation, CSX Railroad, JEA, the Department of Environmental Protection, and the St. Johns River Water Management District.

Many of the Petitioners spoke at the January 22, 2021, meeting and described their concerns with the PUD. The Commission voted 5-1 to recommend approval of the PUD application to the LUZ Committee.

The LUZ Committee held three public meetings concerning the PUD application. The first LUZ Committee meeting was on September 8, 2021. The LUZ Committee heard from the City, the developer applicant, and citizens both for and against the development. The City recommended approval of the PUD and the applicant again stated its position that the current zoning would allow more homes than were currently included in the PUD. The applicant also reiterated that 20 conditions were voluntarily placed on the application, and that many state and federal agencies would have to approve the project before the PUD could proceed.

Following the public comments and further deliberations, the LUZ Committee voted

3-3, so the application was deferred to the next LUZ Committee meeting. At its September 21, 2021, hearing the LUZ Committee referenced its previous consideration of the application and voted 4-3 to approve the rezoning application with the condition of a traffic study. The full City Council voted on September 28, 2021, to remand the PUD back to the LUZ Committee to hear testimony regarding the proposed traffic study. On February 1, 2022, the LUZ Committee met again for that limited purpose, and again voted 4-3 to approve the PUD application.

On February 8, 2022, the full City Council considered the PUD application at a highly-attended public meeting. Council members described their ex parte communications with community members and others involved in the rezoning process. The Council also discussed the substantial record both for and against the PUD application and many stated on the record how they intended to vote and why. After the discussion concluded, the question was called and the Council voted 10-8 to approve the PUD and passed Ordinance 2020-0689. Petitioners timely filed a petition for certiorari seeking review of the City's action.

2. Standard of Review

In reviewing a petition for writ of certiorari of a local government zoning decision, the circuit court is to determine: 1) whether procedural due process was accorded; 2) whether the essential requirements of the law have been observed; and 3) whether the administrative decision was supported by competent substantial evidence. *City of Deerfield*

Beach v. Vaillant, 419 So. 2d 624, 626 (Fla. 1982), *City of Jacksonville v. Car Spa, Inc.*, 772 So. 2d 630, 631 (Fla. 1st DCA 2000). Petitioners do not challenge procedural due process in this case, nor does Respondent challenge Petitioners' standing.

This Court cannot conduct a *de novo* review of the record or reweigh the evidence. *Florida Power & Light Co. v. City of Dania Beach*, 761 So. 2d 1089, 1092 n. 3. (citing *Haines City Community Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995), *City of Jacksonville Beach v. Car Spa, Inc.*, 772 So. 2d 630, 631 (Fla. 1st DCA 2000)). Whether the court might reach a different conclusion than that reached by the governmental entity is "irrelevant." *Id.*

Because certiorari is in the nature of an appellate proceeding, the Court should merely examine the record to determine whether the lower tribunal had competent substantial evidence to support its findings, and if its judgment was in accord with the essential requirements of law. *See De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957). "Substantial evidence" means such evidence "as will establish a substantial basis of fact from which the fact at issue can reasonably be inferred," or "such relevant evidence as a reasonable mind would accept as adequate to support a conclusion." *Id.*

The Fifth District has held that if there is some evidence in the record to support the conclusion below, the competent substantial evidence standard of review is satisfied. *See Haines v. Dep't of Children and Families*, 983 So. 2d 602, 607 (Fla. 5th DCA 2008) (reasoning that "[r]equiring an ALJ to use the competent, substantial evidence standard . . .

would mean that the ALJ would be required to make a fact finding based on some credible evidence in the record even though other evidence outweighed it.”) As the Florida Supreme Court stated in *Heggs*, in reviewing quasi-judicial final orders through common-law certiorari, “the circuit court functions as an appellate court and among other things, is not entitled to reweigh the evidence or substitute its judgment for that of the agency.” *Heggs*, 658 So. 2d at 530.

In *Dusseau v. Metropolitan Dade Co. Bd. of County Commissioners*, 794 So. 2d 1270, 1275-76 (Fla. 2001), the Florida Supreme Court again emphasized that on first-tier review, the circuit court cannot reweigh evidence, stating that the reviewing court cannot use its standard of review as “a mechanism for exerting covert control over the policy determinations and factual findings of the local agency. Rather, this standard requires the reviewing court to defer to the agency’s superior technical expertise and special vantage point in such matters.”

It is also well-settled that opinions of the City’s staff and its experts are by themselves competent, substantial evidence. See *Hillsborough County Bd. of County Commissioners v. Longo*, 505 So. 2d 470, 471 (Fla. 2d DCA 1987); *Metropolitan Dade County v. Fuller*, 515 So. 2d 1312, 1314 (Fla. 3d DCA 1987); *Payne v. City of Miami*, 52 So. 3d 707 (Fla. 3d DCA 2010); *Metropolitan Dade County v. Sportacres Dev. Group, Inc.*, 698 So. 2d 281, 282 (Fla. 2d DCA 1997) (reasoning that a record containing maps, reports and other information along with the testimony at a public hearing constituted competent,

substantial evidence.

3. Essential Requirements of Law

Petitioners argue that the City departed from the essential requirements of law for three reasons: (1) the PUD Written Description fails to comply with Section 656.341(c)(2)(ii)(D), LDC, by failing to include a construction schedule; (2) the PUD fails to comply with Section 656.399.46 LDC buffer requirements; and (3) the PUD fails to comply with Section 656.341, LDC by failing to enumerate a request for waiver of lot coverage requirements.

Parties in administrative proceedings are required to make objections on the record to preserve any error for appellate review. *See City of Miami v. Cortes*, 995 So. 2d 604, 606 (Fla. 3d DCA 2008). It does not appear from the Appendices submitted by the parties that Petitioners raised these specific issues either with the City Council at the public hearing on February 8, 2002, or in the prior public hearings held by the Planning Commission and LUZ. Since these issues were not raised in the quasi-judicial proceedings below, they were not preserved for appeal. *See Clear Channel Comms, Inc. v. City of North Bay Village*, 911 So. 2d 189, 190 (Fla. 3d DCA 2005) (affirming appellate division of circuit court's decision which held that petitioners failed to preserve their legal challenges for appellate review because they did not make contemporaneous objections before the City Commission).

Even if these issues had been preserved for appeal, Petitioners' arguments would not satisfy their burden of showing that the City departed from the essential requirements of

law. To establish that the City departed from these essential requirements of law, Petitioners must establish that the City did not apply the correct law, resulting in a miscarriage of justice. *See Stranahan House, Inc. v. City of Fort Lauderdale*, 967 So. 2d 1121 (Fla. 4th DCA 2007).

It is clear from reviewing the original City Planning and Development Department report, the Planning Commission's advisory report and meeting transcripts of the LUZ and City Council, that the public entities involved applied the correct law, *i.e.*, the City's LDC, to the PUD application. In particular, the Staff Report contains specific and detailed findings regarding the PUD application's consistency with the LDC in general, and with the 2030 Comprehensive Plan. If the Petitioners had raised the issue below that the Written Description did not set out a construction schedule, the issue could have been addressed in some way. It is apparent from the hearing transcripts that the PUD application is only a first step and that additional approvals will be required from numerous agencies. Under those circumstances, this Court cannot determine that the City failed to apply the correct law.

Similarly, the City Council considered the fact that the PUD would be located in an Industrial Situational Compatibility Zone, and that such location did not change the existing land use or zoning of the property and that the overlay does not require the property to be used for industrial purposes.

Finally, Petitioners complain that the PUD does not comply with the "buffer

requirements” in the Industrial Situational Compatibility Zone. However, the industrial overlay did not change the fact that the property was already zoned residential. Had this issue been specifically raised with the City, it could have been addressed in the proceedings below.

4. Competent Substantial Evidence

The Staff Report is Exhibit B of the Appendix to the Petition. In the Report, the Commission details how the rezoning is consistent with the 2030 Comprehensive Plan. Petitioner’s Supplemental Appendix consists of four transcripts: three from the LUZ Committee, and one from the City Council. The City heard extensive evidence, including from individuals with expertise and expert counsel, sought additional studies and reviewed the LDC requirements before determining in its discretion to allow the PUD. Multiple public hearings were held and the City heard all sides of the arguments and evidence before making the decision. Petitioners’ argument that the record fails to reflect competent substantial evidence that the PUD is externally compatible or that requested deviations are necessary is contradicted by the record. The record contains a detailed analysis, criteria, and findings required under §656.131, LDC, including consistency with the 2030 Comprehensive Plan, furtherance of the goals, objections and policies of the 2030 Comprehensive Plan, consistency with the City’s land use regulations, consistency with the Concurrency Mobility and Management System, internal compatibility, external compatibility, intensity of development, and other provisions of the LDC. There was

competent, substantial evidence showing that the Commission's decision was consistent with the 2030 Comprehensive Plan and the LDC.

Petitioners made a compelling case in the proceedings before the Planning Commission, the LUZ Committee, and the City Council that the City should not approve the PUD. However, after thorough consideration of all the facts presented, the recommendations of City staff, and the appropriate provisions of the LDC, a majority of the City Council voted to approve the PUD. In reaching its decision, the City observed the essential requirements of the law and there was competent evidence to support its decision.

ACCORDINGLY, it is ORDERED that the Petition for Writ of Certiorari filed by Petitioners is DENIED.

FAHLGREN, DEES, AND ANDERSON, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330.

Karl J. Sanders, Esq., counsel for Petitioners.

Craig D. Feiser, Esq. Assistant General Counsel, for Respondent.