

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY FLORIDA**

D.R. HORTON, INC., THE CINDY
L. SMITH REVOCABLE LIVING
TRUST and MATT and CINDY L.
SMITH,

Case No:

Petitioners,

vs.

SARASOTA COUNTY,

Respondent.

_____ /

PETITION FOR WRIT OF CERTIORARI

Petitioners, D.R. Horton, Inc. (“DRH”), the Cindy L. Smith Revocable Living Trust (the “Trust”) and Matt and Cindy L. Smith (the “Smiths”) (collectively, “Petitioners”), file this joint Petition for Writ of Certiorari pursuant to Art. V, § 5(b), Fla. Const. and Fla. R. App. P. 9.030(c)(3) and 9.100(c)(2) requesting that the court issue a Writ of Certiorari quashing the Sarasota County Board of County Commissioners’ March 26, 2025 denial of Petitioners’ Rezone Petition No. 23-30 (the “Application”) seeking to rezone 50.82 acres of land owned by the Trust and the Smiths (the “Smith Property” or the “Property”).

As discussed below, despite Petitioners going above and beyond satisfying the criteria for their requested rezoning to alleviate potential effects on neighboring properties, the County denied the Application based on generalized concerns regarding the compatibility of the density of the project, despite the density proposed by Petitioners being consistent with and required by the County's Comprehensive Plan. As discussed below, under the plain meaning of the County's code, there was no competent substantial evidence supporting any legal reason for the County's denial.

The Appendix accompanying this Petition constitutes relevant portions of the record of the hearings that took place at the Sarasota County Board of County Commissioners ("BCC"). References to the Appendix shall be by page number (App. #). References to the County's Code of Ordinances (the "Code"), including the County's Unified Development Code located at Chapter 124 of the Code ("UDC") will include both a code citation and a citation to its location in the Appendix. References to the Sarasota County Comprehensive Plan will include both a citation to the Plan and a citation to its location in the Appendix.

The Petitioners have an interest in the matter exceeding that of the general community as (1) the Smiths are fee simple owners of the Property, and (2) D.R. Horton is the applicant and contract purchaser of the Property. (App. 34).

BASIS FOR INVOKING JURISDICTION

This Petition challenges a quasi-judicial decision of the BCC to deny the Application. The Circuit Court of the 12th Judicial Circuit in and for Sarasota County has appellate jurisdiction over this quasi-judicial matter pursuant to Article V, § 5(b) of the Florida Constitution and Rules 9.030(c)(3) and 9.100(c)(2) of the Florida Rules of Appellate Procedure. *See, e.g., Fla. Power & Light Co. v. City of Dania*, 761 So. 2d 1089 (Fla. 2000).

FACTS

The Smith Property is an area of land approximately one mile east of I-75, south of Palmer Boulevard on the east and south side of Raymond Road, slated for dense infill development by the Sarasota County Comprehensive Plan (the “Plan”). (App. 9). The Property is abutted on the East, Southeast, South and Southwest by residential developments similar to the Petitioners’ proposed 2.48 unit/acre development, with the densities of these surrounding developments

ranging from 1 to 4.5 units/acre. (App. 50). The northwest boundary of the Property sits along the southernmost corner of the Celery Fields Regional Stormwater Facility (the “Celery Fields”)—an over 400-acre flood mitigation zone also used as a park. (App. 9). The Celery Fields are surrounded by developments ranging from single-family residential and four-story apartments to an industrial park and Sarasota County’s new administration building. (App. 1843).



In land use law, a local government’s comprehensive plan acts as a “constitution” for all development within the jurisdiction and prevails over contrary zoning actions and codes. *See, e.g., Citrus Cnty. v. Halls River Development, Inc.*, 8 So. 3d 413, 420-21 (Fla. 5th DCA 2009). A zoning action that is not in accordance with the comprehensive plan is unlawful. *See id.* “[Z]oning laws implement the comprehensive plan, and must be consistent with it.” *Gardens Country Club, Inc. v. Palm Beach Cnty.*, 590 So. 2d 488, 490 (Fla. 4th DCA 1991).

Under the County’s Comprehensive Plan, the Property is designated Moderate Density Residential (“MODR”), a designation which requires residential developments to be zoned for between two and five units per acre. (App. 44, 2229, FLU Policy 2.3.3). The Property is also within the Plan’s Urban Service Area—an area which the Plan states should be developed at the “maximum allowable densities to utilize existing infrastructure and prevent urban sprawl.” (App. 2238, HOU Policy 1.1.14).

The Property has an outdated zoning of Open Use Rural (OUR) under the County’s UDC, which allows only one dwelling unit per 10 acres—around 1/20th of the minimum called for by the Property’s

MODR designation under the Plan. (App. 9). The Plan notes OUR as a zoning category not consistent with the MODR designation. (App. 2226, FLU Policy 1.3.9).

The Petitioners filed the Application below, seeking to rezone the Property to a Residential Single Family/Planned Unit Development zoning category, eventually settling on a 126-unit plan under the category of RSF-1—a category which allows up to 2.5 units per acre and which is one of the least dense districts allowed under the MODR designation. (App. 2246, Code Sec. 124-70, FLU Policy 1.3.9). At 2.48 units per acre, the density of the proposed development is in line with surrounding residential densities and less dense than other developments bordering the Celery Fields. (App. 50).

The Petitioners designed the proposed development to minimize any impacts on the surrounding properties, including Celery Fields. (App. 53). Among other things, the Application provided for: (1) 50% more open space than required by the Code, (2) perimeter setbacks on Raymond Road that were ten times more than required including dense agricultural buffers, (3) setbacks along the East and South boundaries that were four times more than required, (4) Dark Sky protections for any wildlife concerns on the Celery Fields, (5) building

height restrictions and (6) a general design concentrating density around the central stormwater pond to minimize impact on surrounding properties. (App. 1552).

The Sarasota County BCC held a quasi-judicial hearing on the Application on February 12, 2025. (App. 1963). During the hearing, D.R. Horton presented its plan alongside studies showing that the proposal met or exceeded every criteria set out by County law, and that it was consistent with or less dense than both nearby residential developments and other industrial and governmental developments bordering the Celery Fields. (App. 1976). In support, the Petitioners provided civil engineering and expert reports, including a traffic impact analysis from a traffic engineer, a planning report from a certified planner, and an environmental analysis from an environmental scientist in addition to the testimony presented at the hearing. (App. 111, 241).

The Sarasota County staff, consistent with local policy, did not state any opinion on whether the Application should be approved or denied, and instead provided a staff report (the “Staff Report”) with a list of potential justifications for either approval or denial. (App. 75).

The justifications cited by the Staff Report for potential denial of the Application lacked supporting data, cited criteria which are not bases to deny under the Code, or otherwise did not explain why they would constitute a reason for denial. (App. 75-76). Among the “Approval Criteria” listed in the Staff Report, the County included several items whose sole relevance under the Code is that the Planning Commission must show that it had “studied and considered” the items in forming its recommendation. (App. 75, 2241; UDC 124-39(c)(4)). The Staff Report alters the language from the UDC, often removing the word “whether” and adding “could/could not” and “does/does not” alternatives where none exist. (App. 75-76, 2241; UDC 124-39(c)(4)).

During the hearing, many members of the public opposed allowing any development on the Property, requesting that the Property be kept as a floodplain absorbing water for the rest of the surrounding properties. (*See, e.g.*, App. 2029-30). Members of the public also expressed concern over construction activity at any neighboring development and the effect it would have on the wildlife of the abutting Celery Fields. (App. 2032).

Ultimately, the BCC voted to deny the Application, citing solely “incompatibility,” without elaboration. (App. 2211). The BCC approved the form of the resolution constituting the order of denial (the “Order”) on its March 26, 2025 consent agenda, citing seven justifications. (App. 3). All but one of the justifications cited are not listed as criteria for denial under the Code, but rather are aspects which must be studied by the County’s Planning Commission. (App. 2241, UDC 124-39(c)(4)).

Specifically, the seven justifications for denial were as follows:

- The proposed change would not be consistent with the intent, goals, objectives, policies, guiding principles and programs of the comprehensive plan, including, but not limited to, Future Land Use Policies 1.1.1, 1.2.2(A), 1.2.5, 1.2.17, 2.1.2, and 2.3.7;
- The proposed change will adversely influence living conditions in the neighborhood;
- The gradual and ordered growth contemplated in the Comprehensive Plan can be best accomplished through the approval of a land use which is less intense than the intensity designated on the Future Land Use Map of the Comprehensive Plan;
- There are not substantial reasons why the property cannot be used in accordance with existing zoning;
- The proposed change would create adverse impacts in the adjacent area or the County in general;

- The proposed change will create a drainage problem; and
- The tract for the proposed planned district is not suitable in terms of its relationship to the County Comprehensive Plan and the area surrounding the proposed planned district cannot continue to be developed in coordination and substantial compatibility with the planned district proposed.

(App. 3).

Following the denial, on April 23, 2025, the Petitioners applied for relief under Section 70.51, Florida Statutes, also known as the “Florida Land Use and Environmental Dispute Resolution Act” (“FLUEDRA”). (App. 2524). Pursuant to a mediation during the FLUEDRA proceeding, the Petitioners and the County submitted a tentative settlement agreement to the BCC for potential approval. (App. 2531). Under this settlement, the Petitioners would be able to build 85 homes—less than the 2 unit/acre minimum entitlement called for by the Comprehensive Plan. (App. 2542). Despite the Petitioners offering this below-minimum entitlement, the BCC rejected the proposed settlement without a public hearing. (App. 2554).

STANDARD OF REVIEW

The standard of review on a quasi-judicial first-tier petition for certiorari requires the circuit court to determine whether: (1) the decision was supported by competent substantial evidence; (2) the government observed the essential requirements of the law; and (3) whether the Petitioner was afforded due process. *Dusseau v. Metro. Dade County Bd. of County Comm’rs.*, 794 So. 2d 1270, 1274 (Fla. 2001). Although termed “certiorari” review, the initial petition to the circuit court is a matter of right and “is akin in many respects to a plenary appeal.” *See Fla. Power & Light Co.*, 761 So. 2d at 1092.

“Substantial evidence” is evidence that establishes a substantial basis of fact from which the fact at issue can reasonably be inferred. *See De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957). For the substantial evidence to also be competent, the evidence should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. *Id.*

ARGUMENT

For a rezoning application, after an applicant has shown that the proposal is consistent with the comprehensive plan and complies with all procedural requirements in the Code, the burden shifts to the local government to prove with competent substantial evidence

that the refusal to rezone the property is not arbitrary, discriminatory, or unreasonable, and the application either does not meet or violates published criteria. *See Town of Manalapan v. Gyongyosi*, 828 So. 2d 1029, 1032 (Fla. 4th DCA 2002); *see also Miami-Dade County v. Omnipoint Holdings, Inc.*, 863 So. 2d 375, 376-77 (Fla. 3d DCA 2003). “[Q]uasi-judicial boards cannot make decisions based on anything but the local criteria enacted to govern their actions.” *See Miami-Dade County v. Omnipoint Holdings, Inc.*, 863 So. 3d at 377.

On a denial of rezoning, after a local governing body issues a written decision, the Circuit Court must grant a petition for certiorari where there was no competent substantial evidence to support denial for the reasons stated in the written decision. *See Hillsborough County v. Dibbs*, 398 So. 3d 1096, 1099 (Fla. 2d DCA 2024). “[T]he circuit court was tasked with determining whether the record contained competent, substantial evidence to support the denial of the application based on the reasons stated in the resolution.” *Id.*

Lay opinions and speculation on general unfavorable impacts of a proposed land use are not competent, substantial evidence. *See Katherine’s Bay, LLC v. Fagan*, 52 So. 3d 19, 30 (Fla. 1st DCA 2010).

Similarly, an expert opinion not supported by factual evidence in the record is not competent substantial evidence. See *R.P. Hewitt & Associates v. McKimie*, 416 So. 2d 1230, 1232 n. 1 (Fla. 1st DCA 1982).

As discussed below, the County had no competent, substantial evidence to support denial of the Application. Of the seven reasons for denial cited by the County in its Order, six are not criteria for denial at all under the County's Code, but rather aspects for study or findings by the Planning Commission. The County's cited reason for why the Application is inconsistent with the Comprehensive Plan—the only criteria for denial provided that can be legally relied upon in making this decision—does not support any kind of inconsistency with the Plan. And even if the six additional advisory criteria were binding, the record provides no competent substantial evidence to support denial of the Application.

1. Under the County's Code, Once the Petitioner Shows Compliance with Site Design and Other Technical Requirements for Rezoning, the Only Criteria Required for Approval by the BCC is Consistency with the Comprehensive Plan.

Under the Code, following staff-level review, an application for a rezoning goes through the Planning Commission for a recommendation prior to going to the BCC for approval. (App. 2246, UDC § 124-40(a)). An application for a planned development rezoning must satisfy the requirements applicable to all rezoning under Section 124-39, as well as planned development requirements under Section 124-40. The Planning Commission, as part of its review of a planned development application, is required to show that it “has studied and considered” several aspects of the proposed development, and in the case of planned developments, must make certain findings in its recommendation. (App. 2240, 2246; UDC §§ 124-39(c)(4), 124-40(c)(6)). These aspects which the Planning Commission must consider (the “Advisory Criteria”) include:

- 124-39(c)(4)(e): Whether the proposed change will adversely influence living conditions in the neighborhood;
- 124-39(c)(4)(f): Whether the proposed change will create a drainage or flooding problem;
- 124-39(c)(4)(g): Whether there are substantial reasons why the property cannot be used in accord with existing zoning;
- 124-39(c)(4)(i): Whether gradual and ordered growth contemplated in the Comprehensive Plan can best be accomplished through the approval of a land use which

is less intense than the intensity designated on the Future Land Use Map of the Comprehensive Plan;

- 124-39(c)(4)(j): Whether the proposed change would create adverse impacts in the adjacent area or the County in general; and
- 124-40(c)(6)(d): The tract for the proposed Planned Development is suitable in terms of its relationship to the Comprehensive Plan and that the area surrounding the proposed Planned Development can continue to be developed in coordination and substantial compatibility with the Planned Development proposed.

(App. 2240, 2246, UDC §§ 124-39(c)(4), 124-40(c)(6)).

The Code does not state that any of these elements are required or prohibited for approval of rezoning, only that they must be reviewed and considered in findings in the Planning Commission's recommendation. *See id.* After the Planning Commission's advisory review, the BCC decides whether to approve, approve with conditions, or deny an application, with no additional criteria other than what is present in the remainder of the UDC and the Comprehensive Plan. *See* (App. 2246, UDC § 124-40(c)(6)).

When analyzing the effects of an ordinance, the ordinance should be given its plain meaning and any doubts should be construed in favor of the property owner. *See Colonial Apartments, L.P. v. City of DeLand*, 577 So. 2d 593, 598 (Fla. 5th DCA 1991).

In addition, to be constitutionally valid, an ordinance must provide sufficient specificity that Board members may not “act upon whim, caprice or in response to pressures which do not permit of ascertainment or correction.” *Nostimo, Inc. v. City of Clearwater*, 594 So. 2d 779, 781 (Fla. 2d DCA 1992).

The plain meaning of the UDC’s application review provisions described above confirms their nonbinding nature. First, the criteria have incredibly vague descriptions, such as “drainage problem” or “adversely influence”—a practical and constitutional problem if the criteria were binding. Additionally, the provisions ask the Planning Commission to evaluate “whether” certain phenomena are true, but it is unclear whether the answer should be yes or no for approval. For example, while clearly the County would want the answer to be “no” for creating a drainage problem under Section 124-39(c)(4)(f), it may be that the County would want a “yes” to the question of whether there are substantial reasons why a property cannot be used for its existing zoning as described in Section 124-39(c)(4)(g).

Reading the UDC in its entirety confirms that the Advisory Criteria are not binding part of the rezoning process.¹ For example, the question of whether a development could “create a drainage problem”—an incredibly vague standard—pales in comparison to the specific stormwater management provisions required in several other portions of the Plan and UDC. (App. 2436). Article 13 of the UDC provides highly specific criteria regarding the treatment of stormwater discharges at the later site plan stage—a fact confirmed by the Staff Report. (App. 2436, UDC § 124-250, *et seq.*). The Comprehensive Plan itself has additional specific requirements with regard to drainage, again addressed at the later site plan stage. (App. 69).

Instead, these Advisory Criteria serve to guide the BCC in its evaluation of if the binding criteria, such as compliance with the Comprehensive Plan.

Accordingly, the plain language of the Plan and the County’s Code provides that if a rezoning application satisfies the various

¹ Additional reasons why each of the individual Advisory Criteria cannot be read as binding criteria are further discussed in Part 3 below.

technical requirements within the Code, the sole remaining criteria for approval consideration by the BCC is consistency with the Comprehensive Plan.

2. The Petition Should be Granted Because Petitioners Satisfied Their Burden and There Was No Competent Substantial Evidence Supporting Denial.

The County only cited one justification for denial that was not Advisory Criteria—inconsistency with the Comprehensive Plan. (App. 3). As discussed below, there was no competent or substantial evidence presented that the Application was inconsistent with any portion of the Plan.

The County stated that the BCC could deny the Application for violating FLU Policy 1.2.17 because the Property would be the sole property using Raymond Road for access. (App. 61). That policy reads as follows:

As reflected in Sarasota County Zoning standards, potential incompatibilities between land uses due to the density, intensity, character or type of use proposed, shall be mitigated through site and architectural design techniques including but not limited to any or all of the following:

- provision and location of open space, perimeter buffers, landscaping and berms;

- the location and screening of sources of light, noise, mechanical equipment, refuse areas, delivery areas and storage areas; and,
- the location of road access to minimize adverse impacts, increased building setbacks, step downs in building heights.

(App. 2225, FLU Policy 1.2.17).

By its plain language, this policy can never be used to justify a denial on its own because it merely guides the formation of the Code. The language of the policy makes clear that the policy is to be carried out through the Code's standards—standards which the Petitioners met or exceeded. This alone defeats the sole criteria for denial cited by the County.

Even if the policy provision was self-executing, there is no evidence, explanation or indication for why the Application violated this policy. It is undisputed that the Petitioners took many steps to mitigate potential incompatibilities with surrounding properties by meeting and exceeding applicable UDC criteria. (App. ____). The County provided no indication of an alternative for access to the Property, as Raymond Road is the only road available for access. (App. ____). The statement is also contradicted by the record, as the Celery Fields itself also directly connects Raymond Road for

recreational access. (App. ____). The Property *currently* uses Raymond Road for access. (App. ____). And the record also reflects that the road is used by others not directly connected to the development. (App. ____). By determining that allowing the use of Raymond Road as access to the Property violates the County's Comprehensive Plan, the County would essentially render the Property undevelopable and unusable—itself a contradiction of multiple provisions of the Plan as well as creating a possible constitutional taking.

As such, not only was this factual assertion not supported by the Record, but the factual assertion would not be nearly sufficient evidence to support a finding of inconsistency with the Comprehensive Plan.

3. Even if the Advisory Criteria were Binding, There Was No Competent Substantial Evidence Supporting Denial Under Those Criteria.

Even if one were to read the Advisory Criteria as binding, the County still lacked competent substantial evidence to support a denial of the application. To find any violation of the criteria, the County would have to call for readings of the provisions which are

unsupported by the text of the Code and which in some cases would render that portion of the UDC unconstitutional.

Below is a response to each of the County’s justifications for denial based on the Advisory Criteria, using the descriptions from the Staff Report, as modified by the County from the actual language of the Code.

Altered Criteria Cited for Denial	County’s Justification
2. The proposed change will adversely influence living conditions in the neighborhood.	Additional residential units may potentially increase traffic, light, and noise in the surrounding area.

(App. ____).

Here, the sole evidence supporting this justification would be the same for any increase in residential units whatsoever—a carte blanche to deny any application which contemplates an increase in density. This reading conflicts with multiple specific binding provisions applicable to the Property regarding density, including those set forth in the Comprehensive Plan, and renders the criteria unconstitutionally vague. Instead, the only defensible reading would be one which requires more than a general concern over

development, but instead a specific concern over a damaging use, which was not presented.

The Code and the Plan lay out specific requirements for density, including the Plan’s provision requiring a zoning with density of at least 2.0 units/acre on the Property. The Code also has specific requirements regarding traffic, which Petitioners satisfied. There was no competent, substantial evidence of any “adverse influence” on neighboring properties not contemplated by the specifically called-for density required by the Comprehensive Plan. There is no defensible reading of this Code which allows for a denial based purely on an increase in density which is specifically allowed. *See Colonial Apartments*, 577 So. 2d at 598.

Altered Criteria Cited for Denial	County’s Justification
3. The gradual and ordered growth contemplated in the Comprehensive Plan can be best accomplished through the approval of a land use which is less intense than the intensity designated on the Future Land Use Map of the Comprehensive Plan.	The proposed development could be approved for a less intensive zone district resulting in lower density, such as RSF-1 (maximum density of 2.5 du/acre-totaling approximately 123 units) or remain in the current zone (OUR) district which allows 1 unit/10 acres (4 units).

The County’s reading of this provision allowing the BCC to deny Applications because of what they judge as “best” is not constitutionally supportable or supported by the text of the UDC, as it gives no notice as to what is allowed, allows the BCC to ignore the designations in the Comprehensive Plan, and allows any BCC to deny an application on a whim of what the BCC surmises may be “better,” in contravention of the Comprehensive Plan. The only defensible reading would be one where there are multiple available zoning districts under the Comprehensive Plan for the property at issue and the BCC proves with evidence why a different proposed use would be more consistent with the Comprehensive Plan’s goals, policies and objectives. There was no competent, substantial evidence for the superiority of another zoning district allowable under the Comprehensive Plan.

With the Application ultimately calling for an RSF-1 designation, the only remaining zoning district offered as an alternative by the County is the current zoning—the one considered not appropriate for the Property’s MODR designation under the Plan, and one which would minimize residential density on the Property in

violation of the Plan’s call to maximize density on properties within the Urban Service Area.

Altered Criteria Cited for Denial	County’s Justification
4. There are not substantial reasons why the property cannot be used in accordance with existing zoning.	The Board may find the property may be utilized with the existing zoning which would permit 4 units.

Here, the Order’s altered wording from the Code completely changes the purpose of the provision, which asks the Planning Commission to evaluate “whether there are substantial reasons why the property cannot be used in accordance with existing zoning.” The actual wording suggests that a rezoning should be granted where a property owner is unable to make use of their property as zoned. Instead, the County has reworded it to allow the BCC to deny rezonings unless the property owner proves the current zoning does not work—an impossible hurdle for almost any upzoning.

If controlling, this wording would be an inconsistent and overly vague restriction limiting rezonings to ones with “substantial reasons” why the current zoning is unworkable. There is no guidance on what counts as a “substantial” reason.

But even here, there is an uncontested substantial reason why the Property cannot be used in accordance with existing zoning—the Plan labels the current zoning as inappropriate under the MODR designation, and the Plan calls the Property to be developed to maximal density due to its being located in the Urban Service Area. Given that the County is required to adhere to its Comprehensive Plan, honoring these directives within the Plan would appear to be “substantial.” As such, even construing the law in the best possible light for the County, the justification for denial is not supported by competent substantial evidence.

Altered Criteria Cited for Denial	County’s Justification
5. The proposed change would create adverse impacts in the adjacent area or the County in general.	The proposal may result in an increase in residential units, and may negatively impact wildlife, including birds visiting the nearby Celery Fields. Currently the surrounding residential development does not have direct access to Raymond Road.

As discussed above, a vague general restriction against “adverse impacts” cannot prohibit rezoning based on density given the specific rules applicable to this Property regarding density. But additionally,

the County has existing regulations in both the Plan and the UDC for environmental protection which encompass those considerations. Article 9 of the UDC provides specific provisions on how to protect native habitats and other considerations, and the Comprehensive Plan includes several requirements with regard to the environment as well. (App. ____ ENV Policy 1.3.1, 2.1.3). The County's staff found the Application to be consistent with these requirements. (App. ____ (Staff Report 26)).

And it is not an "adverse impact" for the surrounding properties to not have direct access to Raymond Road—a fact present regardless of whether the Property is developed. (App. ____). There was no evidence presented of any kind of any specific impact resulting from this direct access, as Raymond Road

Ultimately, while the Petitioners provided an environmental report based on specific data from the site itself, the only relevant evidence at the hearing in opposition to the development were generalized concerns about any development and speculation of potential impacts, neither of which constitute competent substantial evidence. There was no evidence of these impacts in comparison to

the proposed zoning and the minimum density allowed under the Plan, or even to the current zoning.

Altered Criteria Cited for Denial	County’s Justification
6. The proposed change will create a drainage problem.	If developed, impervious surface will be increased.

As discussed above, this vague provision regarding a “drainage problem” cannot be the basis for denial when the County’s Code and Plan provide highly specific criteria on stormwater improvements in a development.

The County’s reading of this provision, that it allows for denial based on *any increase of impervious surface*, is unsupportable on its face as in conflict with the remainder of the Code and Plan which allow for rezonings which allow *any concrete whatsoever*, and in conflict with the many specific provisions regarding stormwater treatment discussed above.

The only constitutional reading of this provision, if assumed to be applicable and binding, would be if some additional fact or evidence should show that some aspect of the proposed rezoning would necessarily violate the specific drainage requirements in the remaining portion of the Code. There was no such evidence here.

Altered Criteria Cited for Denial	County’s Justification
7. The tract for the proposed planned district is not suitable in terms of its relationship to the County Comprehensive Plan and the area surrounding the proposed planned district cannot continue to be developed in coordination and substantial compatibility with the planned district proposed.	The proposed development may potentially result in conflicting land use to neighboring lands (i.e. Celery Fields).

Here, the County’s statement that the proposed residential development “may potentially” result in a conflicting land use is a good summation of the evidence on which the entire denial rests: unsupported speculation about the general effects of development. In contrast, the uncontroverted evidence shows that the land use requested is specifically one called for in the Plan, completely consistent and compatible with the surrounding area, and less dense and intense than many of the other developments surrounding Celery Fields.

As the Property is currently zoned to allow for residential uses and is designated on the Comprehensive Plan for much denser residential use than has been proposed, as a matter of law its

proposed development was compatible with surrounding uses. See *Ocean Concrete, Inc.*, 241 So. 3d at 188.

And given that the evidence showed only general concerns regarding any development, that the Property is surrounded by similarly dense residential developments and a public park surrounded by developments of the same or greater intensity, there was simply no competent, substantial evidence that the rezoning was “not suitable” or that the surrounding property cannot continue to be developed in compatibility with the area.

CONCLUSION

Because the County lacked competent, substantial evidence to support its denial of the Application, the Court should issue a writ of certiorari quashing the Order with instructions to the County to enter a new Order granting the Application.

Respectfully submitted:

/s/ Jacob Schumer

Jacob Schumer

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CERTIFICATE OF SERVICE

On this 23rd day of April, 2026, pursuant to Fla. R. App. P. 9.420 and Fla. R. Gen. Practice and Jud. Admin. 2.516(b)(1-2), I HEREBY CERTIFY that a copy of this petition was served via e-mail on Joshua Moye, Esq., County Attorney for Sarasota County, at jmoye@scgov.net, and by mail, to 1001 Sarasota Center Boulevard, Sarasota, FL 34240.

/s/ Jacob Schumer
Jacob Schumer, Esq.
Florida Bar. No. 111756

CERTIFICATE OF COMPLIANCE

On this 23rd day of April, 2026, as required by Florida Rule of Appellate Procedure 9.045(e), I HEREBY CERTIFY that this petition complies with applicable font and word counts requirements of the Florida Rules of Appellate Procedure, as Bookman Old Style 14-point was the font used for this Petition for Writ of Certiorari, and this petition does not exceed 13,000 words.

/s/ Jacob Schumer
Jacob Schumer, Esq.
Florida Bar. No. 111756