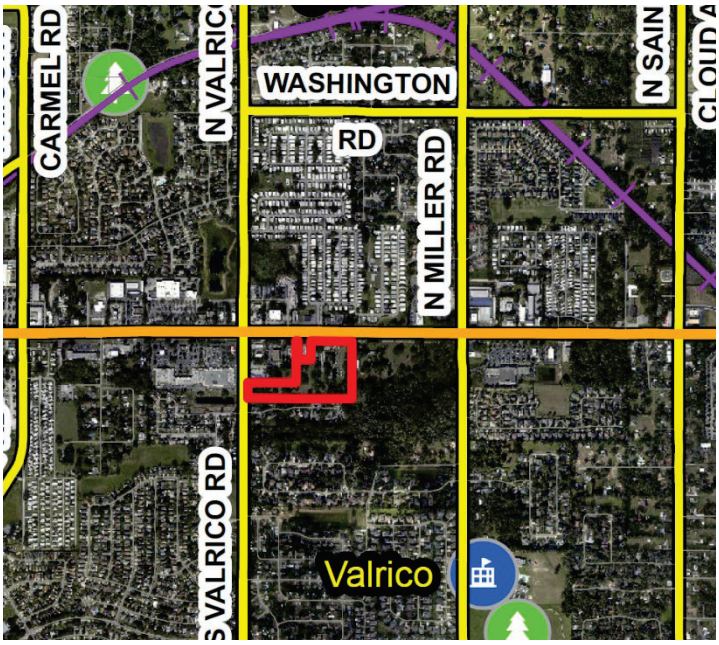
PD Modification Application:	MM 22-0862
Zoning Hearing Master Date:	July 25, 2022
BOCC Land Use Meeting Date:	September 13, 2022

Hillsborough County Florida
Development Services Department

1.0 APPLICATION SUMMARY

Applicant:	Belleair Development Group, LLC
FLU Category:	Residential-9 (Res-9) CPA 21-26, pending adoption, change to Residential-20 (Res-20)
Service Area:	Urban
Site Acreage:	12.84
Community Plan Area:	Valrico
Overlay:	SR 60 Overlay



Introduction Summary
PD 03-0644 was approved in 2003 to allow for 89,000 square feet (sf) of Commercial General (CG) uses, 5,000 sf of residential support uses, and 10,000 sf of Business, Professional Office (BPO) uses. The applicant requests modifications to the allowable uses to allow 256 multi-family dwelling units and reduce the allowable CG uses to 2,475 sf. If adopted, CPA 21-26 will change the future land use designation to Res-20.

Existing Approval(s)	Proposed Modification(s)
Side yard setback of 10 feet for residential lots.	Reduce the amount of allowable CG uses to 2,475 sf.
Maximum building height of 20 feet for commercial buildings	Allow a maximum of 256 multi-family dwelling units and related amenities.

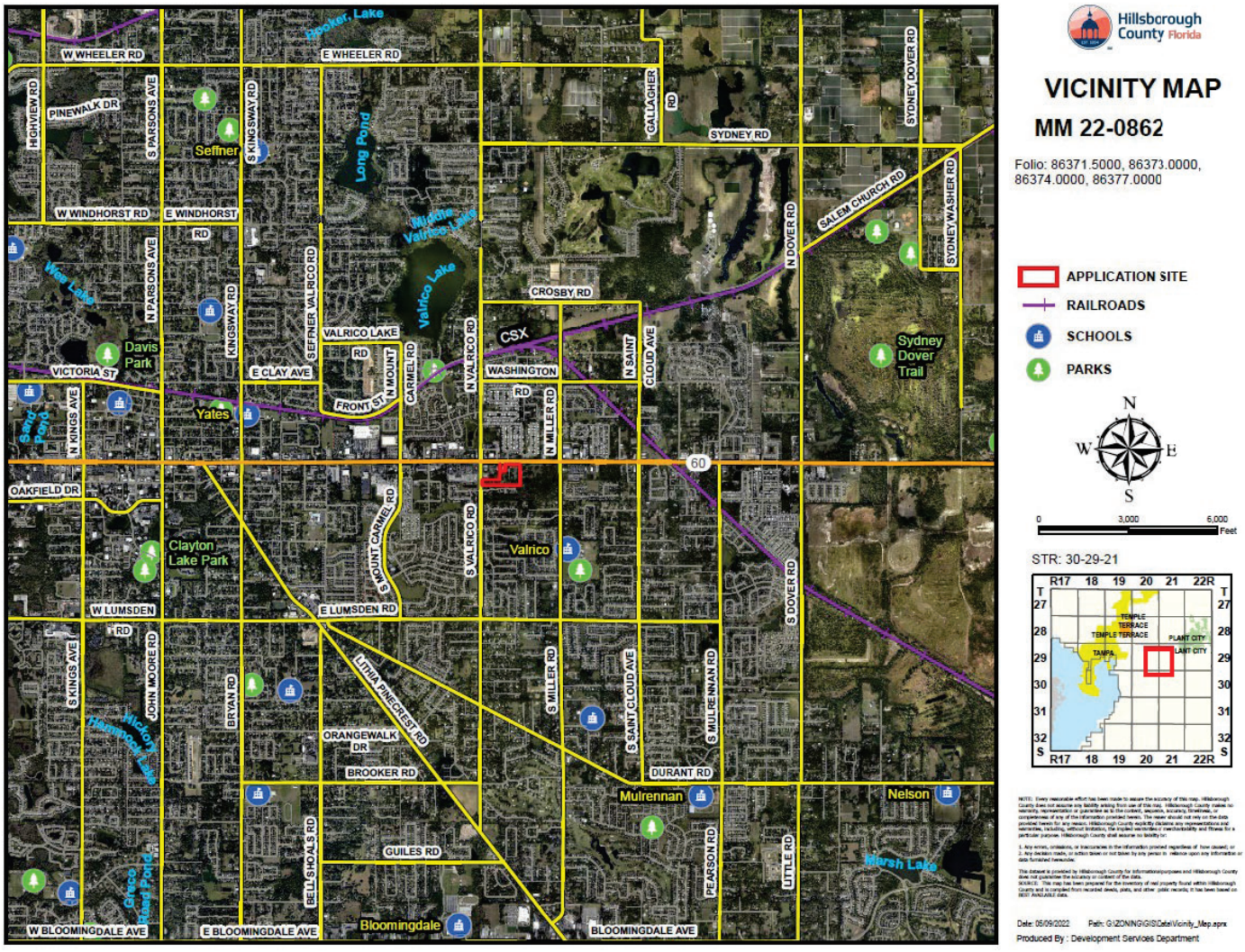
Additional Information	
PD Variation(s):	None Requested as part of this application
Waiver(s) to the Land Development Code:	None Requested as part of this application

Planning Commission Recommendation:	**Development Services Recommendation:**
Consistent	Approvable, subject to proposed conditions

Created: 8-17-21

2.0 LAND USE MAP SET AND SUMMARY DATA

2.1 Vicinity Map

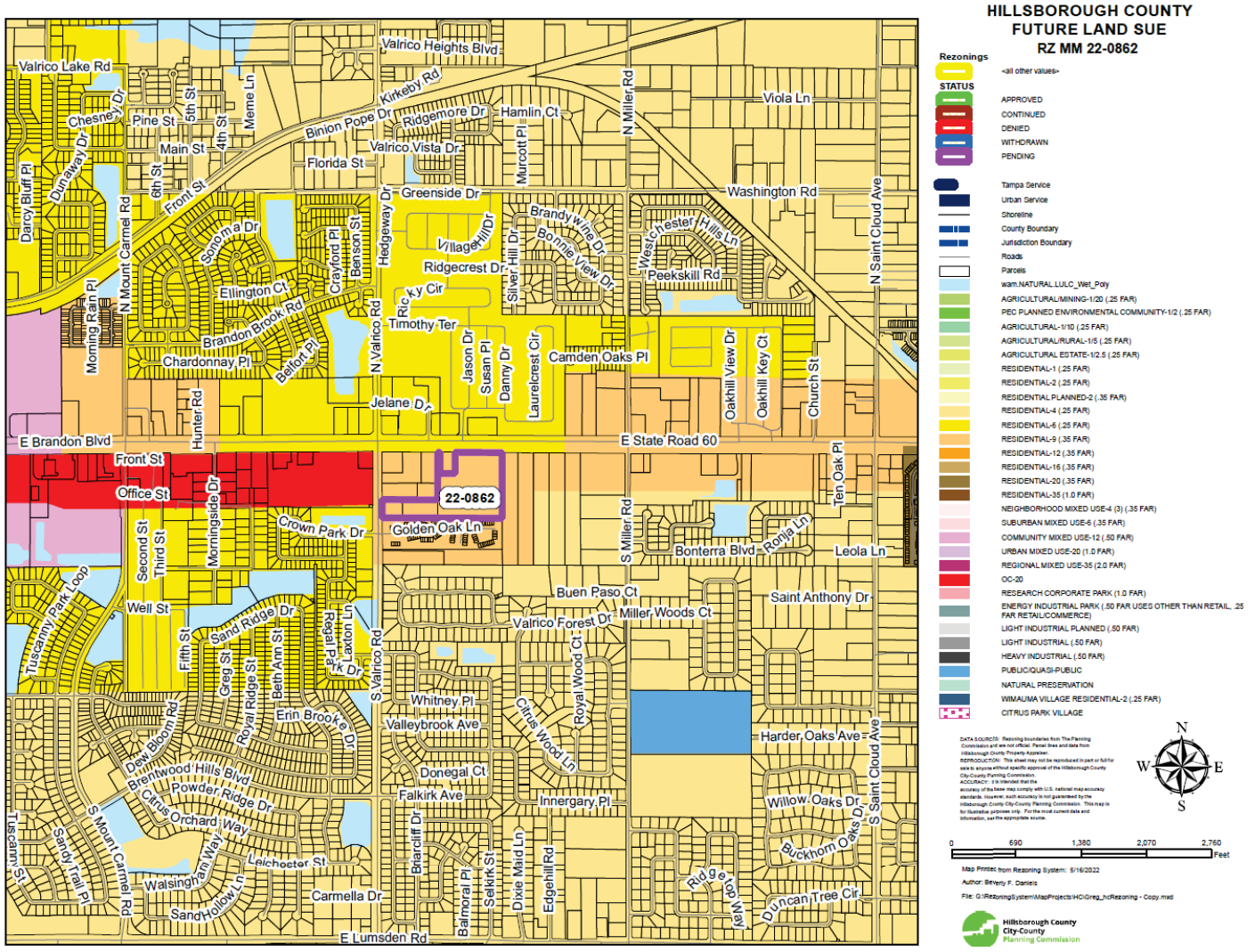


Context of Surrounding Area:

Development in the surrounding area includes a mix of uses including townhomes to the south; single-family residential to the east; a church, mobile home park, and multi-tenant to the north; and a convenience store with gas pumps, carwash, drug store, single-family residential, multi-tenant retail, and an eating establishment with drive-through to the west.

2.0 LAND USE MAP SET AND SUMMARY DATA

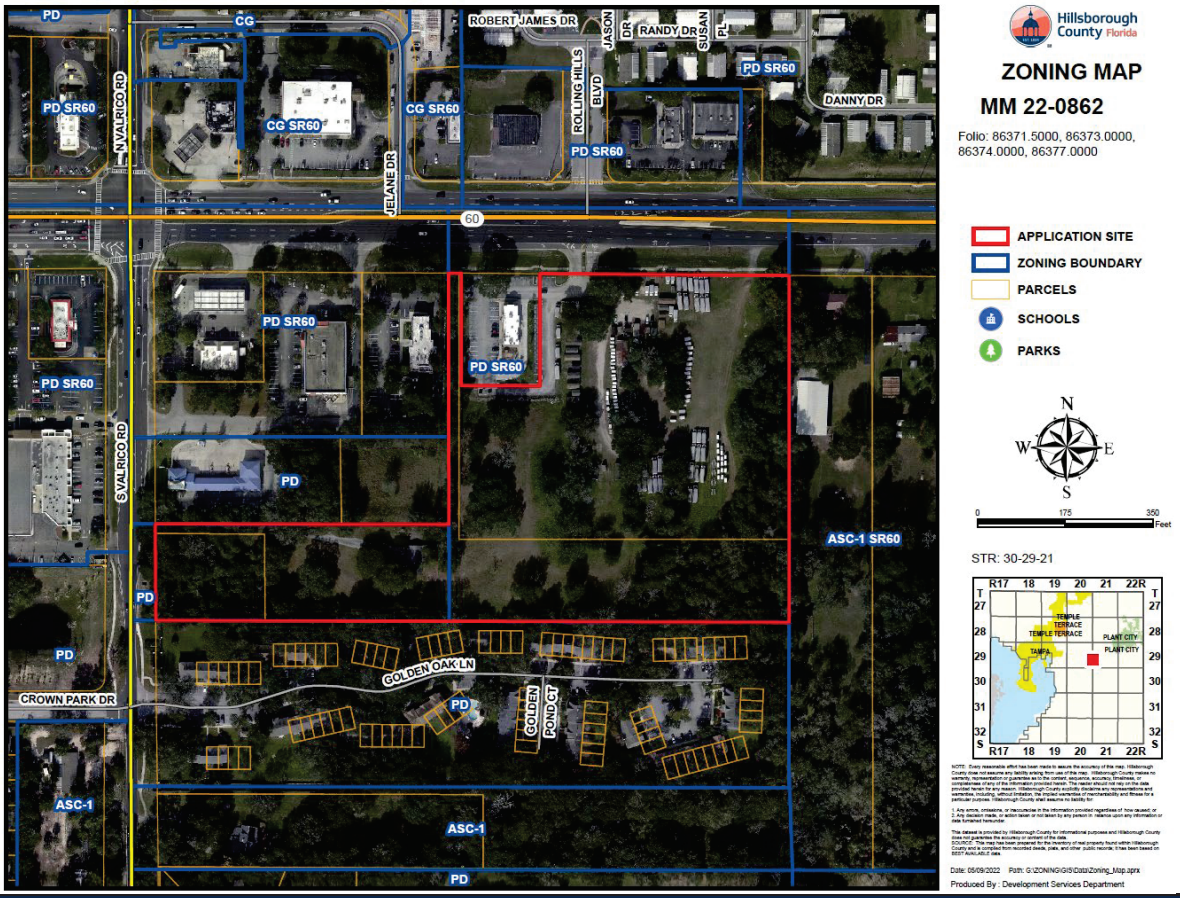
2.2 Future Land Use Map



Subject Site Future Land Use Category	Res-9 (Existing)	Res-20 (Proposed)
Maximum Density/FAR	9 du per ga/FAR: 0.50	20 du per ga/FAR: 0.75
Typical Uses	Residential, urban scale neighborhood commercial, office uses, multi-purpose projects and mixed use development.	Residential, neighborhood commercial, office uses, multi-purpose projects and mixed use development.

2.0 LAND USE MAP SET AND SUMMARY DATA

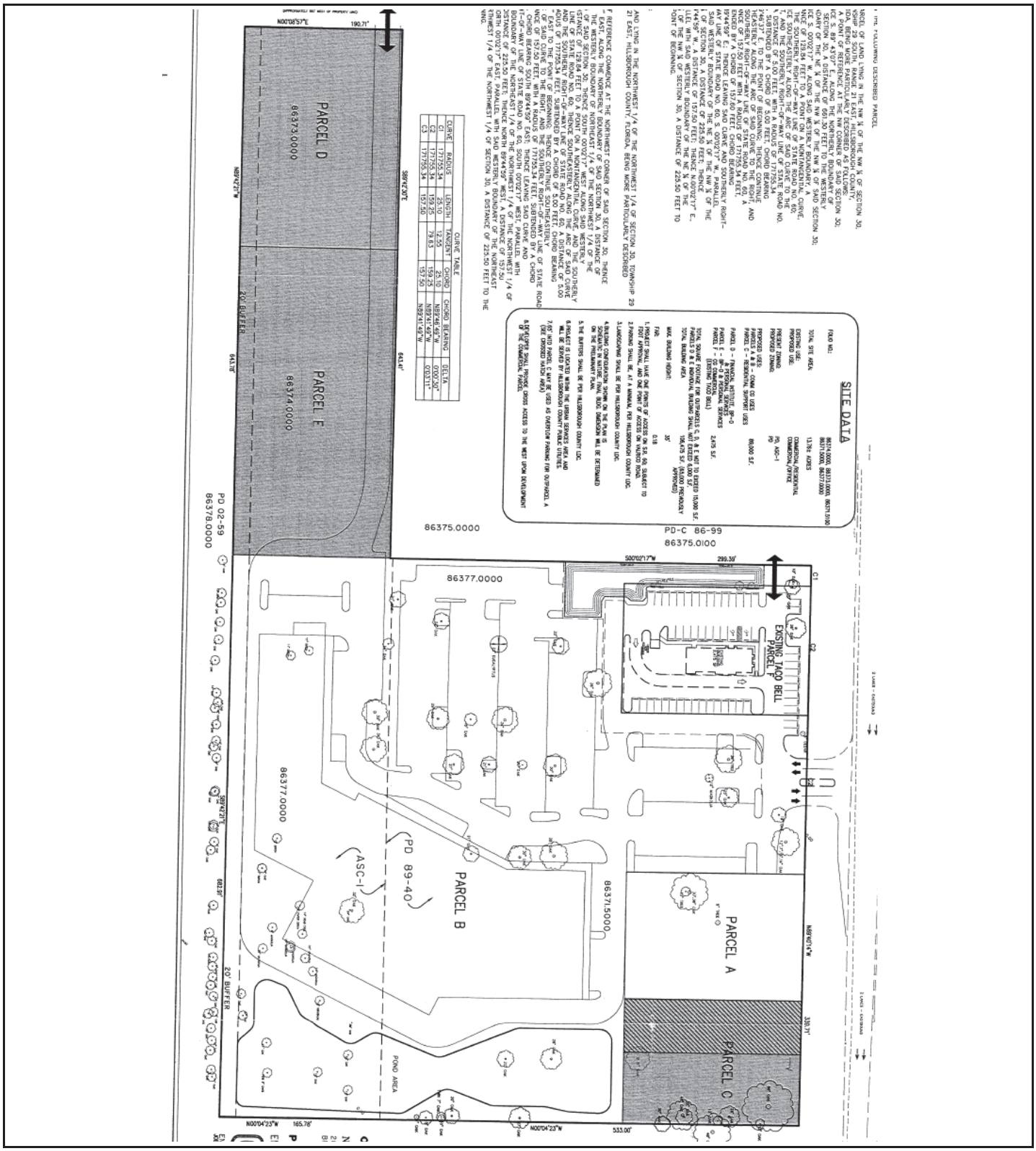
2.3 Immediate Area Map



Adjacent Zonings and Uses				
Location	Zoning	Maximum Density/FAR Permitted by Zoning District	Allowable Use	Existing Use
North	CG	0.0 du per ga/FAR: 0.27	General Commercial	Eating Establishment
	PD 92-0094	NA/FAR: 0.27	Church, Office, Limited Commercial	Church, Eating Establishment with Drive-Through, Multi-Tenant Commercial
	PD 93-0125	5.51 MH per ga or 9 du per ga redeveloped	Mobile Home Park	Mobile Home Park
South	PD 02-0059	9.0 du per ga/FAR: NA	Residential Townhomes	Residential Townhomes
East	ASC-1	1.0 du per ga/FAR: NA	Agriculture and Single-Family Conventional	Single-Family Residential
West	PD 98-0839	NA/FAR: 0.35	Neighborhood Commercial	Convenience Store with Gas Pumps, Drug Store, Eating Establishment w Drive-Through
	PD 82-0289	6 du per ga/FAR: 0.24	Neighborhood Commercial and Single-Family Conventional	Multi-Tenant Commercial and Single-Family Conventional

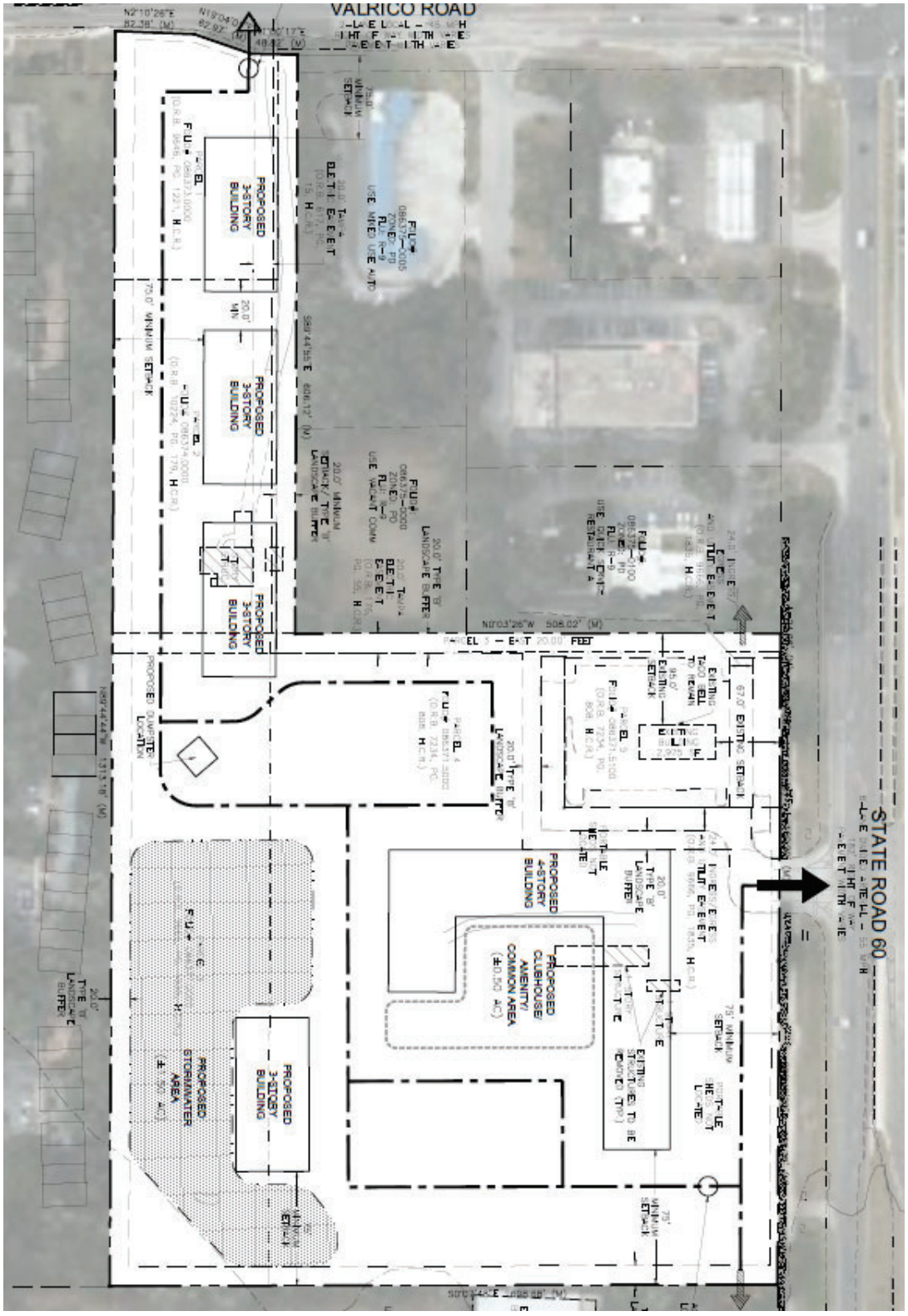
2.0 LAND USE MAP SET AND SUMMARY DATA

2.4 Approved Site Plan (partial provided below for size and orientation purposes. See Section 8.1 for full site plan)



2.0 LAND USE MAP SET AND SUMMARY DATA

2.5 Proposed Site Plan (partial provided below for size and orientation purposes. See Section 8.2 for full site plan)



3.0 TRANSPORTATION SUMMARY (FULL TRANSPORTATION REPORT IN SECTION 9 OF STAFF REPORT)

Adjoining Roadways (check if applicable)			
Road Name	**Classification**	**Current Conditions**	**Select Future Improvements**
Valrico Road	County Collector - Urban	2 Lanes ☒ Substandard Road ☐ Sufficient ROW Width	☒ Corridor Preservation Plan ☐ Site Access Improvements ☐ Substandard Road Improvements ☐ Other
Brandon Blvd	FDOT Principal Arterial - Urban	6 Lanes ☐ Substandard Road ☐ Sufficient ROW Width	☒ Corridor Preservation Plan ☐ Site Access Improvements ☐ Substandard Road Improvements ☐ Other

Project Trip Generation ☐ Not applicable for this request			
	Average Annual Daily Trips	**A.M. Peak Hour Trips**	**P.M. Peak Hour Trips**
Existing	4,002	100	266
Proposed	2,393	142	130
Difference (+/-)	-1,609	+42	-136

*Trips reported are based on net new external trips unless otherwise noted.

Connectivity and Cross Access ☐ Not applicable for this request				
Project Boundary	**Primary Access**	**Additional Connectivity/Access**	**Cross Access**	**Finding**
North	X	None	None	Meets LDC
South		None	None	Meets LDC
East		None	Vehicular & Pedestrian	Meets LDC
West		Vehicular & Pedestrian	Vehicular & Pedestrian	Meets LDC
Notes:				

Design Exception/Administrative Variance ☒ Not applicable for this request		
Road Name/Nature of Request	**Type**	**Finding**
Valrico Road/ Substandard Road	Administrative Variance Requested	Approvable
	Choose an item.	Choose an item.
Notes:		

4.0 ADDITIONAL SITE INFORMATION & AGENCY COMMENTS SUMMARY

INFORMATION/REVIEWING AGENCY				
Environmental:	**Comments Received**	**Objections**	**Conditions Requested**	**Additional Information/Comments**

Environmental Protection Commission	☒ Yes ☐ No	☐ Yes ☒ No	☐ Yes ☒ No	
Natural Resources	☐ Yes ☒ No	☐ Yes ☐ No	☐ Yes ☐ No	
Conservation & Environ. Lands Mgmt.	☒ Yes ☐ No	☐ Yes ☒ No	☐ Yes ☒ No	

Check if Applicable:
☐ Wetlands/Other Surface Waters
☐ Use of Environmentally Sensitive Land Credit
☐ Wellhead Protection Area
☐ Surface Water Resource Protection Area
☐ Potable Water Wellfield Protection Area
☐ Significant Wildlife Habitat
☐ Coastal High Hazard Area
☒ Urban/Suburban/Rural Scenic Corridor
☐ Adjacent to ELAPP property
☐ Other _____

Public Facilities:	Comments Received	Objections	Conditions Requested	Additional Information/Comments
Transportation ☒ Design Exc./Adm. Variance Requested ☐ Off-site Improvements Provided	☐ Yes ☐ No	☐ Yes ☒ No	☒ Yes ☐ No	
Service Area/ Water & Wastewater ☒Urban ☐ City of Tampa ☐Rural ☐ City of Temple Terrace	☒ Yes ☐ No	☐ Yes ☒ No	☐ Yes ☒ No	Connection to County potable water and wastewater systems required
Hillsborough County School Board Adequate ☒ K-5 ☒6-8 ☒9-12 ☐N/A Inadequate ☐ K-5 ☐6-8 ☐9-12 ☐N/A	☒ Yes ☐ No	☐ Yes ☒ No	☐ Yes ☒ No	

Impact/Mobility Fees: Urban Mobility, Central Park/Fire - 256 multi-family units, 2,475 sf fast food w drive-through.

(Fee estimate is based on a 1,200 square foot, Multi-Family Units 1-2 story)
Mobility: $5,995 * 256 units = $1,534,720
Parks: $1,555 * 256 units = $ 398,080
School: $3,891 * 256 units = $ 996,096
Fire: $249 * 256 units = $ 63,744
Total Multi-Family (1 - 2 story) = $2,992,640

Retail - Fast Food w/Drive Thru (Per 1,000 s.f.)
Mobility: $94,045 * 2.475 = $232,761.38
Fire: $313 * 2.475 = $774.68

Comprehensive Plan:	Comments Received	Findings	Conditions Requested	Additional Information/Comments
Planning Commission ☐ Meets Locational Criteria ☐N/A ☒ Locational Criteria Waiver Requested ☒ Minimum Density Met ☐ N/A	☒ Yes ☐ No	☐ Inconsistent ☒ Consistent	☐ Yes ☒ No	

5.0 IMPLEMENTATION RECOMMENDATIONS

5.1 Compatibility

Based on the design features of the general development plan to include 75-foot setbacks and 20-foot type B buffers from the residential properties to the east and south, the internal buffering of the proposed multi-family building from the fast-food restaurant with drive-through, as well as the mix of uses within the immediate vicinity, staff finds the

proposed planned development zoning district compatible with the existing uses, zoning districts, and development pattern in the area.

5.2 Recommendation

Based on the above considerations, staff recommends approval of the request subject to conditions.

6.0 PROPOSED CONDITIONS

Prior to site plan certification, the applicant shall revise site plan to add a label along the project frontage on Valrico Road that states "UP TO +/-20 FEET OF ROW PRESERVATION TO BE PROVIDED ALONG VALRICO ROAD PER HILLSBOROUGH COUNTY CORRIDOR PRESERVATION PLAN "

Approval - Approval of the request, subject to the conditions listed below, is based on the general site plan submitted ~~July 16, 2003~~ July 1, 2022.

1. The project shall be limited to the following:

1.1 Parcels A and B: A maximum of 256 multi-family dwelling units and related amenities~~89,000 square feet of CG (Commercial General) uses~~.

1.2 Parcel B: A maximum of 2,475 sf of CG (Commercial General) uses.~~Parcels C, D, and E: A maximum of 15,000 square feet of development distributed among the three parcels and as limited herein.~~

~~2. Parcel C shall be limited to residential support uses not to exceed 5,000 square feet and shall be developed in accordance with BPO zoning district standards.~~

~~3. Parcels D and E shall be developed with BPO zoning district uses, unless otherwise specified. A bank shall also be permitted within Parcel D.~~

~~4. Parcels A and B shall be developed in accordance to CG (Commercial General) zoning district standards, unless otherwise specified herein. Parcels D and E shall be developed in accordance with BPO zoning district standards unless otherwise specified. Individual buildings within Parcels D and E shall not exceed 6,000 square feet.~~

2.~~5.~~ Buildings within Parcel A ~~B~~ shall be setback a minimum of 75 ~~150~~ feet from the eastern project boundary.

~~6. The westernmost 65 feet of Parcel C may be utilized for overflow parking for Parcel A provided the minimum required number of parking spaces for Parcel A are provided within the boundaries of Parcel A as shown on the site plan. A reduction in the required number of parking within Parcel A shall not be permitted.~~

3.~~7.~~ Development Parcels as well as the retention pond area shall be located as generally shown on the site plan. The design of the retention pond may be modified to meet the requirements of the stormwater technical manual but shall retain a curvilinear nature as shown on the site plan.

4.~~8.~~ Buffering and screening shall be in accordance with the Land Development Code unless otherwise specified herein.

~~8.1 Prior to Site Plan Certification, the site plan shall be revised to indicate a 20-foot buffer area along the southern project boundary.~~

5.~~9.~~ Tree preservation shall be required in accordance with the Land Development Code. The location of building, parking, and circulation areas may be modified during the site development process in order to address tree preservation requirements, provided required buffer/screening/setback areas are maintained.

6.~~10.~~ All solid waste facilities in Parcel A shall be within enclosures that architecturally finished in materials similar to those of the principal structures. ~~All trash/refuse/storage facilities shall be completely enclosed. Said facilities shall be architecturally finished in materials similar to those of the principal structures and shall be setback a minimum of 150 feet from the eastern project boundary of Parcel B.~~

7.~~11.~~ Cross access shall be provided to the property to the west (via the Taco Bell property) and east as shown on the site plan. Cross access shall be constructed prior to the issuance to a Certificate of Occupancy for any building within ~~Parcels A through E~~ Parcel A.

8.~~12.~~ Internal vehicular and pedestrian cross access shall be provided among all portions of the project (Parcels A through ~~E~~ B).

9.~~13.~~ Prior to Construction Site Plan approval, the developer shall provide a traffic analysis, signed by a Professional Engineer, showing the amount of left turn storage needed to serve development traffic. ~~If with the addition of background traffic and if warranted by the results of the analysis, (as determined by Hillsborough County) the developer shall provide, at his expense, left turn storage lanes of sufficient length to accommodate anticipated left turning traffic (for westbound to southbound traffic) into the site, on SR 60, and at each access point where a left turn is permitted.~~ The design and construction of any ~~these~~ left turn lanes shall be approved by Hillsborough County Development Services ~~Planning and Growth Management Department~~. All roadway construction of said left turning lanes shall be completed with proper transitions from the widened section to the existing roadway pavement. For off site improvements, the developer may be eligible for pro-rata share of costs.

10.~~14.~~ If required by FDOT and if warranted, the developer shall provide, at his expense, additional left turn storage lanes of sufficient length to accommodate anticipated left turning traffic, for vehicles making U-turns on SR 60 at each median cut adjacent to the project were a left turn is permitted. Prior to Detailed Site Plan approval, the developer shall provide a traffic analysis, signed by Professional Engineer, showing the amount of left turn storage needed to serve development traffic. The design and construction of these left turn lanes shall be subject to FDOT approval.

11.~~15.~~ Access to the subject property via SR 60 shall be subject to FDOT permitting. Prior to Site Plan Certification, the developer shall remove the easternmost access drive on SR 60.

12.~~16.~~ Approval of this application does not ensure that water will be available at the time when the applicant seeks permits to actually develop.

13.~~17.~~ In the event there is a conflict between a zoning condition of approval, as stated herein, and any written or graphic notation on the general site plan, the more restrictive requirement shall apply.

14.~~18.~~ The development of the project shall proceed in strict accordance with the terms and conditions contained in the Development Order, the General Site Plan, the land use conditions contained herein, and all applicable rules, regulations, and ordinances of Hillsborough County.

15.~~19.~~ Within 90 days of approval of RZ 03-0644 by the Hillsborough County Board of County Commissioners, the developer shall submit to the County Planning and Development Management Department a revised General Development Plan for certification reflecting all the conditions outlined above.

16. In accordance with LDC Section 5.03.07.C, the certified PD general site plan shall expire for the internal transportation network and external access points, as well as for any conditions related to the internal transportation network and external access points, if site construction plans, or equivalent thereof, have not been approved for all or part of the subject Planned Development within 5 years of the effective date of the PD unless an extension is granted as provided in the LDC. Upon expiration, re-certification of the PD General Site Plan shall be required in accordance with provisions set forth in LDC Section 5.03.07.C.

17. If PD 22-0862 is approved, the County Engineer will approve a Section 6.04.02.B. Administrative Variance (dated July 12, 2022) from the Section 6.04.03.L Hillsborough County Land Development Code (LDC) requirement to improve the roadway to current County standards. The Administrative Variance was found approvable by the County Engineer (on July 15, 2022).

18. As Valrico Road is included in the Hillsborough County Corridor Preservation Plan as a future 4-lane improvement, the developer shall designate up to 20 feet of right of way preservation along the project frontage on Valrico Road. Building setbacks shall be calculated from the future right-of-way line.

~~20. Effective as of February 1, 1990, this development order/permit shall meet the concurrency requirements of Chapter 163, Part II, Florida Statutes. Approval of this development order/permit does not constitute a guarantee that there will be public facilities at the time of application for subsequent development orders or permits to allow issuance of such development orders or permits.~~

Zoning Administrator Sign Off:	J. Brian Grady Mon Jul 18 2022 11:55:33

SITE, SUBDIVISION AND BUILDING CONSTRUCTION IN ACCORDANCE WITH HILLSBOROUGH COUNTY SITE DEVELOPMENT PLAN & BUILDING REVIEW AND APPROVAL.

Approval of this re-zoning petition by Hillsborough County does not constitute a guarantee that the project will receive approvals/permits necessary for site development as proposed will be issued, nor does it imply that other required permits needed for site development or building construction are being waived or otherwise approved. The project will be required to comply with the Site Development Plan Review approval process in addition to obtain all necessary building permits for on-site structures.

7.0 ADDITIONAL INFORMATION AND/OR GRAPHICS

8.0 SITE PLANS (FULL)

8.1 Approved Site Plan (Full)

8.0 SITE PLANS (FULL)

8.2 Proposed Site Plan (Full)

9.0 FULL TRANSPORTATION REPORT (see following pages)

AGENCY REVIEW COMMENT SHEET

TO: Zoning Technician, Development Services Department	**DATE:** 07/17/2022
REVIEWER: Alex Steady, Senior Planner	**AGENCY/DEPT:** Transportation
PLANNING AREA/SECTOR: Valrico/Central	**PETITION NO:** PD 22-0862

	This agency has no comments.
	This agency has no objection.
X	This agency has no objection, subject to the listed or attached conditions.
	This agency objects for the reasons set forth below.

REPORT SUMMARY AND CONCLUSIONS

- The proposed rezoning would result in a decrease of trips potentially generated by development of the subject site by 1,609 average daily trips, an increase of 42 trips in the a.m. peak hour, and a decrease in 136 trips in the p.m. peak hour.
- If PD 22-0862 is approved, the County Engineer will approve a Section 6.04.02.B. Administrative Variance (dated July 12, 2022) from the Section 6.04.03.L Hillsborough County Land Development Code (LDC) requirement to improve the roadway to current County standards. The Administrative Variance was found approvable by the County Engineer (on July 15, 2022).
- As Valrico Road is included in the Hillsborough County Corridor Preservation Plan as a future 4-lane improvement, the developer shall designate up to 20 feet of right of way preservation along the project frontage on Valrico Road. Building setbacks shall be calculated from the future right-of-way line.
- Transportation Review Section staff has no objection to the proposed request, subject to the conditions of approval provided hereinbelow.

CONDITIONS OF APPROVAL

In addition to the previously approved zoning conditions, which shall carry forward, staff is requesting the following new and other conditions:

Revised Conditions

~~11.~~ Cross access shall be provided to the property to the west (via the Taco Bell property) and east as shown on the site plan. Cross access shall be constructed prior to the issuance to a Certificate of Occupancy for any building within Parcels ~~A through E~~ Parcel A.

[Staff is proposing changes to this condition to clarify cross access and to update parcels.]

~~12.~~ Internal vehicular and pedestrian cross access shall be provided among all portions of the project (Parcels A through ~~E~~B).

[Staff is proposing changes to this condition in order to clarify new parcel arrangement proposed for the project.]

~~20. Effective as of February 1, 1990, this development order/permit shall meet the concurrency requirements of Chapter 163, Part II, Florida Statutes. Approval of this development order/permit does not constitute a guarantee that there will be public facilities at the time of application for subsequent development orders or permits to allow issuance of such development orders or permits.~~

[Staff is proposing removal of this condition to eliminate outdated language concerning Concurrency.]

New Conditions:

- If PD 22-0862 is approved, the County Engineer will approve a Section 6.04.02.B. Administrative Variance (dated July 12, 2022) from the Section 6.04.03.L Hillsborough County Land Development Code (LDC) requirement to improve the roadway to current County standards. The Administrative Variance was found approvable by the County Engineer (on July 15, 2022).
- As Valrico Road is included in the Hillsborough County Corridor Preservation Plan as a future 4-lane improvement, the developer shall designate up to 20 feet of right of way preservation along the project frontage on Valrico Road. Building setbacks shall be calculated from the future right-of-way line.

Other Conditions

Prior to PD site plan certification, the applicant shall revise the PD site plan to:

- Prior to site plan certification, the applicant shall revise site plan to add a label along the project frontage on Valrico Road that states "UP TO +/-20 FEET OF ROW PRESERVATION TO BE PROVIDED ALONG VALRICO ROAD PER HILLSBOROUGH COUNTY CORRIDOR PRESERVATION PLAN "

PROJECT SUMMARY AND ANALYSIS

The applicant is requesting a modification to Planned Development (PD) 03-0644. PD 03-0644 consists of four parcels totaling 13.76 acres. The existing PD has approval is for 106,000 square feet of Commercial General (CG) uses. The applicant is proposing to modify the entitlements by adding 256 multifamily units and reducing total Commercial General Uses to a maximum of 2,475 sf. The site is located +/- 650 feet southeast of the intersection of Brandon Blvd and Valrico Road. The Future Land Use designation of the site is Residential – 9 (R-9). The subject property is currently included in an application for a Comprehensive Plan Amendment (HC CPA 21-26) and both the major modification, and the comprehensive plan amendment are scheduled to be heard concurrently at the Board of County Commissioners.

Trip Generation Analysis

Staff has prepared a comparison of the trips potentially generated under the previously approved zoning and the proposed planned development including the additional residential units, utilizing a generalized worst-case scenario. Data presented below is based on the Institute of Transportation Engineer's Trip Generation Manual, 10th Edition.

Approved Zoning:

Zoning, Lane Use/Size	24 Hour Two-Way Volume	Total Peak Hour Trips	
		AM	PM
PD 03-0644, 106,000 sf Shopping Center (ITE code 820)	4,002	100	404
Internal Capture Trips	N/A	0	0
Pass by Trips	N/A	0	138
Volume added to Adjacent Streets	**4,002**	**100**	**266**

Proposed Zoning:

Zoning, Lane Use/Size	24 Hour Two-Way Volume	Total Peak Hour Trips	
		AM	PM
PD, 256 Multi Family Dwelling Units (ITE code 221	1,216	108	108
PD, 2,500 sf Fast Food Restaurant with Drive Through (ITE code 934)	1,177	100	82
Unadjusted Volume	2,393	208	190
Internal Capture Trips	N/A	22	26
Pass by Trips	N/A	44	34
Volume added to Adjacent Streets	**2,393**	**142**	**130**

Trip Generation Difference:

Zoning, Lane Use/Size	24 Hour Two-Way Volume	Total Peak Hour Trips	
		AM	PM
Difference	**-1,609**	**+42**	**-136**

The proposed rezoning would result in a decrease of trips potentially generated by development of the subject site by 1,609 average daily trips, an increase of 42 trips in the a.m. peak hour, and a decrease in 136 trips in the p.m. peak hour.

TRANSPORTATION INFRASTRUCTURE SERVING THE SITE

The subject property has frontage on Valrico Road and Brandon Blvd. Valrico Rd. is a 2-lane, substandard Hillsborough County maintained, collector roadway, characterized by +/-10 ft. travel lanes. The existing right-of-way on Valrico Road ranges from +/-70 ft to +/- 95 feet. There are sidewalks and curb on both sides of Valrico Rd. in the vicinity of the proposed project. Brandon Blvd is a 6 lane, Florida Department of Transportation (FDOT) maintained roadway. Brandon Blvd Lies within +/- 190 feet of right of way. Brandon Blvd has sidewalks on both sides of the roadway within the vicinity of the project.

HILLSBOROUGH COUNTY CORRIDOR PRESERVATION PLAN

Valrico Rd. is included as a 4-lane roadway in the Hillsborough County Corridor Preservation Plan. Sufficient ROW must be preserved on Valrico for the future improvements. Using the best available data, right of way on Valrico varies from +/-70 to +/-90 feet. According to the Hillsborough County Transportation Manual, a typical section of a 4-lane collector roadway (TS-6) requires a total of 110 feet of ROW. The portion of the site on Valrico Road that has 70 feet of ROW must preserve up to 20 feet of ROW and the portion that has 95 must preserve up to 7.5 feet of ROW for the planned improvement.

REQUESTED VARIANCE

Valrico Road is a substandard road. The land development code indicates that a developer would need to improve the road up to county standards unless an Administrative Variance is submitted and found approvable. The applicant's Engineer of Record (EOR) submitted a Section 6.04.02.B. Administrative Variance Request (dated July 12, 2022) Section 6.04.03.L Hillsborough County Land Development Code (LDC) requirement to improve the roadway to current County standards. The Administrative Variance was found approvable by the County Engineer (on July 15, 2022). If the rezoning is approved, the

County Engineer will approve the above referenced Administrative Variance Request, upon which the developer will not be required to improve Valrico Road to county standard.

SITE ACCESS

The project is proposing to use an existing full access connection on Brandon Blvd and one full access connection on Valrico Rd. Vehicular and Pedestrian Cross access is provided to the west and east of the project as per requirements of section 6.04.03.Q of the Hillsborough County Land Development Code.

ROADWAY LEVEL OF SERVICE (LOS)

Level of Service (LOS) information is reported below.

FDOT Generalized Level of Service				
Roadway	**From**	**To**	**LOS Standard**	**Peak Hr Directional LOS**
VALRICO RD	DURANT RD	SR 60	D	C
SR 60/ BRANDON BLVD	VALRICO RD	DOVER RD	D	C

Source: 2020 Hillsborough County Level of Service (LOS) Report

3.0 TRANSPORTATION SUMMARY (FULL TRANSPORTATION REPORT IN SECTION 9 OF STAFF REPORT)

Adjoining Roadways (check if applicable)			
Road Name	**Classification**	**Current Conditions**	**Select Future Improvements**
Valrico Road	County Collector - Urban	2 Lanes ☒Substandard Road ☐Sufficient ROW Width	☒ Corridor Preservation Plan ☐ Site Access Improvements ☐ Substandard Road Improvements ☐ Other
Brandon Blvd	FDOT Principal Arterial - Urban	6 Lanes ☐Substandard Road ☐Sufficient ROW Width	☒ Corridor Preservation Plan ☐ Site Access Improvements ☐ Substandard Road Improvements ☐ Other

Project Trip Generation ☐Not applicable for this request			
	Average Annual Daily Trips	**A.M. Peak Hour Trips**	**P.M. Peak Hour Trips**
Existing	4,002	100	266
Proposed	2,393	142	130
Difference (+/-)	-1,609	+42	-136

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Connectivity and Cross Access ☐Not applicable for this request				
Project Boundary	**Primary Access**	**Additional Connectivity/Access**	**Cross Access**	**Finding**
North	X	None	None	Meets LDC
South		None	None	Meets LDC
East		None	Vehicular & Pedestrian	Meets LDC
West		Vehicular & Pedestrian	Vehicular & Pedestrian	Meets LDC
Notes:				

Design Exception/Administrative Variance ☒Not applicable for this request		
Road Name/Nature of Request	**Type**	**Finding**
Valrico Road/ Substandard Road	Administrative Variance Requested	Approvable
	Choose an item.	Choose an item.
Notes:		

4.0 Additional Site Information & Agency Comments Summary			
Transportation	**Objections**	**Conditions Requested**	**Additional Information/Comments**
☒ Design Exception/Adm. Variance Requested ☐ Off-Site Improvements Provided	☐ Yes ☐N/A ☒ No	☒ Yes ☐ No	See Staff Report.

From: Williams, Michael
Sent: Friday, July 15, 2022 10:11 AM
To: Steven Henry
Cc: Tirado, Sheida; PW-CEIntake; Steady, Alex; Ball, Fred (Sam)
Subject: FW: MM 22-0862 - Administrative Variance Review
Attachments: 22-0862 AVReq 07-14-22.pdf

Importance: High

Steve,
I have found the attached Section 6.04.02.B. Administrative Variance (AV) for PD 22-0862 APPROVABLE.

Please note that it is you (or your client's) responsibility to follow-up with Transportation staff after the BOCC approves the PD zoning or PD zoning modification related to below request. This is to obtain a signed copy of the DE/AV.

If the BOCC denies the PD zoning or PD zoning modification request, staff will request that you withdraw the AV/DE. In such instance, notwithstanding the above finding of approvability, if you fail to withdraw the request, I will deny the AV/DE (since the finding was predicated on a specific development program and site configuration which was not approved).

Once I have signed the document, it is your responsibility to submit the signed AV/DE(s) together with your initial plat/site/construction plan submittal. If the project is already in preliminary review, then you must submit the signed document before the review will be allowed to progress. Staff will require resubmittal of all plat/site/construction plan submittals that do not include the appropriate signed AV/DE documentation.

Lastly, please note that it is critical to ensure you copy all related correspondence to PW-CEIntake@hillsboroughcounty.org

Mike

Michael J. Williams, P.E.
Director, Development Review
County Engineer
Development Services Department

P: (813) 307-1851
M: (813) 614-2190
E: Williamsm@HillsboroughCounty.org
W: HCFLGov.net

Hillsborough County
601 E. Kennedy Blvd., Tampa, FL 33602

Received July 14, 2022
Development Services

Engineers
Planners

LINCKS & ASSOCIATES, INC.

July 12, 2022

Mr. Mike Williams
Hillsborough County Government
601 East Kennedy Blvd., 22nd Floor
Tampa, FL 33602

Re: SR 60/Valrico Road
Folio 086373.0000 (119 S Valrico Road)
086374.0000 (117 S Valrico Road)
086377.0000 (2125 E. Hwy 60)
086371.5000 (2207 E. Hwy 60)
086371.5100 (2201 E. Hwy 60)
MM 22-0862
Lincks Project No. 21218

The purpose of this letter is to request a Section 6.04.02.B Administrative Variance to Section 6.04.03L Existing Facilities of the Hillsborough County Land Development Code, which requires projects taking access to a substandard road to improve the roadway to current County standards between the project driveway and the nearest standard road.

The subject property is located south of SR 60 and east of Valrico Road and is currently zoned PD for 106,000 square feet of retail. The developer proposes a Major Modification of the existing PD to allow up to 256 Multi-Family dwelling units. Tables 1, 2 and 3 provide the trip generation comparison of the approved land use versus the proposed land use. As shown, the proposed modification would result in a net decrease of project traffic.

The access to serve the proposed PD is to be as follows :

- One (1) directional median opening to SR 60 (left-in/right-in/right-out)
- One (1) full access to Valrico Road that is to align with the southern Publix access.

The subject property is within the Urban Service Area and as shown on the Hillsborough County Roadways Functional Classification Map, Valrico Road is a collector roadway.

The request is to waive the requirement to improve Valrico Road from SR 60 to the Project Access to current County roadway standards, which are found within the Hillsborough County Transportation Technical Manual.

The variance to the TS-4 standards are as follows:

5023 West Laurel Street
Tampa, FL 33607
813 289 0039 Telephone
8133 287 0674 Telefax
www.Lincks.com Website

1. Bike Lanes – TS-4 has 7 foot buffered bike lanes. The existing roadway does not have bike lanes.

(a) there is an unreasonable burden on the applicant,

It would be unreasonable to require the applicant to add the bike lanes for the following reasons:

1. There are right of way constraints along the subject segment of Valrico Road that would prohibit the ability to construct the bike lanes.
2. The proposed modification would result in a net decrease in project traffic.
3. There are existing sidewalks on both sides of Valrico Road.
4. Hillsborough County has conducted a PD & E study for improvements to the subject segment of Valrico Road.

(b) the variance would not be detrimental to the public health, safety and welfare,

There are sidewalks on both sides of Valrico Road from SR 60 to the Project Access. In addition, there are no bike lanes on Valrico Road south of the project access. Therefore, the Administrative Variance would not be detrimental to the public health, safety and welfare.

(c) without the variance, reasonable access cannot be provided. In the evaluation of the variance request, the issuing authority shall give valid consideration to the land use plans, policies, and local traffic circulation/operation of the site and adjacent areas.

Hillsborough County LDC requires access to Valrico Road to provide connectivity to the roadway network.

Received July 14, 2022
Development Services

Please do not hesitate to contact us if you have any questions or require any additional information.

Best Regards,

Steven J Henry
President
Lincks & Associates, Inc.
P.E. #51555

7/13/22

Based on the information provided by the applicant, this request is:

_____Disapproved

_____Approved

_____Approved with Conditions

If there are any further questions or you need clarification, please contact Sheida L. Tirado, PE.

Date _____

Sincerely,

Michael J. Williams

Hillsborough County Engineer

Received July 14, 2022
Development Services

TABLE 1

DAILY TRIP GENERATION (1)

Scenario	Land Use	ITE LUC	Size	Daily Trip Ends (1)	Passerby Trip Ends (2)	New Daily Trip Ends
Approved	Retail	821	106,000 SF	10,016	3,405	6,611
Proposed	Multi-Family	221	256 DU's	1,162	0	1,162
			Difference	<8,854>	<3,405>	<5,449>

(1) Source: ITE Trip Generation Manual, 11th Edition, 2021.

(2) Source: ITE Trip Generation Handbook, 3rd Edition.

- Passerby Rate - 34%

  10,016 x 0.34 = 3,405

TABLE 2

AM PEAK HOUR
TRIP GENERATION

Scenario	Land Use	ITE LUC	Size	AM Peak Hour Trip Ends (1)			Passerby Trip Ends (2)			New AM Peak Hour Trip Ends		
				In	Out	Total	In	Out	Total	In	Out	Total
Approved	Retail	821	106,000 SF	232	142	374	79	48	127	153	94	247
Proposed	Multi-Family	221	256 DU's	23	78	101	0	0	0	23	78	101
			Difference	<209>	<64>	<273>	<79>	<48>	<127>	<130>	<16>	<146>

(1) Source: ITE Trip Generation Manual, 11th Edition, 2021.

(2) Source: ITE Trip Generation Handbook, 3rd Edition.

- Passerby Rate - 34%

In - 232 x 0.34 = 79

Out - 142 x 0.34 = 48

TABLE 3

PM PEAK HOUR
TRIP GENERATION

Scenario	Land Use	ITE LUC	Size	PM Peak Hour Trip Ends (1)			Passerby Trip Ends (2)			New PM Peak Hour Trip Ends		
				In	Out	Total	In	Out	Total	In	Out	Total
Approved	Retail	821	106,000 SF	447	485	932	152	165	317	295	320	615
Proposed	Multi-Family	221	256 DU's	61	39	100	0	0	0	61	39	100
			Difference	<386>	<446>	<832>	<152>	<165>	<317>	<234>	<281>	<515>

(1) Source: ITE Trip Generation Manual, 11th Edition, 2021.

(2) Source: ITE Trip Generation Handbook, 3rd Edition.

- Passerby Rate - 34%

In - 447 x 0.34 = 152

Out - 485 x 0.34 = 165

Received July 14, 2022
Development Services

APPENDIX

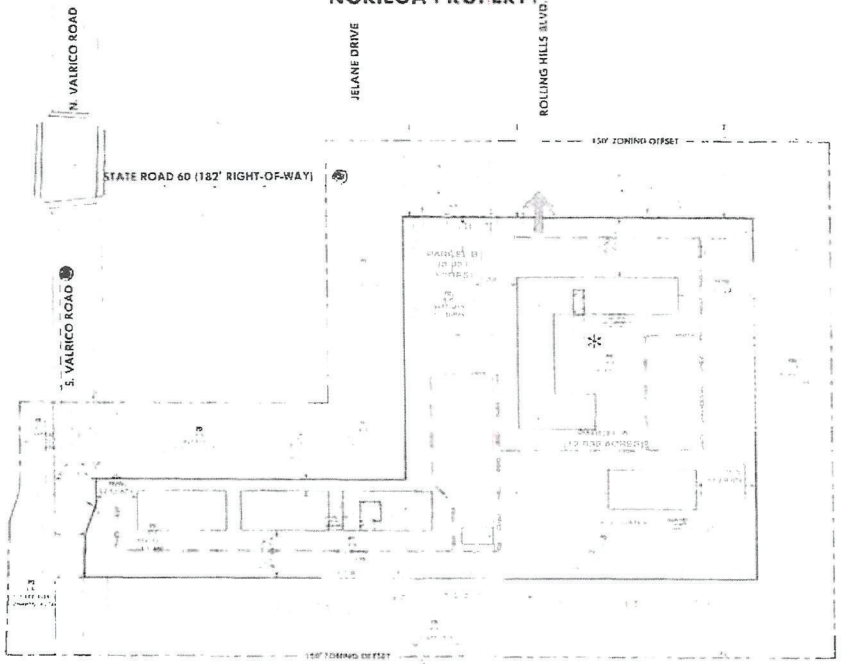
Received July 14, 2022
Development Services

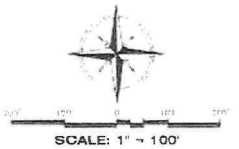
PROPOSED PD PLAN

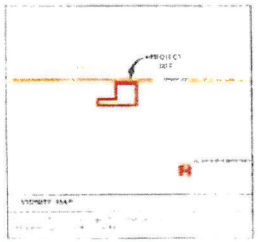
LINCKS & ASSOCIATES, INC.

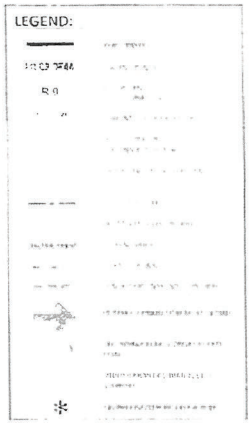
22-0862

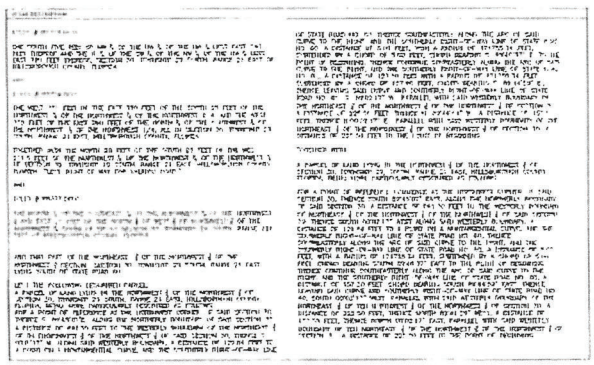
PD MAJOR MODIFICATION TO THE NORIEGA PROPERTY











PD 22- ----
GENERAL DEVELOPMENT PLAN

2301 E. State Road 60
Valrico, Florida 33594

BELLAIR DEVELOPMENT GROUP

SHEET 1 OF 7

22-0862

Received July 14, 2022
Development Services

PD MAJOR MODIFICATION TO THE NORIEGA PROPERTY

SCALE: 1" = 100'

STATE ROAD 60

VALRICO ROAD

LEGEND:

EXISTING CONDITIONS

PD 22- ----
GENERAL DEVELOPMENT PLAN

2301 E. State Road 60
Valrico, Florida 33594

PROFESSIONAL TEAM

BELLAIR DEVELOPMENT GROUP

SHEET 2 OF 2

22-0862

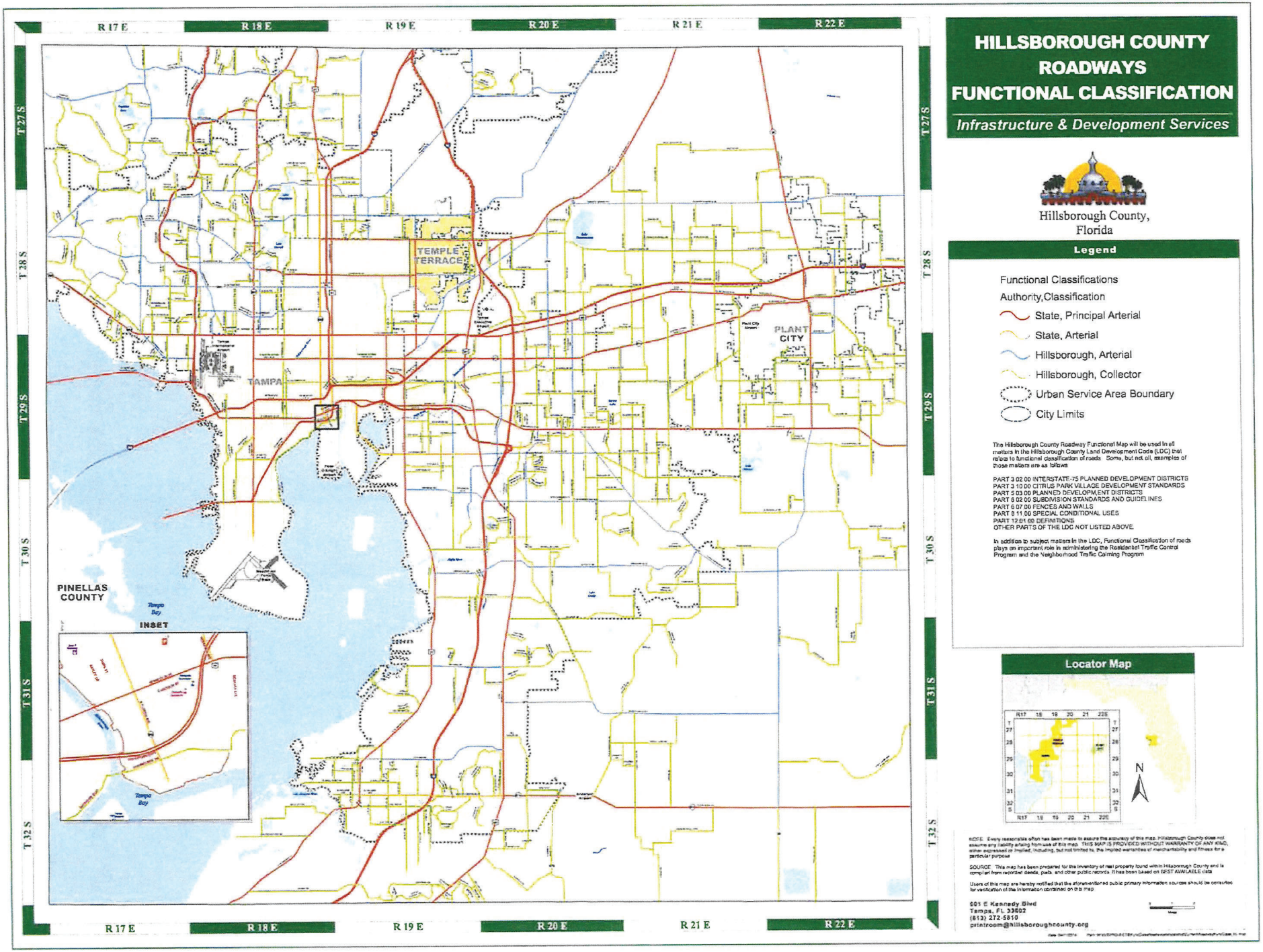
Received July 14, 2022
Development Services

Received July 14, 2022
Development Services

HILLSBOROUGH COUNTY ROADWAYS
FUNCTIONAL CLASSIFICATION MAP

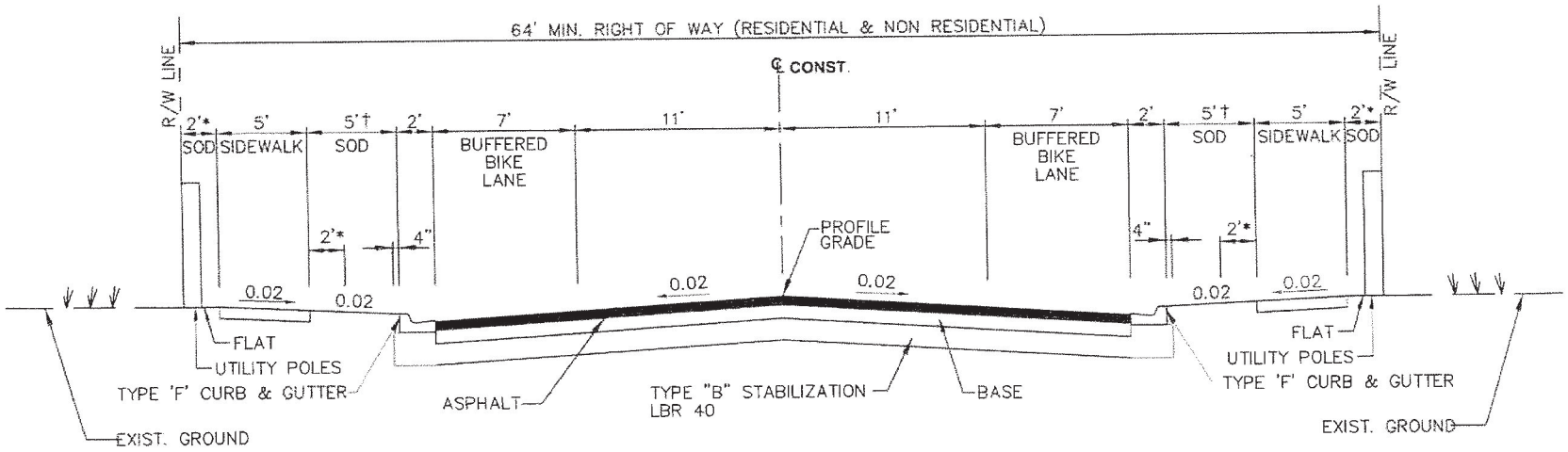
LINCKS & ASSOCIATES, INC.

22-0862



Received July 14, 2022
Development Services

TS-4



TYPICAL SECTION

N.T.S.

5,000 TO 10,000 AADT

MAX. ALLOWABLE DESIGN SPEED – 40 MPH

1. ALL DIMENSIONS SHOWN ARE MINIMUM.
2. SEE APPROPRIATE SECTIONS OF TECHNICAL MANUAL FOR DESIGN PARAMETERS.

* 3. PROVIDE 2' MINIMUM CLEARANCE FROM FENCES, WALLS, HEDGES, ABOVEGROUND UTILITIES OR IMPROVEMENTS, DROP OFFS, OR FROM THE TOPS OF BANKS WITH SLOPES STEEPER THAN 1 TO 4, THAT INTERFERE WITH THE SAFE, FUNCTIONAL USE OF THE SIDEWALK. INTERMITTENT ABOVEGROUND UTILITIES, OR MATURE TREES, 2' OR LESS IN DIAMETER MAY BE PLACED IN THIS 2' STRIP AS FAR FROM THE SIDEWALK AS POSSIBLE, IF NOT IN THE CLEAR ZONE.

† 4. SEE SIDEWALK PROTECTION OPTIONS, DRAWING NO. TD–16 SHEET 7 OF 7 FOR USE WHEN TREES ARE PLANTED IN THE PARKWAY AREA (BETWEEN THE BACK OF CURB AND SIDEWALK).

5. SOD SHALL BE PLACED IN TWO ROWS STAGGERED. (BOTH TEMPORARY AND PERMANENT)

REVISION DATE:				
10/17	**TRANSPORTATION TECHNICAL MANUAL**	Hillsborough County Florida	**URBAN COLLECTORS (2 LANE UNDIVIDED) TYPICAL SECTION**	DRAWING NO. **TS-4**
				SHEET NO. 1 OF 1

PD&E PREFERENCE ALTERNATIVE

REVISIONS			
DATE	DESCRIPTION	DATE	DESCRIPTION

LOGAN T. BARILE, P.E.
P.E. LICENSE NUMBER 71565
FALLER, DAVIS & ASSOCIATES, INC.
4200 W. CYPRESS ST., SUITE 500
TAMPA, FL 33607-4168

Hillsborough County

CAPITAL PROGRAMS DEPARTMENT
601 E. KENNEDY BLVD
TAMPA, FLORIDA 33602

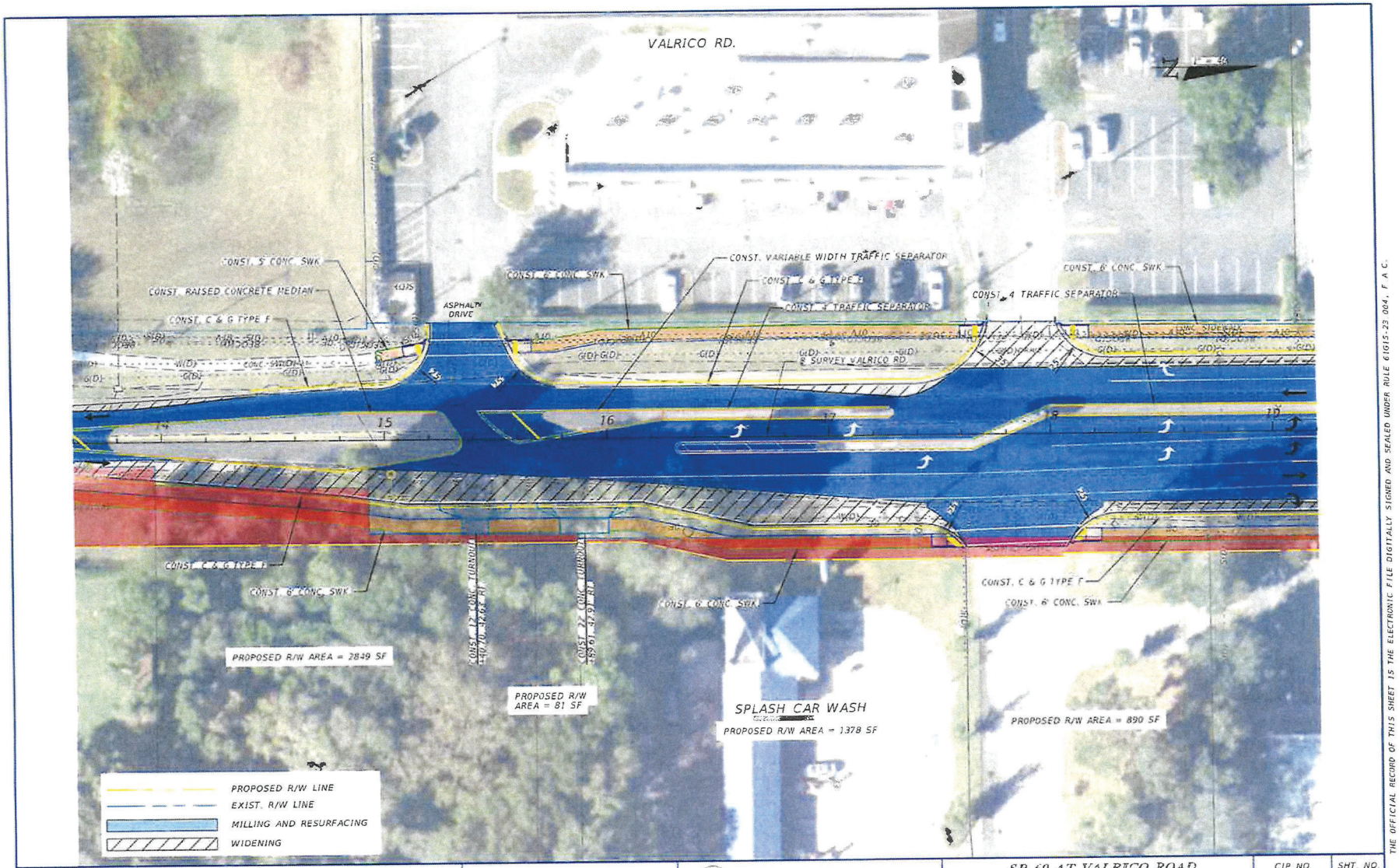
SR 60 AT VALRICO ROAD

ROADWAY PLAN (01)
ALTERNATIVE 2C

CIP NO. C696555

SHT NO

THE OFFICIAL RECORD OF THIS SHEET IS THE ELECTRONIC FILE DIGITALLY SIGNED AND SEALED UNDER RULE 61G15-23.004, F.A.C.



REVISIONS			
DATE	DESCRIPTION	DATE	DESCRIPTION

LOGAN T. BARILE, P.E.
P.E. LICENSE NUMBER 71565
FALLER, DAVIS & ASSOCIATES, INC.
4200 W. CYPRESS ST., SUITE 500
TAMPA, FL 33607-4168

Hillsborough County Florida

CAPITAL PROGRAMS DEPARTMENT
601 E KENNEDY BLVD
TAMPA, FLORIDA 33602

SR 60 AT VALRICO ROAD

ROADWAY PLAN (02)
ALTERNATIVE 2C

CIP NO. C696555

SHT. NO.

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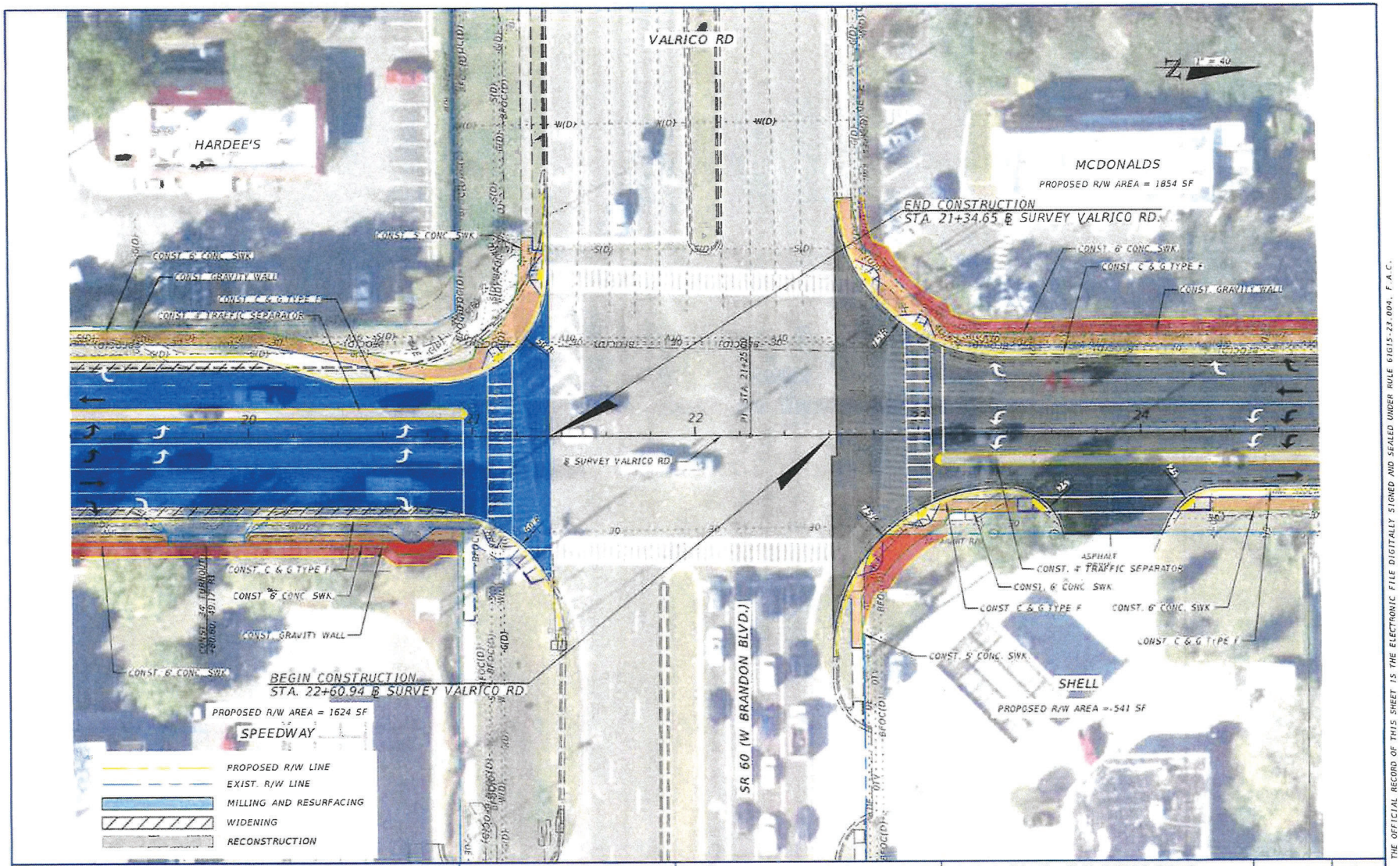

REVISIONS			
DATE	DESCRIPTION	DATE	DESCRIPTION

LOGAN T. BARILE, P.E.
P.E. LICENSE NUMBER 71565
FALLER, DAVIS & ASSOCIATES, INC.
4200 W. CYPRESS ST., SUITE 500
TAMPA, FL 33607-4168

Hillsborough County Florida

CAPITAL PROGRAMS DEPARTMENT
601 E. KENNEDY BLVD.
TAMPA, FLORIDA 33602

SR 60 AT VALRICO ROAD	CIP NO.	SHT. NO.
ROADWAY PLAN (03) ALTERNATIVE 2C	C696555	

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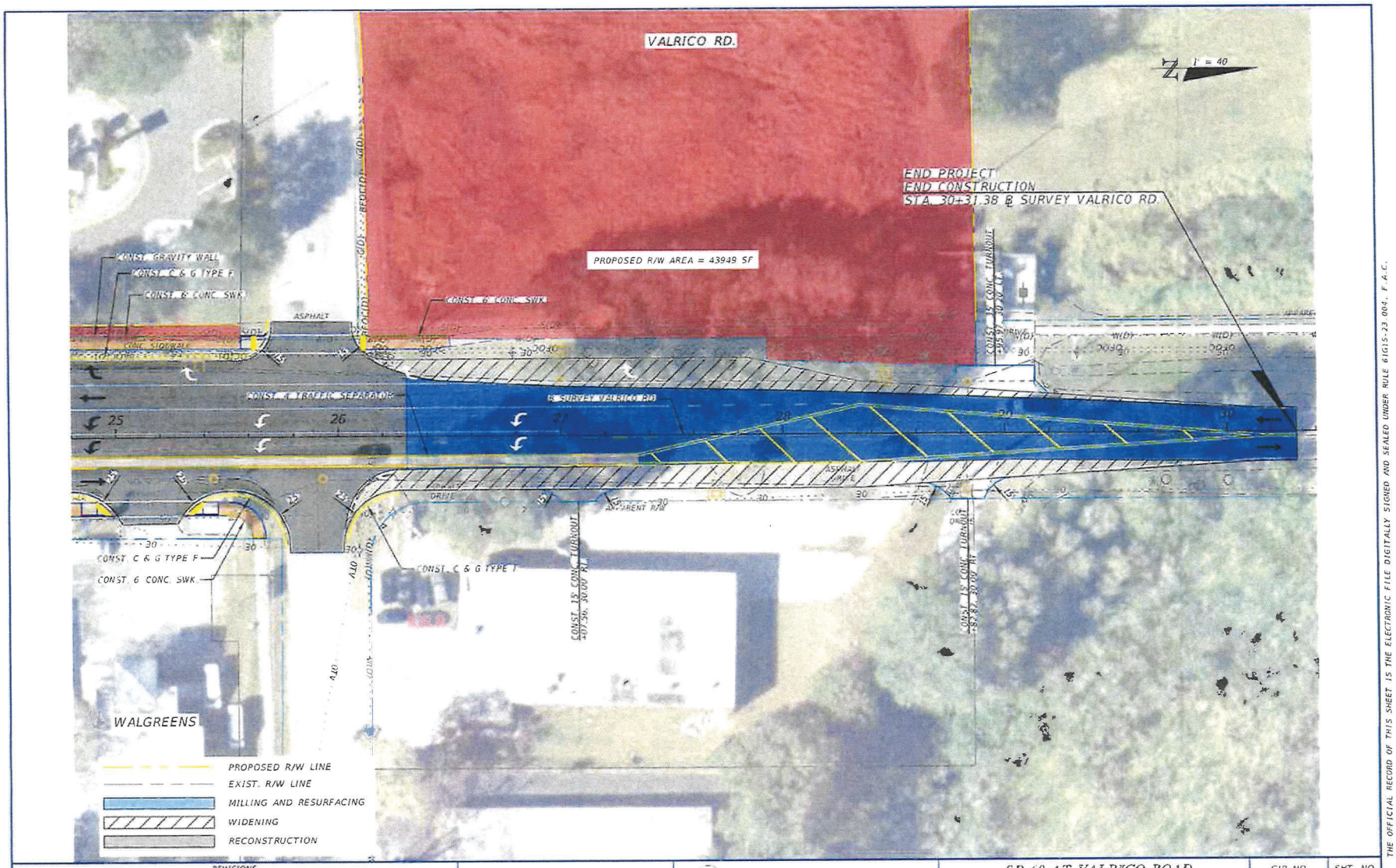

REVISIONS			
DATE	DESCRIPTION	DATE	DESCRIPTION

LOGAN T. BARILE, P.E.
P.E. LICENSE NUMBER 71565
FALLER, DAVIS & ASSOCIATES, INC.
4200 W. CYPRESS ST., SUITE 500
TAMPA, FL 33607-4168

Hillsborough County

CAPITAL PROGRAMS DEPARTMENT
601 E. KENNEDY BLVD
TAMPA, FLORIDA 33602

SR 60 AT VALRICO ROAD	CIP NO.	SHT NO.
ROADWAY PLAN (04) ALTERNATIVE 2C	C696555	

6/7/2021 8:13:13 PM N:\59501\design\55\dgn\Roadway\VALVARD03-2C.dgn

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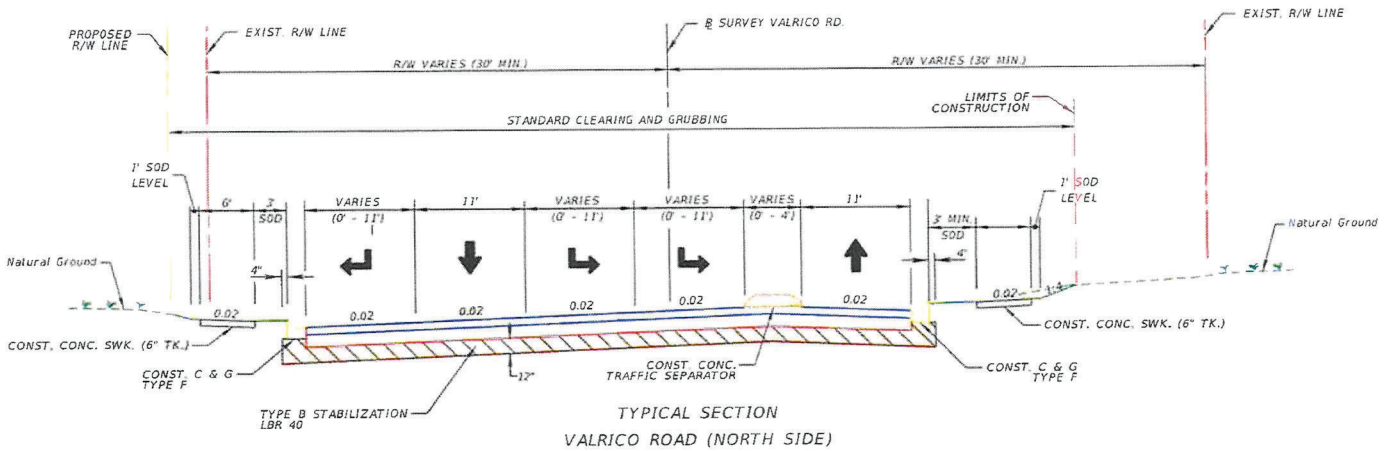


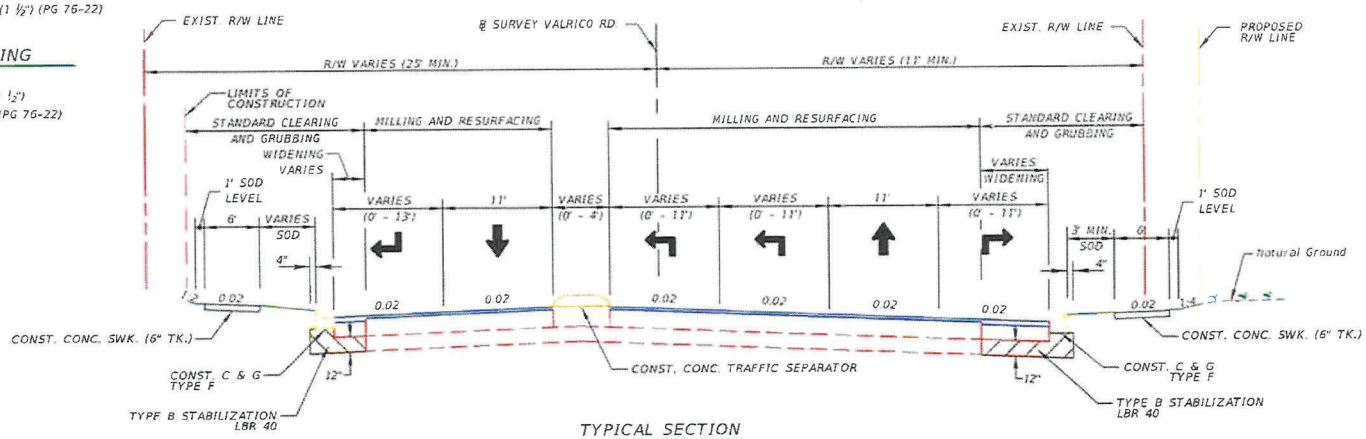
TYPICAL SECTION
VALRICO ROAD (NORTH SIDE)
STA. 22+60.94 TO STA. 30+31.38

MILLING AND RESURFACING

MILL EXISTING ASPHALT PAVEMENT (1 ½" AVG. DEPTH)
OVERBUILD WITH TYPE SP STRUCTURAL COURSE (TRAFFIC B) (½" MIN.)
RESURFACE WITH FRICTION COURSE FC-12.5 (TRAFFIC B) (1 ½") (PG 76-22)

RECONSTRUCTION AND WIDENING

OPTIONAL BASE GROUP 9 WITH
TYPE SP STRUCTURAL COURSE (TRAFFIC B) (1 ½")
AND FRICTION COURSE FC-12.5 (TRAFFIC B) (1 ½") (PG 76-22)



TYPICAL SECTION
VALRICO ROAD (SOUTH SIDE)
STA. 12+84.42 TO STA. 21+34.65

DESIGN SPEED = 45 MPH

REVISIONS			
DATE	DESCRIPTION	DATE	DESCRIPTION

LOGAN T. BARILE, P.E.
P.E. LICENSE NUMBER 71565
FALLER, DAVIS & ASSOCIATES, INC.
4200 W. CYPRESS ST., SUITE 500
TAMPA, FL 33607-4168

Hillsborough County Florida
CAPITAL PROGRAMS DEPARTMENT
601 E KENNEDY BLVD
TAMPA, FLORIDA 33602

SR 60 AT VALRICO ROAD	CIP NO.	SHT. NO.
TYPICAL SECTION ALTERNATIVE 2C	C696555	

COUNTY OF HILLSBOROUGH

RECOMMENDATION OF THE LAND USE HEARING OFFICER

APPLICATION NUMBER:	MM 22-0862
DATE OF HEARING:	July 25, 2022
APPLICANT:	Bellair Dev., LLC
PETITION REQUEST:	The Major Modification request is to modify PD 03-0644 to allow 256 multi-family dwelling units and reduce the CG square footage to 2,475 square feet
LOCATION:	South side of the intersection E. SR 60 and Rolling Hills Blvd.
SIZE OF PROPERTY:	13.65 acres, m.o.l.
EXISTING ZONING DISTRICT:	PD 03-0644
FUTURE LAND USE CATEGORY:	RES-9 (currently processing an amendment to the RES-20 Future Land Use category-CPA 21-26)
SERVICE AREA:	Urban
COMMUNITY PLAN:	Valrico

DEVELOPMENT REVIEW STAFF REPORT

*__Note__: Formatting issues prevented the entire Development Services Department staff report from being copied into the Hearing Master's Recommendation. Therefore, please refer to the Development Services Department web site for the complete staff report.

1.0 APPLICATION SUMMARY

Applicant: Belleair Development Group, LLC

FLU Category: Residential-9 (Res-9) CPA 21-26, pending adoption, change to Residential-20 (Res-20)

Service Area: Urban

Site Acreage: 12.84

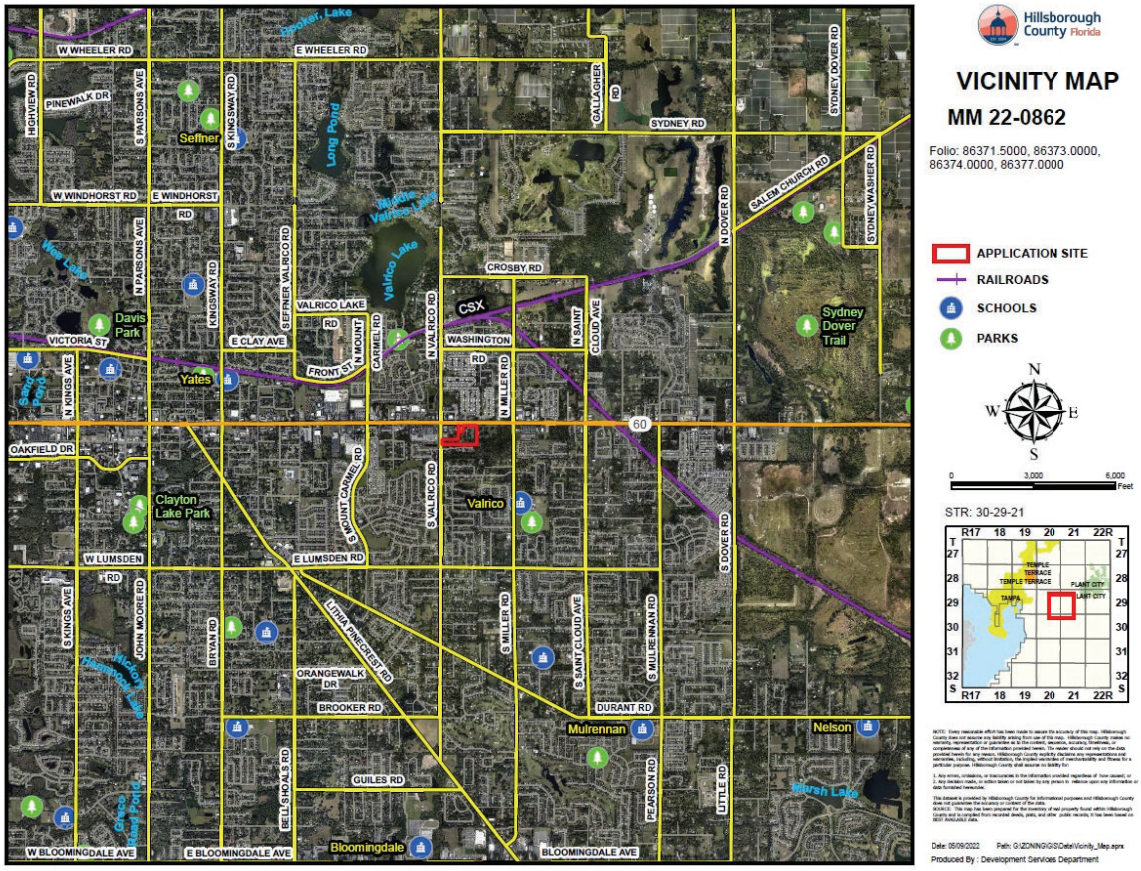
Community Plan Area: Valrico

Overlay: SR 60 Overlay

Introduction Summary	
PD 03-0644 was approved in 2003 to allow for 89,000 square feet (sf) of Commercial General (CG) uses, 5,000 sf of residential support uses, and 10,000 sf of Business, Professional Office (BPO) uses. The applicant requests modifications to the allowable uses to allow 256 multi-family dwelling units and reduce the allowable CG uses to 2,475 sf. If adopted, CPA 21-26 will change the future land use designation to Res-20.	
Side yard setback of 10 feet for residential lots.	Reduce the amount of allowable CG uses to 2,475 sf.
Maximum building height of 20 feet for commercial buildings	Allow a maximum of 256 multi-family dwelling units and related amenities.

Additional Information	
. PD Variation(s):	None Requested as part of this application
Waiver(s) to the Land Development Code:	None Requested as part of this application
Planning Commission Recommendation: Consistent	**Development Services Recommendation:** Approvable, subject to proposed conditions

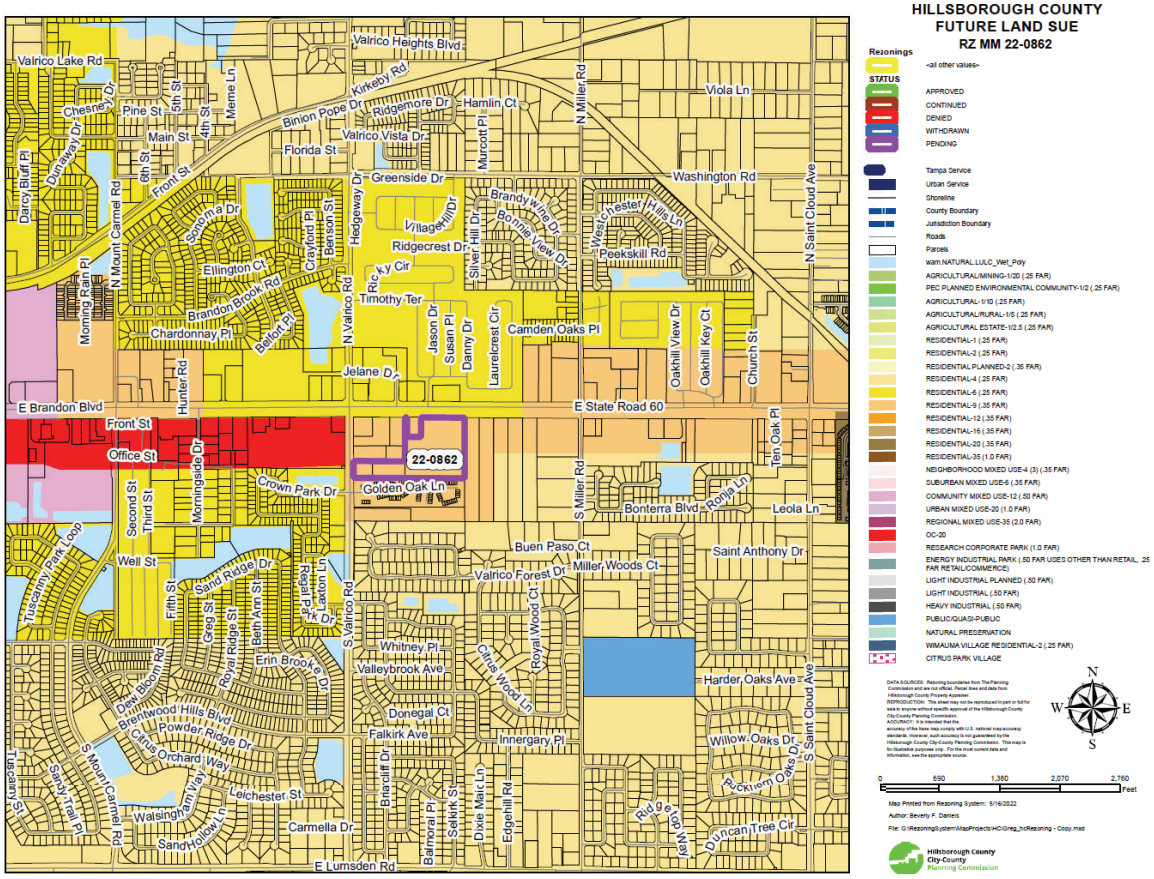
2.0 LAND USE MAP SET AND SUMMARY DATA 2.1 Vicinity Map



Context of Surrounding Area:

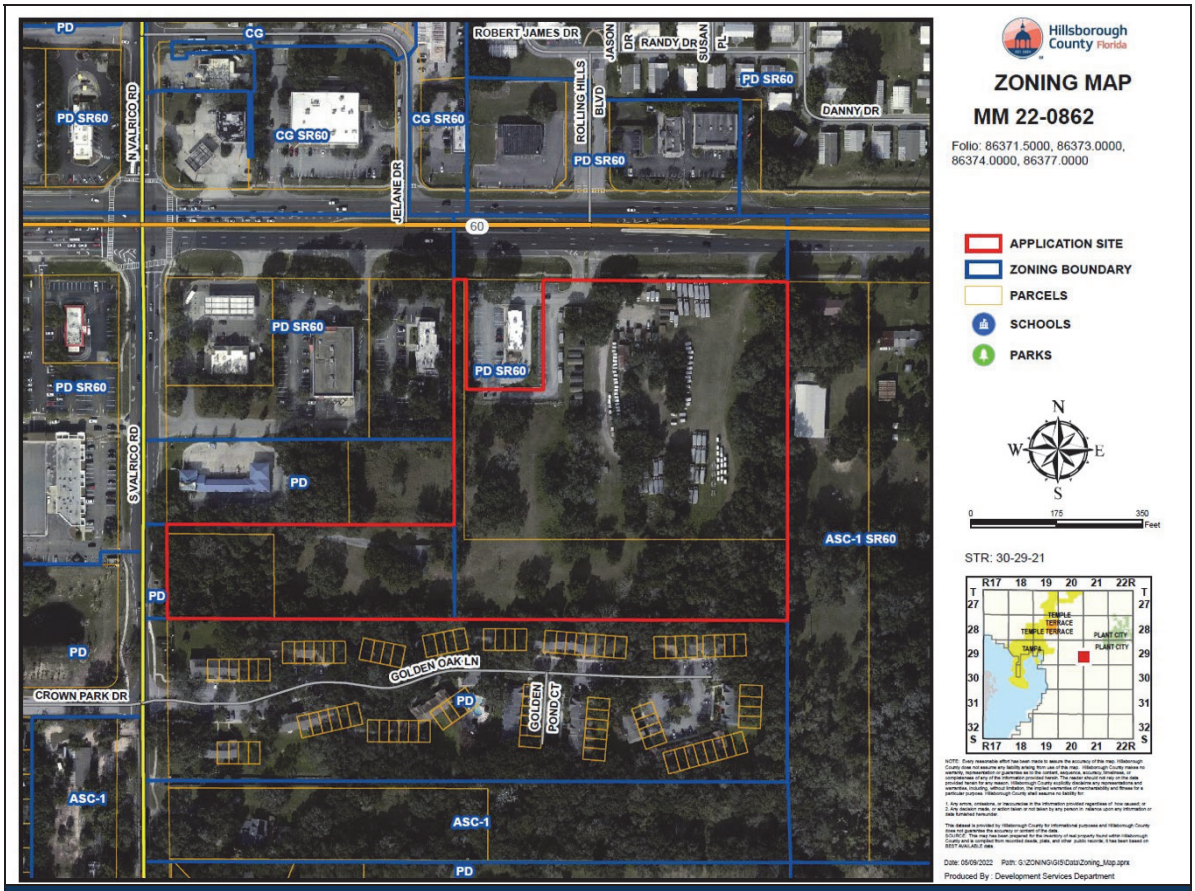
Development in the surrounding area includes a mix of uses including townhomes to the south; single-family residential to the east; a church, mobile home park, and multi-tenant to the north; and a convenience store with gas pumps, carwash, drug store, single-family residential, multi-tenant retail, and an eating establishment with drive- through to the west.

2.0 LAND USE MAP SET AND SUMMARY DATA 2.2 Future Land Use Map



Subject Site Future Land Use Category	Res-9 (Existing)	Res-20 (Proposed)
Maximum Density/FAR	9 du per ga/FAR: 0.50	20 du per ga/FAR: 0.75
Typical Uses	Residential, urban scale neighborhood commercial, office uses, multi-purpose projects and mixed use development.	Residential, neighborhood commercial, office uses, multi- purpose projects and mixed use development.

2.0 LAND USE MAP SET AND SUMMARY DATA 2.3 Immediate Area Map

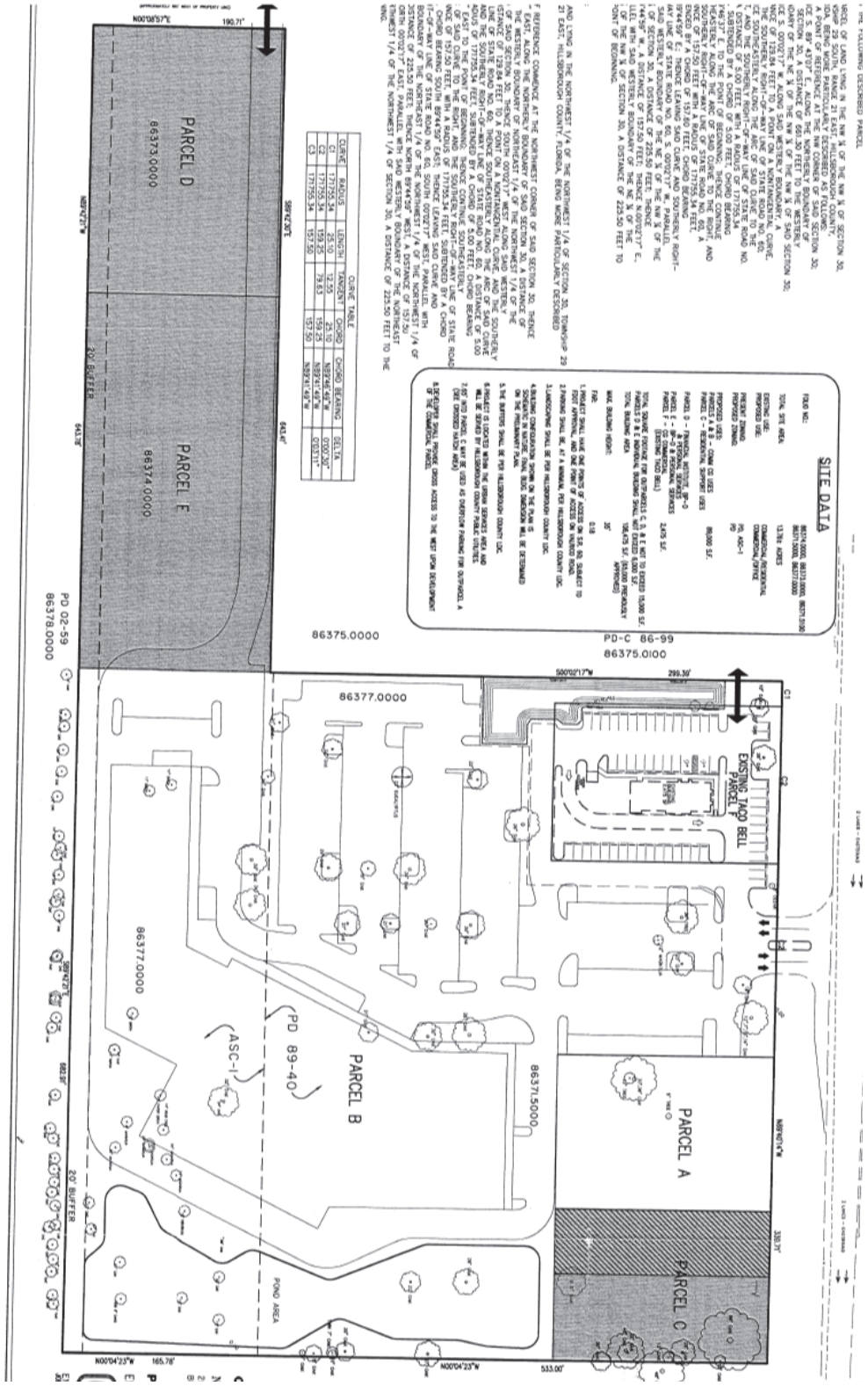


Adjacent Zonings and Uses				
Location	Zoning	Maximum Density/FAR Permitted by Zoning District	Allowable Use	Existing Use
North	CG	0.0 du per ga/FAR: 0.27	General Commercial	Eating Establishment
	PD 92-0094	NA/FAR: 0.27	Church, Office, Limited Commercial	Church, Eating Establishment with Drive- Through, Multi-Tenant Commercial
	PD 93-0125	5.51 MH per ga or 9 du per ga redeveloped	Mobile Home Park	Mobile Home Park
South	PD 02-0059	9.0 du per ga/FAR: NA	Residential Townhomes	Residential Townhomes

East	ASC-1	1.0 du per ga/FAR: NA	Agriculture and Single- Family Conventional	Single-Family Residential
West	PD 98-0839	NA/FAR: 0.35	Neighborhood Commercial	Convenience Store with Gas Pumps, Drug Store, Eating Establishment w Drive-Through
	PD 82-0289	6 du per ga/FAR: 0.24	Neighborhood Commercial and Single-Family Conventional	Multi-Tenant Commercial and Single- Family Conventional

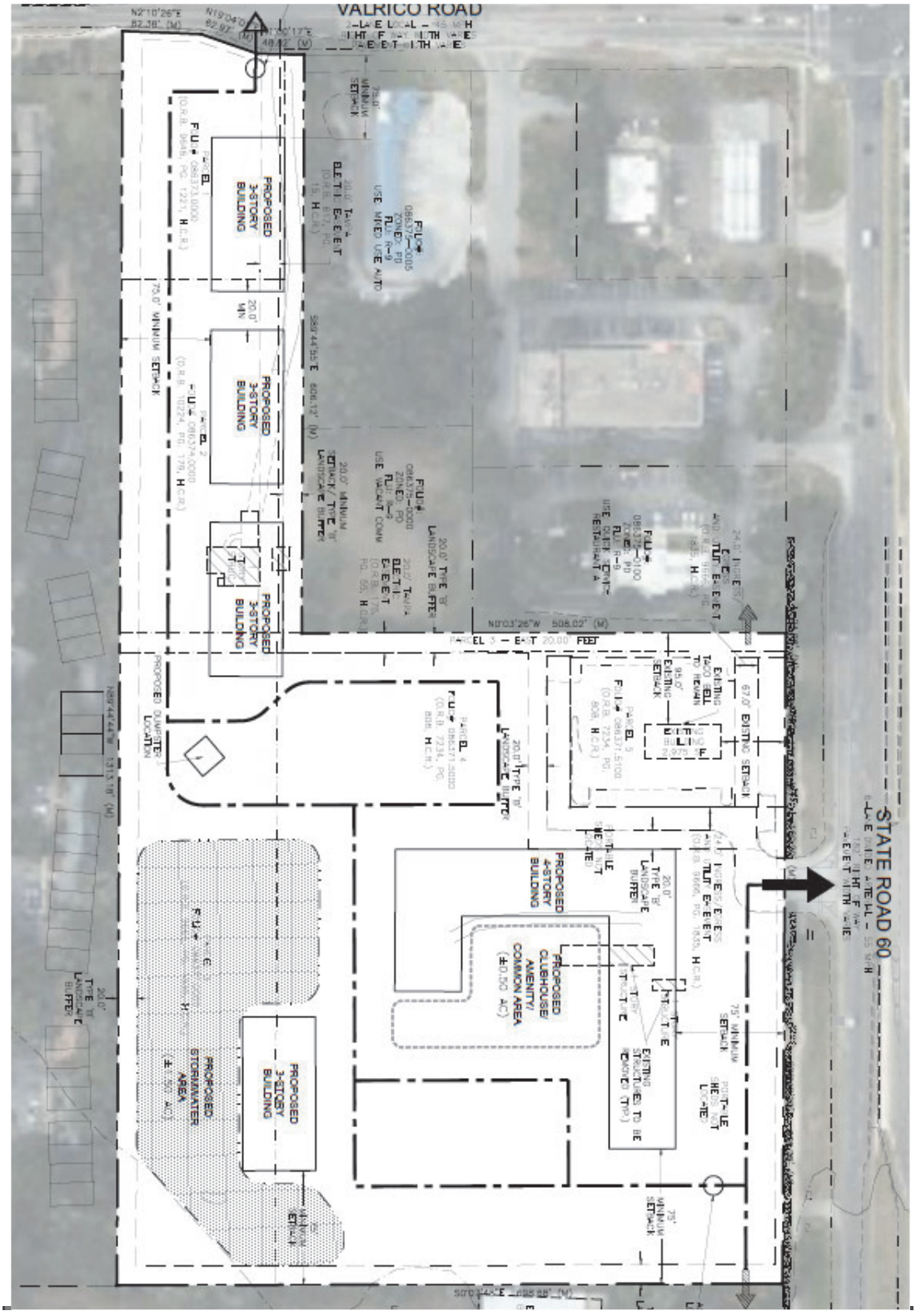
2.0 LAND USE MAP SET AND SUMMARY DATA

2.4 Approved Site Plan (partial provided below for size and orientation purposes. See Section 8.1 for full site plan)



2.0 LAND USE MAP SET AND SUMMARY DATA

2.5 Proposed Site Plan (partial provided below for size and orientation purposes. See Section 8.2 for full site plan)



3.0 TRANSPORTATION SUMMARY (FULL TRANSPORTATION REPORT IN SECTION 9 OF STAFF REPORT)			
Adjoining Roadways (check if applicable)			
Road Name	**Classification**	**Current Conditions**	**Select Future Improvements**
Valrico Road	County Collector - Urban	2 Lanes ☒Substandard Road ☐Sufficient ROW Width	☒ Corridor Preservation Plan ☐ Site Access Improvements ☐ Substandard Road Improvements ☐Other
Brandon Blvd	FDOT Principal Arterial - Urban	6 Lanes ☐Substandard Road ☐Sufficient ROW Width	☒ Corridor Preservation Plan ☐ Site Access Improvements ☐ Substandard Road Improvements ☐Other

Project Trip Generation ☐Not applicable for this request			
	Average Annual Daily Trips	**A.M. Peak Hour Trips**	**P.M. Peak Hour Trips**
Existing	4,002	100	266
Proposed	2,393	142	130
Difference (+/-)	-1,609	+42 -	-136

*Trips reported are based on net new external trips unless otherwise noted.

Connectivity and Cross Access ☐Not applicable for this request				
Project Boundary	**Primary Access**	**Additional Connectivity/Access**	**Cross Access**	**Finding**
North	X	None	None	Meets LDC
South		None	None	Meets LDC
East		None	Vehicular & Pedestrian	Meets LDC
West		Vehicular & Pedestrian	Vehicular & Pedestrian	Meets LDC
Notes:				

Design Exception/Administrative Variance ☒Not applicable for this request		
Road Name/Nature of Request	**Type**	**Finding**
Valrico Road/ Substandard Road	Administrative Variance Requested	Approvable
	Choose an item.	Choose an item.
Notes:		

INFORMATION/REVIEWING AGENCY			

Environmental:	Comments Received	Objections	Conditions Requested	Additional Information/Comments

Natural Resources

Check if Applicable:
☐ Wetlands/Other Surface Waters

☐ Use of Environmentally Sensitive Land Credit

☐ Wellhead Protection Area
☐ Surface Water Resource Protection Area

☐ Potable Water Wellfield Protection Area ☐ Significant Wildlife Habitat
☐ Coastal High Hazard Area
☒ Urban/Suburban/Rural Scenic Corridor ☐ Adjacent to ELAPP property

Transportation

☒ Design Exc./Adm. Variance Requested ☐ Off-site Improvements Provided

Service Area/ Water & Wastewater

☒Urban ☐ City of Tampa
☐Rural ☐ City of Temple Terrace

Conditions Requested

Connection to County potable water and wastewater systems required

Hillsborough County School Board

Adequate ☒ K-5 ☒6-8 ☒9-12 ☐N/A Inadequate ☐ K-5 ☐6-8 ☐9-12 ☐N/A

☒ Yes ☐No

Impact/Mobility Fees: Urban Mobility, Central Park/Fire - 256 multi-family units, 2,475 sf fast food w drive-through. (Fee estimate is based on a 1,200 square foot, Multi-Family Units 1-2 story)

Retail - Fast Food w/Drive Thru (Per 1,000 s.f.)
Mobility: $94,045 * 2.475 = $232,761.38

Fire: $313 * 2.475 = $774.68

Mobility: $5,995 * 256 units Parks: $1,555 * 256 units School: $3,891 * 256 units
Fire: $249 * 256 units = $1,534,720

Additional Information/Comments

Comprehensive Plan:

Planning Commission

☐ Meets Locational Criteria ☐N/A ☒ Locational Criteria Waiver Requested ☒ Minimum Density Met ☐ N/A

☐ Inconsistent ☒ Consistent

5.0 IMPLEMENTATION RECOMMENDATIONS

5.1 Compatibility

Based on the design features of the general development plan to include 75-foot setbacks and 20-foot type B buffers from the residential properties to the east and south, the internal buffering of the proposed multi-family building from the fast-food restaurant with drive-through, as well as the mix of uses within the immediate vicinity, staff finds the proposed planned development zoning district compatible with the existing uses, zoning districts, and development pattern in the area.

5.2 Recommendation

Based on the above considerations, staff recommends approval of the request subject to conditions.

Zoning conditions were presented to the Zoning Hearing Master at the hearing and are hereby incorporated into the Zoning Hearing Master's recommendation.

SUMMARY OF HEARING

THIS CAUSE came on for hearing before the Hillsborough County Land Use Hearing Officer on July 25, 2022. Mr. Brian Grady of the Hillsborough County Development Services Department introduced the petition.

Ms. Elise Batsel testified on behalf of the applicant. Ms. Batsel submitted documents into the record and introduced the development team. She clarified that the acreage is 13.65 rather than the 12.8 acres referred to in the County's staff report. Ms. Batsel showed a PowerPoint presentation and described the location of the subject property. She stated that the applicant has applied for a Comprehensive Plan amendment to change the land use category to RES-20. The application was heard by the Board of County Commissioners (BOCC) in January who requested that it be continued to run concurrent with the rezoning application. She added that both will proceed at the same BOCC meeting. The subject property is located in the Brandon Overlay which has a stated intent to improve the appearance of new and existing commercial and residential development along State Road 60 between I-75 and Dover Road. The proposed development will comply with the Overlay District. Ms. Batsel testified that the property is not located in the Brandon Community Planning Area. The area includes has commercial entitlements that include grocery stores, fast food restaurants, retail shopping, gyms, pharmacies and auto shops in the immediate vicinity. She added that the project will add a walkability such that the residential will coexist with the existing commercial development. The Planning Commission cited numerous policies in their staff report that encourage the integration of commercial and more intensive residential uses to promote walkability. Ms. Batsel discussed the Planning Commission's table that states that Brandon area will grow by 14,685 new residents by 2045 which represents approximately 3.6% of the overall expected growth of the County. Ms. Batsel detailed the surrounding commercial uses and stated that the subject PD is approved for 89,000 square feet of Commercial General uses and 15,000 square feet of residential support and Business Professional Office land uses. The Major Modification requests to eliminate 103,525 square feet of non-residential entitlements. The existing Taco Bell will remain which is 2,475 square feet. The non-residential entitlements will be replaced with 256 multi-family apartments. She referred to the significant reduction in traffic and testified that the apartments will have four three-story buildings and one four-story building. A stormwater pond will be located at the southeast corner to provide a natural separation and buffer. Ms. Batsel described the community meetings that were held with the neighborhood and stated that the major concern was traffic. The buildings were moved on the site plan to the north at the request of the neighbors. The neighbors support the development of the property as there is a homeless issue on-site. Letters of support from neighbors as well as commercial businesses and the Oak Valley Homeowners Association were filed into the record. Ms. Batsel concluded her presentation by stating that access to Valrico Road was originally a right-in/right-out but staff required a full access point.

Mr. Steve Henry 5023 West Laurel Road testified on behalf of the applicant regarding transportation issues. Mr. Henry stated that he did the traffic analysis for the project and compared the traffic generated by the approved land use versus the proposed uses. He noted a difference in the numbers from the County's staff report as the staff uses the 10th Edition of the ITE manual and he uses the 11th Edition. He stated that the comparison shows that the existing entitlements generate approximately 6,000 new daily trips while the proposed project generates approximately 1,700 daily trips which is a significant decrease in daily traffic. Mr. Henry also discussed the traffic in the am and pm which also was decreased in comparison. The FDOT asked the developer to modify the existing full median in front of the subject property to be a directional median opening which would allow right-in/right-out and no left turns onto State Road 60. Access to Valrico Road which is a collector roadway will be a full access point at the request of County staff.

Hearing Master Finch asked Mr. Henry if there was an access connection between the Taco Bell and the rest of the property. Mr. Henry replied yes and identified it on the aerial photo.

Ms. Batsel completed the applicant's presentation by stating that numerous Comprehensive Plan policies support the request and that there are no new waivers requested. The previously approved waiver to commercial locational criteria for the Taco Bell remains in place.

Mr. Sam Ball of the Development Services Department, testified regarding the County staff report. Mr. Ball cited the correction in the acreage and testified that the request is for a Major Modification to the PD to develop 256 multi-family dwelling units and 2,475 square feet of Commercial General land uses. He described the surrounding area and stated that the proposed residential density will be 19.9 dwelling units per acre. He referred to the requested administrative variance which was found approvable by the County Engineer. Mr. Ball stated that staff finds the modification approvable subject to the pending amendment to the Future Land Use category.

Ms. Jillian Massey of the Planning Commission testified regarding the Planning Commission staff report. Ms. Massey stated that the property is designated Residential-9 by the Future Land Use Map and is located within the Urban Service Area. An amendment has been filed to change the property to the Residential-20 Future Land Use category. She testified that the request meets Objective 7 and 8 regarding development being consistent with the Future Land Use category. She added that the request is also consistent with Objective 16 regarding neighborhood protection as the residential is proposed closer to State Road 60. Staff supports the requested waiver of commercial locational criteria. She concluded her presentation by stating that the modification is consistent with the Comprehensive Plan.

Hearing Master Finch asked audience members if there were any proponents of

the application. None replied.

Hearing Master Finch asked audience members if there were any opponents of the application.

Mr. Max Forgey 236 Southeast 45th Street Cape Coral Florida testified in opposition to the request. Mr. Forgey stated that he represents Mr. Charles Both Jr. He stated that the Comprehensive Plan amendment has not been approved therefore the request is inconsistent with the Plan. He added that his client would explain how his property will be impacted by the subject project. Mr. Forgey cited the case law regarding the adoption of a rezoning in the State of Florida and concluded that the subject modification is inconsistent.

Mr. Charles Bothe 2303 Highway 60 testified in opposition. He stated that his property is next door to the subject property. He added that he has lived there 40 years and had previously agreed to the RES-9 category and not RES-20. Mr. Bothe testified that he thought the property would be developed with offices or small businesses and not 600 apartments. He expressed concerns regarding the traffic on State Road 60 and said that improvements are not yet funded.

Ms. Elizabeth Belcher 406 South Miller Road testified in opposition. Ms. Belcher stated that she opposes the project due to the proposed density and building height. The homes in Valrico are primarily single-family and mobile homes. Ms. Belcher referred to a graphic to discuss the single-family homes in the area and the proposed increase in traffic from the project. She added that she is worried that the three and four story buildings will decrease adjacent property values. She requested that the road improvements be completed prior to the development of the property. She stated that she is opposed to the RES-20 density and that the support from neighboring businesses is due to the profits that they will receive.

Mr. Grady of the Development Services Department asked the Planning Commission staff person when is the public hearing date for the related Comprehensive Plan amendment. Ms. Massey replied that she did not know the date. Mr. Grady stated that the Major Modification is scheduled for the September 13th Board of County Commissioners meeting and the items are required to be heard concurrently. He added that a later date may be required.

Mr. Henry testified during the rebuttal period that the retail portion of the traffic calculation is comprised of new trips and passerby traffic. He added that there is a percentage of the traffic that is already on the road. He explained that his graphic shows the new trips. The passerby trips were subtracted out.

Hearing Master Finch asked Mr. Henry to clarify the commercial square footage used for the comparison. Mr. Henry replied that the total shopping center is 160,000 square feet. Hearing Master Finch asked Mr. Henry if it was accurate that the comparison was made to eliminate the 103,525 square feet and add the

proposed 256 multi-family dwelling units. Mr. Henry replied yes and stated that it was the Taco Bell plus the apartments.

Ms. Batsel continued the applicants rebuttal testimony by stating that she appreciated everyone participating in the process. She discussed the proposed site plan and stated that the traffic impacts are less with the proposed multi-family development. She stated that if the rezoning and Comprehensive Plan amendment are heard in the appropriate order, there is not a procedural issue. She detailed the burden of the applicant and the opposition regarding substantial competent evidence. The subject property is currently entitled and evidence has not been provided that it is better to keep the commercial rather than the proposed residential development.

Hearing Master Finch asked Ms. Batsel what is the maximum height under the current Planned Development. Ms. Batsel replied 35 feet and stated that it is important to put on the record that the existing townhomes directly to the south are three stories. Directly across the street from the site is an eight-story office building on State Road 60. The proposed buildings will be three-stories in height along the project boundaries and four stories in height internal to the development.

County staff and Ms. Batsel did not have additional comments.

Hearing Master Finch then concluded the hearing.

EVIDENCE SUBMITTED

*Ms. Timateo submitted a revised Development Services and Planning Commission staff reports into the record.
*Ms. Batsel submitted a copy of her PowerPoint presentation, letters and a petition of support, a copy of the Hillsborough County Vision map, analysis regarding quasi-judicial zoning hearings and the burden of proof regarding consistency with the Comprehensive Plan, an analysis regarding quasi-judicial hearings and citizen testimony and copies of the development team resumes into the record.

PREFACE

All matters that precede the Summary of Hearing section of this Decision are hereby incorporated into and shall constitute a part of the ensuing Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The subject site is 12.84 acres in size and is zoned Planned Development (03-0644). The property is designated Residential-9 (RES-9) by the Comprehensive Plan and located in the Urban Service Area.

2. The applicant has applied for a Comprehensive Plan amendment (CPA 21-26) to change the Future Land Use category to Residential-20 (RES-20). The Board of County Commissioners continued the plan amendment to track simultaneously with the rezoning application such that the applications are heard at the same meeting. The Comprehensive Plan amendment will be required to be decided upon first and then the rezoning application can be considered.

3. The Planned Development (PD) is approved for 89,000 square feet of Commercial General land uses, 5,000 square feet of residential support uses and 10,000 square feet of Business Professional Office land uses.

4. The Major Modification request proposes to eliminate the majority of the non-residential square footage (103,525 square feet) with only the existing 2,475 square foot Taco Bell remaining and develop 256 multi-family dwelling units.

5. No Planned Development variations or waivers are requested.

6. The Planning Commission staff stated that the request meets Objective 7 and 8 regarding development being consistent with the Future Land Use category. Staff stated the application is also consistent with Objective 16 regarding neighborhood protection as the residential is proposed closer to State Road 60. Staff continues to support the previously approved waiver of commercial locational criteria for the existing Taco Bell restaurant. Planning Commission staff testified that the modification is consistent with the Comprehensive Plan.

7. Letters and a petition in support were submitted into the record.

8. Testimony in opposition was provided at the Zoning Hearing Master hearing. Concerns focused on the fact that the Comprehensive Plan amendment had not been approved therefore the residential density was inconsistent with the existing Future Land Use category, the proposed residential density was not compatible with the surrounding area, the possible negative impact of the traffic generated by the project and the proposed height of the multi-family buildings.

   The Comprehensive Plan amendment will be required to be decided upon by the Board of County Commissioners first and then the rezoning application can be considered.

   The applicant's transportation engineer testified that the change in use from primarily Commercial General land uses to multi-family with a small amount of commercial results in a significant decrease in the amount of vehicular traffic from the site.

   The applicant's representative testified that the current zoning permits a height of 35 feet which is the same height as the proposed multi-family buildings located on the perimeter of the project as well as the existing townhomes south of the subject property. The proposed multi-family dwelling units located internal to the project will be 45 feet in height.

9. The proposed modification for the elimination of the majority of the Commercial General and Business Professional Office entitlements with only the existing Taco Bell remaining along with the development of 256 multi-family dwelling units results in a significant reduction in the amount of traffic that could be generated from the site. The modification is consistent with the Comprehensive Plan and Land Development Code.

FINDINGS OF COMPLIANCE/NON-COMPLIANCE WITH THE HILLSBOROUGH COUNTY COMPREHENSIVE PLAN

The Major Modification request is in compliance with and does further the intent of the Goals, Objectives and the Policies of the Future of Hillsborough Comprehensive Plan.

CONCLUSIONS OF LAW

Based on the Findings of Fact cited above, there is substantial competent evidence to demonstrate that the requested Major Modification to the Planned Development zoning is in conformance with the applicable requirements of the Land Development Code and with applicable zoning and established principles of zoning law.

SUMMARY

Planned Development 03-0644 is approved for 89,000 square feet of Commercial General land uses, 5,000 square feet of residential support uses and 10,000 square feet of Business Professional Office land uses. The property is designated RES-9 by the Comprehensive Plan.

The applicant has applied for a Comprehensive Plan amendment (CPA 21-26) to change the Future Land Use category to Residential-20 (RES-20). The Board of County Commissioners continued the plan amendment to track simultaneously with the rezoning application such that the applications are heard at the same meeting. The Comprehensive Plan amendment will be required to be decided upon first and then the rezoning application can be considered.

The Major Modification request proposes to eliminate the majority of the non-residential square footage (103,525 square feet) with only the existing 2,475 square foot Taco Bell remaining and develop 256 multi-family dwelling units.

The Planning Commission supports the modification and found it consistent with the Comprehensive Plan.

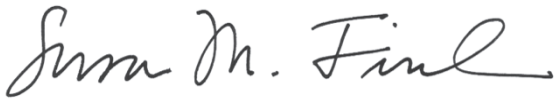
A letter and a petition in support were filed into the record at the Zoning Hearing Master hearing from a representative of the adjacent neighborhood. Testimony in opposition was provided at the hearing and concerns expressed included the fact that the Comprehensive Plan amendment had not been approved therefore the residential density was inconsistent with the existing Future Land Use category, the proposed residential density was not compatible with the surrounding area, the possible negative impact of the traffic generated by the project and the proposed height of the multi-family buildings.

The applicant's transportation engineer testified that the change in use from primarily Commercial General land uses to multi-family with a small amount of commercial results in a significant decrease in the amount of vehicular traffic from the site. The applicant's representative testified that the current zoning permits a height of 35 feet which is the same height as the proposed multi-family buildings located on the perimeter of the project as well as the existing townhomes south of the subject property. The proposed multi-family dwelling units located internal to the project will be 45 feet in height.

The proposed modification for the elimination of the majority of the Commercial General and Business Professional Office entitlements with only the existing Taco Bell remaining along with the development of 256 multi-family dwelling units results in a significant reduction in the amount of traffic that could be generated from the site. The modification is consistent with the Comprehensive Plan and Land Development Code.

RECOMMENDATION

Based on the foregoing, this recommendation is for **APPROVAL** of the Major Modification to Planned Development 03-0644 as indicated by the Findings of Fact and Conclusions of Law stated above subject to the zoning conditions prepared by the Development Services Department.



August 15, 2022

Susan M. Finch, AICP **Date**
Land Use Hearing Officer

Hillsborough County
City-County
Planning Commission

Unincorporated Hillsborough County Rezoning	
Hearing Date: July 25, 2022 **Report Prepared:** July 13, 2022	**Petition: MM 22-0862** ***2301 East State Road 60*** *Southeast quadrant of the of State Road 60 and Valrico Road intersection*
Summary Data:	
Comprehensive Plan Finding:	**CONSISTENT**
Adopted Future Land Use:	**Residential-9 (9 du/ga; 0.35 FAR)** **HC/CPA 21-26, pending adoption, changing the subject property to RES-20*
Service Area	**Urban Service Area**
Community Plan:	Not Applicable
Request:	Major Modification to Planned Development (PD) 03-0644 to develop 256 apartments and 2,475 sq. ft. of non-residential use
Parcel Size (Approx.):	12.8+ acres (557,568 +/- sq. ft.)
Street Functional Classification:	State Road 60 – **State Principal Arterial** Valrico Road– **County Collector**
Locational Criteria	Does not meet Commercial Locational Criteria; Waiver requested
Evacuation Zone	Not within an evacuation zone

Plan Hillsborough
planhillsborough.org
planner@plancom.org
813 – 272 – 5940
601 E Kennedy Blvd
18th floor
Tampa, FL, 33602

Context

- The subject property is 12.8± acres located at 2301 E. State Road 60, at the southeast quadrant at the intersection of State Road 60 and Valrico Road. The property is located within the Urban Service Area (USA) and is not within the limits of a Community Plan.

- The subject site has Plan Amendment HC/CPA 21-26 to change the Future Land Use designation from Residential-9 (RES-9) to Residential-20 (RES-20). Planning Commission recommended approval of the CPA request on January 10, 2022. The Board of County Commissioners instructed staff to process the Plan Amendment concurrently with a Rezoning application at the January 13, 2022 Public Hearing.

- The subject property may potentially have a Future Land Use designation of Residential-20 (RES-20)(pending adoption of CPA 21-26 by the BOCC). The RES-20 category is intended for high density residential development, as well as urban scale neighborhood commercial, office, multi-purpose projects, and mixed use developments. The RES-20 FLU category allows up to 20 dwelling units an acre and up to 0.75 floor area ratio. This would allow the property up to 256 dwelling units and 418,176 sq. ft. of non-residential uses.

- To the north, northwest, and southwest of the subject site is the Residential-6 (Res-6) Future Land Use (FLU) category which allows residential at 6 du/ac and commercial uses at .25 FAR. Office Commercial-20 (OC-20) FLU is found to the west of the subject site and typically allows 0.35 FAR for retail commercial and up to 20 du/ ac. South, southeast, northeast, and east is the Residential-4 (Res-4) FLU category, which allows 4 du/ac and 0.25 FAR.

- The subject site is vacant except for a single-family home and the northern portion of the property contains a vehicle rental service. To the west of the property are two drive-thru restaurants, a pharmacy, a gas station, and a full-service car wash. To the east, southwest and southeast is single-family and undeveloped land. North is a sit-down restaurant and a drive-thru restaurant, and a mobile home park community. Northwest is another gas station, pharmacy, and another drive-thru restaurant. Northeast is a Realtor's Office and the United States Postal Service Office.

- The applicant requests a Major Modification to Planned Development (PD) 03-0644 for the development of a 256 multi-family dwelling units in an apartment complex and 2,475 sq. ft. of non-residential use.

Compliance with Comprehensive Plan:

The following Goals, Objectives and Policies apply to this rezoning request and are used as a basis for a consistency finding.

FUTURE LAND USE ELEMENT

GROWTH MANAGEMENT STRATEGY

The Sustainable Growth Management Strategy serves as a vehicle to structure County spending and planning policies to optimize investment for services and infrastructure, protect the vulnerability of the natural environment, reduce the exposure and risk to natural hazards and provide a clear direction for achieving an efficient development pattern. This strategy is comprised

of three primary components, an environmental overlay, an urban service area and a defined rural area.

The rural area is that area planned to remain in long term agriculture, mining or large lot residential development. Within the rural area, some "rural communities" exist. These communities have historically served as a center of community activity within the rural environment. They include Thonotosassa, Keystone, Lutz, and others. The diversity and unique character of these communities will be reflected through the application of "community-based planning" techniques specifically designed to retain their rural character while providing a level of service appropriate to the community and its surrounding environment. To foster the rural environment and reinforce its character, rural design guidelines will be developed to distinguish between the more urban environment. Additionally rural areas should have differing levels of service for supporting facilities such as emergency services, parks and libraries from those levels of service adopted in urban areas.

This Plan also provides for the development of planned villages within rural areas. These villages are essentially self-supporting communities that plan for a balanced mix of land uses, including residential, commercial, employment and the supporting services such as schools, libraries, parks and emergency services. The intent of these villages is to maximize internal trip capture and avoid the creation of single dimensional communities that create urban sprawl.

Purpose

- *Control Urban Sprawl.*
- *Create a clear distinction between long range urban and rural community forms.*
- *Define the future urban form through the placement of an urban service area that establishes a geographic limit of urban growth.*
- *Define areas within the urban service area where growth can occur concurrent with infrastructure capacities and where public investment decisions can be made more rationally in a manner that does not perpetuate urban sprawl.*
- *Identify a distinct rural area characterized by the retention of land intensive agricultural uses, the preservation of natural environmental areas and ecosystems and the maintenance of a rural lifestyle without the expectation of future urbanization.*
- *Apply an overlay of ecosystems and greenways that preserve natural environmental systems and open space while simultaneously reducing exposure to natural hazards.*
- *Create compatible development patterns through the design and location of land uses.*

Urban Service Area (USA)

This boundary is established to designate on the Future Land Use Map the location for urban level development in the County. The boundary shall serve as a means to provide an efficient use of land and public and private investment, and to contain urban sprawl.

***Objective 1:** Hillsborough County shall pro-actively direct new growth into the urban service area with the goal that at least 80% of all population growth will occur within the USA during the*

planning horizon of this Plan. Within the Urban Service Area, Hillsborough County will not impede agriculture. Building permit activity and other similar measures will be used to evaluate this objective.

***Policy 1.2:** Minimum Density All new residential or mixed use land use categories within the USA shall have a density of 4 du/ga or greater unless environmental features or existing development patterns do not support those densities.*

Within the USA and in categories allowing 4 units per acre or greater, new development or redevelopment shall occur at a density of at least 75% of the allowable density of the land use category, unless the development meets the criteria of Policy 1.3.

***Policy 1.3:** Within the USA and within land use categories permitting 4 du/ga or greater, new rezoning approvals for residential development of less than 75% of the allowable density of the land use category will be permitted only in cases where one or more of the following criteria are found to be meet:*

- *Development at a density of 75% of the category or greater would not be compatible (as defined in Policy 1.4) and would adversely impact with the existing development pattern within a 1,000 foot radius of the proposed development;*
- *Infrastructure (Including but not limited to water, sewer, stormwater and transportation) is not planned or programmed to support development.*
- *Development would have an adverse impact on environmental features on the site or adjacent to the property.*
- *The site is located in the Coastal High Hazard Area.*
- *The rezoning is restricted to agricultural uses and would not permit the further subdivision for residential lots.*

***Policy 1.4:** Compatibility is defined as the characteristics of different uses or activities or design which allow them to be located near or adjacent to each other in harmony. Some elements affecting compatibility include the following: height, scale, mass and bulk of structures, pedestrian or vehicular traffic, circulation, access and parking impacts, landscaping, lighting, noise, odor and architecture. Compatibility does not mean "the same as." Rather, it refers to the sensitivity of development proposals in maintaining the character of existing development.*

Objective 2: Timing of Growth

To manage the timing of new development to coordinate with the provision of infrastructure, transportation, transit services, and other public services, such as schools, recreational facilities, etc., in a financially feasible manner.

***Policy 2.1:** The timeliness of development within the Urban Service Area shall be evaluated by the County. A project is considered premature if any of the following indicators are present:*

- *There is a lack of planned or programmed urban services such as multi-modal transportation systems, central water and sewer, schools, fire, and emergency services.*

- *There are unaddressed LOS deficiencies for adequate public facilities.*

Relationship to the Concept Plan

Objective 6: *The concept plan is the overall, conceptual basis for the long range, Comprehensive Plan, and all plan amendments must be consistent with, and further the intent of the concept plan, which advocates focused clusters of growth connected by corridors that efficiently move goods and people between each of the activity centers.*

Policy 6.1: *All plan amendments and rezoning staff reports shall contain a section that explains how said report(s) are consistent with, and further, the intent of the concept plan and the Future of Hillsborough Comprehensive Plan.*

Relationship to the Future Land Use Map

Policy 7.1: *The Future Land Use Map shall be used to make an initial determination regarding the permissible locations for various land uses and the maximum possible levels* ***of residential*** *densities and/or non-residential intensities, subject to any special density provisions, locational criteria and exceptions of the Future Land Use Element text.*

Provision of Public Facilities-Transportation

Objective 12: *All new development and redevelopment shall be serviced with transportation systems that meet or exceed the adopted levels of service established by Hillsborough County.*

Policy 12.1: *Coordinate land use and transportation plans to provide for locally adopted levels of service consistent with the Transportation and Capital Improvements Elements of the Comprehensive Plan.*

Policy 12.7: *Development proposals shall address effective multi-modal transportation systems including provisions for carpooling, vanpooling, mass transit, bicycling, and walking, where needed.*

Neighborhood/Community Development

Objective 16: *Neighborhood Protection The neighborhood is the functional unit of community development. There is a need to protect existing neighborhoods and communities and those that will emerge in the future. To preserve, protect, and enhance neighborhoods and communities, all new development must conform to the following policies:*

Policy 16.1: *Established and planned neighborhoods and communities shall be protected by restricting incompatible land uses through mechanisms such as:*

a) *locational criteria for the placement of non-residential uses as identified in this Plan,*

b) *limiting commercial development in residential land use categories to neighborhood scale;*

c) *requiring buffer areas and screening devices between unlike land uses;*

Policy 16.2: *Gradual transitions of intensities between different land uses shall be provided for as new development is proposed and approved, through the use of professional site planning, buffering and screening techniques and control of specific land uses.*

Policy 16.3: *Development and redevelopment shall be integrated with the adjacent land uses through:*

a) *the creation of like uses; or*

b) *creation of complementary uses; or c) mitigation of adverse impacts; and*

c) *transportation/pedestrian connections*

Policy 16.5: *Development of higher intensity non-residential land uses that are adjacent to established neighborhoods shall be restricted to collectors and arterials and to locations external to established and developing neighborhoods.*

Policy 16.7: *Residential neighborhoods shall be designed to include an efficient system of internal circulation and street stub-outs to connect adjacent neighborhoods together.*

Policy 16.8: *The overall density and lot sizes of new residential projects shall reflect the character of the surrounding area, recognizing the choice of lifestyles described in this Plan.*

Policy 16.9: *All land use categories allowing residential development may permit clustering of residences within the gross residential density limit for the land use category.*

Policy 16.10: *Any density increase shall be compatible with existing, proposed, or planned surrounding development. Compatibility is defined as the characteristics of different uses or activities or design which allow them to be located near or adjacent to each other in harmony. Some elements affecting compatibility include the following: height, scale, mass and bulk of structures, pedestrian or vehicular traffic, circulation, access and parking impacts, landscaping, lighting, noise, odor and architecture. Compatibility does not mean "the same as." Rather, it refers to the sensitivity of development proposals in maintaining the character of existing development.*

Policy 16.13*: Medium and high density residential and mixed-use development is encouraged to be located along transit emphasis corridors, potential transit corridors on the MPO 2050 Transit Concept Map and collector and arterial roadways within the Urban Service Area.*

Commercial-Locational Criteria

Objective 22: *To avoid strip commercial development, locational criteria for neighborhood serving commercial uses shall be implemented to scale new commercial development consistent with the character of the areas and to the availability of public facilities and the market.*

Policy 22.2: *The maximum amount of neighborhood-serving commercial uses permitted in an area shall be consistent with the locational criteria outlined in the table and diagram below. The table identifies the intersection nodes that may be 33 considered for non-residential uses. The locational criteria is based on the land use category of the property and the classification of the intersection of roadways as shown on the adopted Highway Cost Affordable Long Range Transportation Plan. The maximums stated in the table/diagram may not always be achieved, subject to FAR limitations and short range roadway improvements as well as other factors such as land use compatibility and environmental features of the site. In the review of development*

applications consideration shall also be given to the present and short-range configuration of the roadways involved. The five year transportation Capital Improvement Program, MPO Transportation Improvement Program or Long Range Transportation Needs Plan shall be used as a guide to phase the development to coincide with the ultimate roadway size as shown on the adopted Long Range Transportation Plan.

Policy 22.7: *Neighborhood commercial activities that serve the daily needs of residents in areas designated for residential development in the Future Land Use Element shall be considered provided that these activities are compatible with surrounding existing and planned residential development and are developed in accordance with applicable development regulations, including phasing to coincide with long range transportation improvements. The locational criteria outlined in Policy 22.2 are not the only factors to be considered for approval of a neighborhood commercial or office use in a proposed activity center. Considerations involving land use compatibility, adequacy and availability of public services, environmental impacts, adopted service levels of effected roadways and other policies of the Comprehensive Plan and zoning regulations would carry more weight than the locational criteria in the approval of the potential neighborhood commercial use in an activity center. The locational criteria would only designate locations that could be considered, and they in no way guarantee the approval of a particular neighborhood commercial or office use in a possible activity center.*

Community Design Component

5.0 ***NEIGHBORHOOD LEVEL DESIGN***

5.1 ***COMPATIBILITY***

GOAL 12: *Design neighborhoods which are related to the predominant character of the surroundings.*

OBJECTIVE 12-1: *New developments should recognize the existing community and be designed in a way that is compatible (as defined in FLUE policy 1.4) with the established character of the surrounding neighborhood.*

Staff Analysis of Goals, Objectives and Policies:

The subject property is 12.8 ± acres located at 2301 E. State Road 60, at the southeast quadrant at the intersection of State Road 60 and Valrico Road. The property is located within the Urban Service Area (USA) and is not found within the limits of a Community Plan. The subject site is in process for a Plan Amendment (HC/CPA 21-26) to change the Future Land Use designation from Residential-9 (RES-9) to Residential-20 (RES-20). The Board of County Commissioners instructed staff to process the Plan Amendment concurrently with the Rezoning application. The applicant requests a Major Modification to Planned Development (PD) 03-0644 for the development of a 256-apartment complex and 2,475 sq. ft. of non-residential use.

To the north, northwest, and southwest of the subject site is the Residential-6 (Res-6) Future Land Use (FLU) category. Office Commercial-20 (OC-20) FLU is found to the west of the subject site and east is the Residential-4 (Res-4) FLU category. The subject site is vacant except for a single-family home and the northern portion of the property contains a vehicle rental service.

Objective 1 of the Future Land Element (FLUE) directs 80% of all population growth to occur within the USA. The property is located within the USA and is serviced by public infrastructure. Policy 1.4 refers to compatibility with the surrounding neighborhood and uses. The policy defines compatibility as the characteristics of different uses or activities or design which allow them to be located near or adjacent to each other in harmony. Some elements affecting compatibility include the following: height, scale, mass and bulk of structures, pedestrian or vehicular traffic, circulation, access and parking impacts, landscaping, lighting, noise, odor, and architecture. Compatibility does not mean "the same as." Rather, it refers to the sensitivity of development proposals in maintaining the character of existing development.

The proposed rezoning is compatible with the surrounding uses. The general vicinity is mostly commercial intensive uses along SR 60 and further south the development pattern transitions to medium density single-family residential. The nearby commercial is mostly retail-oriented, with a developed floor area ratio (FAR) between 0.08 and 0.23. The residential development surrounding the site is mostly composed of quarter acre lots which would be equivalent to four dwelling units to the acre. To the west of the property are two drive-thru restaurants, a pharmacy, a gas station and a full-service car wash. To the east, southwest and southeast is single-family and undeveloped land. North is a sit-down restaurant and a drive-thru restaurant, and a mobile home park community. Northwest is another gas station, pharmacy, and another drive-thru restaurant. Northeast is a Realtor's Office and the United States Postal Service Office.

The rezoning is consistent with Objective 7, Policy 7.1, and Objective 8, which requires development to be consistent with the FLU category. The subject property may potentially have a Future Land Use designation of Residential-20 (RES-20) if the rezoning and CPA are approved by the BOCC. The RES-20 category is intended for high density residential development, as well as urban scale neighborhood commercial, office, multi-purpose projects, and mixed-use developments. The RES-20 FLU category allows up to 20 dwelling units an acre and up to 0.75 floor area ratio. This would allow the property up to 256 dwelling units and 418,176 sq. ft. of non-residential uses. To the north, northwest, and southwest of the subject site is the Residential-6 (Res-6) Future Land Use (FLU) category which allows residential at 6 du/ac and commercial uses at .25 FAR. Office Commercial-20 (OC-20) FLU is found to the west of the subject site and typically allows 0.35 FAR for retail commercial and up to 20 du/ ac. South, southeast, northeast, and east is the Residential-4 (Res-4) FLU category, which allows 4 du/ac and 0.25 FAR.

The rezoning is consistent with Objective 16, Policy 16.1, Policy 16.2, Policy 16.3, and Policy 16.5 which is the need to protect existing, neighborhoods and communities and those that will emerge in the future. The request does protect existing neighborhoods by concentrating the density closer to SR 60. This not only allows transition from the single-family to the south to the intensive commercial uses on SR 60 but it also allows for the use of public transportation significantly reducing vehicular trips generated form the development.

Objective 22 provides location criteria for neighborhood serving commercial uses. One of the criteria is for properties to be within the required distance of a qualifying intersection as shown on the 2040 Highway Cost Affordable Map. The nearest qualifying intersection is Valrico Road and State Road 60. The required distance is 300 linear feet from the intersection. The subject site located 1,000 linear feet away and does not meet commercial locational criteria. The applicant has submitted a commercial locational criteria waiver

pursuant to Policy 22.7. Staff has reviewed the waiver request and recommends approval of the waiver request. State Road 60 and Valrico Road has significantly changed since the adoption of the 2040 Highway Cost Affordable map. Today, these roads would be considered a principal arterial road and a county collector, qualifying the intersection for a 1,000 linear foot distance requirement, which the subject site would have met.

Per the Community Design Component Objective 1.2 Urban Pattern Characteristics, the proposed request is consistent with the Urban Development Pattern criteria for housing, transportation, and public Services. The rezoning will introduce multi-family housing which is readily seen within the area.

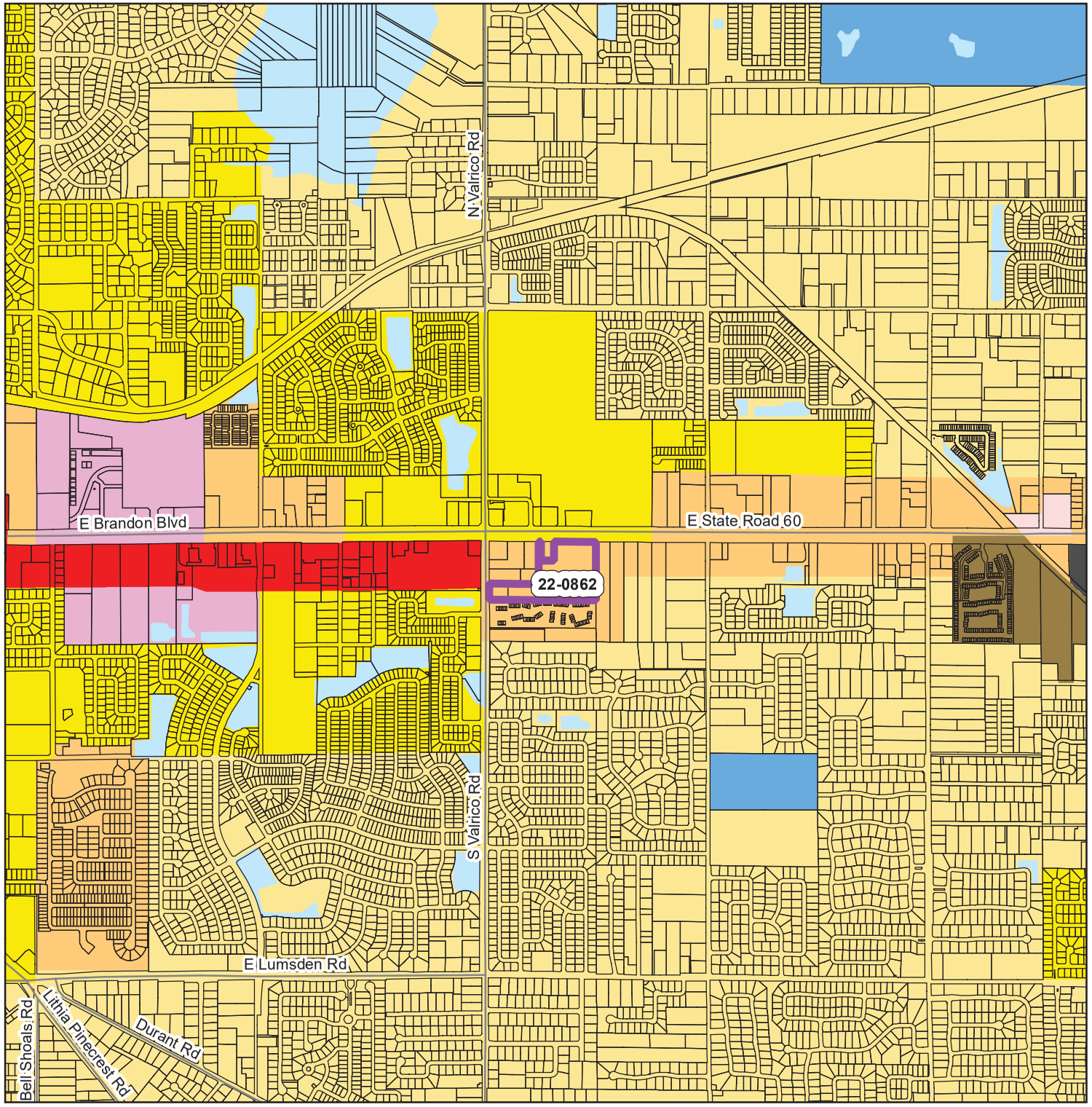
Overall, the proposed Major Modification would allow for development that is consistent with the Goals, Objectives and Policies of the Future Land Use Element of the Unincorporated Hillsborough County Comprehensive Plan.

Recommendation

Based upon the above considerations, the Planning Commission staff finds the proposed Major Modification **CONSISTENT** with the *Future of Hillsborough Comprehensive Plan for Unincorporated Hillsborough County, subject to the conditions proposed by the development Services Department.*

HILLSBOROUGH COUNTY FUTURE LAND USE

RZ MM 22-0862



Rezonings

- <all other values>

STATUS

- APPROVED
- CONTINUED
- DENIED
- WITHDRAWN
- PENDING

- Tampa Service
- Urban Service
- Shoreline
- County Boundary
- Jurisdiction Boundary
- Major Roads
- Parcels
- wam.NATURAL.LULC_Wet_Poly
- AGRICULTURAL/MINING-1/20 (.25 FAR)
- PEC PLANNED ENVIRONMENTAL COMMUNITY-1/2 (.25 FAR)
- AGRICULTURAL-1/10 (.25 FAR)
- AGRICULTURAL/RURAL-1/5 (.25 FAR)
- AGRICULTURAL ESTATE-1/2.5 (.25 FAR)
- RESIDENTIAL-1 (.25 FAR)
- RESIDENTIAL-2 (.25 FAR)
- RESIDENTIAL PLANNED-2 (.35 FAR)
- RESIDENTIAL-4 (.25 FAR)
- RESIDENTIAL-6 (.25 FAR)
- RESIDENTIAL-9 (.35 FAR)
- RESIDENTIAL-12 (.35 FAR)
- RESIDENTIAL-16 (.35 FAR)
- RESIDENTIAL-20 (.35 FAR)
- RESIDENTIAL-35 (1.0 FAR)
- NEIGHBORHOOD MIXED USE-4 (3) (.35 FAR)
- SUBURBAN MIXED USE-6 (.35 FAR)
- COMMUNITY MIXED USE-12 (.50 FAR)
- URBAN MIXED USE-20 (1.0 FAR)
- REGIONAL MIXED USE-35 (2.0 FAR)
- OC-20
- RESEARCH CORPORATE PARK (1.0 FAR)
- ENERGY INDUSTRIAL PARK (.50 FAR USES OTHER THAN RETAIL, .25 FAR RETAIL/COMMERCE)
- LIGHT INDUSTRIAL PLANNED (.50 FAR)
- LIGHT INDUSTRIAL (.50 FAR)
- HEAVY INDUSTRIAL (.50 FAR)
- PUBLIC/QUASI-PUBLIC
- NATURAL PRESERVATION
- WIMAUMA VILLAGE RESIDENTIAL-2 (.25 FAR)
- CITRUS PARK VILLAGE

N W E S

0 920 1,840 2,760 3,680 Feet

Map Printed from Rezoning System: 5/16/2022

Author: Beverly F. Daniels

File: G:\RezoningSystem\MapProjects\HC\Greg_hcRezoning - Copy.mxd

Hillsborough County City-County Planning Commission

GENERAL
SITE PLAN
FOR
CERTIFICATION

Hillsborough County Florida

DEVELOPMENT SERVICES
PO Box 1110, Tampa, FL 33601-1110
(813) 272-5600

HILLSBOROUGH COUNTY
DEVELOPMENT SERVICES DEPARTMENT

GENERAL SITE PLAN REVIEW/CERTIFICATION

Project Name: Bellair Development

Zoning File: RZ-PD (03-0644) **Modification:** MM (22-0862)

Atlas Page: None **Submitted:** 08/26/22

To Planner for Review: 08/26/22 **Date Due:** ASAP

Contact Person: S. Elise Batsel **Phone:** 813-223-4800

Right-Of-Way or Land Required for Dedication: **Yes** ☐ **No** ☑

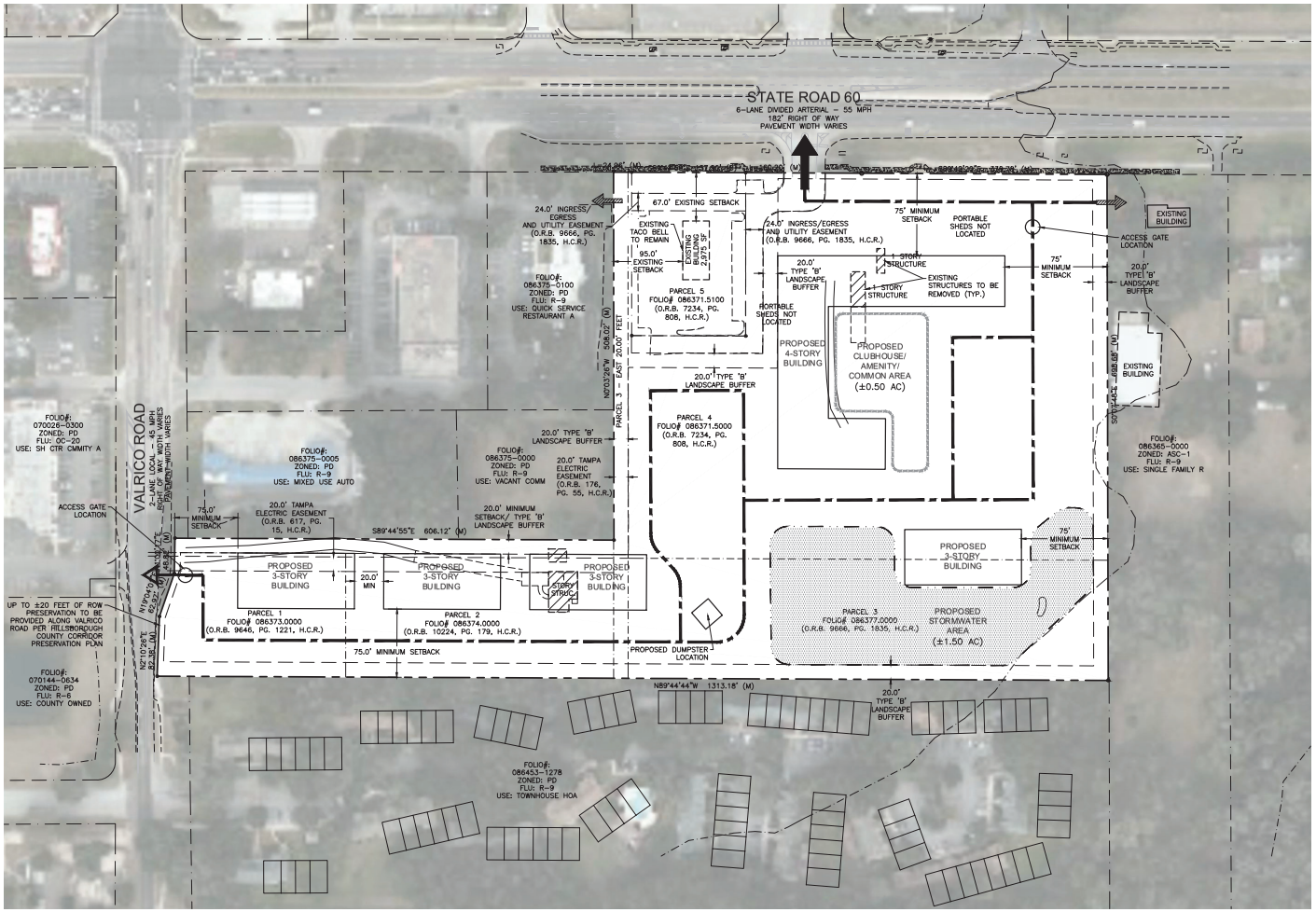
☑ The Development Services Department HAS NO OBJECTION to this General Site Plan.

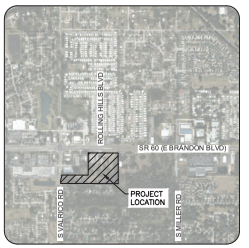
☐ The Development Services Department RECOMMENDS DISAPPROVAL of this General Site Plan for the following reasons:

Reviewed by: Sam Ball Date: 8-29-22

Date Agent/Owner notified of Disapproval: _____

Received August 26, 2022
Development Services





VICINITY MAP
N.T.S

LEGEND

- PD BOUNDARY
- PARCEL LOT LINES
- PROPOSED CONCEPTUAL INTERNAL ROADWAY
- COMMON OPEN SPACE / RECREATIONAL AREA
- PRIMARY CONNECTION ACCESS POINT
- VEHICULAR / PEDESTRIAN CROSS ACCESS
- SECONDARY FULL ACCESS POINT

SITE DATA

FOLIO NUMBER:	086371-5000; 086371-5100 086377-0000; 086374-0000; 086373-0000
EXISTING ZONING:	PD
CURRENT COMPREHENSIVE PLAN/FLU:	R-9
PROPOSED COMPREHENSIVE PLAN/FLU:	R-20
EXISTING LAND USE:	VACANT COMMERCIAL / RESTAURANT
COMMUNITY PLANNING AREA:	VALRICO COMMUNITY PLANNING AREA
OVERLAY DISTRICT:	SR 60 - BRANDON BLVD
SERVICE AREA:	URBAN SERVICE AREA
SCENIC ROADWAY CORRIDOR:	YES-VALRICO RD
EXISTING FLOOD ZONE:	ZONE 'X', 'A' PANEL #: 12057C 0385H, 0392H, 0405H, 0415H; COMMUNITY #: 120112; DATED: 08/28/08
EXISTING STRUCTURES ON-SITE:	6,794 SF
EXISTING STRUCTURES ON-SITE TO REMAIN:	2,975 SF
DEVELOPMENT TYPE:	MULTI-FAMILY RESIDENTIAL / COMMERCIAL
MAXIMUM DWELLING UNITS:	256
GROSS ALLOWED DENSITY:	19.9 DU/AC (256 UNITS / 12.839 AC)
MINIMUM LOT SIZE:	N/A
MINIMUM LOT WIDTH:	N/A
MAXIMUM BUILDING HEIGHT:	45 FT / 4 STORIES
MINIMUM BUILDING SETBACKS:	AS SHOWN ON PLAN
MINIMUM BUILDING SEPARATION:	20'
MAXIMUM TOTAL F.A.R.:	0.75
MAXIMUM TOTAL IMPERVIOUS SURFACE:	0.75
MAXIMUM TOTAL ALLOWABLE BUILDING COVERAGE:	40%
EXISTING NON-RESIDENTIAL AREA:	.005 (2,975 SF)
PROPOSED NON-RESIDENTIAL AREA:	EXISTING .005 (2,975 SF)
TOTAL SITE AREA:	594,751 SF = 13.654 AC (±)
PARKING CALCULATIONS:	
REQUIRED SPACES FOR FAST FOOD WITH DRIVE THRU:	30 SPACES
CURRENTLY PROVIDED FAST FOOD PARKING:	53 SPACES
REQUIRED SPACES FOR RESIDENTIAL MULTI-FAMILY:	442 SPACES
MULTI-FAMILY PARKING TO BE PROVIDED:	442 SPACES
TOTAL REQUIRED PARKING:	472 SPACES
TOTAL PARKING TO BE PROVIDED:	495 SPACES

LEGAL DESCRIPTION

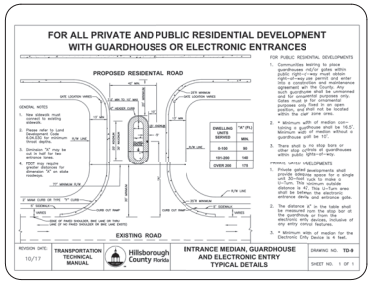
PARCEL 1 (FOLIO #086373.0000)
THE SOUTH FIVE FEET OF NW 1/4 OF THE NW 1/4 OF THE NW 1/4 LESS EAST 390 FEET THEREOF AND THE N 1/4 OF THE SW 1/4 OF THE NW 1/4 OF THE NW 1/4 LESS EAST 390 FEET THEREOF, SECTION 30, TOWNSHIP 29 SOUTH, RANGE 21 EAST OF HILLSBOROUGH COUNTY, FLORIDA

PARCEL 2 (FOLIO #086374.0000)
THE WEST 370 FEET OF THE EAST 390 FEET OF THE SOUTH 25 FEET OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4, AND THE WEST 370 FEET OF THE EAST 390 FEET OF THE NORTH 1/4 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4, ALL IN SECTION 30, TOWNSHIP 29 SOUTH, RANGE 21 EAST, HILLSBOROUGH COUNTY, FLORIDA. TOGETHER WITH THE NORTH 20 FEET OF THE SOUTH 25 FEET OF THE WEST 271.3 FEET OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 30, TOWNSHIP 29 SOUTH, RANGE 21 EAST, HILLSBOROUGH COUNTY, FLORIDA, "LESS RIGHT OF WAY FOR VALRICO ROAD."

PARCEL 3 (FOLIO #086377.0000)
THE NORTH 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4, THE EAST 20 FEET OF THE NORTH 1/4 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4, AND THAT PART OF THE EAST 20 FEET OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 LYING SOUTH OF THE SOUTH RIGHT-OF-WAY LINE OF STATE ROAD #60 (132 FEET FROM CENTERLINE), ALL IN SECTION 30, TOWNSHIP 29 SOUTH, RANGE 21 EAST, HILLSBOROUGH COUNTY, FLORIDA.

PARCEL 4 (FOLIO #086371.5000)
THAT PART OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 30, TOWNSHIP 29 SOUTH, RANGE 21 EAST, LYING SOUTH OF THE SOUTH RIGHT OF WAY LINE OF STATE ROAD 60, LESS THE LANDS CONVEYED IN OFFICIAL RECORDS BOOK 9666, PAGE 1860, OF THE PUBLIC RECORDS OF HILLSBOROUGH COUNTY, FLORIDA.

PARCEL 5 (FOLIO #086371.5100)
COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST 1/4 OF SAID SECTION 30; THENCE ALONG THE NORTH BOUNDARY OF SAID NORTHWEST 1 /4, SOUTH 89°43'54" EAST, 661.24 FEET TO THE NORTHEAST CORNER OF THE NORTHWEST 1/4 OF SAID NORTHWEST 1/4; THENCE DEPARTING SAID NORTH BOUNDARY, SOUTH 00°03'04" WEST, 130.00 FEET TO A POINT ON THE SOUTHERN RIGHT OF WAY LINE OF STATE ROAD 60, SAID POINT LYING ON A NON-TANGENT CIRCULAR CURVE, CONCAVE SOUTHERLY; THENCE ALONG SAID SOUTHERLY RIGHT OF WAY LINE, AND 5.04 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 171755.34 FEET, A CENTRAL ANGLE OF 00°00'06", A CHORD WHICH BEARS SOUTH 89°44'50" EAST, A CHORD DISTANCE OF 5.04 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE CONTINUE ALONG SAID SOUTHERLY RIGHT OF WAY LINE, AND 157.50 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 171755.34 FEET, A CENTRAL ANGLE OF 00°03'09", A CHORD WHICH BEARS SOUTH 89°43'13, A CHORD DISTANCE OF 157.50 FEET; THENCE DEPARTING SAID SOUTHERLY RIGHT OF WAY LINE, SOUTH 00°03'04" WEST, 225.50 FEET; THENCE NORTH 89°43'54" WEST, 157.50 FEET; THENCE NORTH 00°03'04" EAST, 225.50 FEET TO THE POINT OF BEGINNING.



NOTES

1. MAJOR MODIFICATION APPLIES TO THE ENTIRE PD BOUNDARY AREA AS INDICATED ON THE PLAN.
2. NO FLU FLEX IS REQUESTED.
3. MULTI-FAMILY PROJECT WILL BE DEVELOPED IN ONE PHASE.
4. ALL LAND USES AND THE GENERAL LOCATION OF STRUCTURES WITHIN 150 FT OF THE PROJECT BOUNDARY ARE SHOWN.
5. NO RECORDED HISTORICAL OR ARCHAEOLOGICAL SITES, ENVIRONMENTALLY SENSITIVE AREAS, COMMUNITY RECREATION OR PUBLIC FACILITIES EXIST ON-SITE.
6. THERE ARE NO EXISTING ROADS ON SITE.
7. NO PROPOSED PUBLIC PARK LANDS OR SCHOOL SITES ARE PROPOSED ON SITE.
8. PROJECT ROADS TO BE PRIVATE, WITH THE MULTI-FAMILY PARCELS GATED AS SHOWN ON THE PLAN.
9. CROSS ACCESS TO ADJACENT PROPERTIES IS PROPOSED AS SHOWN.
10. PROPOSED POINTS OF INGRESS AND EGRESS SHALL BE AS GENERALLY SHOWN.
11. SIDEWALKS, BIKEWAYS AND TYPES OF TRAFFIC CONTROL DEVICES ON ALL ROADWAYS ADJOINING, TRAVERSING, AND WITHIN 150 FEET OF THE SITE ARE SHOWN. THERE ARE NO TRANSIT STOPS WITHIN 150 FEET OF THE SITE.
12. THE PROJECT WILL BE SERVED BY HILLSBOROUGH COUNTY PUBLIC SEWER AND WATER.
13. BUFFERING AND SCREENING SHALL BE PROVIDED AS REQUIRED BY LDC SEC. 6.06.06, UNLESS OTHERWISE SHOWN.
14. NO BUILDING ELEVATIONS OR RENDERINGS OR SPECIFIC ARCHITECTURAL DESIGNS ARE PROPOSED.
15. A 20' WIDE BUFFER SHALL BE PROVIDED WHERE SHOWN ON THE PLANS. EXISTING VEGETATION TO REMAIN MAY BE SUBSTITUTED FOR THE REQUIRED PLANTINGS TO ACHIEVE THE DESIRED SCREENING, SUBJECT TO REVIEW AND APPROVAL BY NATURAL RESOURCES STAFF.

PROJECT CONTACT INFORMATION

OWNER:	APPLICANT:	SURVEYOR:
NORIEGA PROPERTIES INC; 202 E BRANDON BLVD BRANDON, FL 33511-5221	BELLEAIR DEVELOPMENT GROUP, LLC 6654 78TH AVE. NORTH PINELLAS PARK, FL 33781 (727) 536-8686	CARLSON ENVIRONMENTAL CONSULTANTS, PC 305 SOUTH MAIN ST MONROE, NC 28112 (704) 283-9765

REVISIONS

NO	DATE	DESCRIPTION
1		
2		
3		
4	05-25-2022	RESPONSE TO COUNTY COMMENTS

NATIVE engineering,plic
P.O. BOX 2995
LAND O LAKES, FL 34639
813-536-2539

PD MAJOR MODIFICATION - 2301 EAST S.R. 60
FOR
BELLEAIR DEVELOPMENT GROUP, LLC
6654 78TH AVE. NORTH
PINELLAS PARK, FL 33781 (727) 536-8686

GENERAL DEVELOPMENT PLAN

PD 22-0862

SHEET NUMBER
GDP
S-T-R
30-29-21

22-0862

G:\SHARED DRIVES\CLIENTS\BELLEAIR DEV GROUP\PROJECTS\1.22.001.01 - SR 60 & VALRICO\DRAWINGS\EXHIBITS\GDP--GENERAL DEVELOPMENT PLANDWG - 8/25/2022 4:54 PM

AGENCY COMMENTS

AGENCY REVIEW COMMENT SHEET

TO: Zoning Technician, Development Services Department	**DATE:** 07/17/2022
REVIEWER: Alex Steady, Senior Planner	**AGENCY/DEPT:** Transportation
PLANNING AREA/SECTOR: Valrico/Central	**PETITION NO:** PD 22-0862

	This agency has no comments.
	This agency has no objection.
X	This agency has no objection, subject to the listed or attached conditions.
	This agency objects for the reasons set forth below.

REPORT SUMMARY AND CONCLUSIONS

- The proposed rezoning would result in a decrease of trips potentially generated by development of the subject site by 1,609 average daily trips, an increase of 42 trips in the a.m. peak hour, and a decrease in 136 trips in the p.m. peak hour.
- If PD 22-0862 is approved, the County Engineer will approve a Section 6.04.02.B. Administrative Variance (dated July 12, 2022) from the Section 6.04.03.L Hillsborough County Land Development Code (LDC) requirement to improve the roadway to current County standards. The Administrative Variance was found approvable by the County Engineer (on July 15, 2022).
- As Valrico Road is included in the Hillsborough County Corridor Preservation Plan as a future 4-lane improvement, the developer shall designate up to 20 feet of right of way preservation along the project frontage on Valrico Road. Building setbacks shall be calculated from the future right-of-way line.
- Transportation Review Section staff has no objection to the proposed request, subject to the conditions of approval provided hereinbelow.

CONDITIONS OF APPROVAL

In addition to the previously approved zoning conditions, which shall carry forward, staff is requesting the following new and other conditions:

Revised Conditions

~~11.~~ Cross access shall be provided to the property to the west (via the Taco Bell property) and east as shown on the site plan. Cross access shall be constructed prior to the issuance to a Certificate of Occupancy for any building within Parcels ~~A through E~~ Parcel A.

[Staff is proposing changes to this condition to clarify cross access and to update parcels.]

~~12.~~ Internal vehicular and pedestrian cross access shall be provided among all portions of the project (Parcels A through ~~E~~B).

[Staff is proposing changes to this condition in order to clarify new parcel arrangement proposed for the project.]

~~20. Effective as of February 1, 1990, this development order/permit shall meet the concurrency requirements of Chapter 163, Part II, Florida Statutes. Approval of this development order/permit does not constitute a guarantee that there will be public facilities at the time of application for subsequent development orders or permits to allow issuance of such development orders or permits.~~

[Staff is proposing removal of this condition to eliminate outdated language concerning Concurrency.]

New Conditions:

- If PD 22-0862 is approved, the County Engineer will approve a Section 6.04.02.B. Administrative Variance (dated July 12, 2022) from the Section 6.04.03.L Hillsborough County Land Development Code (LDC) requirement to improve the roadway to current County standards. The Administrative Variance was found approvable by the County Engineer (on July 15, 2022).
- As Valrico Road is included in the Hillsborough County Corridor Preservation Plan as a future 4-lane improvement, the developer shall designate up to 20 feet of right of way preservation along the project frontage on Valrico Road. Building setbacks shall be calculated from the future right-of-way line.

Other Conditions

Prior to PD site plan certification, the applicant shall revise the PD site plan to:

- Prior to site plan certification, the applicant shall revise site plan to add a label along the project frontage on Valrico Road that states "UP TO +/-20 FEET OF ROW PRESERVATION TO BE PROVIDED ALONG VALRICO ROAD PER HILLSBOROUGH COUNTY CORRIDOR PRESERVATION PLAN "

PROJECT SUMMARY AND ANALYSIS

The applicant is requesting a modification to Planned Development (PD) 03-0644. PD 03-0644 consists of four parcels totaling 13.76 acres. The existing PD has approval is for 106,000 square feet of Commercial General (CG) uses. The applicant is proposing to modify the entitlements by adding 256 multifamily units and reducing total Commercial General Uses to a maximum of 2,475 sf. The site is located +/- 650 feet southeast of the intersection of Brandon Blvd and Valrico Road. The Future Land Use designation of the site is Residential – 9 (R-9). The subject property is currently included in an application for a Comprehensive Plan Amendment (HC CPA 21-26) and both the major modification, and the comprehensive plan amendment are scheduled to be heard concurrently at the Board of County Commissioners.

Trip Generation Analysis

Staff has prepared a comparison of the trips potentially generated under the previously approved zoning and the proposed planned development including the additional residential units, utilizing a generalized worst-case scenario. Data presented below is based on the Institute of Transportation Engineer's Trip Generation Manual, 10th Edition.

Approved Zoning:

Zoning, Lane Use/Size	24 Hour Two-Way Volume	Total Peak Hour Trips	
		AM	PM
PD 03-0644, 106,000 sf Shopping Center (ITE code 820)	4,002	100	404
Internal Capture Trips	N/A	0	0
Pass by Trips	N/A	0	138
Volume added to Adjacent Streets	**4,002**	**100**	**266**

Proposed Zoning:

Zoning, Lane Use/Size	24 Hour Two-Way Volume	Total Peak Hour Trips	
		AM	PM
PD, 256 Multi Family Dwelling Units (ITE code 221	1,216	108	108
PD, 2,500 sf Fast Food Restaurant with Drive Through (ITE code 934)	1,177	100	82
Unadjusted Volume	2,393	208	190
Internal Capture Trips	N/A	22	26
Pass by Trips	N/A	44	34
Volume added to Adjacent Streets	**2,393**	**142**	**130**

Trip Generation Difference:

Zoning, Lane Use/Size	24 Hour Two-Way Volume	Total Peak Hour Trips	
		AM	PM
Difference	**-1,609**	**+42**	**-136**

The proposed rezoning would result in a decrease of trips potentially generated by development of the subject site by 1,609 average daily trips, an increase of 42 trips in the a.m. peak hour, and a decrease in 136 trips in the p.m. peak hour.

TRANSPORTATION INFRASTRUCTURE SERVING THE SITE

The subject property has frontage on Valrico Road and Brandon Blvd. Valrico Rd. is a 2-lane, substandard Hillsborough County maintained, collector roadway, characterized by +/-10 ft. travel lanes. The existing right-of-way on Valrico Road ranges from +/-70 ft to +/- 95 feet. There are sidewalks and curb on both sides of Valrico Rd. in the vicinity of the proposed project. Brandon Blvd is a 6 lane, Florida Department of Transportation (FDOT) maintained roadway. Brandon Blvd Lies within +/- 190 feet of right of way. Brandon Blvd has sidewalks on both sides of the roadway within the vicinity of the project.

HILLSBOROUGH COUNTY CORRIDOR PRESERVATION PLAN

Valrico Rd. is included as a 4-lane roadway in the Hillsborough County Corridor Preservation Plan. Sufficient ROW must be preserved on Valrico for the future improvements. Using the best available data, right of way on Valrico varies from +/-70 to +/-90 feet. According to the Hillsborough County Transportation Manual, a typical section of a 4-lane collector roadway (TS-6) requires a total of 110 feet of ROW. The portion of the site on Valrico Road that has 70 feet of ROW must preserve up to 20 feet of ROW and the portion that has 95 must preserve up to 7.5 feet of ROW for the planned improvement.

REQUESTED VARIANCE

Valrico Road is a substandard road. The land development code indicates that a developer would need to improve the road up to county standards unless an Administrative Variance is submitted and found approvable. The applicant's Engineer of Record (EOR) submitted a Section 6.04.02.B. Administrative Variance Request (dated July 12, 2022) Section 6.04.03.L Hillsborough County Land Development Code (LDC) requirement to improve the roadway to current County standards. The Administrative Variance was found approvable by the County Engineer (on July 15, 2022). If the rezoning is approved, the

County Engineer will approve the above referenced Administrative Variance Request, upon which the developer will not be required to improve Valrico Road to county standard.

SITE ACCESS

The project is proposing to use an existing full access connection on Brandon Blvd and one full access connection on Valrico Rd. Vehicular and Pedestrian Cross access is provided to the west and east of the project as per requirements of section 6.04.03.Q of the Hillsborough County Land Development Code.

ROADWAY LEVEL OF SERVICE (LOS)

Level of Service (LOS) information is reported below.

FDOT Generalized Level of Service				
Roadway	**From**	**To**	**LOS Standard**	**Peak Hr Directional LOS**
VALRICO RD	DURANT RD	SR 60	D	C
SR 60/ BRANDON BLVD	VALRICO RD	DOVER RD	D	C

Source: 2020 Hillsborough County Level of Service (LOS) Report

3.0 TRANSPORTATION SUMMARY (FULL TRANSPORTATION REPORT IN SECTION 9 OF STAFF REPORT)

Adjoining Roadways (check if applicable)			
Road Name	**Classification**	**Current Conditions**	**Select Future Improvements**
Valrico Road	County Collector - Urban	2 Lanes ☒Substandard Road ☐Sufficient ROW Width	☒ Corridor Preservation Plan ☐ Site Access Improvements ☐ Substandard Road Improvements ☐ Other
Brandon Blvd	FDOT Principal Arterial - Urban	6 Lanes ☐Substandard Road ☐Sufficient ROW Width	☒ Corridor Preservation Plan ☐ Site Access Improvements ☐ Substandard Road Improvements ☐ Other

Project Trip Generation ☐Not applicable for this request			
	Average Annual Daily Trips	**A.M. Peak Hour Trips**	**P.M. Peak Hour Trips**
Existing	4,002	100	266
Proposed	2,393	142	130
Difference (+/-)	-1,609	+42	-136

*Trips reported are based on net new external trips unless otherwise noted.

Connectivity and Cross Access ☐Not applicable for this request				
Project Boundary	**Primary Access**	**Additional Connectivity/Access**	**Cross Access**	**Finding**
North	X	None	None	Meets LDC
South		None	None	Meets LDC
East		None	Vehicular & Pedestrian	Meets LDC
West		Vehicular & Pedestrian	Vehicular & Pedestrian	Meets LDC
Notes:				

Design Exception/Administrative Variance ☒Not applicable for this request		
Road Name/Nature of Request	**Type**	**Finding**
Valrico Road/ Substandard Road	Administrative Variance Requested	Approvable
	Choose an item.	Choose an item.
Notes:		

4.0 Additional Site Information & Agency Comments Summary			
Transportation	**Objections**	**Conditions Requested**	**Additional Information/Comments**
☒ Design Exception/Adm. Variance Requested ☐ Off-Site Improvements Provided	☐ Yes ☐N/A ☒ No	☒ Yes ☐ No	See Staff Report.

From: Williams, Michael
Sent: Friday, July 15, 2022 10:11 AM
To: Steven Henry
Cc: Tirado, Sheida; PW-CEIntake; Steady, Alex; Ball, Fred (Sam)
Subject: FW: MM 22-0862 - Administrative Variance Review
Attachments: 22-0862 AVReq 07-14-22.pdf

Importance: High

Steve,
I have found the attached Section 6.04.02.B. Administrative Variance (AV) for PD 22-0862 APPROVABLE.

Please note that it is you (or your client's) responsibility to follow-up with Transportation staff after the BOCC approves the PD zoning or PD zoning modification related to below request. This is to obtain a signed copy of the DE/AV.

If the BOCC denies the PD zoning or PD zoning modification request, staff will request that you withdraw the AV/DE. In such instance, notwithstanding the above finding of approvability, if you fail to withdraw the request, I will deny the AV/DE (since the finding was predicated on a specific development program and site configuration which was not approved).

Once I have signed the document, it is your responsibility to submit the signed AV/DE(s) together with your initial plat/site/construction plan submittal. If the project is already in preliminary review, then you must submit the signed document before the review will be allowed to progress. Staff will require resubmittal of all plat/site/construction plan submittals that do not include the appropriate signed AV/DE documentation.

Lastly, please note that it is critical to ensure you copy all related correspondence to PW-CEIntake@hillsboroughcounty.org

Mike

Michael J. Williams, P.E.
Director, Development Review
County Engineer
Development Services Department

P: (813) 307-1851
M: (813) 614-2190
E: Williamsm@HillsboroughCounty.org
W: HCFLGov.net

Hillsborough County
601 E. Kennedy Blvd., Tampa, FL 33602

Received July 14, 2022
Development Services

Engineers
Planners

LINCKS & ASSOCIATES, INC.

July 12, 2022

Mr. Mike Williams
Hillsborough County Government
601 East Kennedy Blvd., 22nd Floor
Tampa, FL 33602

Re: SR 60/Valrico Road
Folio 086373.0000 (119 S Valrico Road)
086374.0000 (117 S Valrico Road)
086377.0000 (2125 E. Hwy 60)
086371.5000 (2207 E. Hwy 60)
086371.5100 (2201 E. Hwy 60)
MM 22-0862
Lincks Project No. 21218

The purpose of this letter is to request a Section 6.04.02.B Administrative Variance to Section 6.04.03L Existing Facilities of the Hillsborough County Land Development Code, which requires projects taking access to a substandard road to improve the roadway to current County standards between the project driveway and the nearest standard road.

The subject property is located south of SR 60 and east of Valrico Road and is currently zoned PD for 106,000 square feet of retail. The developer proposes a Major Modification of the existing PD to allow up to 256 Multi-Family dwelling units. Tables 1, 2 and 3 provide the trip generation comparison of the approved land use versus the proposed land use. As shown, the proposed modification would result in a net decrease of project traffic.

The access to serve the proposed PD is to be as follows :

- One (1) directional median opening to SR 60 (left-in/right-in/right-out)
- One (1) full access to Valrico Road that is to align with the southern Publix access.

The subject property is within the Urban Service Area and as shown on the Hillsborough County Roadways Functional Classification Map, Valrico Road is a collector roadway.

The request is to waive the requirement to improve Valrico Road from SR 60 to the Project Access to current County roadway standards, which are found within the Hillsborough County Transportation Technical Manual.

The variance to the TS-4 standards are as follows:

5023 West Laurel Street
Tampa, FL 33607
813 289 0039 Telephone
8133 287 0674 Telefax
www.Lincks.com Website

1. Bike Lanes – TS-4 has 7 foot buffered bike lanes. The existing roadway does not have bike lanes.

(a) there is an unreasonable burden on the applicant,

It would be unreasonable to require the applicant to add the bike lanes for the following reasons:

1. There are right of way constraints along the subject segment of Valrico Road that would prohibit the ability to construct the bike lanes.
2. The proposed modification would result in a net decrease in project traffic.
3. There are existing sidewalks on both sides of Valrico Road.
4. Hillsborough County has conducted a PD & E study for improvements to the subject segment of Valrico Road.

(b) the variance would not be detrimental to the public health, safety and welfare,

There are sidewalks on both sides of Valrico Road from SR 60 to the Project Access. In addition, there are no bike lanes on Valrico Road south of the project access. Therefore, the Administrative Variance would not be detrimental to the public health, safety and welfare.

(c) without the variance, reasonable access cannot be provided. In the evaluation of the variance request, the issuing authority shall give valid consideration to the land use plans, policies, and local traffic circulation/operation of the site and adjacent areas.

Hillsborough County LDC requires access to Valrico Road to provide connectivity to the roadway network.

Received July 14, 2022
Development Services

Please do not hesitate to contact us if you have any questions or require any additional information.

Best Regards,

Steven J Henry
President
Lincks & Associates, Inc.
P.E. #51555

7/13/22

Based on the information provided by the applicant, this request is:

_____Disapproved

_____Approved

_____Approved with Conditions

If there are any further questions or you need clarification, please contact Sheida L. Tirado, PE.

Date _____

Sincerely,

Michael J. Williams

Hillsborough County Engineer

Received July 14, 2022
Development Services

TABLE 1

DAILY TRIP GENERATION (1)

Scenario	Land Use	ITE LUC	Size	Daily Trip Ends (1)	Passerby Trip Ends (2)	New Daily Trip Ends
Approved	Retail	821	106,000 SF	10,016	3,405	6,611
Proposed	Multi-Family	221	256 DU's	1,162	0	1,162
			Difference	<8,854>	<3,405>	<5,449>

(1) Source: ITE Trip Generation Manual, 11th Edition, 2021.

(2) Source: ITE Trip Generation Handbook, 3rd Edition.

- Passerby Rate - 34%

  10,016 x 0.34 = 3,405

TABLE 2

AM PEAK HOUR
TRIP GENERATION

Scenario	Land Use	ITE LUC	Size	AM Peak Hour Trip Ends (1)			Passerby Trip Ends (2)			New AM Peak Hour Trip Ends		
				In	Out	Total	In	Out	Total	In	Out	Total
Approved	Retail	821	106,000 SF	232	142	374	79	48	127	153	94	247
Proposed	Multi-Family	221	256 DU's	23	78	101	0	0	0	23	78	101
			Difference	<209>	<64>	<273>	<79>	<48>	<127>	<130>	<16>	<146>

(1) Source: ITE Trip Generation Manual, 11th Edition, 2021.

(2) Source: ITE Trip Generation Handbook, 3rd Edition.

- Passerby Rate - 34%

In - 232 x 0.34 = 79

Out - 142 x 0.34 = 48

TABLE 3

PM PEAK HOUR
TRIP GENERATION

Scenario	Land Use	ITE LUC	Size	PM Peak Hour Trip Ends (1)			Passerby Trip Ends (2)			New PM Peak Hour Trip Ends		
				In	Out	Total	In	Out	Total	In	Out	Total
Approved	Retail	821	106,000 SF	447	485	932	152	165	317	295	320	615
Proposed	Multi-Family	221	256 DU's	61	39	100	0	0	0	61	39	100
			Difference	<386>	<446>	<832>	<152>	<165>	<317>	<234>	<281>	<515>

(1) Source: ITE Trip Generation Manual, 11th Edition, 2021.

(2) Source: ITE Trip Generation Handbook, 3rd Edition.

- Passerby Rate - 34%

In - 447 x 0.34 = 152

Out - 485 x 0.34 = 165

Received July 14, 2022
Development Services

APPENDIX

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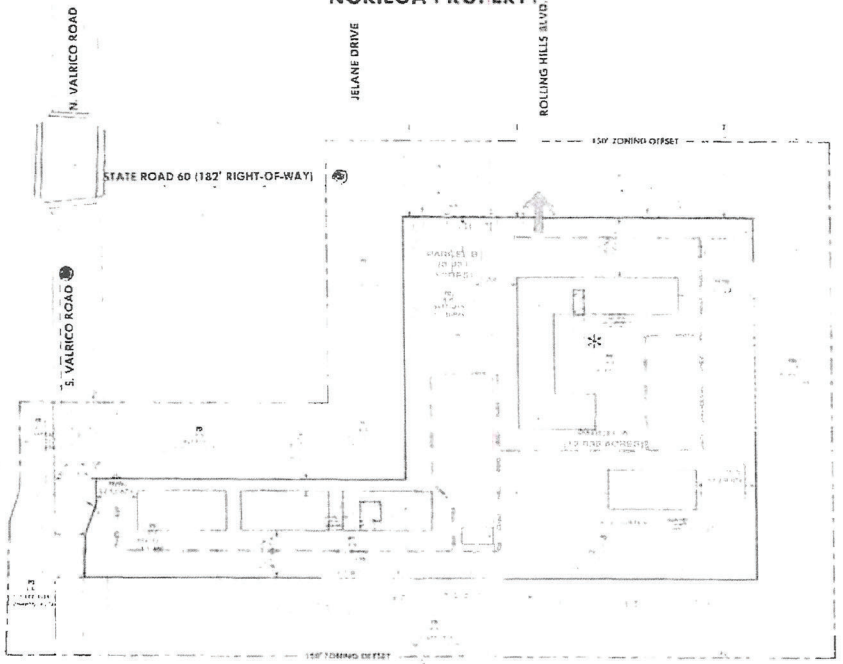
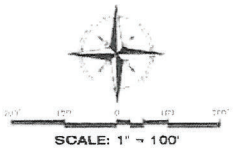
PROPOSED PD PLAN

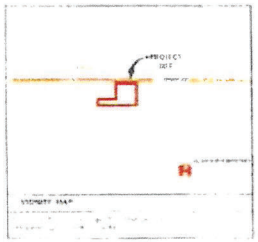
LINCKS & ASSOCIATES, INC.

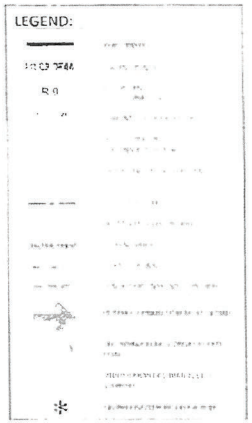
22-0862

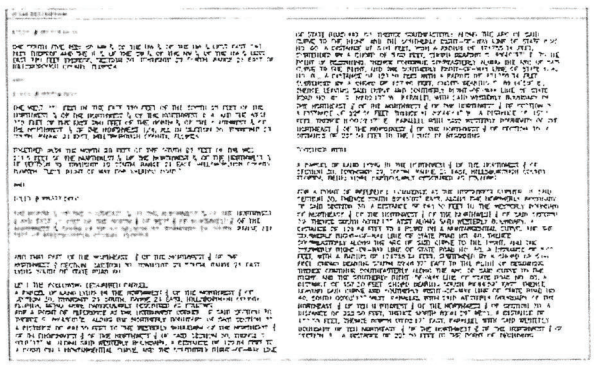
PD MAJOR MODIFICATION TO THE NORIEGA PROPERTY











PD 22- ----
GENERAL DEVELOPMENT PLAN

2301 E. State Road 60
Valrico, Florida 33594

BELLAIR DEVELOPMENT GROUP

SHEET 1 OF 7

22-0862

Received July 14, 2022
Development Services

PD MAJOR MODIFICATION TO THE NORIEGA PROPERTY

SCALE: 1" = 100'

STATE ROAD 60

VALRICO ROAD

LEGEND:

EXISTING CONDITIONS

PD 22- ----
GENERAL DEVELOPMENT PLAN

2301 E. State Road 60
Valrico, Florida 33594

PROFESSIONAL TEAM

BELLAIR DEVELOPMENT GROUP

SHEET 2 OF 2

22-0862

Received July 14, 2022
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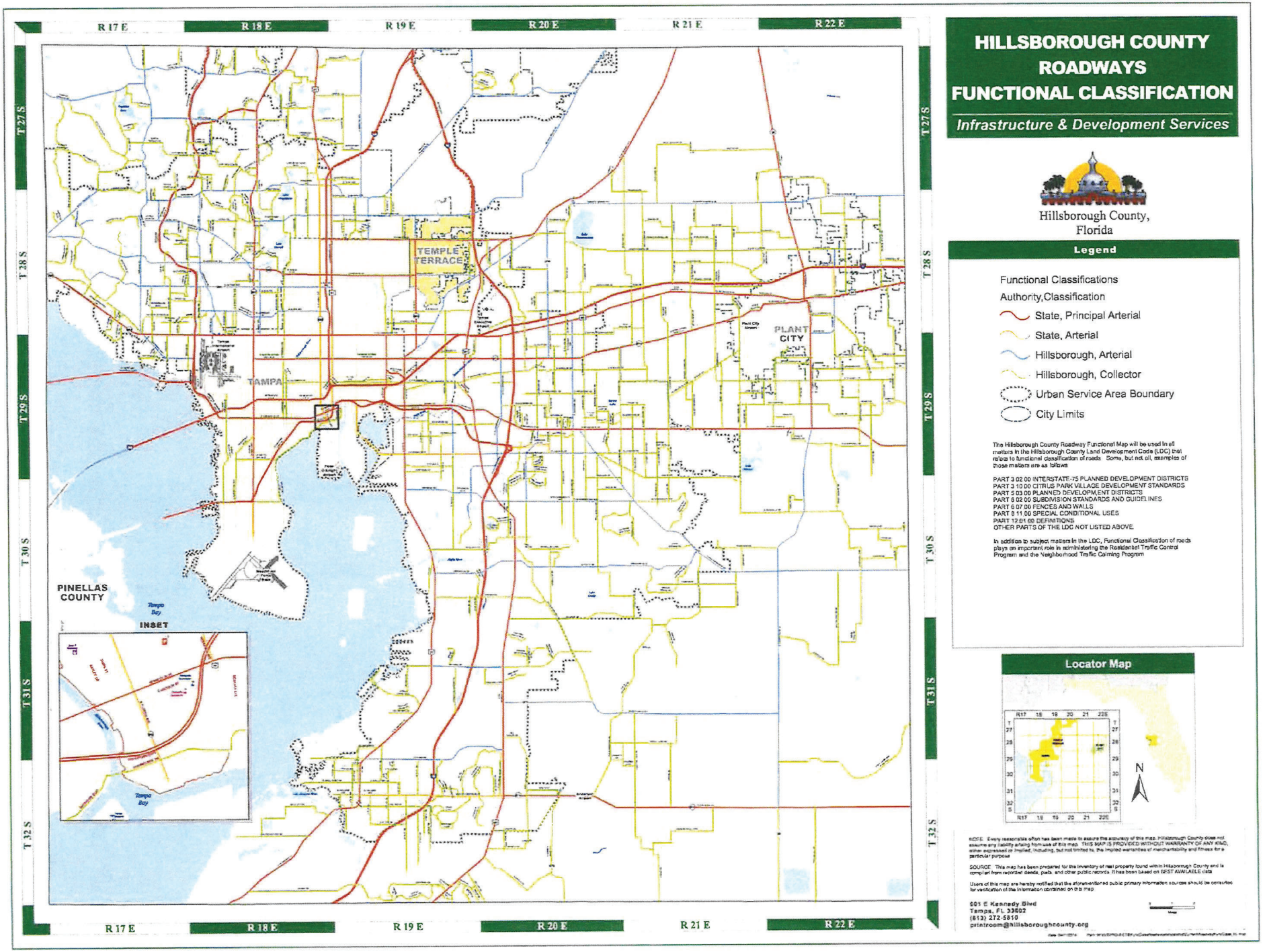
HILLSBOROUGH COUNTY ROADWAYS
FUNCTIONAL CLASSIFICATION MAP

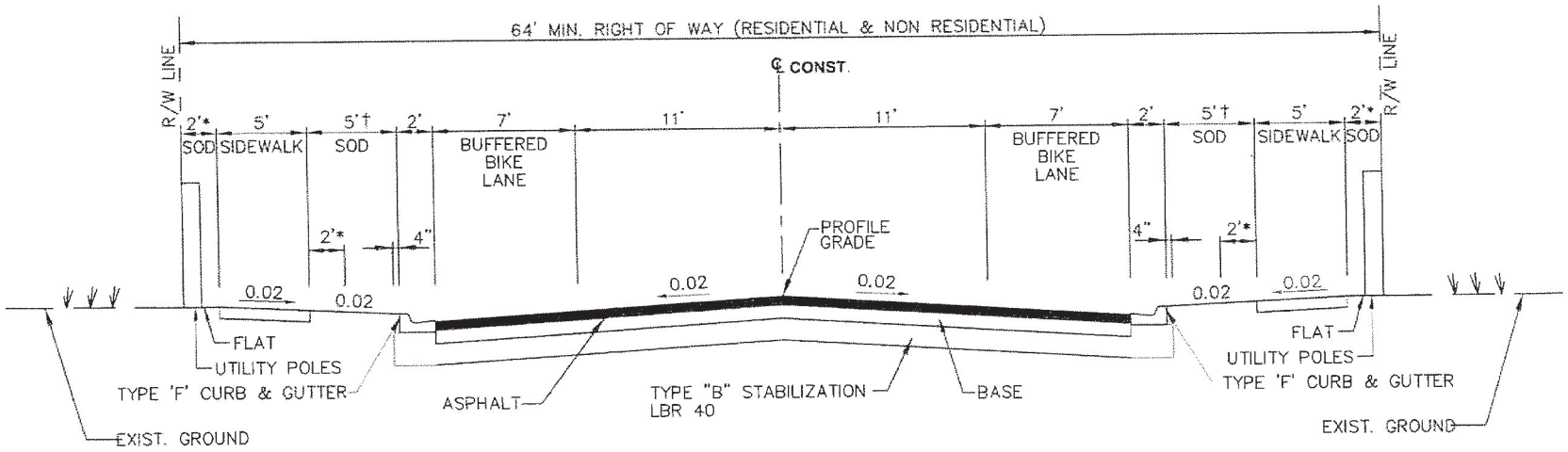
LINCKS & ASSOCIATES, INC.

22-0862



Received July 14, 2022
Development Services

TS-4



TYPICAL SECTION

N.T.S.

5,000 TO 10,000 AADT

MAX. ALLOWABLE DESIGN SPEED – 40 MPH

1. ALL DIMENSIONS SHOWN ARE MINIMUM.
2. SEE APPROPRIATE SECTIONS OF TECHNICAL MANUAL FOR DESIGN PARAMETERS.

* 3. PROVIDE 2' MINIMUM CLEARANCE FROM FENCES, WALLS, HEDGES, ABOVEGROUND UTILITIES OR IMPROVEMENTS, DROP OFFS, OR FROM THE TOPS OF BANKS WITH SLOPES STEEPER THAN 1 TO 4, THAT INTERFERE WITH THE SAFE, FUNCTIONAL USE OF THE SIDEWALK. INTERMITTENT ABOVEGROUND UTILITIES, OR MATURE TREES, 2' OR LESS IN DIAMETER MAY BE PLACED IN THIS 2' STRIP AS FAR FROM THE SIDEWALK AS POSSIBLE, IF NOT IN THE CLEAR ZONE.

† 4. SEE SIDEWALK PROTECTION OPTIONS, DRAWING NO. TD–16 SHEET 7 OF 7 FOR USE WHEN TREES ARE PLANTED IN THE PARKWAY AREA (BETWEEN THE BACK OF CURB AND SIDEWALK).

5. SOD SHALL BE PLACED IN TWO ROWS STAGGERED. (BOTH TEMPORARY AND PERMANENT)

REVISION DATE:				
10/17	**TRANSPORTATION TECHNICAL MANUAL**	Hillsborough County Florida	**URBAN COLLECTORS (2 LANE UNDIVIDED) TYPICAL SECTION**	DRAWING NO. **TS-4**
				SHEET NO. 1 OF 1

PD&E PREFERENCE ALTERNATIVE

REVISIONS			
DATE	DESCRIPTION	DATE	DESCRIPTION

LOGAN T. BARILE, P.E.
P.E. LICENSE NUMBER 71565
FALLER, DAVIS & ASSOCIATES, INC.
4200 W. CYPRESS ST., SUITE 500
TAMPA, FL 33607-4168

Hillsborough County

CAPITAL PROGRAMS DEPARTMENT
601 E. KENNEDY BLVD
TAMPA, FLORIDA 33602

SR 60 AT VALRICO ROAD

ROADWAY PLAN (01)
ALTERNATIVE 2C

CIP NO. C696555

SHT NO

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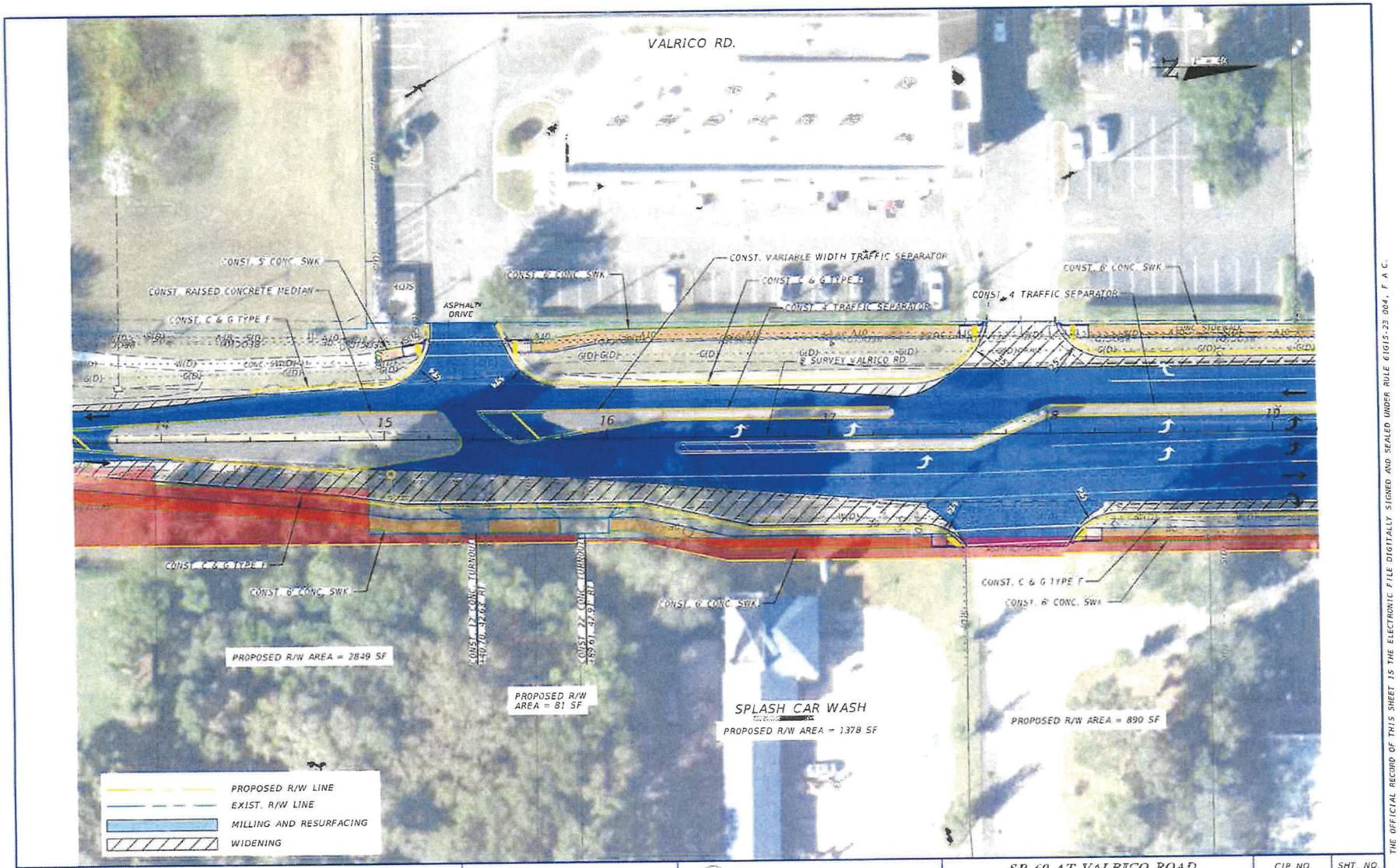

REVISIONS			
DATE	DESCRIPTION	DATE	DESCRIPTION

LOGAN T. BARILE, P.E.
P.E. LICENSE NUMBER 71565
FALLER, DAVIS & ASSOCIATES, INC.
4200 W. CYPRESS ST., SUITE 500
TAMPA, FL 33607-4168

Hillsborough County Florida

CAPITAL PROGRAMS DEPARTMENT
601 E KENNEDY BLVD
TAMPA, FLORIDA 33602

SR 60 AT VALRICO ROAD

ROADWAY PLAN (02)
ALTERNATIVE 2C

CIP NO. C696555

SHT. NO.

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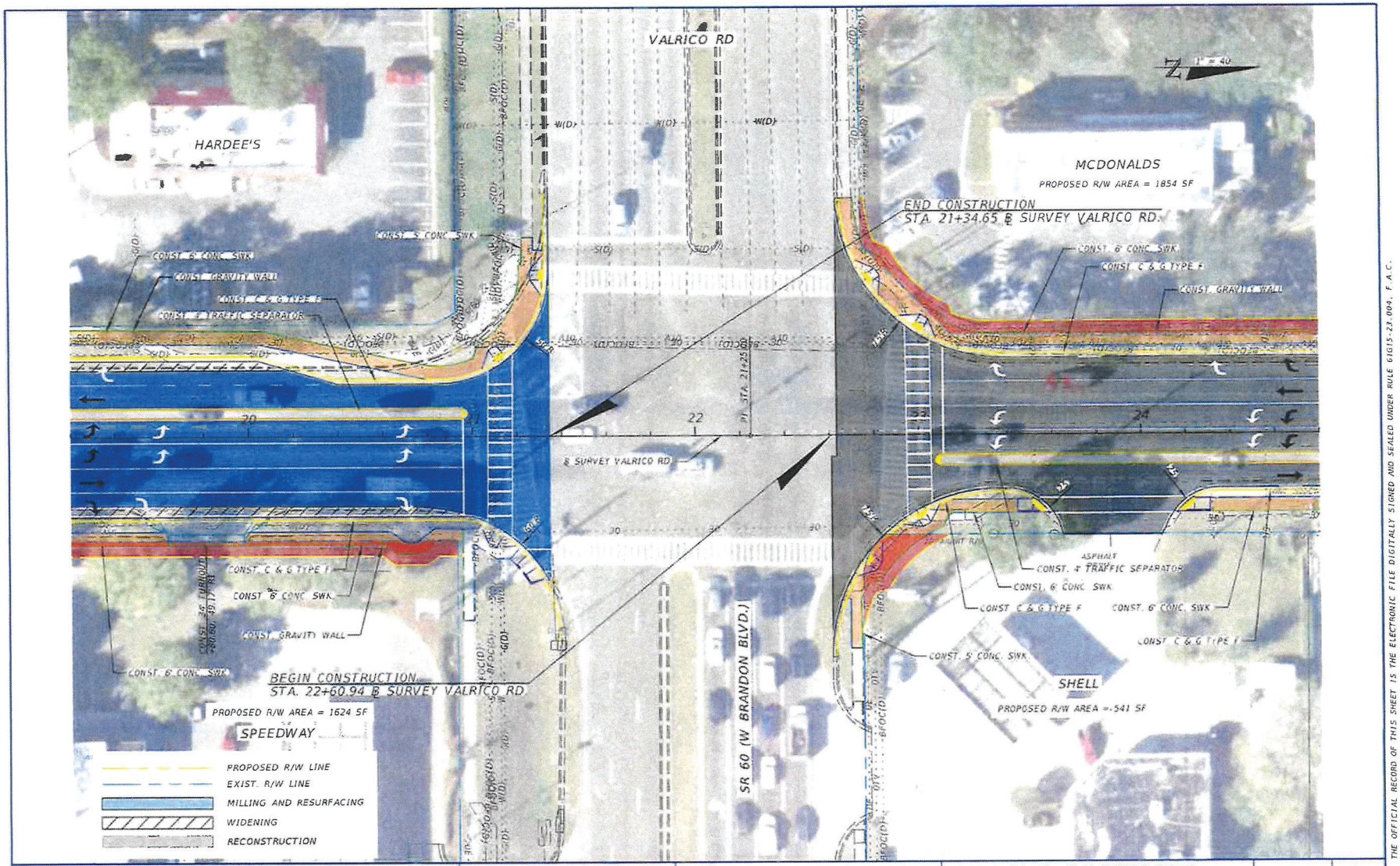

REVISIONS			
DATE	DESCRIPTION	DATE	DESCRIPTION

LOGAN T. BARILE, P.E.
P.E. LICENSE NUMBER 71565
FALLER, DAVIS & ASSOCIATES, INC.
4200 W. CYPRESS ST., SUITE 500
TAMPA, FL 33607-4168

Hillsborough County Florida

CAPITAL PROGRAMS DEPARTMENT
601 E. KENNEDY BLVD.
TAMPA, FLORIDA 33602

SR 60 AT VALRICO ROAD	CIP NO.	SHT. NO.
ROADWAY PLAN (03) ALTERNATIVE 2C	C696555	

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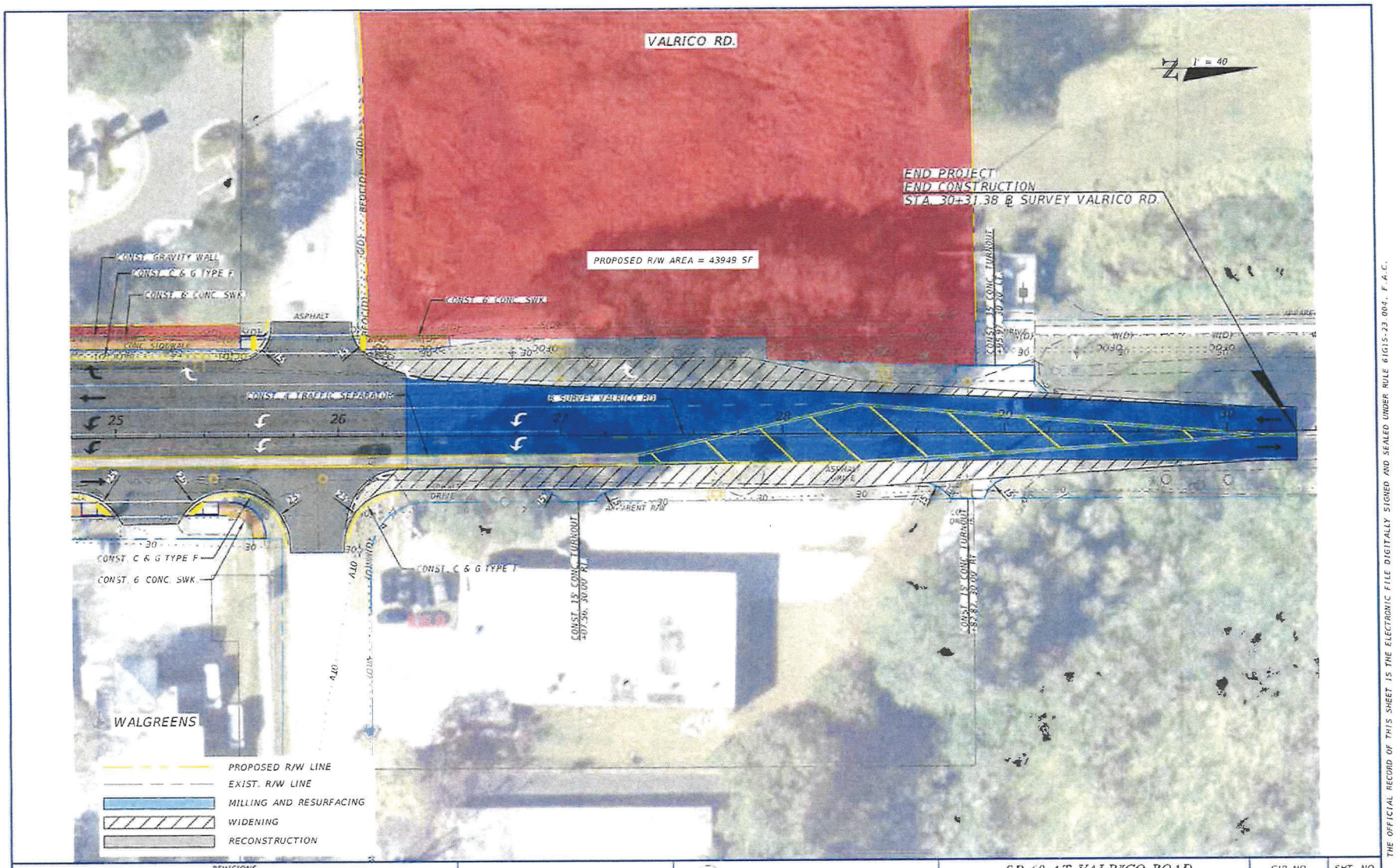

REVISIONS			
DATE	DESCRIPTION	DATE	DESCRIPTION

LOGAN T. BARILE, P.E.
P.E. LICENSE NUMBER 71565
FALLER, DAVIS & ASSOCIATES, INC.
4200 W. CYPRESS ST., SUITE 500
TAMPA, FL 33607-4168

Hillsborough County

CAPITAL PROGRAMS DEPARTMENT
601 E. KENNEDY BLVD
TAMPA, FLORIDA 33602

SR 60 AT VALRICO ROAD	CIP NO.	SHT NO.
ROADWAY PLAN (04) ALTERNATIVE 2C	C696555	

6/7/2021 8:13:13 PM N:\59501\design\55\dgn\Roadway\VALVARD03-2C.dgn

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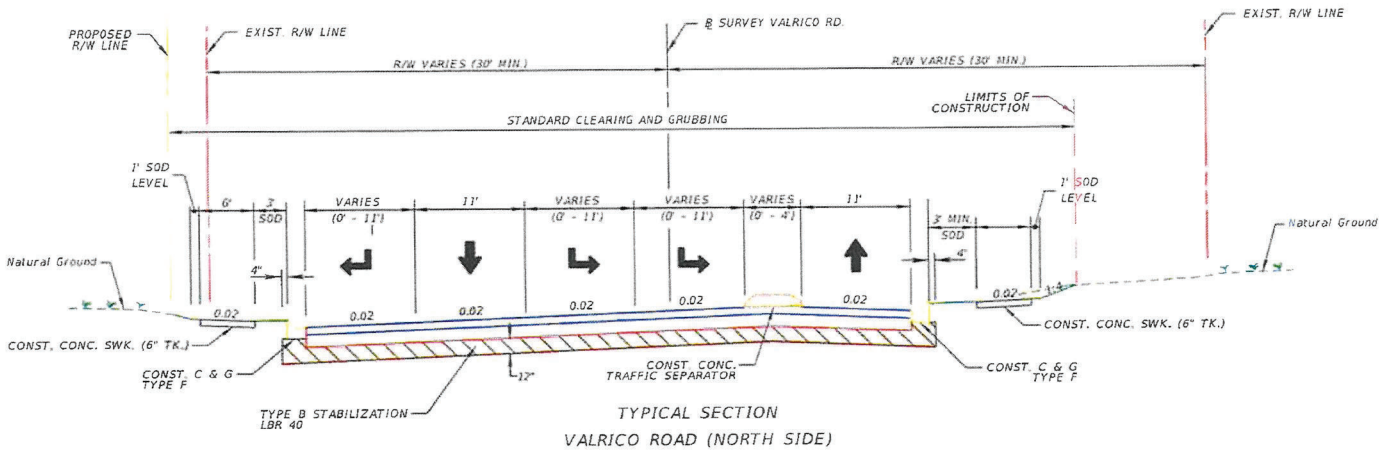


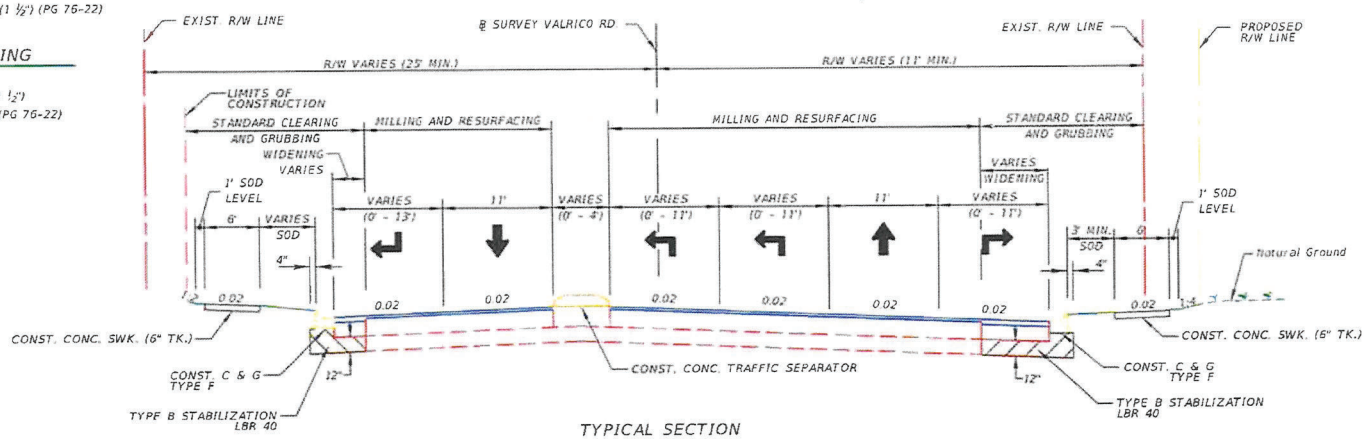
TYPICAL SECTION
VALRICO ROAD (NORTH SIDE)
STA. 22+60.94 TO STA. 30+31.38

MILLING AND RESURFACING

MILL EXISTING ASPHALT PAVEMENT (1 ½" AVG. DEPTH)
OVERBUILD WITH TYPE SP STRUCTURAL COURSE (TRAFFIC B) (½" MIN.)
RESURFACE WITH FRICTION COURSE FC-12.5 (TRAFFIC B) (1 ½") (PG 76-22)

RECONSTRUCTION AND WIDENING

OPTIONAL BASE GROUP 9 WITH
TYPE SP STRUCTURAL COURSE (TRAFFIC B) (1 ½")
AND FRICTION COURSE FC-12.5 (TRAFFIC B) (1 ½") (PG 76-22)



TYPICAL SECTION
VALRICO ROAD (SOUTH SIDE)
STA. 12+84.42 TO STA. 21+34.65

DESIGN SPEED = 45 MPH

REVISIONS			
DATE	DESCRIPTION	DATE	DESCRIPTION

LOGAN T. BARILE, P.E.
P.E. LICENSE NUMBER 71565
FALLER, DAVIS & ASSOCIATES, INC.
4200 W. CYPRESS ST., SUITE 500
TAMPA, FL 33607-4168

Hillsborough County Florida
CAPITAL PROGRAMS DEPARTMENT
601 E KENNEDY BLVD
TAMPA, FLORIDA 33602

SR 60 AT VALRICO ROAD	CIP NO.	SHT. NO.
TYPICAL SECTION ALTERNATIVE 2C	C696555	

Florida Department of Transportation

RON DESANTIS
GOVERNOR

2822 Leslie Road
Tampa, FL 33612-6456

JARED W. PERDUE, P.E.
SECRETARY

July 12th, 2022

Valrico Multi-Family

SR 60 (2301 E SR 60)
10 110 000
MP 11.735 Rt Rdwy
Class 3 @ 55 MPH
Folio # 086377-0000, 086371-5000, 086374, & 086373

THIS DOCUMENT IS NOT A PERMIT APPROVAL

THE COMMENTS AND FINDINGS FROM THIS PRE-APPLICATION MEETING MAY BE SUBJECT TO CHANGE AND MAY NOT BE USED AS A BASIS OF APPROVAL AFTER 1/12/2023

Attendees:

Guests: Steve Henry, Alex Steady, James Ratliff, and Carlos Yepes

FDOT Staff: Todd Croft, Mecale' Roth, Tom Allen, Dan Santos, Lindsey Mineer, and Antonius Lebrun

Proposed Conditions:

This development is proposing to share existing access to SR 60, a class 3 roadway with a posted speed limit of 55 MPH. Florida Administrative Code, Rule Chapter 14-97, requires 660' driveway spacing, 1320' directional, 2640' full median opening spacing, and 2640' signal spacing requirements.

FDOT Recommendations:

1. This project is in the process of rezoning from commercial to residential, which will result in decreased trips.
2. Also proposing to keep shared access to SR 60 as well as have access to Valrico Rd.

3. SR 60 is currently undergoing resurfacing under project number 440251. Coordinate activity or planning with FDOT construction project manager as needed.
    a. Kouser Manzer (Kouser.Manzer@dot.state.fl.us) 813-612-3200
    b. Completion date estimated to be early 2023.
4. PD&E for widening is project number 430055-1, project manager is unknown.
5. Another widening project.435750-1 from Valrico to Dover Rd. letting 2-6-2028.
    a. Project manager Manny Flores (Manuel.Flores@dot.state.fl.us) 813-975-4248
6. One of the later projects will be converting the area to curb and gutter, but this project will not need to do anything. Area is to remain as is for now, no curb and gutter.
7. Lengthen the westbound left turn lane into site to the appropriate length
8. Property does not control the Burger King or Taco Bell properties or full driveway so cross access to the west will not be able to be added by the applicant.
9. Cross access to the east will need to be provided.
10. Add an eastbound left turn lane (for U-Turns) at the full median opening to the east on SR 60. 12 U-turns is the limit before requiring a turn lane.
11. Verify control radii for proposed directional median opening in front of property into the driveway and into Rolling Hills.
    a. Driveway may need to be shifted (east) to avoid negative offset.
    b. Remove dual inbound lanes on driveway.
12. Driveway geometry needs to have 35ft radii (labeled on plans) and wrap shoulders all the way around and tie into the ROW.
13. A sidewalk connection to the state road is required.
14. A traffic study and auto turn template for largest anticipated vehicle will need to be submitted with application.
15. Provide existing and proposed drainage maps.
16. If any runoff drains to the ROW or there is an existing structure or system either active or inactive, then a drainage permit will be required, and you will need to show that the proposed runoff does not exceed the existing runoff volume.
17. If applying for an exemption, complete the attached questionnaire and submit it with the drainage application.

Florida Department of Transportation

RON DESANTIS
GOVERNOR

2822 Leslie Road
Tampa, FL 33612-6456

JARED W. PERDUE, P.E.
SECRETARY

Summary: After reviewing and discussing the information presented in this meeting, the Department has determined we are

☒ in favor (considering the conditions stated above)
☐ not in favor
☐ willing to revisit a revised plan

If you do not agree with the pre application meeting findings or wish to appeal a permit denial, you may schedule a meeting with the AMRC. Contact Traffic Ops, David Ayala, at 813-975-6717.

The access, as proposed in this meeting, would be considered

☐ conforming
☒ non-conforming
☐ N/A (no access proposed)

in accordance with the rule chapters 1996/97 for connection spacing. The following state permits will need to be applied for on our One Stop Permitting website (osp.fdot.gov):

☐ access-category A or B
☒ access-category C, D, E, or F
☐ access safety upgrade
☒ drainage
or
☒ drainage exception
☒ construction agreement
☐ utility
☐ general Use
☐ other_____

Thank you for giving us the opportunity to review and discuss this project in advance of applying for a permit with us. Please feel free to contact me with any questions. We look forward to seeing the permit package submittal.

Florida Department of Transportation

RON DESANTIS
GOVERNOR

2822 Leslie Road
Tampa, FL 33612-6456

JARED W. PERDUE, P.E.
SECRETARY

Respectfully,

Mecale' Roth

Permit Coordinator II
Tampa Operations
Office - 813-612-3237
M-Th 7 AM- 5:30 PM

Additional Comments/Standard Information:

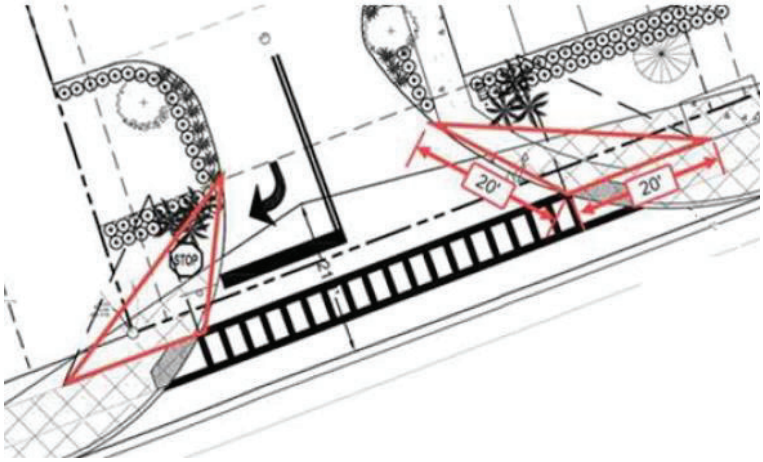
(These comments may or may not apply to this project, they are standard comments)

1. Document titles need to reflect what the document is before it is uploaded into OSP, and please do not upload unnecessary documents.
2. Documents need to be signed and sealed or notarized.
3. Include these notes with the application submittal.
4. Permits that fall within the limit of a FDOT project must contact project manager, provide a work schedule, and coordinate construction activities prior to permit approval.
5. Plans shall be per the current Standard Plans and FDM.
6. Any relocation of utilities, utility poles, signs, or other agency owned objects must be coordinated with the Department and the **existing and proposed location** must be clearly labeled on the plans. Contact the Permits Department for more details and contact information.
7. All the following project identification information must be on the Cover Sheet of the plans:
    a. all associated FDOT permit #'s
    b. state road # (& local road name) and road section ID #
    c. mile post # and left (Lt) or right (Rt) side of the roadway (when facing north or east)
    d. roadway classification # and posted speed limit (MPH)
8. All typical driveway details are to be placed properly:
    a. 24" thermoplastic white stop bar equal to the lane width placed 4' behind crosswalk or a minimum of 25' in front of it
    b. 36" stop sign mounted on a 3" round post, aligned with the stop bar
    c. if applicable, a "right turn only" sign mounted below the stop sign (FTP-55R-06 or FTP-52-06)

d. double yellow 6” lane separation lines
e. 6’ wide, high emphasis, ladder style crosswalk straddling the detectable warning mats
f. warning mats to be red in color unless specified otherwise
g. directional arrow(s) 25’ behind the stop bar
h. all markings on concrete are to be high contrast (white with black border)
i. all striping within and approaching FDOT ROW shall be thermoplastic

9. **Lighting of sidewalks and/or shared paths must be to current standards** (FDM section 231). Newly implemented FDOT Context classifications updated the required sidewalk widths (FDM section 222.2.1.1). Where sidewalk is being added and/or widened, the lighting will be analyzed to ensure sidewalks are properly lighted per FDOT FDM standards. Reference the following link for details: https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/roadway/fdm/2020/2020fdm231lighting.pdf?sfvrsn=2ad35fbf_2https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/roadway/fdm/2020/2020fdm231lighting.pdf?sfvrsn=2ad35fbf_2

10. Maintain 20’ x 20’ pedestrian sight triangles and draw the triangles on the plans to show there are no obstructions taller than 24” within the triangles. Also, no parking spaces can be in these triangles Measure 20’ up the sidewalk and 20’ up the driveway from the point at which the sidewalk meets the driveway. Here is an example of what these triangles look like and how they are positioned.



LINCKS & ASSOCIATES, INC.

TABLE 1

DAILY TRIP GENERATION (1)

Scenario	Land Use	ITE LUC	Size	Daily Trip Ends (1)	Passerby Trip Ends (2)	New Daily Trip Ends
Approved	Retail	821	106,000 SF	10,016	3,405	6,611
Proposed	Multi-Family	221	256 DU's	1,162	0	1,162
			Difference	<8,854>	<3,405>	<5,449>

(1) Source: ITE Trip Generation Manual, 11th Edition, 2021.

(2) Source: ITE Trip Generation Handbook, 3rd Edition.

- Passerby Rate - 34%

  10,016 x 0.34 = 3,405

TABLE 2

AM PEAK HOUR
TRIP GENERATION

Scenario	Land Use	ITE LUC	Size	AM Peak Hour Trip Ends (1)			Passerby Trip Ends (2)			New AM Peak Hour Trip Ends		
				In	Out	Total	In	Out	Total	In	Out	Total
Approved	Retail	821	106,000 SF	232	142	374	79	48	127	153	94	247
Proposed	Multi-Family	221	256 DU's	23	78	101	0	0	0	23	78	101
			Difference	<209>	<64>	<273>	<79>	<48>	<127>	<130>	<16>	<146>

(1) Source: ITE Trip Generation Manual, 11th Edition, 2021.

(2) Source: ITE Trip Generation Handbook, 3rd Edition.

- Passerby Rate - 34%

  In - 232 x 0.34 = 79

  Out - 142 x 0.34 = 48

TABLE 3

PM PEAK HOUR
TRIP GENERATION

Scenario	Land Use	ITE LUC	Size	PM Peak Hour Trip Ends (1)			Passerby Trip Ends (2)			New PM Peak Hour Trip Ends		
				In	Out	Total	In	Out	Total	In	Out	Total
Approved	Retail	821	106,000 SF	447	485	932	152	165	317	295	320	615
Proposed	Multi-Family	221	256 DU's	61	39	100	0	0	0	61	39	100
			Difference	<386>	<446>	<832>	<152>	<165>	<317>	<234>	<281>	<515>

(1) Source: ITE Trip Generation Manual, 11th Edition, 2021.

(2) Source: ITE Trip Generation Handbook, 3rd Edition.

- Passerby Rate - 34%

In - 447 x 0.34 = 152

Out - 485 x 0.34 = 165

Received July 01, 2022
Development Services

Hillsborough County Florida
Development Services

Additional / Revised Information Sheet

Office Use Only		
Application Number: MM 22-0862	**Received Date:**	**Received By:**

The following form is required when submitted changes for any application that was previously submitted. A cover letter must be submitted providing a summary of the changes and/or additional information provided. If there is a change in project size the cover letter must list any new folio number(s) added. Additionally, **the second page of this form must be included indicating the additional/revised documents being submitted with this form.**

Application Number: MM 22-0862 Applicant's Name: Belleair Development

Reviewing Planner's Name: Sam Ball Date: 07/01/2022

Application Type:

- ☐ Planned Development (PD)
- ☐ Minor Modification/Personal Appearance (PRS)
- ☐ Standard Rezoning (RZ)
- ☐ Variance (VAR)
- ☐ Development of Regional Impact (DRI)
- ☒ Major Modification (MM)
- ☐ Special Use (SU)
- ☐ Conditional Use (CU)
- ☐ Other _____

Current Hearing Date (if applicable): 07/25/2022

Important Project Size Change Information

Changes to project size may result in a new hearing date as all reviews will be subject to the established cut-off dates.

Will this revision add land to the project? ☐ Yes ☒ No
If "Yes" is checked on the above please ensure you include all items marked with * on the last page.

Will this revision remove land from the project? ☐ Yes ☒ No
If "Yes" is checked on the above please ensure you include all items marked with * on the last page.

Email this form along with all submittal items indicated on the next page in pdf form to:
ZoningIntake-DSD@hcflgov.net

Files must be in pdf format and minimum resolution of 300 dpi. Each item should be submitted as a separate file titled according to its contents. All items should be submitted in one email with application number (including prefix) included on the subject line. Maximum attachment(s) size is 15 MB.

For additional help and submittal questions, please call (813) 277-1633 or email ZoningIntake-DSD@hcflgov.net.

I certify that changes described above are the only changes that have been made to the submission. Any further changes will require an additional submission and certification.

Signature

07/01/2022
Date

Received July 01, 2022
Development Services

Hillsborough County Florida
Development Services

Identification of Sensitive/Protected Information and Acknowledgement of Public Records

Pursuant to Chapter 119 Florida Statutes, all information submitted to Development Services is considered public record and open to inspection by the public. Certain information may be considered sensitive or protected information which may be excluded from this provision. Sensitive/protected information may include, but is not limited to, documents such as medical records, income tax returns, death certificates, bank statements, and documents containing social security numbers.

While all efforts will be taken to ensure the security of protected information, certain specified information, such as addresses of exempt parcels, may need to be disclosed as part of the public hearing process for select applications. If your application requires a public hearing and contains sensitive/protected information, please contact Hillsborough County Development Services to determine what information will need to be disclosed as part of the public hearing process.

Additionally, parcels exempt under Florida Statutes §119.071(4) will need to contact Hillsborough County Development Services to obtain a release of exempt parcel information.

Are you seeking an exemption from public disclosure of selected information submitted with your application pursuant to Chapter 119 FS? ☐ Yes ☒ No

I hereby confirm that the material submitted with application MM 22-0862

☐ Includes sensitive and/or protected information.

Type of information included and location _____

_____

☒ Does not include sensitive and/or protected information.

Please note: Sensitive/protected information will not be accepted/requested unless it is required for the processing of the application.

If an exemption is being sought, the request will be reviewed to determine if the applicant can be processed with the data being held from public view. Also, by signing this form I acknowledge that any and all information in the submittal will become public information if not required by law to be protected.

Signature: _____
(Must be signed by applicant or authorized representative)

Intake Staff Signature: _____ Date: _____

Received July 01, 2022
Development Services

Hillsborough County Florida
Development Services

Additional / Revised Information Sheet

Please indicate below which revised/additional items are being submitted with this form.

	Included	Submittal Item
1	☒	**Cover Letter*+** If adding or removing land from the project site, the final list of folios must be included
2	☐	**Revised Application Form*+**
3	☐	**Copy of Current Deed*** Must be provided for any new folio(s) being added
4	☐	**Affidavit to Authorize Agent*** (If Applicable) Must be provided for any new folio(s) being added
5	☐	**Sunbiz Form*** (If Applicable) Must be provided for any new folio(s) being added
6	☐	**Property Information Sheet*+**
7	☐	**Legal Description of the Subject Site*+**
8	☐	**Close Proximity Property Owners List*+**
9	☒	**Site Plan*+** All changes on the site plan must be listed in detail in the Cover Letter.
10	☐	**Survey**
11	☐	**Wet Zone Survey**
12	☐	**General Development Plan**
13	☒	**Project Description/Written Statement**
14	☐	**Design Exception and Administrative Variance requests/approvals**
15	☐	**Variance Criteria Response**
16	☐	**Copy of Code Enforcement or Building Violation**
17	☐	**Transportation Analysis**
18	☐	**Sign-off form**
19	☒	**Other Documents** (please describe): Administrative Variance dated June 22, 2022 and Updated Access Management Analysis dated June 16, 2022.

*Revised documents required when adding land to the project site. Other revised documents may be requested by the planner reviewing the application.

+Required documents required when removing land from the project site. Other revised documents may be requested by the planner reviewing the application.

Received July 01, 2022
Development Services

STEARNS WEAVER MILLER
WEISSLER ALHADEFF & SITTERSON, P.A.

SunTrust Financial Centre
401 East Jackson Street, Suite 2200
Tampa, FL 33602
(813) 222-5050
stearnsweaver.com
kreali@stearnsweaver.com

July 1, 2022

VIA E-MAIL (zoningintake-DSD@hcflgov.net)
Hillsborough County Development Services Department
Attention: Zoning Intake
County Center
601 East Kennedy Boulevard, 19th Floor
Tampa, Florida 33602

Re: MM 22-0862
Belleair Development, LLC

Dear Sir or Madam:

Attached please find the following in connection with the above referenced Planned Development Application:

1. Additional/Revised Information Sheet, along with the Identification of Sensitive/Protected Information and list of additional items.

2. Updated Narrative to be consistent with changes listed below.

3. Updated Site Plan, with the following revisions:

- Revised buffers.
- Revised access point on Valrico Road from exit only to full access.
- Eliminated the internal cross access to the Taco Bell.

4. Administrative Variance for Valrico Road.

5. Revised Access Management Analysis for Valrico Road.

If you have any questions or need anything further, please do not hesitate to contact me.

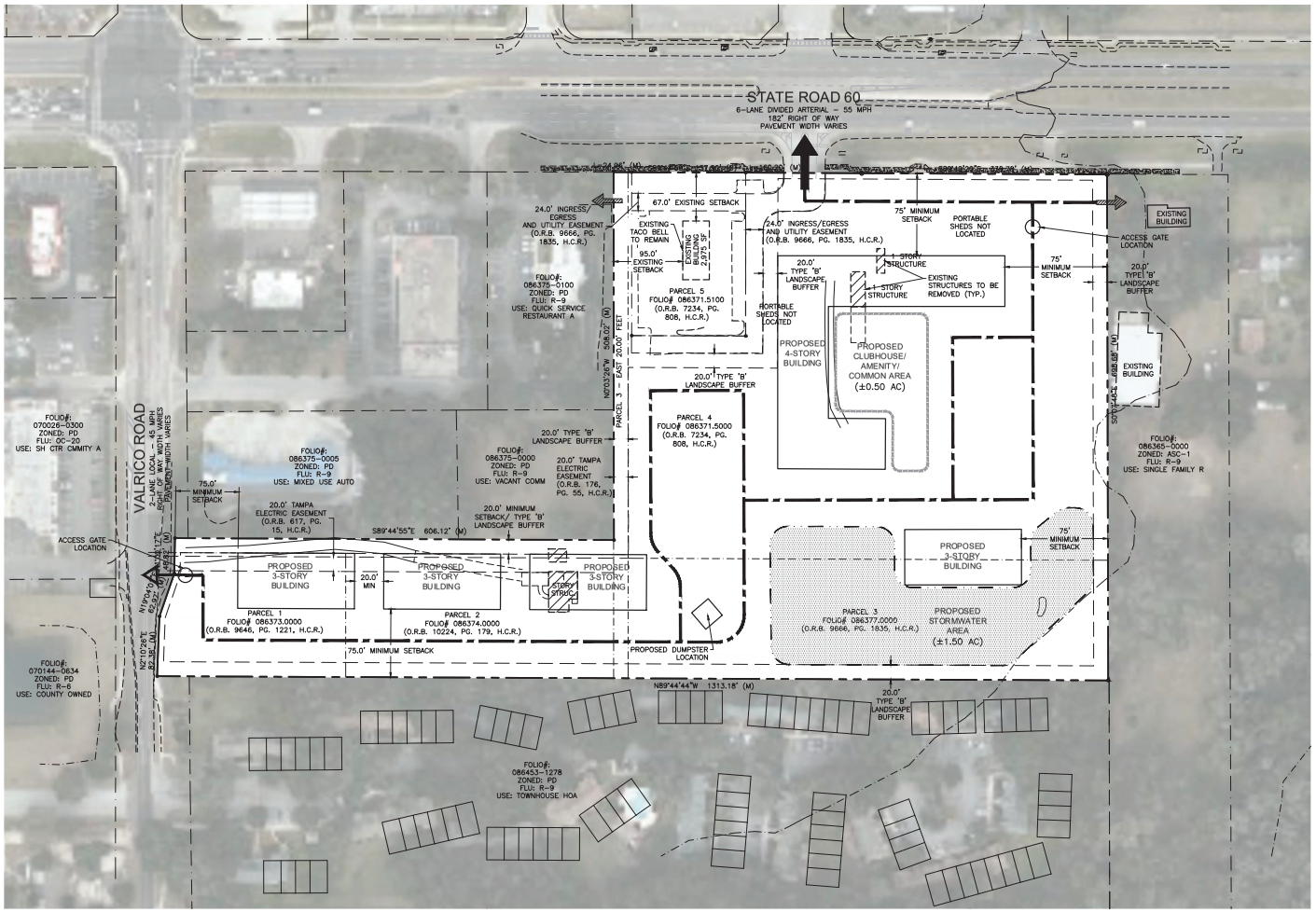
Sincerely,

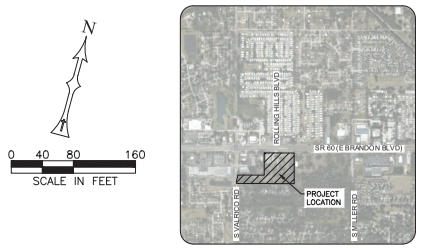
Nicole A. Neugebauer

Nicole A. Neugebauer

NAN/sjw
Enclosures

Received July 01, 2022
Development Services





VICINITY MAP
N.T.S

0 40 80 160
SCALE IN FEET

LEGEND

- PD BOUNDARY
- PARCEL LOT LINES
- PROPOSED CONCEPTUAL INTERNAL ROADWAY
- COMMON OPEN SPACE / RECREATIONAL AREA
- PRIMARY CONNECTION ACCESS POINT
- VEHICULAR / PEDESTRIAN CROSS ACCESS
- SECONDARY FULL ACCESS POINT

SITE DATA

FOLIO NUMBER:	086371-5000; 086371-5100 086377-0000; 086374-0000; 086373-0000
EXISTING ZONING:	PD
CURRENT COMPREHENSIVE PLAN/FLU:	R-9
PROPOSED COMPREHENSIVE PLAN/FLU:	R-20
EXISTING LAND USE:	VACANT COMMERCIAL / RESTAURANT
COMMUNITY PLANNING AREA:	VALRICO COMMUNITY PLANNING AREA
OVERLAY DISTRICT:	SR 60 - BRANDON BLVD
SERVICE AREA:	URBAN SERVICE AREA
SCENIC ROADWAY CORRIDOR:	YES-VALRICO RD
EXISTING FLOOD ZONE:	ZONE 'X', 'A' PANEL #: 12057C 0385H, 0392H, 0405H, 0415H; COMMUNITY #: 120112; DATED: 08/28/08
EXISTING STRUCTURES ON-SITE:	6,794 SF
EXISTING STRUCTURES ON-SITE TO REMAIN:	2,975 SF
DEVELOPMENT TYPE:	MULTI-FAMILY RESIDENTIAL / COMMERCIAL
MAXIMUM DWELLING UNITS:	256
GROSS ALLOWED DENSITY:	19.9 DU/AC (256 UNITS / 12.839 AC)
MINIMUM LOT SIZE:	N/A
MINIMUM LOT WIDTH:	N/A
MAXIMUM BUILDING HEIGHT:	45 FT / 4 STORIES
MINIMUM BUILDING SETBACKS:	AS SHOWN ON PLAN
MINIMUM BUILDING SEPARATION:	20'
MAXIMUM TOTAL F.A.R.:	0.75
MAXIMUM TOTAL IMPERVIOUS SURFACE:	0.75
MAXIMUM TOTAL ALLOWABLE BUILDING COVERAGE:	40%
EXISTING NON-RESIDENTIAL AREA:	.005 (2,975 SF)
PROPOSED NON-RESIDENTIAL AREA:	EXISTING .005 (2,975 SF)
TOTAL SITE AREA:	594,751 SF = 13.654 AC (±)
PARKING CALCULATIONS:	
REQUIRED SPACES FOR FAST FOOD WITH DRIVE THRU:	30 SPACES
CURRENTLY PROVIDED FAST FOOD PARKING:	53 SPACES
REQUIRED SPACES FOR RESIDENTIAL MULTI-FAMILY:	442 SPACES
MULTI-FAMILY PARKING TO BE PROVIDED:	442 SPACES
TOTAL REQUIRED PARKING:	472 SPACES
TOTAL PARKING TO BE PROVIDED:	495 SPACES

LEGAL DESCRIPTION

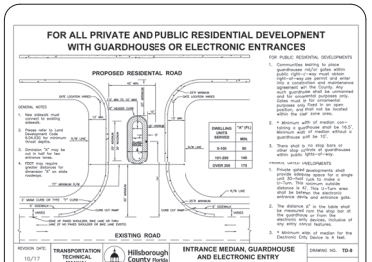
PARCEL 1 (FOLIO #086373.0000)
THE SOUTH FIVE FEET OF NW 1/4 OF THE NW 1/4 OF THE NW 1/4 LESS EAST 390 FEET THEREOF AND THE N 1/4 OF THE SW 1/4 OF THE NW 1/4 OF THE NW 1/4 LESS EAST 390 FEET THEREOF, SECTION 30, TOWNSHIP 29 SOUTH, RANGE 21 EAST OF HILLSBOROUGH COUNTY, FLORIDA

PARCEL 2 (FOLIO #086374.0000)
THE WEST 370 FEET OF THE EAST 390 FEET OF THE SOUTH 25 FEET OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4, AND THE WEST 370 FEET OF THE EAST 390 FEET OF THE NORTH 1/4 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4, ALL IN SECTION 30, TOWNSHIP 29 SOUTH, RANGE 21 EAST, HILLSBOROUGH COUNTY, FLORIDA. TOGETHER WITH THE NORTH 20 FEET OF THE SOUTH 25 FEET OF THE WEST 271.3 FEET OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 30, TOWNSHIP 29 SOUTH, RANGE 21 EAST, HILLSBOROUGH COUNTY, FLORIDA, "LESS RIGHT OF WAY FOR VALRICO ROAD."

PARCEL 3 (FOLIO #086377.0000)
THE NORTH 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4, THE EAST 20 FEET OF THE NORTH 1/4 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4, AND THAT PART OF THE EAST 20 FEET OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 LYING SOUTH OF THE SOUTH RIGHT-OF-WAY LINE OF STATE ROAD #60 (132 FEET FROM CENTERLINE), ALL IN SECTION 30, TOWNSHIP 29 SOUTH, RANGE 21 EAST, HILLSBOROUGH COUNTY, FLORIDA.

PARCEL 4 (FOLIO #086371.5000)
THAT PART OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 30, TOWNSHIP 29 SOUTH, RANGE 21 EAST, LYING SOUTH OF THE SOUTH RIGHT OF WAY LINE OF STATE ROAD 60, LESS THE LANDS CONVEYED IN OFFICIAL RECORDS BOOK 9666, PAGE 1860, OF THE PUBLIC RECORDS OF HILLSBOROUGH COUNTY, FLORIDA.

PARCEL 5 (FOLIO #086371.5100)
COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST 1/4 OF SAID SECTION 30; THENCE ALONG THE NORTH BOUNDARY OF SAID NORTHWEST 1 /4, SOUTH 89°43'54" EAST, 661.24 FEET TO THE NORTHEAST CORNER OF THE NORTHWEST 1/4 OF SAID NORTHWEST 1/4; THENCE DEPARTING SAID NORTH BOUNDARY, SOUTH 00°03'04" WEST, 130.00 FEET TO A POINT ON THE SOUTHERN RIGHT OF WAY LINE OF STATE ROAD 60, SAID POINT LYING ON A NON-TANGENT CIRCULAR CURVE, CONCAVE SOUTHERLY; THENCE ALONG SAID SOUTHERLY RIGHT OF WAY LINE, AND 5.04 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 171755.34 FEET, A CENTRAL ANGLE OF 00°00'06", A CHORD WHICH BEARS SOUTH 89°44'50" EAST, A CHORD DISTANCE OF 5.04 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE CONTINUE ALONG SAID SOUTHERLY RIGHT OF WAY LINE, AND 157.50 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 171755.34 FEET, A CENTRAL ANGLE OF 00°03'09", A CHORD WHICH BEARS SOUTH 89°43'13, A CHORD DISTANCE OF 157.50 FEET; THENCE DEPARTING SAID SOUTHERLY RIGHT OF WAY LINE, SOUTH 00°03'04" WEST, 225.50 FEET; THENCE NORTH 89°43'54" WEST, 157.50 FEET; THENCE NORTH 00°03'04" EAST, 225.50 FEET TO THE POINT OF BEGINNING.



NOTES

1. MAJOR MODIFICATION APPLIES TO THE ENTIRE PD BOUNDARY AREA AS INDICATED ON THE PLAN.
2. NO FLU FLEX IS REQUESTED.
3. MULTI-FAMILY PROJECT WILL BE DEVELOPED IN ONE PHASE.
4. ALL LAND USES AND THE GENERAL LOCATION OF STRUCTURES WITHIN 150 FT OF THE PROJECT BOUNDARY ARE SHOWN.
5. NO RECORDED HISTORICAL OR ARCHAEOLOGICAL SITES, ENVIRONMENTALLY SENSITIVE AREAS, COMMUNITY RECREATION OR PUBLIC FACILITIES EXIST ON-SITE.
6. THERE ARE NO EXISTING ROADS ON SITE.
7. NO PROPOSED PUBLIC PARK LANDS OR SCHOOL SITES ARE PROPOSED ON SITE.
8. PROJECT ROADS TO BE PRIVATE, WITH THE MULTI-FAMILY PARCELS GATED AS SHOWN ON THE PLAN.
9. CROSS ACCESS TO ADJACENT PROPERTIES IS PROPOSED AS SHOWN.
10. PROPOSED POINTS OF INGRESS AND EGRESS SHALL BE AS GENERALLY SHOWN.
11. SIDEWALKS, BIKEWAYS AND TYPES OF TRAFFIC CONTROL DEVICES ON ALL ROADWAYS ADJOINING, TRAVERSING, AND WITHIN 150 FEET OF THE SITE ARE SHOWN. THERE ARE NO TRANSIT STOPS WITHIN 150 FEET OF THE SITE.
12. THE PROJECT WILL BE SERVED BY HILLSBOROUGH COUNTY PUBLIC SEWER AND WATER.
13. BUFFERING AND SCREENING SHALL BE PROVIDED AS REQUIRED BY LDC SEC. 6.06.06, UNLESS OTHERWISE SHOWN.
14. NO BUILDING ELEVATIONS OR RENDERINGS OR SPECIFIC ARCHITECTURAL DESIGNS ARE PROPOSED.
15. A 20' WIDE BUFFER SHALL BE PROVIDED WHERE SHOWN ON THE PLANS. EXISTING VEGETATION TO REMAIN MAY BE SUBSTITUTED FOR THE REQUIRED PLANTINGS TO ACHIEVE THE DESIRED SCREENING, SUBJECT TO REVIEW AND APPROVAL BY NATURAL RESOURCES STAFF.

PROJECT CONTACT INFORMATION

OWNER:	APPLICANT:	SURVEYOR:
NORIEGA PROPERTIES INC; 202 E BRANDON BLVD BRANDON, FL 33511-5221	BELLEAIR DEVELOPMENT GROUP, LLC 6654 78TH AVE. NORTH PINELLAS PARK, FL 33781 (727) 536-8686	CARLSON ENVIRONMENTAL CONSULTANTS, PC 305 SOUTH MAIN ST MONROE, NC 28112 (704) 283-9765

REVISIONS

NO	DATE	DESCRIPTION
A	05-25-2022	RESPONSE TO COUNTY COMMENTS

NATIVE engineering,plic
P.O. BOX 2995
LAND O LAKES, FL 34639
813-536-2539

PD MAJOR MODIFICATION - 2301 EAST S.R. 60
FOR
BELLEAIR DEVELOPMENT GROUP, LLC
6654 78TH AVE. NORTH
PINELLAS PARK, FL 33781 (727) 536-8686

GENERAL DEVELOPMENT PLAN

PD 22-0862

SHEET NUMBER
GDP
S-T-R
30-29-21

G:\JM* DRIVE\COMPANY\CLIENTS\BELLEAIR DEV GROUP\PROJECTS\1.22.001.01 - SR 60 & VALRICO\DRAWINGS\EXHIBITS\GDP-GENERAL DEVELOPMENT PLAN.DWG - 6/21/2022 3:32 PM

AGENCY COMMENT SHEET

REZONING	
HEARING DATE: 7/25/2022	**COMMENT DATE:** 5/26/2022
PETITION NO.: 22-0862	**PROPERTY ADDRESS:** 117, 119 S Valrico Rd, Valrico, FL 33594; 2125, 2207 E 60 Hwy, Valrico, FL 33594
EPC REVIEWER: Melissa Yanez	
CONTACT INFORMATION: (813) 627-2600 X1360	**FOLIO #:** 0863770000, 0863740000, 0863730000 and 0863715000
EMAIL: yanezm@epchc.org	**STR:** 30-29S-21E

REQUESTED ZONING: : Major Modification to PD

FINDINGS	
WETLANDS PRESENT	NO
SITE INSPECTION DATE	NA – Desktop review, soil survey and EPC file research
WETLAND LINE VALIDITY	NA
WETLANDS VERIFICATION (AERIAL PHOTO, SOILS SURVEY, EPC FILES)	NA

INFORMATIONAL COMMENTS:

Wetlands Management Division staff of the Environmental Protection Commission of Hillsborough County (EPC) conducted an aerial review, soil survey and EPC file search of the above referenced site in order to determine the extent of any wetlands and other surface waters pursuant to Chapter 1-11, Rules of the EPC. The review revealed that no wetlands or other surface waters were apparent within the above referenced parcel.

Please be advised this wetland determination is informal and non-binding. A formal wetland delineation may be applied for by submitting a "WDR30 - Delineation Request Application". Once approved, the formal wetland delineation would be binding for five years.

My/mst

Hillsborough County PUBLIC SCHOOLS
Preparing Students for Life

Adequate Facilities Analysis: Rezoning

Date: May 24, 2022

Jurisdiction: Hillsborough County

Case Number: MM-22-0862

HCPS #: RZ-682

Address: 2301 E. State Road 60, Valrico

Parcel Folio Number(s): 086374.0000, 086373.0000, 086371.5000 and 086377.0000

Acreage: 12.84 +/- acres

Proposed Zoning: PD

Future Land Use: RES-9

Maximum Residential Units: 256 Units

Residential Type: Multi-family

School Data	Valrico Elementary	Mulrennan Middle	Durant High
FISH Capacity Total school capacity as reported to the Florida Inventory of School Houses (FISH)	*979*	*1445*	*2738*
2021-22 Enrollment K-12 enrollment on 2021-22 40th day of school. This count is used to evaluate school concurrency per Interlocal Agreements with area jurisdictions	*709*	*1267*	*2468*
Current Utilization Percentage of school capacity utilized based on 40th day enrollment and FISH capacity	*72%*	*88%*	*90%*
Concurrency Reservations Existing concurrency reservations due to previously approved development. Source: CSA Tracking Sheet as of 05-14-2022	*51*	*33*	*162*
Students Generated Estimated number of new students expected in development based on adopted generation rates. Source: Duncan Associates, School Impact Fee Study for Hillsborough County, Florida, Dec. 2019	*30*	*11*	*14*
Proposed Utilization School capacity utilization based on 40th day enrollment, existing concurrency reservations, and estimated student generation for application	*81%*	*91%*	*97%*

Notes: Valrico Elementary, Mulrennan Middle and Durant High School have adequate capacity for the residential impact of the proposed development.

This is an analysis for adequate facilities only and is NOT a determination of school concurrency. A school concurrency review will be issued PRIOR TO preliminary plat or site plan approval.

Thank you,

Michelle Orton, General Manager
Growth Management and Planning
e: michelle.orton@hcps.net
p: 813-272-4896

AGENCY REVIEW COMMENT SHEET

TO: ZONING TECHNICIAN, Planning Growth Management **DATE:** 31 May 2022

REVIEWER: **Bernard W. Kaiser, Conservation and Environmental Lands Management**

APPLICANT: Elise Batsel **PETITION NO:** MM 22-0862

LOCATION: Not listed

FOLIO NO: 86371.5000, 86377.0000, 86374.0000, 86373.0000 **SEC:** _____ **TWN:** _____ **RNG:** _____

☒ This agency has no comments.

☐ This agency has no objection.

☐ This agency has no objection, subject to listed or attached conditions.

☐ This agency objects, based on the listed or attached conditions.

COMMENTS: _____.

Hillsborough County Florida
Development Services

AGENCY REVIEW COMMENT SHEET

NOTE: THIS IS ONLY FOR ESTIMATE PURPOSES, BASED ON THE FEES AT THE TIME THE REVIEW WAS MADE. ACTUAL FEES WILL BE ASSESSED BASED ON PERMIT APPLICATIONS RECEIVED AND BASED ON THE FEE SCHEDULE AT THE TIME OF BUILDING PERMIT APPLICATION.

TO:	Zoning Review, Development Services	**DATE:**	06/01/2022
REVIEWER:	Ron Barnes, Impact & Mobility Fee Coordinator		
APPLICANT:	Belleair Development, LLC	**PETITION NO:**	22-0862
LOCATION:	2207, 2125, E SR 60; 117, 119 S Valrico Rd		
FOLIO NO:	86371.5000 86377.0000 86374.0000 86373.0000		

Estimated Fees:

(Fee estimate is based on a 1,200 square foot, Multi-Family Units 1-2 story)
Mobility: $5,995 * 256 units = $1,534,720
Parks: $1,555 * 256 units = $ 398,080
School: $3,891 * 256 units = $ 996,096
Fire: $249 * 256 units = $ 63,744
Total Multi-Family (1-2 story) = $2,992,640

Retail - Fast Food w/Drive Thru
(Per 1,000 s.f.)
Mobility: $94,045 * 2.475 = $232,761.38
Fire: $313 * 2.475 = $774.68

Project Summary/Description:

Urban Mobility, Central Park/Fire - 256 multi-family units, 2,475 s.f. fast food w/DT

WATER RESOURCE SERVICES
REZONING REVIEW COMMENT SHEET: WATER & WASTEWATER

PETITION NO.: MM22-0862 **REVIEWED BY:** **Randy Rochelle** **DATE:** 6/13/2022

FOLIO NO.: 86371.5000, 86373.0000, 86374.0000 & 86377.0000

WATER

☐ The property lies within the _____ Water Service Area. The applicant should contact the provider to determine the availability of water service.

☒ A 12 inch water main exists ☒ (adjacent to the site), ☐ (approximately __ feet from the site) and is located within the south Right-of-Way of E. State Road 60. This will be the likely point-of-Connection, however there could be additional and/or different points-of-connection determined at the time of the application for service. This is not a reservation of capacity.

☐ Water distribution system improvements will need to be completed prior to connection to the County's water system. The improvements include _____ and will need to be completed by the _____ prior to issuance of any building permits that will create additional demand on the system.

WASTEWATER

☐ The property lies within the _____ Wastewater Service Area. The applicant should contact the provider to determine the availability of wastewater service.

☒ A 4 inch wastewater force exists ☒ (adjacent to the site), ☐ (approximately __ feet from the site) and is located within the south Right-of-Way of E. State Road 60 . This will be the likely point-of-connection, however there could be additional and/or different points-of-connection determined at the time of the application for service. This is not a reservation of capacity.

☐ Wastewater collection system improvements will need to be completed prior to connection to the County's wastewater system. The improvements include _____ and will need to be completed by the _____ prior to issuance of any building permits that will create additional demand on the system.

COMMENTS: The subject rezoning includes parcels that are within the Urban Service Area and would require connection to the County's potable water and wastewater systems

VERBATIM TRANSCRIPT

HILLSBOROUGH COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS

IN RE:

ZONE HEARING MASTER HEARINGS

ZONING HEARING MASTER HEARING
TRANSCRIPT OF TESTIMONY AND PROCEEDINGS

BEFORE: SUSAN FINCH
Land Use Hearing Master

DATE: Monday, July 25, 2022

TIME: Commencing at 6:00 p.m.
Concluding at 11:20 p.m.

PLACE: Robert W. Saunders, Sr. Public Library
Ada T. Payne Community Room
1505 N. Nebraska Avenue
Tampa, Florida 33602

Reported via Cisco Webex Videoconference by:

Christina M. Walsh, RPR
Executive Reporting Service
Ulmerton Business Center
13555 Automobile Blvd., Suite 130
Clearwater, FL 33762
(800) 337-7740

HILLSBOROUGH COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS

ZONING HEARING MASTER HEARINGS
July 25, 2022
ZONING HEARING MASTER: SUSAN FINCH

D14:

Application Number:	MM 22-0862
Applicant:	Belleair Dev., LLC
Location:	S side of E SR 60 & Rolling Hills Blvd. intersection
Folio Number:	086371.5000, 086373.0000, 086374.0000, 086377.0000
Acreage:	12.84 `acres, more or less
Comprehensive Plan:	R-9
Service Area:	Urban
Existing Zoning:	PD 03-0644
Request:	Major Modification to a Planned Development

MR. GRADY: The last item is agenda item D-14, Major Mod Application 22-0862. This is a request for Major Modification to existing Planned Development.

Sam Ball will provide staff presentation -- recommendation after presentation by the applicant.

HEARING MASTER FINCH: Is the applicant here? Good evening. You made it.

MS. BATSEL: Yes. Procedurally -- Elise Batsel, Stearns Weaver Miller -- I have been not been sworn.

HEARING MASTER FINCH: Okay. Is there anyone in the room or online that was planning to speak and has not been sworn, please stand raise your right hand.

Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth?

MS. BATSEL: I do.

HEARING MASTER FINCH: Thank you. Please be seated.

MS. BATSEL: Again, for the record, Elise Batsel with Stearns Weaver Miller. May I present information for the record.

HEARING MASTER FINCH: Sure.

MS. BATSEL: So good evening. We're here to

present this Major Modification to you. Next slide, please. Either attending virtually or share with us tonight are the applicant, Belleair Development, Carlos Yepes; our civil engineer with Lincks & Associates and myself on behalf of Stearns Weaver Miller. Next slide.

This property is 13.65 acres. As a housekeeping matter, I think the staff report and the Planning Commission report mention 12.8 acres. It may have been updated. I just want to put that into the record. It is 13.65 acres.

It is located in Valrico. Generally south of State Road 60 east and east of Valrico Road, it is in the Urban Service Area. Next slide. Before we discuss the specific project, I just wanted to spend a moment on the larger area.

This project is sandwiched in between an area to the east and to the west that are OC-20 right now Future Land Use Category, and these areas already have existing commercial development. So it really is a prime location for infill residential development.

The applicant did apply for a Comprehensive Plan Amendment to change the Future Land Use Category from RES-9 to RES-20. That application

was heard by the Board of County Commissioners in January, and they asked that it be continued to run concurrent with this rezoning application.

So with your recommendation, both will proceed at the same meeting to the BOCC. Next slide.

The project is included, as I mentioned, in the Urban Service Area, but it is also within the Brandon overlay. As you're probably already aware, the intent of the Brandon overlay is to improve the appearance of new and existing commercial and residential development along State Road 60 between I-75 and Dover Road. And this project will comply with those provisions.

It's also important to note that this project is not in the Brandon Community Plan. So this is a graphic that just shows the infill opportunity within the Urban Service Area along State Road 60.

It's built out with a lot of commercial development. As you can see from the graphic, the commercial entitlements that already exist include grocery stores, fast-food restaurants, retail shopping, gyms, pharmacies, and auto shops in the immediate vicinity.

And this is really important because from a walkability perspective, if this project is approved, the project is exactly the type of use that will allow residential to coexist with the existing commercial development.

And as you'll hear from the Planning Commission, so many of our Comprehensive Plan policies encourage that integration of commercial and more intensive residential uses to promote walkability.

This is in an area targeted for growth by the Hillsborough Vision Map. Specifically, this area is located in an area envisioned for high-intensity suburban level three development.

It's also important to note that the Planning Commission population table shows that the Brandon area is expected to grow by 14,685 new residents by 2045. This is approximately 3.6 percent of the overall expected growth of the county in this particular area.

So now that I've kind of painted the big pictured, I want to talk a little bit more about this specific project and what's directly adjacent to the property.

To the north is a car wash, a CVS Pharmacy,

a Burger King, and a gas station. To the south are the existing townhomes, Oak Valley Townhomes, and we have submitted letters of support from 10 to 11 of those owners of the existing development.

To the west are Valrico Commons, which is a retail center including a Publix, and to the east is a single-family residential home. This is just a graphic depiction of the surrounding uses. As you can see again, the commercial is directly across the street and directly to the west of the project. Next slide.

So here's where it's really important to stop for just a moment. This property is not a clean slate. There are existing approved entitlements in the form of a PD today. In 2003 this PD was approved for 89,000 square feet of Commercial General uses and 15,000 square feet of residential support and Business Professional Office uses.

The top -- back one second. That's okay. In the northwest corner -- and you can see this a little bit better on the next slide, but there's a Taco Bell in that northwest corner. That exists as part of the existing PD as well.

HEARING MASTER FINCH: Is that the shaded

area?

MS. BATSEL: No. It's actually to the northwest.

HEARING MASTER FINCH: I see, the corner.

MS. BATSEL: Exactly. I have a better graphic to show you soon. Next slide.

So our request today is to amend the existing PD to eliminate 103,525 square feet of nonresidential entitlements. We are maintaining the Taco Bell, which is 2,475 square feet, and we are replacing those nonresidential entitlements with 256 multifamily apartments.

There is also, as you'll hear from Steve Henry with Lincks & Associates, an associated very significant reduction in traffic.

So this is a graphic depiction of the project. The area in white in that northwest corner, that's the Taco Bell. That use will remain. The colored area represents the area that's being converted from a more intense commercial development to 256 multifamily units.

There are four three-story buildings and one four-story building. If you look, you'll see that the four-story building is located more centrally to the project. We really did spend a great deal

of time after engaging with the community modifying our site plan to try to be sensitive to the surrounding existing single-family residential and multifamily townhomes to the south.

We did that in a number of ways. We located the stormwater retention to the southeast corner of the project to provide a natural physical separation and buffer.

We provided greater setbacks, buffering and screening that exceeds the requirements of the Land Development Code to mitigate those potential impacts. And, again, we internalize the buildings to increase the separation from the existing uses.

And, finally, we provided a Type B buffer along the southern boundary and along the eastern boundary which allows us to work with Natural Resources and maintain some of that existing mature vegetation that exists. Next slide.

So the applicant has engaged the community on a number of occasions. There was a community meeting on April 27th and a meeting with the Oak Valley Townhomes Homeowners Association on February 16th, 2022.

There is one thing that the community overwhelmingly was concerned about, and that was

traffic. And they were concerned and they wanted a reduction in traffic on Valrico Road. Obviously, we can't provide for what is existing out there today. But what this development can do is, it can reduce the number of trips between existing commercial development and between what's proposed, and Steve can talk a little bit more about that.

The community also requested that the proposed buildings be located as far away as possible from the existing residential, and so we did move the buildings further north along the southern boundary in order to accommodate that request. Next slide.

Oh, and one more thing, Officer Finch, the community noted that there is a homeless issue on the property, and so there were concerns about the people squatting there. So those numbers that have provided letters of support were happy to see this finally being redeveloped.

So I thought it would be helpful to show the actual distances from the buildings that we're proposing to the existing structures around the property just as a reference point.

As you can see on the southern boundary, the setback is 110 feet, but it's actually 140 feet

from the nearest residential structure to the south. Again, you'll see ranges from 207 feet all the way up to almost 1200 feet.

But if you look directly to the east, there is a marker. You'll see a little, small, white building that's directly on the property line. That's actually a shed, not a single-family structure. The single-family structure is 325 feet away.

So we have submitted a number of letters of support. I won't go into all of those. I'll allow you to read them. But generally, the letters of support that have come from commercial properties really recognize the need for housing for their employees along this corridor.

We have five commercial letters of support, and there are also signatures from members of the Oak Valley Homeowners Association. I believe we have ten signatures, and that is the property directly to the south of this development. Next slide.

So this is an issue that we struggled with. We originally proposed a right in, right out only. Steve Henry can talk to you about this a little bit more, but staff did come back and required a full

access point on Valrico Road. So we did accommodate that requirement in our site development plan.

At this point in time I'd like to introduce Steve Henry with Lincks & Associates to talk about the trip generation.

HEARING MASTER FINCH: Good evening.

MR. HENRY: Good evening. Steve Henry, Lincks & Associates, 5023 West Laurel, Tampa, 33607.

We did the traffic analysis for the project, and what we've got here is a comparison of what the approved land use would generate versus what we're proposing.

And this includes -- and you'll notice that this is slightly different than what you might see in the staff report, and part of that reason is, is staff uses the ITE 10th edition. We use the 11th edition.

So this is more current data than what's in the staff report, but that's the latest edition that they have to go to work from. So if you look at that today under the approved zoning, it could generate about 6,000 new daily trip ends. With the proposed, it'd be about 1700. So pretty

significant decrease in the daily traffic. Next slide.

And then we also looked at the a.m. and p.m. So in the a.m., the green shows the approved about 224. The proposed, 157. Again, a reduction. And then the p.m. is a pretty significant reduction from 559 to 137.

So pretty significant reduction in the overall traffic associated with what's approved today versus what we're proposing. And that includes both not only the apartments but also the existing Taco Bell as far as the approved. The next slide.

And then also we have met with DOT on the access to State Road 60 and, you know, this is actually -- they're asking us to modify the median opening. In front right now is a full median opening on State Road 60.

As a part of their widening plan for State Road 60, they were intending to do this anyway, but they're asking us to do it in conjunction with the development of the property. So what we're going to do is modify that median out there is currently a full median to a directional median opening.

That would allow left in, right in, right

out, just no left out. And then as far as the access to Valrico Road, we had originally showed it as an exit only. But because it is actually classified as a collector roadway, that the County Staff had asked us to make it required that we make that a full access.

So we modified that in the analysis and on the site plan to be a full access. And it does -- what it does is it will align with the southern driveway for the Publix on the west side of Valrico Road.

HEARING MASTER FINCH: So that's the sole access?

MR. HENRY: We have access to State Road 60, which is the direction median opening.

HEARING MASTER FINCH: Okay.

MR. HENRY: And then we also have the Valrico access.

HEARING MASTER FINCH: I see. And there's no connection between the Taco Bell and the rest of this property?

MR. HENRY: Yes. If you look at the -- if you look at the aerial, you can see it better, but the driveway is there. It kind of then veers off to the west. That will continue straight and

that'll be our access.

HEARING MASTER FINCH: I see. Okay. I understand.

MR. HENRY: That concludes my presentation unless you have any questions.

HEARING MASTER FINCH: No. It's pretty straightforward. Thank you. I appreciate it. If you could please sign in.

MS. BATSEL: Just a couple more points in the last minute. Next slide, please.

Your Planning Commission staff has about four pages of Comprehensive Plan objectives and policies that this project supports or supports this development.

I want to just point out one, and that is, that it's consistent the Urban Service objective and policies related to density and timing of growth. The Planning Commission and your Development Services have made their professional determinations that the timing for this particular project is appropriate. So I just wanted to put that into the record. Next slide.

There are no new waivers. However, we do have to restate a waiver that's existing for the existing Taco Bell. Next slide. And that is a

waiver of the commercial locational criteria. Again, this is not the new development that's requiring this but the existing Taco Bell that's part of the development. Next slide.

Development Services recommends approval. Planning Commission found the project consistent. It is consistent with the County's vision plan for Brandon, with the Comprehensive Plan.

Your staff has found that it's compatible. And importantly, the project provides much needed residential in an area with abundant commercial uses on a future transit corridor. With that, we respectfully request your recommendation of approval.

HEARING MASTER FINCH: Thank you so much. I appreciate it. If you could, please, sign in if you haven't already.

MS. BATSEL: Yes. Please let us know if you have any further questions.

HEARING MASTER FINCH: I don't have any further questions. Thank you, though.

All right. We'll go to Development Services, please.

MR. BALL: Good evening. Sam Ball, Hillsborough County Development Services.

There was a correction to the staff report, it was revised to show the property size is at 13.65 acres instead of the 12.84.

The applicant -- the applicant's requesting a Major Modification to PD 03-644 for the parcel located at the south side of State Road 60 and Rolling Hills Boulevard intersection.

PD 03-0644 was approved to allow for 89,000 square feet of Commercial General uses, 1,000 square feet of residential support uses, 10,000 square feet of Business Professional Office uses.

The request -- applicant is requesting modifications to allowable uses to allow 256 family dwelling units and use the allowable -- the general uses to 2,475 square feet.

The development in the surrounding area includes a mix of uses, including townhomes to the south, single-family residential to the east, a church, mobile home park, and multitenant to the north and a convenience store gas pumps, car wash, drug store, single-family residential, multitenant retail, and eating establishment with drive-through to the west.

If Major Modification 22-0862 is approved,

development will be limited to 256 multifamily dwellings and 2,475 square feet of general commercial uses, and multifamily structures will have 75-foot setbacks from State Road 60 and south and east property lines a 20-foot buffer will be required between the site and nonresidential properties to the northwest. The maximum height will be 45 feet. Four stories for the main building and three stories for the small building.

Development would result in a gross density of 19.9 dwelling units per acre. The main multifamily building will also be separated from the existing drive-through restaurant by a 20-foot Type B buffer.

If Planned Development 22-0862 is approved, the county engineer will approve Section 6.04.02.B administrative variance dated July 12th, 2022, from this Section 6.04.03.L Hillsborough County Land Development Code requirement to improve the roadway to current county standards.

The administrative variance was found approvable by the county engineer on July 15th, 2022. Based on the Future Land Use Classification that's pending, the surrounding zoning and development pattern and the proposed uses and

development standards for the Major Modification, staff finds the request approvable subject to conditions.

That completes my presentation. I'm available for any questions.

HEARING MASTER FINCH: No further questions at this time. Thank you.

Planning Commission.

MS. MASSEY: This is Jillian Massey with Planning Commission staff.

As mentioned, the site's located currently in the Residential-9 Future Land Use Category. However, there is a pending Comprehensive Plan Amendment 21-26 to change the property to Residential-20.

The property is located in the Urban Service Area and not within the limits of a community plan. To the north of the request and southwest of the subject site is Residential-6. The Office Commercial-20 is found to the west and to the east is the Residential-4 Future Land Use Category.

The subject setting is vacant except for a single-family home, and the northern portion of the property contains a vehicle rental service. The proposed rezoning is compatible with the

surrounding uses.

The general vicinity is mostly Commercial Intensive uses along State Road 60 and further south the development pattern transitions to medium density single-family residential.

The rezoning is consistent with Objective 7, Policy 7.1, and Objective 8 which requires development to be consistent with the Future Land Use Category.

The subject property may potentially have a Future Land Use designation of Residential-20 if the rezoning and Comprehensive Plan Amendment is approved by the Board of County Commissioners.

The Residential-20 category is intended for high-density residential development as well as urban scale neighborhood, commercial, office, multipurpose projects in these mixed-use developments.

The Residential-20 Future Land Use Category allows up to 20 dwellings units per acre and a FAR -- or a maximum FAR of .75. This would allow the property up to 256 dwelling units and 418,176 square feet of nonresidential uses.

To the north -- excuse me. The rezoning is consistent with Objective 16; Policy 16.1, 16.2,

16.3, and 16.5 which discusses the need to protect existing neighborhoods and communities, and those will not merge in the future.

The request does protect existing neighborhoods by concentrating the density closer to State Road 60. This not only allows transition from single-family to the south, to the intensive commercial uses on State Road 60 but also allows for the use of public transportation significantly reducing the vehicular trips generated from the development.

Objective 22 provides location criteria for neighborhood serving commercial uses. One of the criteria for the properties is to be located within the required distance of a qualifying intersection. As shown on the 2040 Highway Cost Affordable Map, the nearest qualifying intersection is Valrico Road and State Road 60.

The required distance is 300 linear feet from the intersection, and the subject site is located approximately 1,000 linear feet away. The applicant has submitted a commercial locational criteria waiver for review.

Staff's reviewed the waiver requesting, recommends approval. State Road 60 and Valrico

Road has significantly changed since the adoption of 2040 Highway Cost Affordable Map. Today, these roads would be considered and then a county collector.

Qualifying the intersection for an -- for a 1,000 linear foot distance requirement which is the subject site won't admit. Based on these considerations, Planning Commission staff finds the proposed either modification consistent with the Future of Hillsborough Comprehensive Plan for unincorporated Hillsborough County subject to the conditions proposed by the Development Services Department.

And that concludes my testimony, if you have any questions. Thank you.

HEARING MASTER FINCH: No further questions. Thank you.

Is there anyone in the room or online that would like to speak in support? Anyone in favor?

Seeing no one, anyone in opposition to this request? How many people would like to speak? We have four. Okay. All right. So we'll do four minutes a piece, if you could set the clock. Good evening. Give us your name and address, please. Three -- oh, okay. Good evening.

MR. FORGEY: Good evening. We'll go with four and see how it goes. Good evening.

Max Forgey, doing business as Forgey Planning Services, 236 Southeast 45th Street, Cape Coral, Florida. Member in good standing of the American Institute of Certified Planners since 1993.

I am here on behalf of my client, Mr. Charles Both, Jr., and unfortunately, our attorney, Luke LaRoe is indisposed and we probably won't be hearing from him. I can address this rather quickly.

Tonight's companion case is FLUME 21-26. It was -- the adopted Future Land Use Map illustrates this property -- this subject property as RES-9 with a FAR of .5. The applicant is requesting RES-20 with a .75 FAR.

The surrounding area is RES-9 or lower. At least the immediate area across -- across State Road 60, it's RES-6. It's RES-9 to the east, south, and west.

The Comprehensive Plan has not been amended to make this consistent with -- for this property to be consistent with the Comprehensive Plan. It is inconsistent. Yes. I will stipulate that state

law allows local government Comprehensive Plan amendments and zoning amendments to be considered on the same agenda and adopted on the same agenda.

That's not what's taking place here. We're trying to ride this bicycle backwards. The distinction between a Future Land Use Map amendments are legislative and rezonings are quasi-judicial.

This would constitute a spot Future Land Use Map amendment, and I hope that my clients get the opportunity to explain that on the record to the Board of County Commissioners. The Florida Statutes Section 163.3194, paren 9 define compatibility as a condition in which land uses or conditions can coexist in relevant proximity to each other over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition.

Mr. -- my clients will explain to you how their properties will be impacted. Finally, there is a two-prong, two-fold test for the adoption of a rezoning in the state of Florida that came from the Florida Supreme Court in their 1993 Schneider decision.

That first prong is, quote, a landowner

seeking to rezone property has the burden of proving that the proposal is consistent with the Comprehensive Plan, which it is not, and complies with all the procedural requirements of the zoning ordinance.

You have received competent and substantial evidence to the effect that this is, in fact, inconsistent. You will be hearing from Mr. Bothe and from Elizabeth. Thank you.

HEARING MASTER FINCH: Thank you, sir. Next please. Good evening.

MR. BOTHE: Good evening. My name is Charles Bothe. I live at 2303 Highway 60, which is exactly the property next to this development that's going in.

I've lived there 40 years. My neighbors, the Bianskis (phonetic), have lived right next to me for 60 years. We agreed to Residential-9 seven years ago. We would have never agreed to Residential-20.

We thought that there were going to be some doctors' offices, dentist offices, small businesses where people would be there during the day, but not where there's going to be because there's a development going to the east of us and to the west

of us.

So now there's going to be 600 apartments around us. And Highway 60 goes from six lanes to four lanes right in front of my house. It is a bottleneck there. It's dangerous. I can't believe that they're -- that this could get approved before.

They are going to widen 60 and that the January 10th hearing that we did virtually, the developer said that they were going to be breaking ground on the widening of 60 in a matter of weeks. It's not even been funded yet.

I mean, if you live there like I have for 40 years, it is a mess right there where they're going to put all this, and they're putting the cart in front of the horse. I just wish you would consider that and it's -- like I said, we agreed to Residential-9, not Residential-20.

It's too much. And it's not just for me and my neighbors. It's for all the neighbors there. There's quite a few there. It's just -- it's just too much to put on us. It's not in the best interest of the neighborhood as far as I'm concerned. Thank you very much.

HEARING MASTER FINCH: Thank you for coming

down. I appreciate it. If you could please sign in.

Yes, ma'am. Good evening.

MS. BELCHER: My name is Elizabeth Belcher. I live off of Miller. 406 South Miller Road.

I'm in opposition of this project because of the density and the height of the building. We -- we in Valrico are made up primarily of single-family residences and mobile homes communities that others retire to.

Most of the people own their homes that live in Valrico. If you look at all the existing land use, you see that primarily all of it is yellow. It's because it's -- I don't know if you need to see it on here. If you just want --

HEARING MASTER FINCH: You can show it on the overhead.

MS. BELCHER: And I don't know if -- it's upside down. It's primarily all yellow, which is single-family. But there are some apartments in our area, and none of them exceed three stories and they're not zoned Residential-20. They're Residential-9 or they're PDs.

They talked about the traffic, the trip generation -- generation. That to me is very

false. Residential is adding traffic to our community. It's not deducting it. If it's business or commercial, it's using the traffic that already exists in the area. So I believe that that trip generation chart they shared is inaccurate.

As a residential owner in that community, we're worried that the three-story to four-story heights of the building will invade our property and diminish our property values. Not only that, the roads.

Entering there from Publix and 60 is very dangerous as it is, and adding another entrance and adding 256 dwelling units is doubling cars too. That -- our infrastructure there and roads cannot handle what we have already and entering into 60 is another issue.

We're asking for the roads to accommodate what they want to build before it's built because it's not a safe area because of the amount of traffic and trips and people on the road. The road cannot sustain this project first.

So, again, our major issue is density. It's Residential-9 going to Residential-20. That's huge. And we were expecting it to be commercial because that's what they had zoned it for before,

and we were fine with that. But now we're asking for more.

And they say they have five letters of approval from the commercial businesses in the area. This is all about profits. I mean, it's all about money. They're more happy -- or trying to make the commercial people happy and not the community.

That's going to provide more businesses to commercial. It's not going to make our lives easier when we are driving every day in that traffic, and we are getting our privacy invaded by three- or four-story buildings.

So this project to me is not in line with what we have in our community, which is single-family residents. And it is not in line with our -- our traffic. It's too much before we widened 60, before we approved the median. All those things -- widening 60 needs to happen before this because it's not -- it's not beneficial to the community at all. So thank you.

HEARING MASTER FINCH: Thank you for coming down. I appreciate it. If you could please sign in. All right.

So no one else in the room to speak. Did we

have one person in opposition online? No one. Okay. All right. So there's no one else to speak in opposition. We'll close that portion of the hearing.

Mr. Grady.

MR. GRADY: I have got a question for Jillian. If she at this point knows what the -- the public hearing date is for the Comprehensive Plan Amendment that's related to this rezoning hearing application?

MS. MASSEY: I don't actually know the date to that hearing. I try to look real quick, but I'm not entirely sure offhand. Yeah. I'd have to talk with Yeneka about that. I'm not sure when it's scheduled.

MR. GRADY: I'll just have to note for the record that the Board directed these be concurrent items. Right now, this is scheduled for a September 13th -- BOCC meeting date was the regular land use meeting date for this.

I just want to note on the record that it may be going to a different date, but so we don't have that at this point. So I just wanted to note that for the record that --

HEARING MASTER FINCH: It couldn't be

contemplated without the official change of the land use map?

MR. GRADY: Yeah. So the reality is that if it's going to a later hearing date, it's likely that's going to happen after September 13th to provide proper notice of that date, but I just wanted to put that on the record. Thank you.

HEARING MASTER FINCH: All right.

Ms. Batsel, it's time for rebuttal.

MS. BATSEL: I'll have Steve Henry just address the traffic concerns on rebuttal.

HEARING MASTER FINCH: All right. Thank you.

MR. HENRY: Can we pull up the PowerPoint? Is that's possible? So one of the issues that had come up was the traffic and the type of traffic.

So she's correct as far as retail goes. Retail's made up of two different components of traffic. There's new trip and there are passerby traffic. So there is a percentage of the traffic that is commercial is already on the road, and there's a percent that are new trips.

And so what we've shown here are the actual new trips. If you take the total trips, which would be the passerby, which we subtracted those

out. The commercial would actually generate 10,000 trips per day.

So we've actually already taken out -- those trips that are already on the road and reduced it the same thing with the 17 -- those are just new trips. That's what we've looked at is just the new trips, not the total?

So when you look at the total, it's significantly higher for the retail. So that's why we located just the new trips, and so we do still have a significant decrease in the news trips that are going to be on the record.

HEARING MASTER FINCH: Just to clarify, so the 1610 -- the 6010 represents the existing entitlements of 89,000 square feet of Commercial General, right, and this is -- you can correct me if I'm wrong -- 5,000 residential support and 10,000 of BPO?

MR. HENRY: A total shopping center which would be 160,000 square feet total.

HEARING MASTER FINCH: Okay. And then the elimination of that, what Ms. Batsel put, is 103,525 square feet and the addition of the 256 multifamily is the total 1747.

MR. HENRY: Correct. That represents the

Taco Bell plus the apartments.

HEARING MASTER FINCH: Understood. Thank you.

MR. HENRY: Thank you.

MS. BATSEL: For the record again, Elise Batsel, Stearns Weaver Miller.

It's always hard when you come in and you have neighbors that are opposed to development, and I just want to thank everybody to come out. I always think it's important to be part of the process.

I do want to talk just a little bit about some of the comments. In the staff report, your staff and the Planning Commission staff have determined that multifamily is a more appropriate transition to the single-family and the existing multifamily to the south than commercial development.

We've already provided testimony and shown the existing entitlements slide. Could you put that slide up, please. The graphic. Keep going. Keep going. I'm sorry. It's at the beginning existing entitlements. There we go. Slide 11. 11.

So if you look at the site plan -- and, of

course, this is in the record -- you'll notice that Parcel C is right up against the eastern boundary with very little setback. You'll also notice that the development of commercial shopping center, the rear of that shopping center is right up against the southern boundary.

And so the impacts to the residential development with respect to traffic, which Mr. Henry has already indicated is less, and noise and lighting and all of those things, those would all be lessened by turning this into multifamily development.

With respect to the issues regarding the procedural issue, I'll defer to the County Attorney's Office, but obviously, that is our procedure and as long as the Comp Plan and the rezoning are heard in the appropriate order, there shouldn't be any procedural issues.

He did state that he thought it was not compatible, but I did not hear any substantial competent evidence on the record that would indicate or provide any facts to say that it was not compatible.

As you know competent substantial evidence for things like traffic and technical matters, you

have to rely on the expert testimony rather than layperson testimony because those are areas that the Florida courts have determined require expert opinions, such as traffic, light, noise, general unfavorable impacts.

It's also really important to talk a little bit about the burden shifting based on what the first speaker indicated. So, yes, our burden is to provide substantial competent evidence.

But Florida courts have determined that a prima fascia case is established if a government staff report or findings of an independent review or have found that to be consistent. And then the burden shifts back to the local government or in this case to neighbors to show how the -- to show how that competent substantial evidence is required to keep the existing zoning.

So it's a little bit different when there's an existing zoning. It's not a clean slate. We're not saying is this better with or without. We're saying, if it is not, if we have proven our burden by substantial competent evidence, what is the documentation in the record, the competent, substantial evidence that says it's better to keep commercial. And today we have not heard any of

that substantial, competent evidence in the record.

HEARING MASTER FINCH: Do you happen to know what the maximum height is on the existing entitlements?

MS. BATSEL: I have it. I can find that for you. We are proposing 45 feet, but it's also important to put on the record that the existing townhomes directly to the south are three stories already. And directly across the street, there is an eight-story office building across State Road 60.

The existing entitlements are 35 feet, and the three-story buildings, which are all along the boundary, they are 35 feet in our project. The 45 feet would be limited to the internal four-story building.

HEARING MASTER FINCH: So that's the only 45 feet --

MS. BATSEL: Correct.

HEARING MASTER FINCH: -- the four-story?

MS. BATSEL: Everything else remains at 35 feet.

HEARING MASTER FINCH: Okay.

MS. BATSEL: That concludes our rebuttal testimony, unless you have any questions.

HEARING MASTER FINCH: No. That was it. Thank you.

MS. BATSEL: Thank you.

HEARING MASTER FINCH: All right.

With that, we'll close Major Modification 22-0862 and adjourn the hearing. Thank you-all for your time.

(Hearing was concluded at 11:19 p.m.)

EXHIBITS SUBMITTED

DURING THE ZHM HEARING

SIGN-IN SHEET: RFR, ZHM, PHM, LUHO PAGE 1 OF 6

DATE/TIME: 2/25/22 6pm HEARING MASTER: Susan Finch

PLEASE **PRINT CLEARLY.** THIS INFORMATION WILL BE USED FOR MAILING

APPLICATION # MM 22-0087 or	PLEASE PRINT NAME Kami Corbett MAILING ADDRESS 101 E Kennedy Blvd, St 3400 CITY Tampa STATE FL ZIP 33602 PHONE 813 227-8421
APPLICATION #	
APPLICATION # RZ 22-0698 V.S.	PLEASE PRINT NAME David Wright MAILING ADDRESS P.O. Box 273417 CITY Tampa STATE FL ZIP 33688 PHONE (813) 230-7473
APPLICATION # RZ 22-0456 V.S.	PLEASE PRINT NAME David Wright MAILING ADDRESS P.O. Box 273417 CITY Tampa STATE FL ZIP 33688 PHONE (813) 230-7473
APPLICATION # RZ 22-0789	PLEASE PRINT NAME Jeffrey + Jaime Peck MAILING ADDRESS 1221 Canyon Oaks Dr CITY Brandon STATE FL ZIP 33610 PHONE 302-218-5131
APPLICATION # RZ 22-0829	PLEASE PRINT NAME Ruth P. Londono MAILING ADDRESS 1502 W. Busch Blvd St D1 CITY Tpa STATE FL ZIP 33612 PHONE (813) 919-7802

SIGN-IN SHEET: RFR, (ZHM), PHM, LUHO PAGE 2 OF 6

DATE/TIME: 7/25/22 6pm HEARING MASTER: Susan Finch

PLEASE **PRINT CLEARLY**, THIS INFORMATION WILL BE USED FOR MAILING

APPLICATION #	PLEASE PRINT NAME / MAILING ADDRESS / CITY / STATE / ZIP / PHONE
RZ 22-0980	NAME TU MAI MAILING ADDRESS 14031 N. Dale Mabry Hwy. CITY Tampa STATE FL ZIP 33618 PHONE (813) 962-6230
RZ 22-0075	NAME Kami Corbett MAILING ADDRESS 101 E Kennedy Blvd, Ste 3700 CITY TAMPA STATE FL ZIP 3360[illegible] PHONE 813-8227 8424
RZ 22-0075 ex	NAME Isabelle Albert / Halff & Associates MAILING ADDRESS 1000 N Ashley Dr. Ste 900 CITY Tampa STATE FL ZIP 33602 PHONE 813 331-0976
RZ 22-0075	NAME Abbey Naylor MAILING ADDRESS 14706 Tudor Chase Dr. CITY Tampa STATE FL ZIP 33626 PHONE 727-207-5525
RZ 22-0075 ex	NAME Suhee MAILING ADDRESS 610 Garrison Cove Ln CITY Tampa STATE FL ZIP 3360[illegible] PHONE 813-763-2[illegible]
RZ 22-0075 ex	NAME William Place MAILING ADDRESS 610 Garrison Cove Lane CITY Tampa STATE FL ZIP 33602 PHONE 813 763-2664

SIGN-IN SHEET: RFR, ZHM, PHM, LUHO PAGE 3 OF 6

DATE/TIME: 7/25/22 6pm HEARING MASTER: Susan Finch

PLEASE **PRINT CLEARLY**, THIS INFORMATION WILL BE USED FOR MAILING

APPLICATION #	PLEASE PRINT NAME / MAILING ADDRESS / CITY STATE ZIP PHONE
RZ 22-0075	NAME James Anderson MAILING ADDRESS 10514 Sedgebrook Drive CITY Riverview STATE FL ZIP 33569 PHONE 727 430-3494
RZ 22-0075 VS.	NAME Ethel Hammer MAILING ADDRESS 19825 Angel Ln CITY Odessa STATE FL ZIP 33556 PHONE
RZ 22-0075	NAME Mac McGraw MAILING ADDRESS 3000 W. San Nicholas St. CITY Tampa STATE FL ZIP 33629 PHONE 813-390-0627
RZ 22-0557 VS	NAME Marco Raffaele MAILING ADDRESS 11910 Neal Rd CITY Lithia STATE FL ZIP 33547 PHONE
MM 22-0089 ea	NAME Michael Brooks MAILING ADDRESS 400 N. Tampa St / Unit 1910 CITY Tampa STATE FL ZIP 33602 PHONE
MM 22-0089	NAME Rebecca Kert MAILING ADDRESS 400 N Tampa St. Ste 1910 CITY Tampa STATE FL ZIP 33602 PHONE

SIGN-IN SHEET: RFR, ZHM, PHM, LUHO PAGE 4 OF 6

DATE/TIME: 7/25/22 6pm HEARING MASTER: Susan Finch

PLEASE **PRINT CLEARLY**. THIS INFORMATION WILL BE USED FOR MAILING

APPLICATION #	PLEASE PRINT NAME / MAILING ADDRESS / CITY / STATE / ZIP / PHONE
MM 22-0089	NAME Barbara Fite MAILING ADDRESS 16102 E Lk Burrell Dr CITY Lutz STATE FL ZIP 33548 PHONE 813 246-5544
RZ 22-0420 ea	NAME Kami Corbett MAILING ADDRESS 101 E Kennedy Blvd, Ste 3700 CITY Tampa STATE FL ZIP 33602 PHONE
RZ 22-0442 ea	NAME Isabelle Albert MAILING ADDRESS 1000 N Ashley Dr ste 900 CITY Tampa STATE FL ZIP 33602 PHONE
RZ 22-0443 ea	NAME Rebecca Kert MAILING ADDRESS 400 N. Tampa St ste 1910 CITY Tampa STATE FL ZIP 33602 PHONE
RZ 22-0477	NAME Wesley Mills MAILING ADDRESS 700 22nd PLACE CITY VERO BEACH STATE FL ZIP 32960 PHONE 772-226-7282
MM 0670 22-	NAME Brian Smith MAILING ADDRESS 307 11th Ave. E CITY Palmetto STATE FL ZIP 34221 PHONE 813-957-2277

SIGN-IN SHEET: RFR, ZHM, PHM, LUHO PAGE 5 OF 6

DATE/TIME: 7/25/22 6pm HEARING MASTER: Susan Finch

PLEASE **PRINT CLEARLY**, THIS INFORMATION WILL BE USED FOR MAILING

APPLICATION #	PLEASE PRINT NAME / MAILING ADDRESS / CITY STATE ZIP PHONE
RZ 22-0683	NAME Nicole Neugebauer MAILING ADDRESS 401 E. Jackson St ste 2100 CITY Tampa STATE FL ZIP 33602 PHONE 813-223-4800
MM 22-0782 VS.	NAME David Mechanik MAILING ADDRESS 305 S. Boulevard CITY Tampa STATE FL ZIP 33606 PHONE (813) 276-1920
RZ 22-0832 et	NAME KEN TINKLER, [illegible] FIELDS MAILING ADDRESS 4221 W. Boyscout Blvd CITY Tampa STATE FL ZIP ____ PHONE 813 223 7000
RZ 22-0832	NAME Matt Femal MAILING ADDRESS 201 N Franklin St. Suite 1400 CITY Tampa STATE FL ZIP 33602 PHONE 813-635-5526
RZ 22-0834	NAME Mark Bentley MAILING ADDRESS 401 E Jackson St CITY Tamp STATE FL ZIP 33602 PHONE ____
RZ 22-0834	NAME Russell Ohlenberg MAILING ADDRESS 3737 Lake Joyce Dr. CITY Land O'Lakes STATE FL ZIP 34639 PHONE 813.962.1752

SIGN-IN SHEET: RFR, ZHM, PHM, LUHO PAGE 6 OF 6

DATE/TIME: 7/25/22 6pm HEARING MASTER: Susan Finch

PLEASE **PRINT CLEARLY**, THIS INFORMATION WILL BE USED FOR MAILING

APPLICATION #	PLEASE PRINT
MM 22-0862 ea	NAME Elise Batsel MAILING ADDRESS 401 E. Jackson St, Ste 2100 CITY Tampa STATE FL ZIP 33602 PHONE 765 993 3429
APPLICATION #	PLEASE PRINT
MM 22-0862	NAME Steve Henry MAILING ADDRESS 5023 W. LAUREL St CITY TPA STATE FL ZIP 33607 PHONE 813-289 0039
APPLICATION #	PLEASE PRINT
MM 22-0862	NAME (Daryl) MAX FORGEY, AICP MAILING ADDRESS 236 SE 45th STREET CITY CAPE CORAL STATE FL ZIP 33904 PHONE 239,560 5864
APPLICATION #	PLEASE PRINT
MM 22-0862	NAME CHARLES ROTHE MAILING ADDRESS 2303 Hwy 60 CITY VALRICO STATE FL ZIP 33594 PHONE 813 267 5476
APPLICATION #	PLEASE PRINT
MM 22-0862	NAME Elizabeth R Belcher MAILING ADDRESS 406 S Miller Rd CITY Valrico STATE FL ZIP 33594 PHONE 813-478-1041
APPLICATION #	PLEASE PRINT
	NAME MAILING ADDRESS CITY STATE ZIP PHONE

HEARING TYPE: ZHM, PHM, VRH, LUHO **DATE: 07/25/2022**

HEARING MASTER: Susan Finch **PAGE: 1 OF 1**

APPLICANT #	SUBMITTED BY	EXHIBITS SUBMITTED	HRG. MASTER YES OR NO
RZ 22-0075	Rosa Timoteo	1. Applicant Presentation Packet	NO
RZ 22-0075	Isabelle Albert	2. Applicant Presentation Packet	NO
RZ 22-0075	William Place	3. Applicant Presentation Packet	NO
RZ 22-0075	Abbey Naylor	4. Applicant Presentation Packet	NO
MM 22-0087	Kami Corbett	1. Applicant Presentation Packet	NO
MM 22-0089	Rosa Timoteo	1. Revised Staff Report	YES - COPY
MM 22-0089	Michael Brooks	2. Applicant Presentation Packet	NO
RZ 22-0420	Rosa Timoteo	1. Revised Staff Report	YES - COPY
RZ 22-0420	Kami Corbett	2. Applicant Presentation Packet	NO
RZ 22-0442	Isabelle Albert	1. Applicant Presentation Packet	YES - COPY
RZ 22-0443	Rosa Timoteo	1. Revised Staff Report	YES - COPY
RZ 22-0443	Rebecca Kert	2. Applicant Presentation Packet	NO
RZ 22-0683	Nicole Neugebauer	1. Applicant Presentation Packet	YES - COPY
RZ 22-0832	Ken Tinkler	1. Applicant Presentation Packet	NO
RZ 22-0834	Russell Ottenberg	1. Applicant Presentation Packet	NO
RZ 22-0834	Mark Bentley	2. Applicant Presentation Packet	NO
MM 22-0862	Rosa Timoteo	1. Revised Staff Report	YES - COPY
MM 22-0862	Rosa Timoteo	2. Revised Staff Report	YES - COPY
MM 22-0862	Elise Batsel	3. Applicant Presentation Packet	YES - COPY

JULY 25, 2022 – ZONING HEARING MASTER

The Zoning Hearing Master (ZHM), Hillsborough County, Florida, met in Regular Meeting, scheduled for Monday, July 25, 2022, at 6:00 p.m., in the Ada T. Payne Community Room, Robert W. Saunders Sr. Public Library, Tampa, Florida, and held virtually.

Susan Finch, ZHM, calls the meeting to order and leads in the pledge of allegiance to the flag.

A. WITHDRAWALS AND CONTINUANCES

Brian Grady, Development Services, reviews changes/withdrawals/continuances.

D.7. RZ 22-0562

Brian Grady, Development Services, calls RZ 22-0562.

Isabelle Albert, applicant rep, requests continuance.

Susan Finch, ZHM, calls proponents/opponents/continues RZ 22-0562 to September 19, 2022.

C.4. RZ 22-0698

Brian Grady, Development Services, calls RZ 22-0698.

David Wright, applicant rep, requests continuance.

Susan Finch, ZHM, calls proponents/opponents/continues RZ 22-0698 September 19, 2022.

D.13. RZ 22-0856

Brian Grady, Development Services, calls RZ 22-0856.

Mark Bentley, applicant rep, requests continuance.

Susan Finch, ZHM, calls proponents/opponents/continues RZ 22-0856.

B.1. RZ 19-0521

Brian Grady, Development Services, reviews RZ 19-0521.

Susan Finch, ZHM, announces withdrawal of RZ 19-0521.

Brian Grady, Development Services, continues review of withdrawals/continuances.

Susan Finch, ZHM, overview of ZHM process.

Senior Assistant County Attorney Cameron Clark, overview of oral argument/ZHM process.

Susan Finch, ZHM, oath.

B. REMANDS

B.2. MM 22-0087

Brian Grady, Development Services, calls RZ 22-0087.

Kami Corbett, applicant rep, presents testimony/submits exhibits.

Brian Grady, Development Services, staff report/questions to applicant rep.

Kami Corbett, applicant rep, answers Development Services questions.

Jillian Massey, Planning Commission, staff report.

Susan Finch, ZHM, calls proponents/opponents/Development Services/applicant/closes MM 22-0087.

C. REZONING STANDARD (RZ-STD):

C.1. RZ 22-0423

Brian Grady, Development Services, calls RZ 22-0423.

David Wright, applicant rep, presents testimony.

Chris Grandlienard, Development Services, staff report.

Jillian Massey, Planning Commission, staff report.

Susan Finch, ZHM, calls proponents/opponents/Development Services/applicant rep/closes RZ 22-0423.

C.2. RZ 22-0456

Brian Grady, Development Services, calls RZ 22-0456.

David Wright, applicant rep, presents testimony.

Isis Brown, Development Services, staff report.

Susan Finch, ZHM, questions to Development Services.

Isis Brown, Development Services, answers ZHM questions and continues staff report.

Jillian Massey, Planning Commission, staff report.

Susan Finch, ZHM, calls proponents/opponents/Development Services/applicant rep/closes RZ 22-0456.

C.5. RZ 22-0789

Brian Grady, Development Services, calls RZ 22-0789.

Jeffrey Peck, applicant rep, presents testimony.

Chris Grandlienard, Development Services, staff report.

Jillian Massey, Planning Commission, staff report.

Susan Finch, ZHM, calls proponents/opponents/Development Services/applicant rep/closes RZ 22-0789

C.6. RZ 22-0829

Brian Grady, Development Services, calls RZ 22-0829.

Ruth Londono, applicant rep, presents testimony.

Chris Grandlienard, Development Services, staff report

Jillian Massey, Planning Commission, staff report.

Susan Finch, ZHM, calls proponents/opponents/Development Services/applicant rep/closes RZ 22-0829.

C.7. RZ 22-0980

Brian Grady, Development Services, calls RZ 22-0980.

Tu Mai, applicant rep, presents testimony.

Chris Grandlienard, Development Services, staff report.

Jillian Massey, Planning Commission, staff report.

Susan Finch, ZHM, calls proponents/opponents/Development Services/applicant rep/closes RZ 22-0980.

D. REZONING-PLANNED DEVELOPMENT (RZ-PD) & MAJOR MODIFICATION (MM):

D.1. RZ 22-0075

Brian Grady, Development Services, calls RZ 22-0075.

Kami Corbett, applicant rep, presents testimony.

Isabelle Albert, applicant rep, presents testimony.

Susan Finch, ZHM, questions to applicant rep.

Isabelle Albert, applicant rep, answers ZHM questions/continues testimony.

Susan Finch, ZHM, questions to applicant rep.

Isabelle Albert, applicant rep, answers ZHM questions/continues testimony.

Abbey Naylor, applicant rep, presents testimony.

Israel Monsanto, Development Services, staff report.

Susan Finch, ZHM, questions to Development Services.

Israel Monsanto, Development Services, answers ZHM questions/continues staff report.

Brian Grady, Development Services, revised staff report.

Jillian Massey, Planning Commission, staff report.

Susan Finch, ZHM, questions to Development Services.

Jillian Massey, Planning Commission, answers ZHM questions.

Susan Finch, ZHM, calls proponents.

William Place, proponent, presents testimony/submits exhibits.

Susan Finch, ZHM, questions to proponent.

William Place, proponent, answers ZHM questions.

Susan Finch, ZHM, calls opponents.

James Anderson, opponent, presents testimony.

Ethel Hammer, opponent, presents testimony.

Susan Finch, ZHM, calls opponents/Development Services.

Susan Finch, ZHM, questions to Development Services.

Kami Corbett, applicant rep, gives rebuttal.

Abbey Naylor, applicant rep, gives rebuttal, submits exhibit.

Kami Corbett, applicant rep, continues rebuttal.

Susan Finch, ZHM, questions to applicant rep.

Kami Corbett, applicant rep, answers ZHM questions.

Brian Grady, Development Services, statement for the record.

Kami Corbett, applicant rep, responds to Development Services.

Brian Grady, Development Services, provides clarification.

Kami Corbett, applicant rep, continues rebuttal.

Mac McCraw, applicant rep, closes rebuttal.

Susan Finch, ZHM, closes RZ 22-0075.

Susan Finch, ZHM, breaks.

Susan Finch, ZHM, resumes hearing.

C.3. RZ 22-0557

Brian Grady, Development Services, calls RZ 22-0557.

Susan Finch, ZHM, oath.

Marco Raffaele, applicant rep, presents testimony.

Isis Brown, Development Services, staff report.

Susan Finch, ZHM, questions to Development Services.

Isis Brown, Development Services, answers ZHM questions.

Jillian Massey, Planning Commission, staff report.

Susan Finch, ZHM, calls proponents/opponents/Development Services/applicant rep/closes RZ 22-0557

D.2. MM 22-0089

Brian Grady, Development Services, calls RZ 22-0089.

Michael Brooks, applicant rep, presents testimony/submits exhibits.

Rebecca Kert, applicant rep, continues testimony.

Michael Brooks, applicant rep, continues testimony.

Timothy Lampkin, Development Services, staff report.

Susan Finch, ZHM, statement to Development Services.

Jillian Massey, Planning Commission, staff report.

Susan Finch, ZHM, calls proponents.

Barbara Fite, proponent, presents testimony.

Susan Finch, ZHM, calls opponents/Development Services/applicant rep.

Michael Brooks, applicant rep, concludes testimony.

Susan Finch, ZHM, closes MM 22-0089.

D.3. RZ 22-0420

Brian Grady, Development Services, calls RZ 22-0420 and notes expedited review for the record.

Kami Corbett, applicant rep, presents testimony/submits exhibits.

Sam Ball, Development Services, staff report.

Susan Finch, ZHM, questions to Development Services.

Sam Ball, Development Services, answers ZHM questions.

Jillian Massey, Planning Commission, staff report.

Susan Finch, ZHM, calls proponents/opponents/Development Services/applicant rep/closes RZ 22-0420.

D.4. RZ 22-0442

Brian Grady, Development Services, calls RZ 22-0442.

Isabelle Albert, applicant rep, presents testimony/submits exhibits.

Susan Finch, ZHM, questions to applicant rep.

Isabelle Albert, applicant rep, answers ZHM questions.

Susan Finch, ZHM, calls Development Services.

Tania Chapela, Development Services, staff report.

Jillian Massey, Planning Commission, staff report.

Susan Finch, ZHM, calls proponents/opponents/Development Services/applicant rep/closes MM 22-0442.

D.5. RZ 22-0443

Brian Grady, Development Services, calls RZ 22-0443.

Rebecca Kert, applicant rep, presents testimony/submits exhibits.

Michelle Heinrich, Development Services, staff report.

Jillian Massey, Planning Commission, staff report.

Susan Finch, ZHM, calls proponents/opponents/Development Services/applicant rep.

Michelle Heinrich, Development Services, provides additional information.

Susan Finch, ZHM, closes RZ 22-0443.

D.6. MM 22-0477

Brian Grady, Development Services, calls MM 22-0477.

Wesley Mills, applicant rep, presents testimony.

Sam Ball, Development Services, staff report.

Jillian Massey, Planning Commission, staff report.

Susan Finch, ZHM, calls proponents/opponents/Development Services/applicant rep/closes RZ 22-0477.

D.8. MM 22-0670

Brian Grady, Development Services, calls MM 22-0670 and notes expedited review for the record.

Brian Smith, applicant rep, presents testimony.

Susan Finch, ZHM, questions to applicant rep.

Brian Smith, applicant rep, presents testimony.

Israel Monsanto, Development Services, staff report.

Jillian Massey, Planning Commission, staff report.

Susan Finch, ZHM, calls proponents/opponents/Development Services/applicant rep/closes MM 22-0670.

D.9. RZ 22-0683

Brian Grady, Development Services, calls RZ 22-0683.

Nicole Neugebauer, applicant rep, presents testimony/submits exhibits.

Susan Finch, ZHM, questions to applicant rep.

Nicole Neugebauer, applicant rep, answers ZHM questions.

Sam Ball, Development Services, staff report.

Jillian Massey, Planning Commission, staff report.

Susan Finch, ZHM, calls proponents/opponents/Development Services/applicant rep/closes RZ 22-0683.

D.10. MM 22-0782

Brian Grady, Development Services, calls MM 22-0782.

David Mechanik, applicant rep, presents testimony.

Susan Finch, ZHM, questions to applicant rep.

David Mechanik, applicant rep, answers ZHM questions.

Tania Chapela, Development Services, staff report.

Susan Finch, ZHM, questions to Development Services.

David Mechanik, applicant rep, answers ZHM questions.

Jillian Massey, Planning Commission, staff report.

Susan Finch, ZHM, calls proponents/opponents/Development Services/applicant rep/closes MM 22-0782.

D.11. RZ 22-0832

Brian Grady, Development Services, calls RZ 22-0832.

Ken Tinkler, applicant rep, presents testimony.

Matthew Femal, applicant rep, presents testimony.

Tania Chapela, Development Services, staff report.

Susan Finch, ZHM, questions to Development Services.

Brian Grady, Development Services, corrects the record.

Susan Finch, ZHM, questions to Development Services.

Tania Chapela, Development Services, answers ZHM questions.

Jillian Massey, Planning Commission, staff report.

Susan Finch, ZHM, calls proponents/opponents/Development Services.

Brian Grady, Development Services, statement for the record.

Susan Finch, ZHM, questions to applicant rep.

Matthew Femal, applicant rep, answers ZHM questions/presents rebuttal.

Susan Finch, ZHM, questions to applicant rep.

Ken Tinkler, applicant rep, answers ZHM questions.

Susan Finch, ZHM, closes RZ 22-0832.

D.12. RZ 22-0834

Brian Grady, Development Services, calls RZ 22-0834.

Mark Bentley, applicant rep, presents testimony.

Russell Ottenberg, applicant rep, presents testimony.

Susan Finch, ZHM, questions to applicant rep.

Russell Ottenberg, applicant rep, answers ZHM questions.

Mark Bentley, applicant rep, continues testimony.

Timothy Lampkin, Development Services, staff report.

Susan Finch, ZHM, questions to Development Services.

Timothy Lampkin, Development Services, answers ZHM.

Jillian Massey, Planning Commission, staff report.

Susan Finch, ZHM, calls proponents/opponents/Development Services/applicant rep/closes RZ 22-0834.

D.14. MM 22-0862

Brian Grady, Development Services, calls MM 22-0862.

Susan Finch, ZHM, oath.

Elise Batsel, applicant rep, presents testimony/submits exhibits.

Steve Henry, applicant rep, continues testimony.

Susan Finch, ZHM, questions to applicant rep.

Steve Henry, applicant rep, answers ZHM questions.

Elise Batsel, applicant rep, continues testimony.

Sam Ball, Development Services, staff report.

Jillian Massey, Planning Commission, staff report.

Susan Finch, ZHM, calls proponents/opponents.

Max Forgey, opponent, presents testimony.

Charles Bothe, opponent, presents testimony.

Elizabeth Belcher, opponent, presents testimony.

Susan Finch, ZHM, calls opponents/Development Services.

Brian Grady, Development Services, questions for Planning Commission.

Jillian Massey, Planning Commission, answers Development Services.

Brian Grady, Development Services, statement for the record.

Susan Finch, ZHM, calls applicant rep.

Elise Batsel, applicant rep, calls Steve Henry, applicant rep.

Steve Henry, applicant rep, gives rebuttal.

Elise Batsel, applicant rep, gives rebuttal.

Susan Finch, ZHM, closes MM 22-0862.

ADJOURNMENT

Susan Finch, ZHM, adjourns the meeting.

PD Modification Application:	MM 22-0862
Zoning Hearing Master Date:	July 25, 2022
BOCC Land Use Meeting Date:	September 13, 2022

MM 22-0862
Application No.
Name: Rosa Timoko
Entered at Public Hearing: ZHM
Exhibit # 1 Date: 7/25/22

ugh
lorida
artment

1.0 APPLICATION SUMMARY

Applicant:	Belleair Development Group, LLC
FLU Category:	Residential-9 (Res-9) CPA 21-26, pending adoption, change to Residential-20 (Res-20)
Service Area:	Urban
Site Acreage:	13.65 ~~12.84~~
Community Plan Area:	Valrico
Overlay:	SR 60 Overlay

Introduction Summary
PD 03-0644 was approved in 2003 to allow for 89,000 square feet (sf) of Commercial General (CG) uses, 5,000 sf of residential support uses, and 10,000 sf of Business, Professional Office (BPO) uses. The applicant requests modifications to the allowable uses to allow 256 multi-family dwelling units and reduce the allowable CG uses to 2,475 sf. If adopted, CPA 21-26 will change the future land use designation to Res-20.

Existing Approval(s)	Proposed Modification(s)
Side yard setback of 10 feet for residential lots.	Reduce the amount of allowable CG uses to 2,475 sf.
Maximum building height of 20 feet for commercial buildings	Allow a maximum of 256 multi-family dwelling units and related amenities.

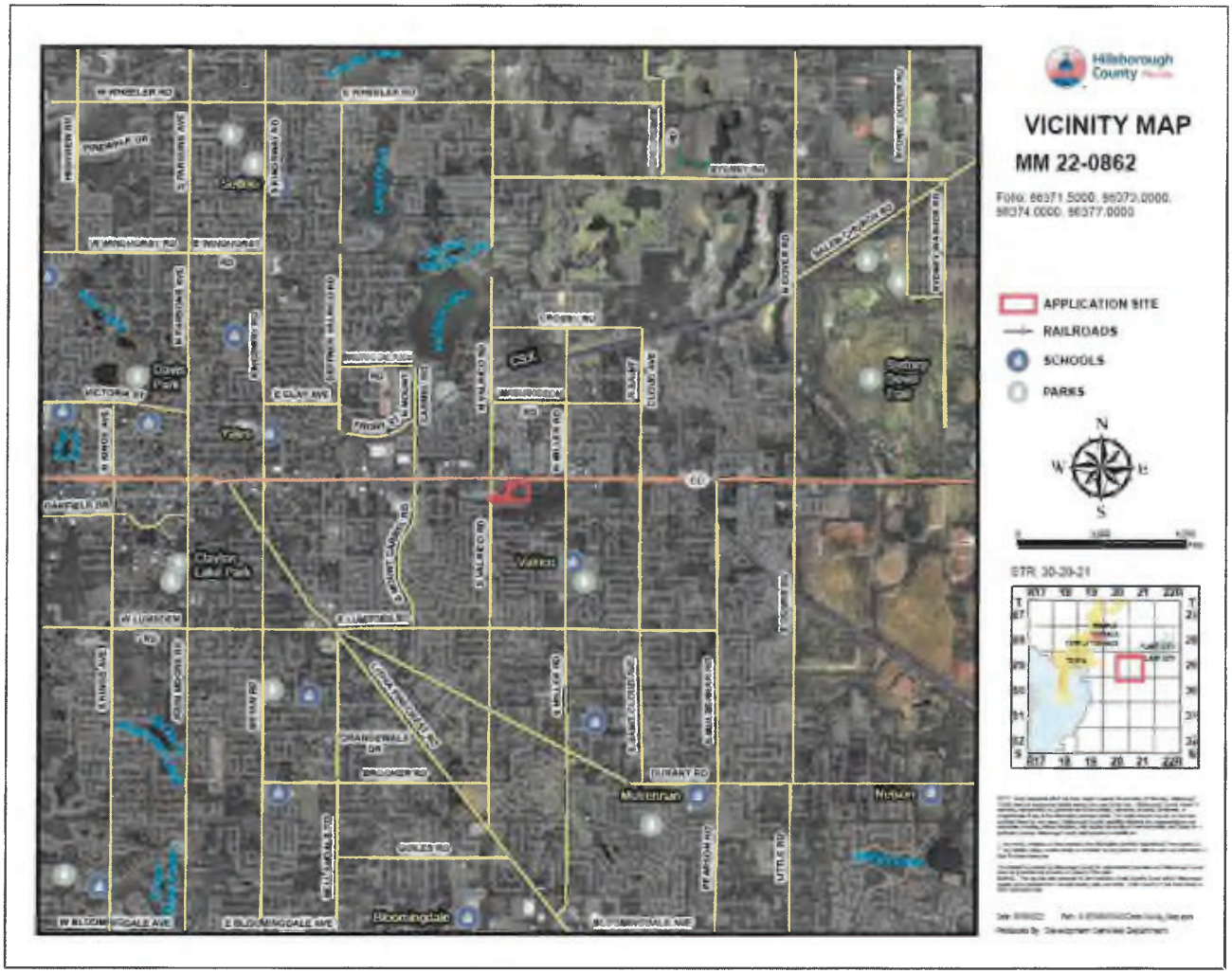
Additional Information	
PD Variation(s):	None Requested as part of this application
Waiver(s) to the Land Development Code:	None Requested as part of this application

Planning Commission Recommendation:	**Development Services Recommendation:**
Consistent	Approvable, subject to proposed conditions

Created: 8-17-21

2.0 LAND USE MAP SET AND SUMMARY DATA

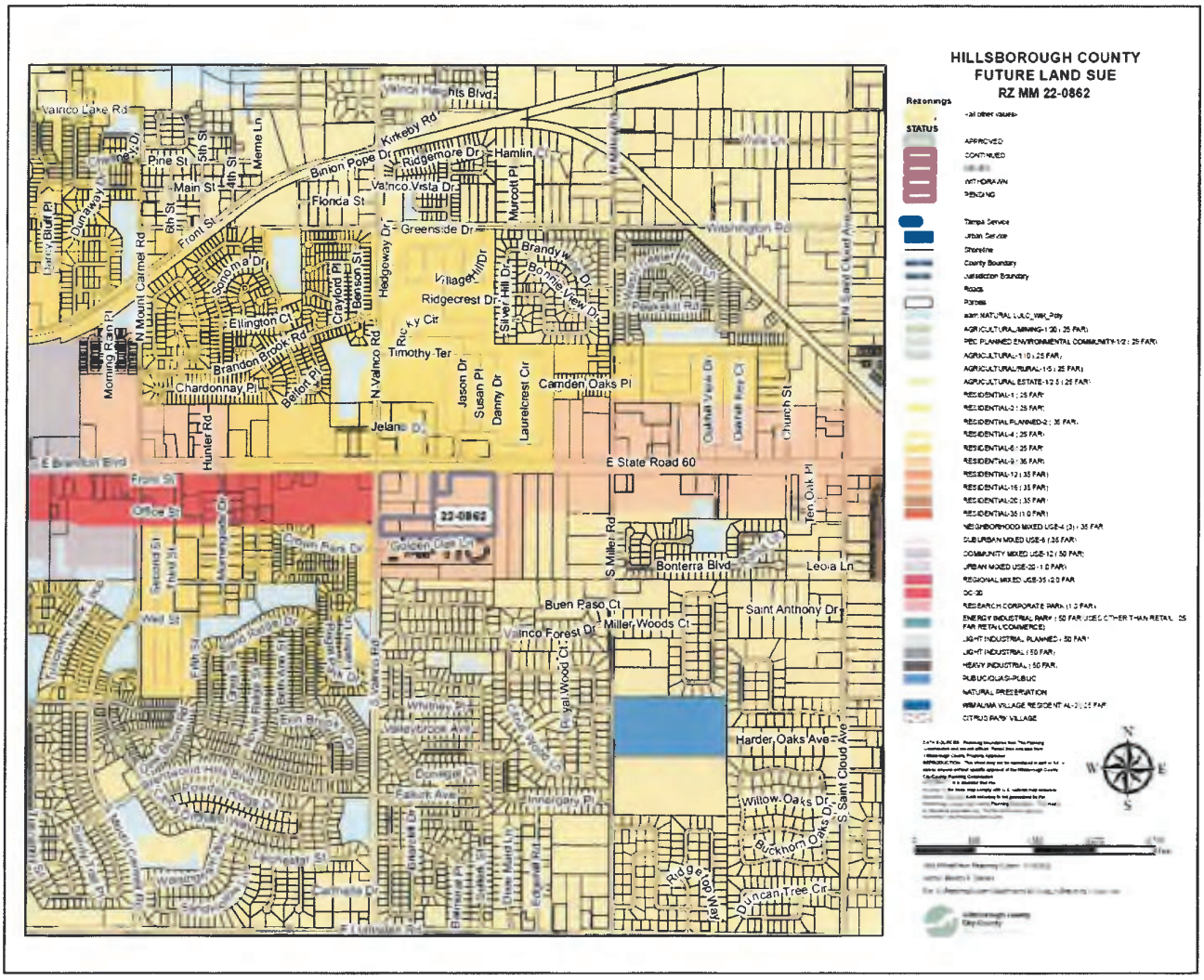
2.1 Vicinity Map



Context of Surrounding Area:
Development in the surrounding area includes a mix of uses including townhomes to the south; single-family residential to the east; a church, mobile home park, and multi-tenant to the north; and a convenience store with gas pumps, carwash, drug store, single-family residential, multi-tenant retail, and an eating establishment with drive-through to the west.

2.0 LAND USE MAP SET AND SUMMARY DATA

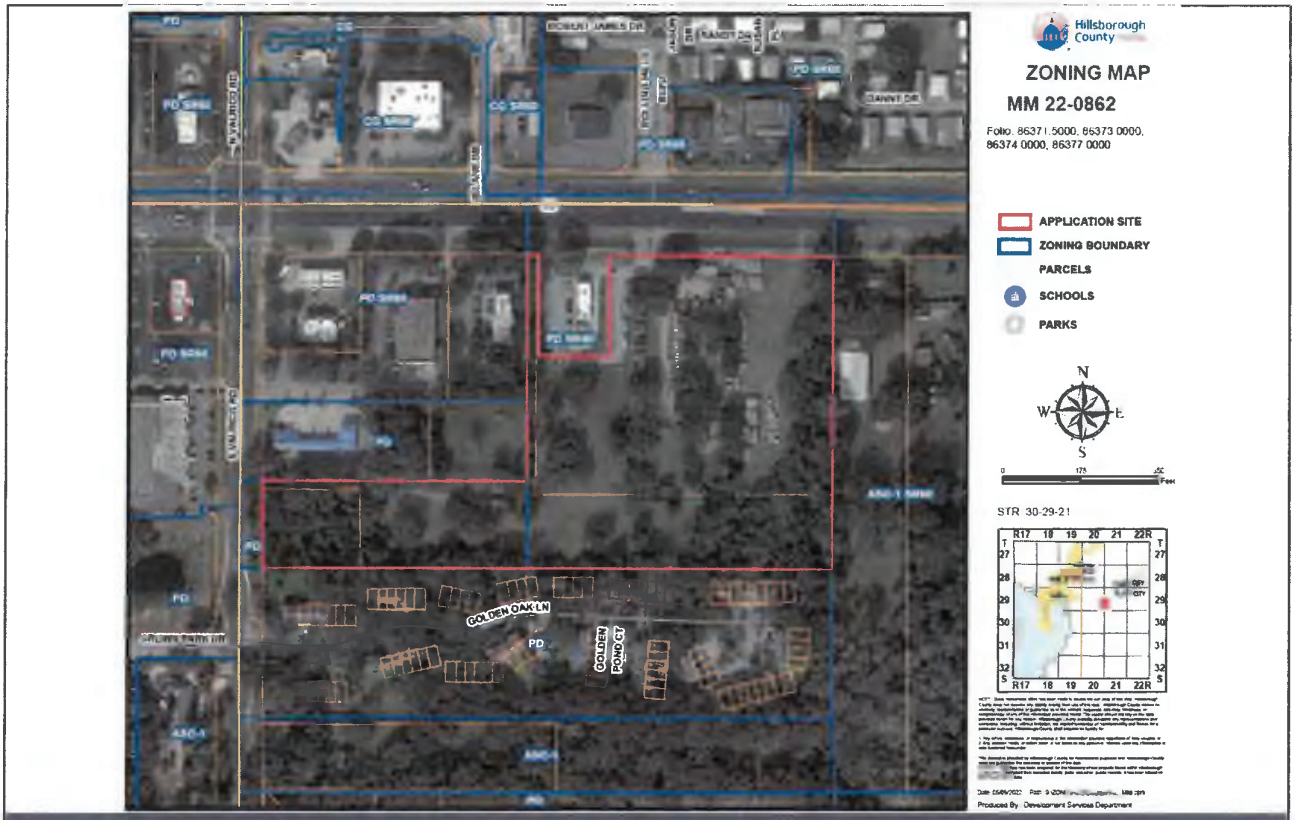
2.2 Future Land Use Map



Subject Site Future Land Use Category	Res-9 (Existing)	Res-20 (Proposed)
Maximum Density/FAR	9 du per ga/FAR: 0.50	20 du per ga/FAR: 0.75
Typical Uses	Residential, urban scale neighborhood commercial, office uses, multi-purpose projects and mixed use development.	Residential, neighborhood commercial, office uses, multi-purpose projects and mixed use development.

2.0 LAND USE MAP SET AND SUMMARY DATA

2.3 Immediate Area Map

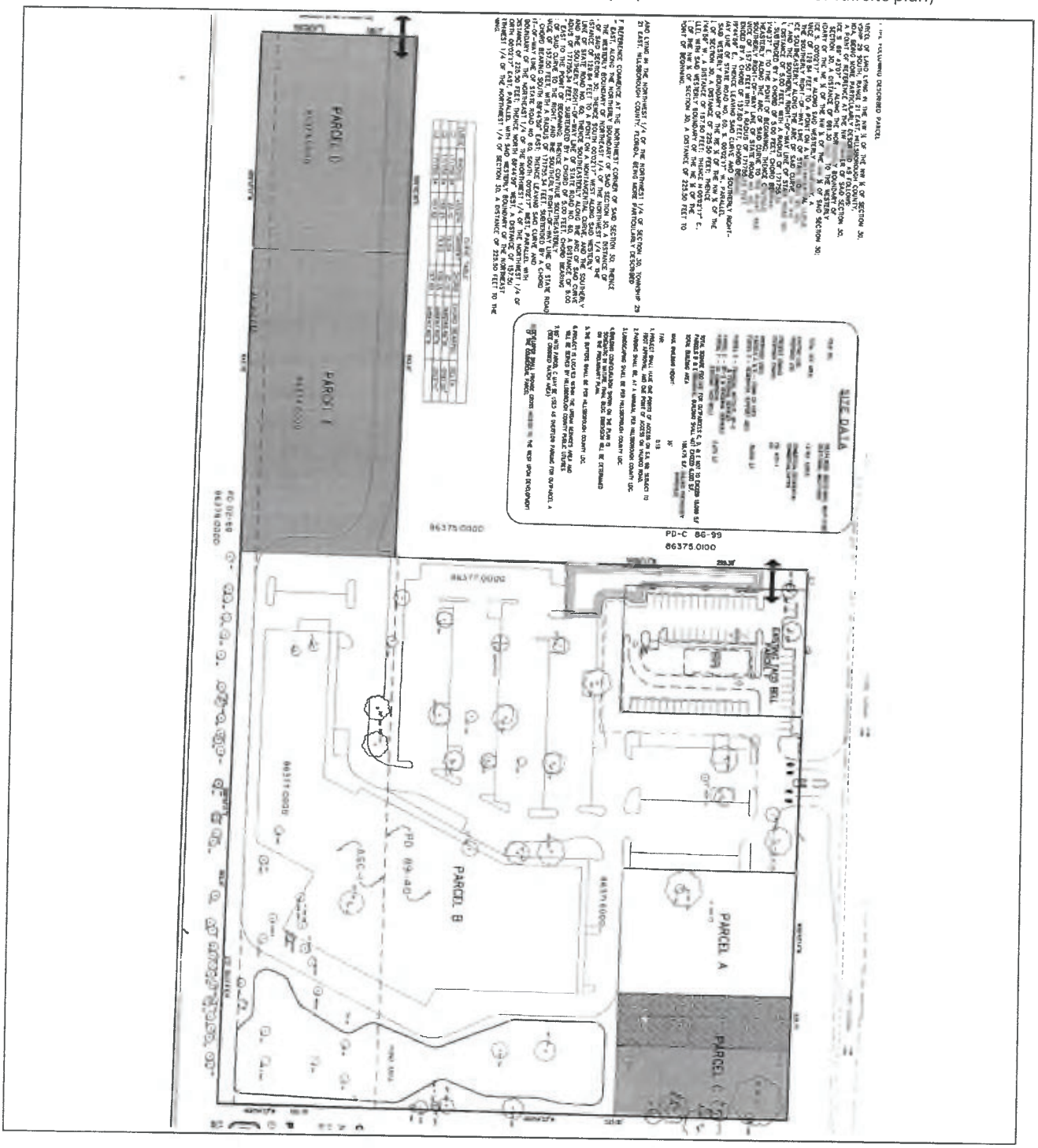


Adjacent Zonings and Uses

Location	Zoning	Maximum Density/FAR Permitted by Zoning District	Allowable Use	Existing Use
North	CG	0.0 du per ga/FAR: 0.27	General Commercial	Eating Establishment
	PD 92-0094	NA/FAR: 0.27	Church, Office, Limited Commercial	Church, Eating Establishment with Drive-Through, Multi-Tenant Commercial
	PD 93-0125	5.51 MH per ga or 9 du per ga redeveloped	Mobile Home Park	Mobile Home Park
South	PD 02-0059	9.0 du per ga/FAR: NA	Residential Townhomes	Residential Townhomes
East	ASC-1	1.0 du per ga/FAR: NA	Agriculture and Single-Family Conventional	Single-Family Residential
West	PD 98-0839	NA/FAR: 0.35	Neighborhood Commercial	Convenience Store with Gas Pumps, Drug Store, Eating Establishment w Drive-Through
	PD 82-0289	6 du per ga/FAR: 0.24	Neighborhood Commercial and Single-Family Conventional	Multi-Tenant Commercial and Single-Family Conventional

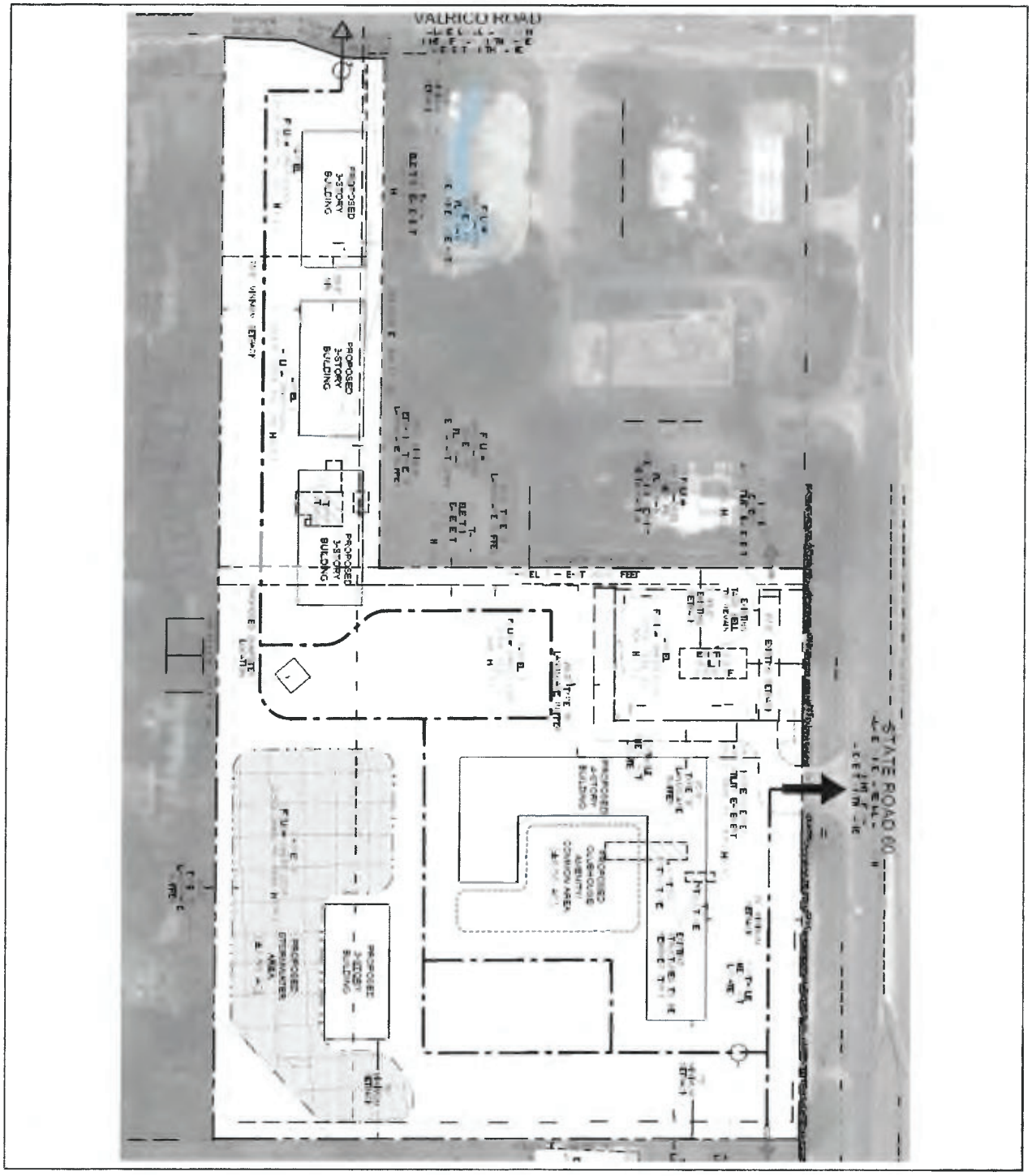
2.0 LAND USE MAP SET AND SUMMARY DATA

2.4 Approved Site Plan (partial provided below for size and orientation purposes. See Section 8.1 for full site plan)



2.0 LAND USE MAP SET AND SUMMARY DATA

2.5 Proposed Site Plan (partial provided below for size and orientation purposes. See Section 8.2 for full site plan)



3.0 TRANSPORTATION SUMMARY (FULL TRANSPORTATION REPORT IN SECTION 9 OF STAFF REPORT)

Adjoining Roadways (check if applicable)			
Road Name	**Classification**	**Current Conditions**	**Select Future Improvements**
Valrico Road	County Collector - Urban	2 Lanes ☒ Substandard Road ☐ Sufficient ROW Width	☒ Corridor Preservation Plan ☐ Site Access Improvements ☐ Substandard Road Improvements ☐ Other
Brandon Blvd	FDOT Principal Arterial - Urban	6 Lanes ☐ Substandard Road ☐ Sufficient ROW Width	☒ Corridor Preservation Plan ☐ Site Access Improvements ☐ Substandard Road Improvements ☐ Other

Project Trip Generation ☐ Not applicable for this request			
	Average Annual Daily Trips	**A.M. Peak Hour Trips**	**P.M. Peak Hour Trips**
Existing	4,002	100	266
Proposed	2,393	142	130
Difference (+/-)	-1,609	+42	-136

*Trips reported are based on net new external trips unless otherwise noted.

Connectivity and Cross Access ☐ Not applicable for this request				
Project Boundary	**Primary Access**	**Additional Connectivity/Access**	**Cross Access**	**Finding**
North	X	None	None	Meets LDC
South		None	None	Meets LDC
East		None	Vehicular & Pedestrian	Meets LDC
West		Vehicular & Pedestrian	Vehicular & Pedestrian	Meets LDC
Notes:				

Design Exception/Administrative Variance ☒ Not applicable for this request		
Road Name/Nature of Request	**Type**	**Finding**
Valrico Road/ Substandard Road	Administrative Variance Requested	Approvable
	Choose an item.	Choose an item.
Notes:		

4.0 ADDITIONAL SITE INFORMATION & AGENCY COMMENTS SUMMARY

INFORMATION/REVIEWING AGENCY				
Environmental:	**Comments Received**	**Objections**	**Conditions Requested**	**Additional Information/Comments**

Environmental Protection Commission	☒ Yes ☐ No	☐ Yes ☒ No	☐ Yes ☒ No	
Natural Resources	☐ Yes ☒ No	☐ Yes ☐ No	☐ Yes ☐ No	
Conservation & Environ. Lands Mgmt.	☒ Yes ☐ No	☐ Yes ☒ No	☐ Yes ☒ No	

Check if Applicable:	☐ Potable Water Wellfield Protection Area
☐ Wetlands/Other Surface Waters	☐ Significant Wildlife Habitat
☐ Use of Environmentally Sensitive Land Credit	☐ Coastal High Hazard Area
☐ Wellhead Protection Area	☒ Urban/Suburban/Rural Scenic Corridor
☐ Surface Water Resource Protection Area	☐ Adjacent to ELAPP property
	☐ Other _____

Public Facilities:	Comments Received	Objections	Conditions Requested	Additional Information/Comments
Transportation ☒ Design Exc./Adm. Variance Requested ☐ Off-site Improvements Provided	☐ Yes ☐ No	☐ Yes ☒ No	☒ Yes ☐ No	
Service Area/ Water & Wastewater ☒ Urban ☐ City of Tampa ☐ Rural ☐ City of Temple Terrace	☒ Yes ☐ No	☐ Yes ☒ No	☐ Yes ☒ No	Connection to County potable water and wastewater systems required
Hillsborough County School Board Adequate ☒ K-5 ☒ 6-8 ☒ 9-12 ☐ N/A Inadequate ☐ K-5 ☐ 6-8 ☐ 9-12 ☐ N/A	☒ Yes ☐ No	☐ Yes ☒ No	☐ Yes ☒ No	

Impact/Mobility Fees: Urban Mobility, Central Park/Fire - 256 multi-family units, 2,475 sf fast food w drive-through.

(Fee estimate is based on a 1,200 square foot, Multi-Family Units 1-2 story)

Mobility: $5,995 * 256 units = $1,534,720
Parks: $1,555 * 256 units = $ 398,080
School: $3,891 * 256 units = $ 996,096
Fire: $249 * 256 units = $ 63,744
Total Multi-Family (1 - 2 story) = $2,992,640

Retail - Fast Food w/Drive Thru (Per 1,000 s.f.)
Mobility: $94,045 * 2.475 = $232,761.38
Fire: $313 * 2.475 = $774.68

Comprehensive Plan:	Comments Received	Findings	Conditions Requested	Additional Information/Comments
Planning Commission ☐ Meets Locational Criteria ☐ N/A ☒ Locational Criteria Waiver Requested ☒ Minimum Density Met ☐ N/A	☒ Yes ☐ No	☐ Inconsistent ☒ Consistent	☐ Yes ☒ No	

5.0 IMPLEMENTATION RECOMMENDATIONS

5.1 Compatibility

Based on the design features of the general development plan to include 75-foot setbacks and 20-foot type B buffers from the residential properties to the east and south, the internal buffering of the proposed multi-family building from the fast-food restaurant with drive-through, as well as the mix of uses within the immediate vicinity, staff finds the

proposed planned development zoning district compatible with the existing uses, zoning districts, and development pattern in the area.

5.2 Recommendation

Based on the above considerations, staff recommends approval of the request subject to conditions.

6.0 PROPOSED CONDITIONS

Prior to site plan certification, the applicant shall revise site plan to add a label along the project frontage on Valrico Road that states "UP TO +/-20 FEET OF ROW PRESERVATION TO BE PROVIDED ALONG VALRICO ROAD PER HILLSBOROUGH COUNTY CORRIDOR PRESERVATION PLAN"

Approval - Approval of the request, subject to the conditions listed below, is based on the general site plan submitted ~~July 16, 2003~~ July 1, 2022.

1. The project shall be limited to the following:

1.1 Parcels A and B: A maximum of 256 multi-family dwelling units and related amenities~~89,000 square feet of CG (Commercial General) uses~~.

1.2 Parcel B: A maximum of 2,475 sf of CG (Commercial General) uses.~~Parcels C, D, and E: A maximum of 15,000 square feet of development distributed among the three parcels and as limited herein.~~

~~2. Parcel C shall be limited to residential support uses not to exceed 5,000 square feet and shall be developed in accordance with BPO zoning district standards.~~

~~3. Parcels D and E shall be developed with BPO zoning district uses, unless otherwise specified. A bank shall also be permitted within Parcel D.~~

~~4. Parcels A and B shall be developed in accordance to CG (Commercial General) zoning district standards, unless otherwise specified herein. Parcels D and E shall be developed in accordance with BPO zoning district standards unless otherwise specified. Individual buildings within Parcels D and E shall not exceed 6,000 square feet.~~

2.~~5.~~ Buildings within Parcel A~~-B~~ shall be setback a minimum of 75 ~~150~~ feet from the eastern project boundary.

~~6. The westernmost 65 feet of Parcel C may be utilized for overflow parking for Parcel A provided the minimum required number of parking spaces for Parcel A are provided within the boundaries of Parcel A as shown on the site plan. A reduction in the required number of parking within Parcel A shall not be permitted.~~

3.~~7.~~ Development Parcels as well as the retention pond area shall be located as generally shown on the site plan. The design of the retention pond may be modified to meet the requirements of the stormwater technical manual but shall retain a curvilinear nature as shown on the site plan.

4.~~8.~~ Buffering and screening shall be in accordance with the Land Development Code unless otherwise specified herein.

~~8.1 Prior to Site Plan Certification, the site plan shall be revised to indicate a 20-foot buffer area along the southern project boundary.~~

5.~~9.~~ Tree preservation shall be required in accordance with the Land Development Code. The location of building, parking, and circulation areas may be modified during the site development process in order to address tree preservation requirements, provided required buffer/screening/setback areas are maintained.

6.~~10.~~ All solid waste facilities in Parcel A shall be within enclosures that architecturally finished in materials similar to those of the principal structures. ~~All trash/refuse/storage facilities shall be completely enclosed. Said facilities shall be architecturally finished in materials similar to those of the principal structures and shall be setback a minimum of 150 feet from the eastern project boundary of Parcel B.~~

7.~~11.~~ Cross access shall be provided to the property to the west (via the Taco Bell property) and east as shown on the site plan. Cross access shall be constructed prior to the issuance to a Certificate of Occupancy for any building within ~~Parcels A through E~~ Parcel A.

8.~~12.~~ Internal vehicular and pedestrian cross access shall be provided among all portions of the project (Parcels A through ~~E~~ B).

9.~~13.~~ Prior to Construction Site Plan approval, the developer shall provide a traffic analysis, signed by a Professional Engineer, showing the amount of left turn storage needed to serve development traffic. ~~If with the addition of background traffic and if warranted by the results of the analysis, (as determined by Hillsborough County) the developer shall provide, at his expense, left turn storage lanes of sufficient length to accommodate anticipated left turning traffic (for westbound to southbound traffic) into the site, on SR 60, and at each access point where a left turn is permitted.~~ The design and construction of any ~~these~~ left turn lanes shall be approved by Hillsborough County Development Services ~~Planning and Growth Management Department~~. All roadway construction of said left turning lanes shall be completed with proper transitions from the widened section to the existing roadway pavement. For off site improvements, the developer may be eligible for pro-rata share of costs.

10.~~14.~~ If required by FDOT and if warranted, the developer shall provide, at his expense, additional left turn storage lanes of sufficient length to accommodate anticipated left turning traffic, for vehicles making U-turns on SR 60 at each median cut adjacent to the project were a left turn is permitted. Prior to Detailed Site Plan approval, the developer shall provide a traffic analysis, signed by Professional Engineer, showing the amount of left turn storage needed to serve development traffic. The design and construction of these left turn lanes shall be subject to FDOT approval.

11.~~15.~~ Access to the subject property via SR 60 shall be subject to FDOT permitting. Prior to Site Plan Certification, the developer shall remove the easternmost access drive on SR 60.

12.~~16.~~ Approval of this application does not ensure that water will be available at the time when the applicant seeks permits to actually develop.

13.~~17.~~ In the event there is a conflict between a zoning condition of approval, as stated herein, and any written or graphic notation on the general site plan, the more restrictive requirement shall apply.

14.~~18.~~ The development of the project shall proceed in strict accordance with the terms and conditions contained in the Development Order, the General Site Plan, the land use conditions contained herein, and all applicable rules, regulations, and ordinances of Hillsborough County.

15.~~19.~~ Within 90 days of approval of RZ 03-0644 by the Hillsborough County Board of County Commissioners, the developer shall submit to the County Planning and Development Management Department a revised General Development Plan for certification reflecting all the conditions outlined above.

16. In accordance with LDC Section 5.03.07.C, the certified PD general site plan shall expire for the internal transportation network and external access points, as well as for any conditions related to the internal transportation network and external access points, if site construction plans, or equivalent thereof, have not been approved for all or part of the subject Planned Development within 5 years of the effective date of the PD unless an extension is granted as provided in the LDC. Upon expiration, re-certification of the PD General Site Plan shall be required in accordance with provisions set forth in LDC Section 5.03.07.C.

17. If PD 22-0862 is approved, the County Engineer will approve a Section 6.04.02.B. Administrative Variance (dated July 12, 2022) from the Section 6.04.03.L Hillsborough County Land Development Code (LDC) requirement to improve the roadway to current County standards. The Administrative Variance was found approvable by the County Engineer (on July 15, 2022).

18. As Valrico Road is included in the Hillsborough County Corridor Preservation Plan as a future 4-lane improvement, the developer shall designate up to 20 feet of right of way preservation along the project frontage on Valrico Road. Building setbacks shall be calculated from the future right-of-way line.

~~20. Effective as of February 1, 1990, this development order/permit shall meet the concurrency requirements of Chapter 163, Part II, Florida Statutes. Approval of this development order/permit does not constitute a guarantee that there will be public facilities at the time of application for subsequent development orders or permits to allow issuance of such development orders or permits.~~

Zoning Administrator Sign Off:	

SITE, SUBDIVISION AND BUILDING CONSTRUCTION IN ACCORDANCE WITH HILLSBOROUGH COUNTY SITE DEVELOPMENT PLAN & BUILDING REVIEW AND APPROVAL.

Approval of this re-zoning petition by Hillsborough County does not constitute a guarantee that the project will receive approvals/permits necessary for site development as proposed will be issued, nor does it imply that other required permits needed for site development or building construction are being waived or otherwise approved. The project will be required to comply with the Site Development Plan Review approval process in addition to obtain all necessary building permits for on-site structures.

7.0 ADDITIONAL INFORMATION AND/OR GRAPHICS

8.0 SITE PLANS (FULL)

8.1 Approved Site Plan (Full)

8.0 SITE PLANS (FULL)

8.2 Proposed Site Plan (Full)

9.0 FULL TRANSPORTATION REPORT (see following pages)

AGENCY REVIEW COMMENT SHEET

TO: Zoning Technician, Development Services Department	**DATE:** 07/17/2022
REVIEWER: Alex Steady, Senior Planner	**AGENCY/DEPT:** Transportation
PLANNING AREA/SECTOR: Valrico/Central	**PETITION NO:** PD 22-0862

	This agency has no comments.
	This agency has no objection.
X	This agency has no objection, subject to the listed or attached conditions.
	This agency objects for the reasons set forth below.

REPORT SUMMARY AND CONCLUSIONS

- The proposed rezoning would result in a decrease of trips potentially generated by development of the subject site by 1,609 average daily trips, an increase of 42 trips in the a.m. peak hour, and a decrease in 136 trips in the p.m. peak hour.
- If PD 22-0862 is approved, the County Engineer will approve a Section 6.04.02.B. Administrative Variance (dated July 12, 2022) from the Section 6.04.03.L Hillsborough County Land Development Code (LDC) requirement to improve the roadway to current County standards. The Administrative Variance was found approvable by the County Engineer (on July 15, 2022).
- As Valrico Road is included in the Hillsborough County Corridor Preservation Plan as a future 4-lane improvement, the developer shall designate up to 20 feet of right of way preservation along the project frontage on Valrico Road. Building setbacks shall be calculated from the future right-of-way line.
- Transportation Review Section staff has no objection to the proposed request, subject to the conditions of approval provided hereinbelow.

CONDITIONS OF APPROVAL

In addition to the previously approved zoning conditions, which shall carry forward, staff is requesting the following new and other conditions:

Revised Conditions

~~11.~~ Cross access shall be provided to the property to the west (via the Taco Bell property) and east as shown on the site plan. Cross access shall be constructed prior to the issuance to a Certificate of Occupancy for any building within Parcels ~~A through E~~ Parcel A.

[Staff is proposing changes to this condition to clarify cross access and to update parcels.]

~~12.~~ Internal vehicular and pedestrian cross access shall be provided among all portions of the project (Parcels A through ~~E~~B).

[Staff is proposing changes to this condition in order to clarify new parcel arrangement proposed for the project.]

~~20. Effective as of February 1, 1990, this development order/permit shall meet the concurrency requirements of Chapter 163, Part II, Florida Statutes. Approval of this development order/permit does not constitute a guarantee that there will be public facilities at the time of application for subsequent development orders or permits to allow issuance of such development orders or permits.~~

[Staff is proposing removal of this condition to eliminate outdated language concerning Concurrency.]

New Conditions:

- If PD 22-0862 is approved, the County Engineer will approve a Section 6.04.02.B. Administrative Variance (dated July 12, 2022) from the Section 6.04.03.L Hillsborough County Land Development Code (LDC) requirement to improve the roadway to current County standards. The Administrative Variance was found approvable by the County Engineer (on July 15, 2022).
- As Valrico Road is included in the Hillsborough County Corridor Preservation Plan as a future 4-lane improvement, the developer shall designate up to 20 feet of right of way preservation along the project frontage on Valrico Road. Building setbacks shall be calculated from the future right-of-way line.

Other Conditions

Prior to PD site plan certification, the applicant shall revise the PD site plan to:

- Prior to site plan certification, the applicant shall revise site plan to add a label along the project frontage on Valrico Road that states "UP TO +/-20 FEET OF ROW PRESERVATION TO BE PROVIDED ALONG VALRICO ROAD PER HILLSBOROUGH COUNTY CORRIDOR PRESERVATION PLAN "

PROJECT SUMMARY AND ANALYSIS

The applicant is requesting a modification to Planned Development (PD) 03-0644. PD 03-0644 consists of four parcels totaling 13.76 acres. The existing PD has approval is for 106,000 square feet of Commercial General (CG) uses. The applicant is proposing to modify the entitlements by adding 256 multifamily units and reducing total Commercial General Uses to a maximum of 2,475 sf. The site is located +/- 650 feet southeast of the intersection of Brandon Blvd and Valrico Road. The Future Land Use designation of the site is Residential – 9 (R-9). The subject property is currently included in an application for a Comprehensive Plan Amendment (HC CPA 21-26) and both the major modification, and the comprehensive plan amendment are scheduled to be heard concurrently at the Board of County Commissioners.

Trip Generation Analysis

Staff has prepared a comparison of the trips potentially generated under the previously approved zoning and the proposed planned development including the additional residential units, utilizing a generalized worst-case scenario. Data presented below is based on the Institute of Transportation Engineer's Trip Generation Manual, 10th Edition.

Approved Zoning:

Zoning, Lane Use/Size	24 Hour Two-Way Volume	Total Peak Hour Trips	
		AM	PM
PD 03-0644, 106,000 sf Shopping Center (ITE code 820)	4,002	100	404
Internal Capture Trips	N/A	0	0
Pass by Trips	N/A	0	138
Volume added to Adjacent Streets	**4,002**	**100**	**266**

Proposed Zoning:

Zoning, Lane Use/Size	24 Hour Two-Way Volume	Total Peak Hour Trips	
		AM	PM
PD, 256 Multi Family Dwelling Units (ITE code 221	1,216	108	108
PD, 2,500 sf Fast Food Restaurant with Drive Through (ITE code 934)	1,177	100	82
Unadjusted Volume	2,393	208	190
Internal Capture Trips	N/A	22	26
Pass by Trips	N/A	44	34
Volume added to Adjacent Streets	**2,393**	**142**	**130**

Trip Generation Difference:

Zoning, Lane Use/Size	24 Hour Two-Way Volume	Total Peak Hour Trips	
		AM	PM
Difference	**-1,609**	**+42**	**-136**

The proposed rezoning would result in a decrease of trips potentially generated by development of the subject site by 1,609 average daily trips, an increase of 42 trips in the a.m. peak hour, and a decrease in 136 trips in the p.m. peak hour.

TRANSPORTATION INFRASTRUCTURE SERVING THE SITE

The subject property has frontage on Valrico Road and Brandon Blvd. Valrico Rd. is a 2-lane, substandard Hillsborough County maintained, collector roadway, characterized by +/-10 ft. travel lanes. The existing right-of-way on Valrico Road ranges from +/-70 ft to +/- 95 feet. There are sidewalks and curb on both sides of Valrico Rd. in the vicinity of the proposed project. Brandon Blvd is a 6 lane, Florida Department of Transportation (FDOT) maintained roadway. Brandon Blvd Lies within +/- 190 feet of right of way. Brandon Blvd has sidewalks on both sides of the roadway within the vicinity of the project.

HILLSBOROUGH COUNTY CORRIDOR PRESERVATION PLAN

Valrico Rd. is included as a 4-lane roadway in the Hillsborough County Corridor Preservation Plan. Sufficient ROW must be preserved on Valrico for the future improvements. Using the best available data, right of way on Valrico varies from +/-70 to +/-90 feet. According to the Hillsborough County Transportation Manual, a typical section of a 4-lane collector roadway (TS-6) requires a total of 110 feet of ROW. The portion of the site on Valrico Road that has 70 feet of ROW must preserve up to 20 feet of ROW and the portion that has 95 must preserve up to 7.5 feet of ROW for the planned improvement.

REQUESTED VARIANCE

Valrico Road is a substandard road. The land development code indicates that a developer would need to improve the road up to county standards unless an Administrative Variance is submitted and found approvable. **The applicant's Engineer of Record (EOR) submitted a Section 6.04.02.B. Administrative** Variance Request (dated July 12, 2022) Section 6.04.03.L Hillsborough County Land Development Code (LDC) requirement to improve the roadway to current County standards. The Administrative Variance was found approvable by the County Engineer (on July 15, 2022). If the rezoning is approved, the

County Engineer will approve the above referenced Administrative Variance Request, upon which the developer will not be required to improve Valrico Road to county standard.

SITE ACCESS

The project is proposing to use an existing full access connection on Brandon Blvd and one full access connection on Valrico Rd. Vehicular and Pedestrian Cross access is provided to the west and east of the project as per requirements of section 6.04.03.Q of the Hillsborough County Land Development Code.

ROADWAY LEVEL OF SERVICE (LOS)

Level of Service (LOS) information is reported below.

FDOT Generalized Level of Service				
Roadway	**From**	**To**	**LOS Standard**	**Peak Hr Directional LOS**
VALRICO RD	DURANT RD	SR 60	D	C
SR 60/ BRANDON BLVD	VALRICO RD	DOVER RD	D	C

Source: 2020 Hillsborough County Level of Service (LOS) Report

3.0 TRANSPORTATION SUMMARY (FULL TRANSPORTATION REPORT IN SECTION 9 OF STAFF REPORT)

Adjoining Roadways (check if applicable)			
Road Name	**Classification**	**Current Conditions**	**Select Future Improvements**
Valrico Road	County Collector - Urban	2 Lanes ☒Substandard Road ☐Sufficient ROW Width	☒ Corridor Preservation Plan ☐ Site Access Improvements ☐ Substandard Road Improvements ☐ Other
Brandon Blvd	FDOT Principal Arterial - Urban	6 Lanes ☐Substandard Road ☐Sufficient ROW Width	☒ Corridor Preservation Plan ☐ Site Access Improvements ☐ Substandard Road Improvements ☐ Other

Project Trip Generation ☐Not applicable for this request			
	Average Annual Daily Trips	**A.M. Peak Hour Trips**	**P.M. Peak Hour Trips**
Existing	4,002	100	266
Proposed	2,393	142	130
Difference (+/-)	-1,609	+42	-136

*Trips reported are based on net new external trips unless otherwise noted.

Connectivity and Cross Access ☐Not applicable for this request				
Project Boundary	**Primary Access**	**Additional Connectivity/Access**	**Cross Access**	**Finding**
North	X	None	None	Meets LDC
South		None	None	Meets LDC
East		None	Vehicular & Pedestrian	Meets LDC
West		Vehicular & Pedestrian	Vehicular & Pedestrian	Meets LDC
Notes:				

Design Exception/Administrative Variance ☒Not applicable for this request		
Road Name/Nature of Request	**Type**	**Finding**
Valrico Road/ Substandard Road	Administrative Variance Requested	Approvable
	Choose an item.	Choose an item.
Notes:		

4.0 Additional Site Information & Agency Comments Summary			
Transportation	**Objections**	**Conditions Requested**	**Additional Information/Comments**
☒ Design Exception/Adm. Variance Requested ☐ Off-Site Improvements Provided	☐ Yes ☐N/A ☒ No	☒ Yes ☐ No	See Staff Report.

From: Williams, Michael
Sent: Friday, July 15, 2022 10:11 AM
To: Steven Henry
Cc: Tirado, Sheida; PW-CEIntake; Steady, Alex; Ball, Fred (Sam)
Subject: FW: MM 22-0862 - Administrative Variance Review
Attachments: 22-0862 AVReq 07-14-22.pdf

Importance: High

Steve,
I have found the attached Section 6.04.02.B. Administrative Variance (AV) for PD 22-0862 APPROVABLE.

Please note that it is you (or your client's) responsibility to follow-up with Transportation staff after the BOCC approves the PD zoning or PD zoning modification related to below request. This is to obtain a signed copy of the DE/AV.

If the BOCC denies the PD zoning or PD zoning modification request, staff will request that you withdraw the AV/DE. In such instance, notwithstanding the above finding of approvability, if you fail to withdraw the request, I will deny the AV/DE (since the finding was predicated on a specific development program and site configuration which was not approved).

Once I have signed the document, it is your responsibility to submit the signed AV/DE(s) together with your initial plat/site/construction plan submittal. If the project is already in preliminary review, then you must submit the signed document before the review will be allowed to progress. Staff will require resubmittal of all plat/site/construction plan submittals that do not include the appropriate signed AV/DE documentation.

Lastly, please note that it is critical to ensure you copy all related correspondence to PW-CEIntake@hillsboroughcounty.org

Mike

Michael J. Williams, P.E.
Director, Development Review
County Engineer
Development Services Department

P: (813) 307-1851
M: (813) 614-2190
E: Williamsm@HillsboroughCounty.org
W: HCFLGov.net

Hillsborough County
601 E. Kennedy Blvd., Tampa, FL 33602

Received July 14, 202:
Development Services

Engineers
Planners

LINCKS & ASSOCIATES, INC.

July 12, 2022

Mr. Mike Williams
Hillsborough County Government
601 East Kennedy Blvd., 22nd Floor
Tampa, FL 33602

Re: SR 60/Valrico Road
Folio 086373.0000 (119 S Valrico Road)
086374.0000 (117 S Valrico Road)
086377.0000 (2125 E. Hwy 60)
086371.5000 (2207 E. Hwy 60)
086371.5100 (2201 E. Hwy 60)
MM 22-0862
Lincks Project No. 21218

The purpose of this letter is to request a Section 6.04.02.B Administrative Variance to Section 6.04.03L Existing Facilities of the Hillsborough County Land Development Code, which requires projects taking access to a substandard road to improve the roadway to current County standards between the project driveway and the nearest standard road.

The subject property is located south of SR 60 and east of Valrico Road and is currently zoned PD for 106,000 square feet of retail. The developer proposes a Major Modification of the existing PD to allow up to 256 Multi-Family dwelling units. Tables 1, 2 and 3 provide the trip generation comparison of the approved land use versus the proposed land use. As shown, the proposed modification would result in a net decrease of project traffic.

The access to serve the proposed PD is to be as follows :

- One (1) directional median opening to SR 60 (left-in/right-in/right-out)
- One (1) full access to Valrico Road that is to align with the southern Publix access.

The subject property is within the Urban Service Area and as shown on the Hillsborough County Roadways Functional Classification Map, Valrico Road is a collector roadway.

The request is to waive the requirement to improve Valrico Road from SR 60 to the Project Access to current County roadway standards, which are found within the Hillsborough County Transportation Technical Manual.

The variance to the TS-4 standards are as follows:

5023 West Laurel Street
Tampa, FL 33607
813 289 0039 Telephone
8133 287 0674 Telefax
www.Lincks.com Website

1. Bike Lanes – TS-4 has 7 foot buffered bike lanes. The existing roadway does not have bike lanes.

(a) there is an unreasonable burden on the applicant,

It would be unreasonable to require the applicant to add the bike lanes for the following reasons:

1. There are right of way constraints along the subject segment of Valrico Road that would prohibit the ability to construct the bike lanes.
2. The proposed modification would result in a net decrease in project traffic.
3. There are existing sidewalks on both sides of Valrico Road.
4. Hillsborough County has conducted a PD & E study for improvements to the subject segment of Valrico Road.

(b) the variance would not be detrimental to the public health, safety and welfare,

There are sidewalks on both sides of Valrico Road from SR 60 to the Project Access. In addition, there are no bike lanes on Valrico Road south of the project access. Therefore, the Administrative Variance would not be detrimental to the public health, safety and welfare.

(c) without the variance, reasonable access cannot be provided. In the evaluation of the variance request, the issuing authority shall give valid consideration to the land use plans, policies, and local traffic circulation/operation of the site and adjacent areas.

Hillsborough County LDC requires access to Valrico Road to provide connectivity to the roadway network.

Please do not hesitate to contact us if you have any questions or require any additional information.

Best Regards,

Steven J Henry
President
Lincks & Associates, Inc.
P.E. #51555

7/13/22

Based on the information provided by the applicant, this request is:

_____Disapproved

_____Approved

_____Approved with Conditions

If there are any further questions or you need clarification, please contact Sheida L. Tirado, PE.

Date _____

Sincerely,

Michael J. Williams

Hillsborough County Engineer

TABLE 1

DAILY TRIP GENERATION (1)

Scenario	Land Use	ITE LUC	Size	Daily Trip Ends (1)	Passerby Trip Ends (2)	New Daily Trip Ends
Approved	Retail	821	106,000 SF	10,016	3,405	6,611
Proposed	Multi-Family	221	256 DU's	1,162	0	1,162
			Difference	<8,854>	<3,405>	<5,449>

(1) Source: ITE Trip Generation Manual, 11th Edition, 2021.

(2) Source: ITE Trip Generation Handbook, 3rd Edition.

- Passerby Rate - 34%

10,016 x 0.34 = 3,405

TABLE 2

AM PEAK HOUR
TRIP GENERATION

Scenario	Land Use	ITE LUC	Size	AM Peak Hour Trip Ends (1)			Passerby Trip Ends (2)			New AM Peak Hour Trip Ends		
				In	Out	Total	In	Out	Total	In	Out	Total
Approved	Retail	821	106,000 SF	232	142	374	79	48	127	153	94	247
Proposed	Multi-Family	221	256 DU's	23	78	101	0	0	0	23	78	101
			Difference	<209>	<64>	<273>	<79>	<48>	<127>	<130>	<16>	<146>

(1) Source: ITE Trip Generation Manual, 11th Edition, 2021.

(2) Source: ITE Trip Generation Handbook, 3rd Edition.

- Passerby Rate - 34%

In - 232 x 0.34 = 79

Out - 142 x 0.34 = 48

TABLE 3

PM PEAK HOUR
TRIP GENERATION

Scenario	Land Use	ITE LUC	Size	PM Peak Hour Trip Ends (1)			Passerby Trip Ends (2)			New PM Peak Hour Trip Ends		
				In	Out	Total	In	Out	Total	In	Out	Total
Approved	Retail	821	106,000 SF	447	485	932	152	165	317	295	320	615
Proposed	Multi-Family	221	256 DU's	61	39	100	0	0	0	61	39	100
			Difference	<386>	<446>	<832>	<152>	<165>	<317>	<234>	<281>	<515>

(1) Source: ITE Trip Generation Manual, 11th Edition, 2021.

(2) Source: ITE Trip Generation Handbook, 3rd Edition.

- Passerby Rate - 34%

In - 447 x 0.34 = 152

Out - 485 x 0.34 = 165

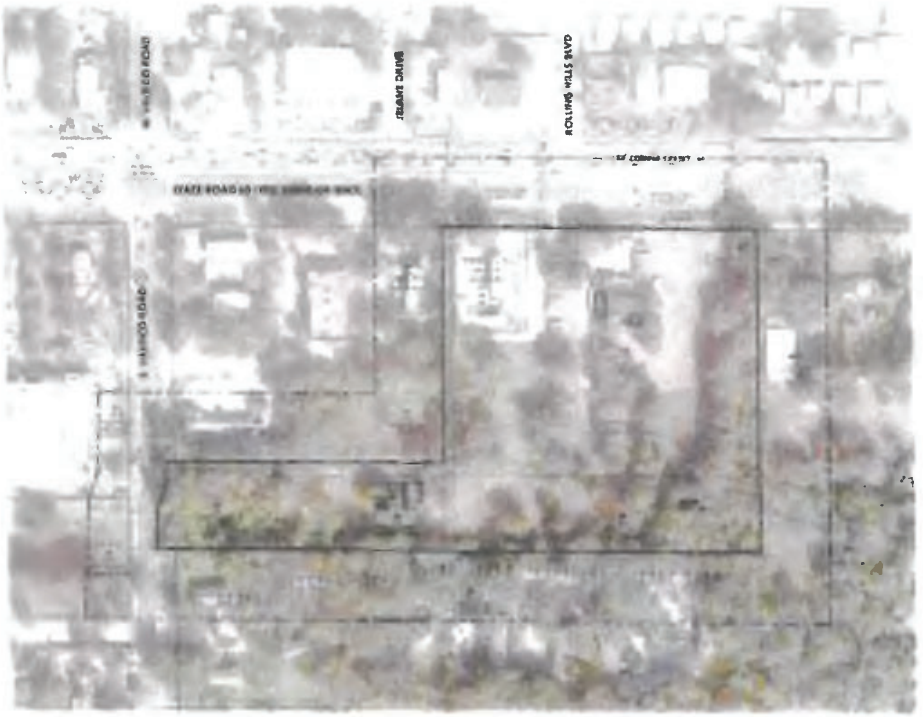
APPENDIX

PROPOSED PD PLAN

LINCKS & ASSOCIATES, INC.

22-0862

PD MAJOR MODIFICATION TO THE
NORIEGA PROPERTY



SCALE: 1" = 100'

STATE ROAD 60

VALRICO ROAD

LEGEND:

EXISTING CONDITIONS

PD 22- ----
GENERAL DEVELOPMENT PLAN

2301 E. State Road 60
Valrico, Florida 33594

RELIAR DEVELOPMENT GROUP

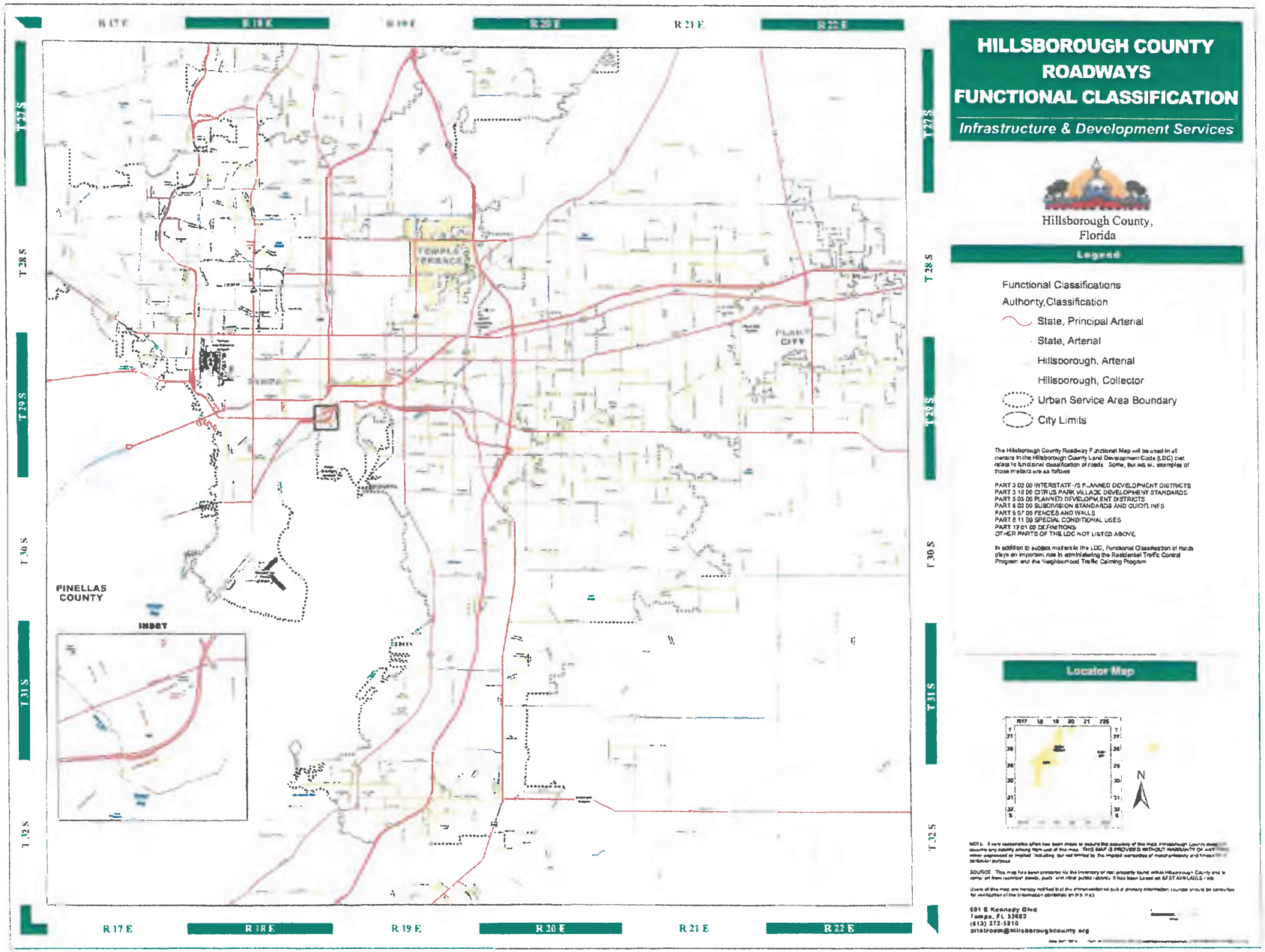
22-0862

Received July 14, 20;
Development Service

HILLSBOROUGH COUNTY ROADWAYS
FUNCTIONAL CLASSIFICATION MAP

LINCKS & ASSOCIATES, INC.

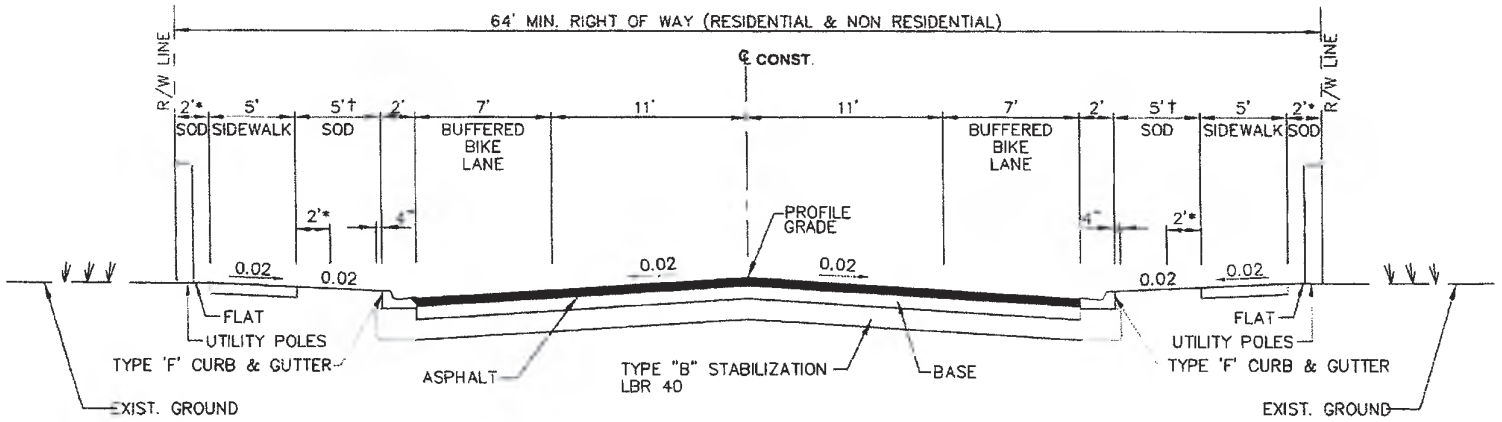
22-0862



22-0862

Received July 14, 202
Development Services

TS-4



TYPICAL SECTION

N.T.S.

5,000 TO 10,000 AADT

MAX. ALLOWABLE DESIGN SPEED – 40 MPH

1. ALL DIMENSIONS SHOWN ARE MINIMUM.
2. SEE APPROPRIATE SECTIONS OF TECHNICAL MANUAL FOR DESIGN PARAMETERS.
* 3. PROVIDE 2' MINIMUM CLEARANCE FROM FENCES, WALLS, HEDGES, ABOVEGROUND UTILITIES OR IMPROVEMENTS, DROP OFFS, OR FROM THE TOPS OF BANKS WITH SLOPES STEEPER THAN 1 TO 4, THAT INTERFERE WITH THE SAFE, FUNCTIONAL USE OF THE SIDEWALK. INTERMITTENT ABOVEGROUND UTILITIES, OR MATURE TREES, 2' OR LESS IN DIAMETER MAY BE PLACED IN THIS 2' STRIP AS FAR FROM THE SIDEWALK AS POSSIBLE, IF NOT IN THE CLEAR ZONE.
† 4. SEE SIDEWALK PROTECTION OPTIONS, DRAWING NO. TD–16 SHEET 7 OF 7 FOR USE WHEN TREES ARE PLANTED IN THE PARKWAY AREA (BETWEEN THE BACK OF CURB AND SIDEWALK).
5. SOD SHALL BE PLACED IN TWO ROWS STAGGERED. (BOTH TEMPORARY AND PERMANENT)

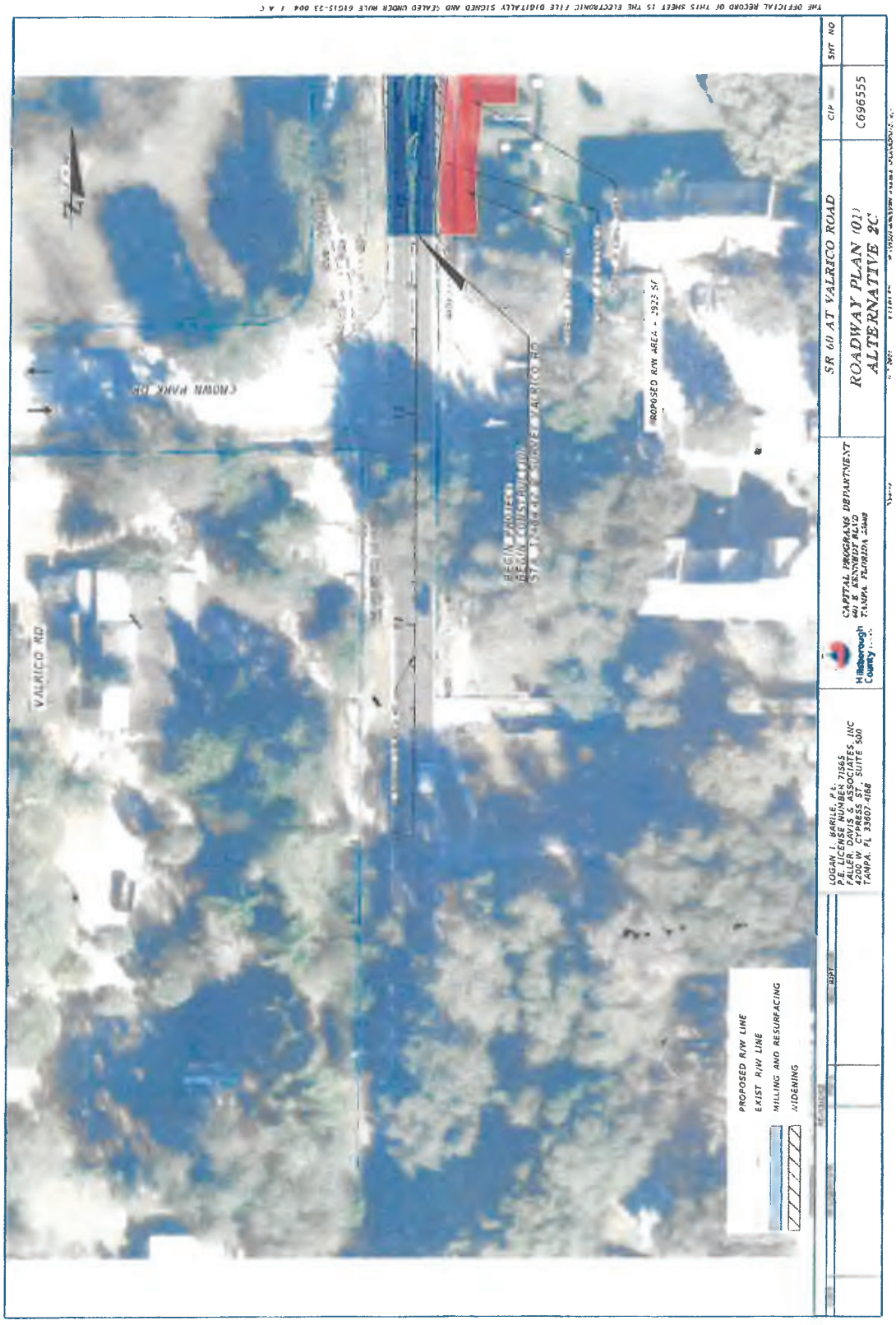
REVISION DATE: 10/17	TRANSPORTATION TECHNICAL MANUAL	Hillsborough County Florida	URBAN COLLECTORS (2 LANE UNDIVIDED) TYPICAL SECTION	DRAWING NO. TS-4
				SHEET NO. 1 OF 1

22-0862

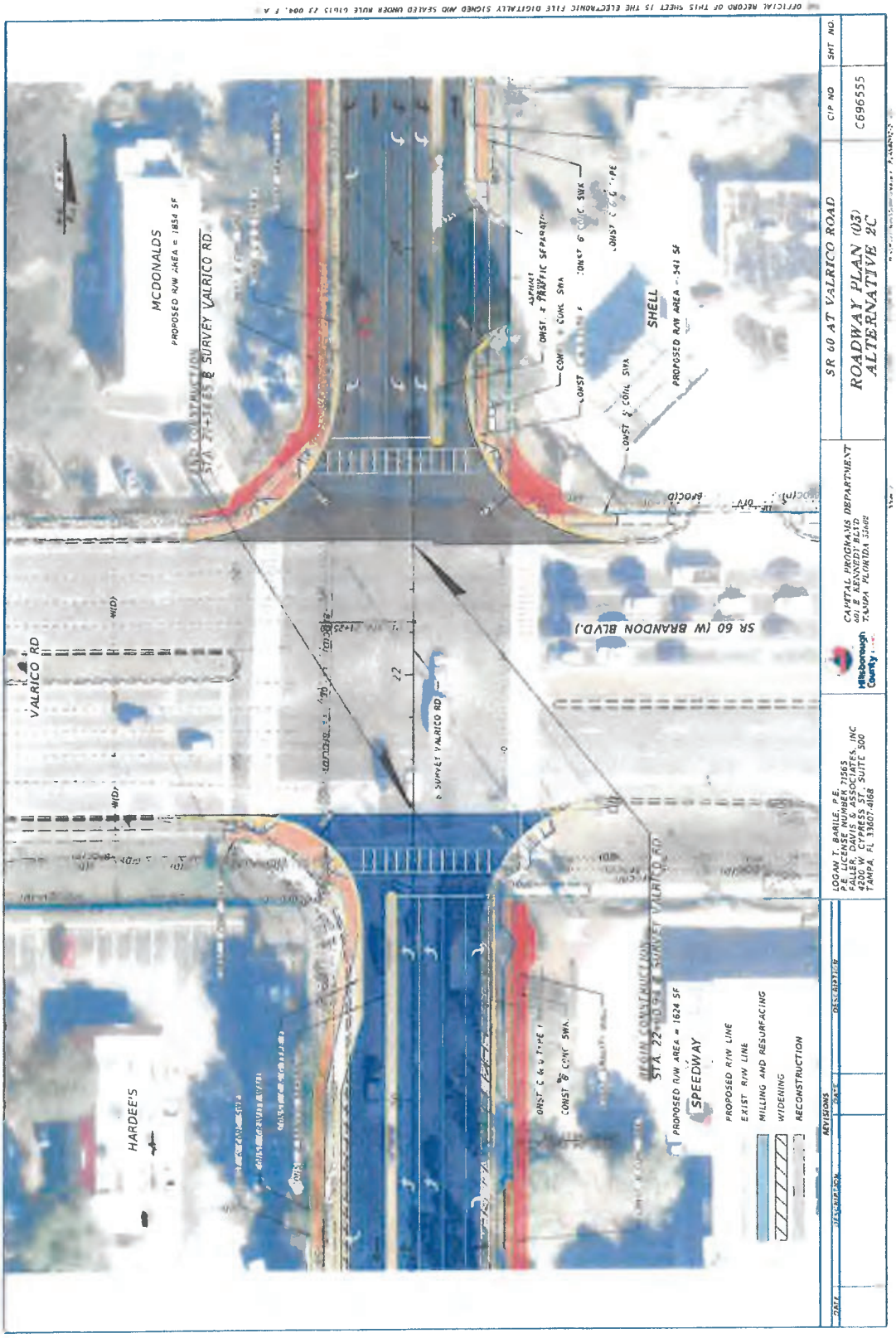
PD&E PREFERENCE ALTERNATIVE

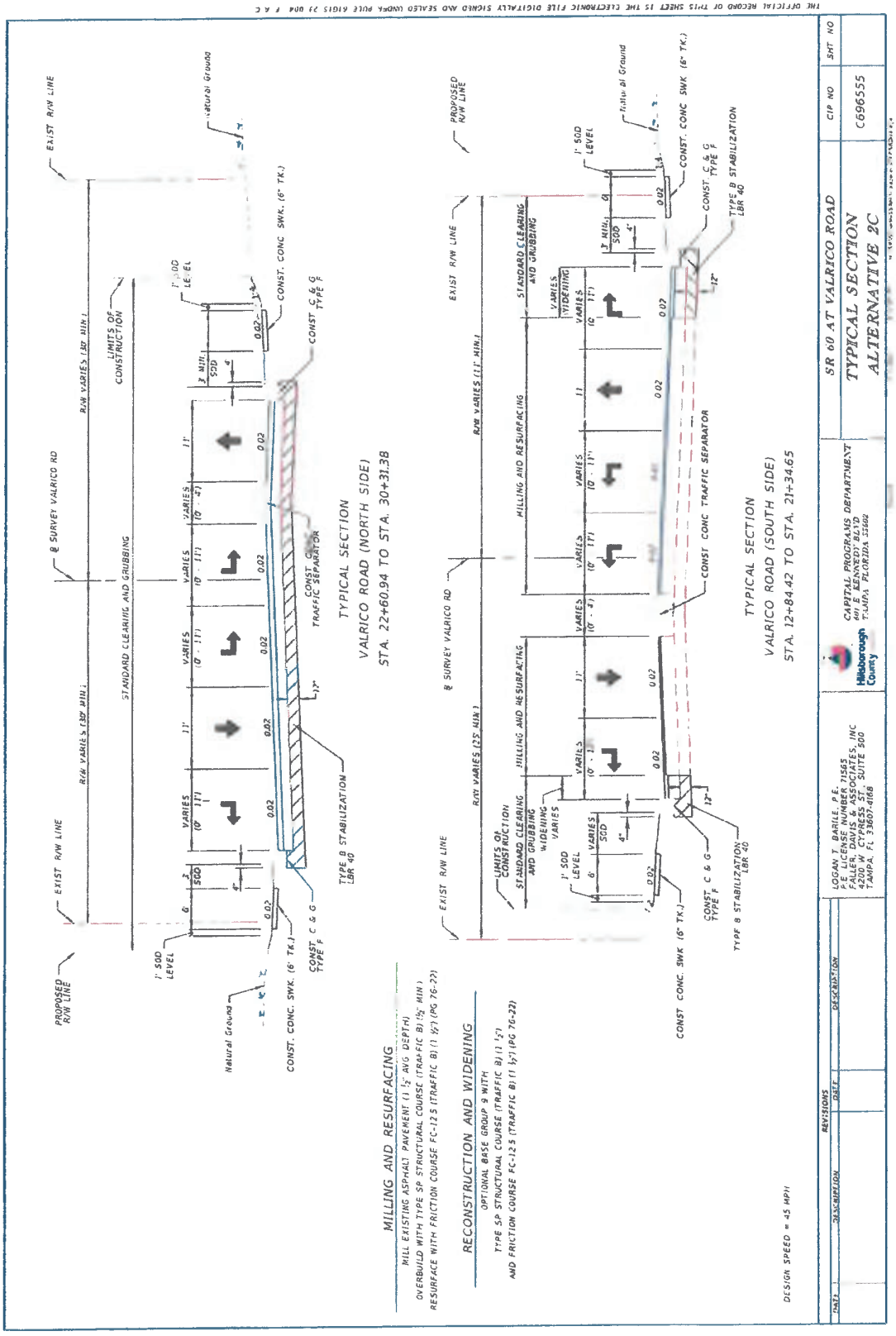
LINCKS & ASSOCIATES, INC.

22-0862



22-0862





Hillsborough County
City-County
Planning Commission

Application No. MM 22-0862
Name: Rosa Tinoco
Entered at Public Hearing: ZHM
Exhibit # 2 Date: 7/25/22

Unincorporated Hillsborough County Rezoning	
Hearing Date: July 25, 2022 **Report Prepared:** July 25, 2022	**Petition: MM 22-0862** ***2301 East State Road 60*** *Southeast quadrant of the of State Road 60 and Valrico Road intersection*
Summary Data:	
Comprehensive Plan Finding:	**CONSISTENT**
Adopted Future Land Use:	**Residential-9 (9 du/ga; 0.35 FAR)** **HC/CPA 21-26, pending adoption, changing the subject property to RES-20*
Service Area	**Urban Service Area**
Community Plan:	Not Applicable
Request:	Major Modification to Planned Development (PD) 03-0644 to develop 256 apartments and 2,475 sq. ft. of non-residential use
Parcel Size (Approx.):	13.65+/- acres (594,594+/- sq. ft.)
Street Functional Classification:	State Road 60 – **State Principal Arterial** Valrico Road– **County Collector**
Locational Criteria	Does not meet Commercial Locational Criteria; Waiver requested
Evacuation Zone	Not within an evacuation zone

Plan Hillsborough
planhillsborough.org
planner@plancom.org
813 – 272 – 5940
601 E Kennedy Blvd
18th floor
Tampa, FL, 33602

Context

- The subject property is 13.65± acres located at 2301 E. State Road 60, at the southeast quadrant at the intersection of State Road 60 and Valrico Road. The property is located within the Urban Service Area (USA) and is not within the limits of a Community Plan.

- The subject site has Plan Amendment HC/CPA 21-26 to change the Future Land Use designation from Residential-9 (RES-9) to Residential-20 (RES-20). Planning Commission recommended approval of the CPA request on January 10, 2022. The Board of County Commissioners instructed staff to process the Plan Amendment concurrently with a Rezoning application at the January 13, 2022 Public Hearing.

- The subject property may potentially have a Future Land Use designation of Residential-20 (RES-20) (pending adoption of CPA 21-26 by the BOCC). The RES-20 category is intended for high density residential development, as well as urban scale neighborhood commercial, office, multi-purpose projects, and mixed use developments. The RES-20 FLU category allows up to 20 dwelling units an acre and up to 0.75 floor area ratio. This would allow the property up to 256 dwelling units and 418,176 sq. ft. of non-residential uses.

- To the north, northwest, and southwest of the subject site is the Residential-6 (Res-6) Future Land Use (FLU) category which allows residential at 6 du/ac and commercial uses at .25 FAR. Office Commercial-20 (OC-20) FLU is found to the west of the subject site and typically allows 0.35 FAR for retail commercial and up to 20 du/ ac. South, southeast, northeast, and east is the Residential-4 (Res-4) FLU category, which allows 4 du/ac and 0.25 FAR.

- The subject site is vacant except for a single-family home and the northern portion of the property contains a vehicle rental service. To the west of the property are two drive-thru restaurants, a pharmacy, a gas station, and a full-service car wash. To the east, southwest and southeast is single-family and undeveloped land. North is a sit-down restaurant and a drive-thru restaurant, and a mobile home park community. Northwest is another gas station, pharmacy, and another drive-thru restaurant. Northeast is a Realtor's Office and the United States Postal Service Office.

- The applicant requests a Major Modification to Planned Development (PD) 03-0644 for the development of a 256 multi-family dwelling units in an apartment complex and 2,475 sq. ft. of non-residential use.

Compliance with Comprehensive Plan:
The following Goals, Objectives and Policies apply to this rezoning request and are used as a basis for a consistency finding

FUTURE LAND USE ELEMENT

GROWTH MANAGEMENT STRATEGY

The Sustainable Growth Management Strategy serves as a vehicle to structure County spending and planning policies to optimize investment for services and infrastructure, protect the vulnerability of the natural environment, reduce the exposure and risk to natural hazards and

provide a clear direction for achieving an efficient development pattern. This strategy is comprised of three primary components, an environmental overlay, an urban service area and a defined rural area.

The rural area is that area planned to remain in long term agriculture, mining or large lot residential development. Within the rural area, some "rural communities" exist. These communities have historically served as a center of community activity within the rural environment. They include Thonotosassa, Keystone, Lutz, and others. The diversity and unique character of these communities will be reflected through the application of "community-based planning" techniques specifically designed to retain their rural character while providing a level of service appropriate to the community and its surrounding environment. To foster the rural environment and reinforce its character, rural design guidelines will be developed to distinguish between the more urban environment. Additionally rural areas should have differing levels of service for supporting facilities such as emergency services, parks and libraries from those levels of service adopted in urban areas.

This Plan also provides for the development of planned villages within rural areas. These villages are essentially self-supporting communities that plan for a balanced mix of land uses, including residential, commercial, employment and the supporting services such as schools, libraries, parks and emergency services. The intent of these villages is to maximize internal trip capture and avoid the creation of single dimensional communities that create urban sprawl.

Purpose

- *Control Urban Sprawl.*
- *Create a clear distinction between long range urban and rural community forms.*
- *Define the future urban form through the placement of an urban service area that establishes a geographic limit of urban growth.*
- *Define areas within the urban service area where growth can occur concurrent with infrastructure capacities and where public investment decisions can be made more rationally in a manner that does not perpetuate urban sprawl.*
- *Identify a distinct rural area characterized by the retention of land intensive agricultural uses, the preservation of natural environmental areas and ecosystems and the maintenance of a rural lifestyle without the expectation of future urbanization.*
- *Apply an overlay of ecosystems and greenways that preserve natural environmental systems and open space while simultaneously reducing exposure to natural hazards.*
- *Create compatible development patterns through the design and location of land uses.*

Urban Service Area (USA)

This boundary is established to designate on the Future Land Use Map the location for urban level development in the County. The boundary shall serve as a means to provide an efficient use of land and public and private investment, and to contain urban sprawl.

Objective 1: *Hillsborough County shall pro-actively direct new growth into the urban service area with the goal that at least 80% of all population growth will occur within the USA during the planning horizon of this Plan. Within the Urban Service Area, Hillsborough County will not impede agriculture. Building permit activity and other similar measures will be used to evaluate this objective.*

Policy 1.2: *Minimum Density All new residential or mixed use land use categories within the USA shall have a density of 4 du/ga or greater unless environmental features or existing development patterns do not support those densities.*

Within the USA and in categories allowing 4 units per acre or greater, new development or redevelopment shall occur at a density of at least 75% of the allowable density of the land use category, unless the development meets the criteria of Policy 1.3.

Policy 1.3: *Within the USA and within land use categories permitting 4 du/ga or greater, new rezoning approvals for residential development of less than 75% of the allowable density of the land use category will be permitted only in cases where one or more of the following criteria are found to be meet:*

- *Development at a density of 75% of the category or greater would not be compatible (as defined in Policy 1.4) and would adversely impact with the existing development pattern within a 1,000 foot radius of the proposed development;*
- *Infrastructure (Including but not limited to water, sewer, stormwater and transportation) is not planned or programmed to support development.*
- *Development would have an adverse impact on environmental features on the site or adjacent to the property.*
- *The site is located in the Coastal High Hazard Area.*
- *The rezoning is restricted to agricultural uses and would not permit the further subdivision for residential lots.*

Policy 1.4: *Compatibility is defined as the characteristics of different uses or activities or design which allow them to be located near or adjacent to each other in harmony. Some elements affecting compatibility include the following: height, scale, mass and bulk of structures, pedestrian or vehicular traffic, circulation, access and parking impacts, landscaping, lighting, noise, odor and architecture. Compatibility does not mean "the same as." Rather, it refers to the sensitivity of development proposals in maintaining the character of existing development.*

Objective 2: Timing of Growth

To manage the timing of new development to coordinate with the provision of infrastructure, transportation, transit services, and other public services, such as schools, recreational facilities, etc., in a financially feasible manner.

Policy 2.1: *The timeliness of development within the Urban Service Area shall be evaluated by the County. A project is considered premature if any of the following indicators are present:*

- *There is a lack of planned or programmed urban services such as multi-modal transportation systems, central water and sewer, schools, fire, and emergency services.*

- *There are unaddressed LOS deficiencies for adequate public facilities.*

Relationship to the Concept Plan

Objective 6: *The concept plan is the overall, conceptual basis for the long range, Comprehensive Plan, and all plan amendments must be consistent with, and further the intent of the concept plan, which advocates focused clusters of growth connected by corridors that efficiently move goods and people between each of the activity centers.*

Policy 6.1: *All plan amendments and rezoning staff reports shall contain a section that explains how said report(s) are consistent with, and further, the intent of the concept plan and the Future of Hillsborough Comprehensive Plan.*

Relationship to the Future Land Use Map

Policy 7.1: *The Future Land Use Map shall be used to make an initial determination regarding the permissible locations for various land uses and the maximum possible levels* ***of residential*** *densities and/or non-residential intensities, subject to any special density provisions, locational criteria and exceptions of the Future Land Use Element text.*

Provision of Public Facilities-Transportation

Objective 12: *All new development and redevelopment shall be serviced with transportation systems that meet or exceed the adopted levels of service established by Hillsborough County.*

Policy 12.1: *Coordinate land use and transportation plans to provide for locally adopted levels of service consistent with the Transportation and Capital Improvements Elements of the Comprehensive Plan.*

Policy 12.7: *Development proposals shall address effective multi-modal transportation systems including provisions for carpooling, vanpooling, mass transit, bicycling, and walking, where needed.*

Neighborhood/Community Development

Objective 16: *Neighborhood Protection The neighborhood is the functional unit of community development. There is a need to protect existing neighborhoods and communities and those that will emerge in the future. To preserve, protect, and enhance neighborhoods and communities, all new development must conform to the following policies:*

Policy 16.1: *Established and planned neighborhoods and communities shall be protected by restricting incompatible land uses through mechanisms such as:*

a) *locational criteria for the placement of non-residential uses as identified in this Plan,*

b) *limiting commercial development in residential land use categories to neighborhood scale;*

c) *requiring buffer areas and screening devices between unlike land uses;*

Policy 16.2: *Gradual transitions of intensities between different land uses shall be provided for as new development is proposed and approved, through the use of professional site planning, buffering and screening techniques and control of specific land uses.*

Policy 16.3: *Development and redevelopment shall be integrated with the adjacent land uses through:*

a) *the creation of like uses; or*

b) *creation of complementary uses; or c) mitigation of adverse impacts; and*

c) *transportation/pedestrian connections*

Policy 16.5: *Development of higher intensity non-residential land uses that are adjacent to established neighborhoods shall be restricted to collectors and arterials and to locations external to established and developing neighborhoods.*

Policy 16.7: *Residential neighborhoods shall be designed to include an efficient system of internal circulation and street stub-outs to connect adjacent neighborhoods together.*

Policy 16.8: *The overall density and lot sizes of new residential projects shall reflect the character of the surrounding area, recognizing the choice of lifestyles described in this Plan.*

Policy 16.9: *All land use categories allowing residential development may permit clustering of residences within the gross residential density limit for the land use category.*

Policy 16.10: *Any density increase shall be compatible with existing, proposed, or planned surrounding development. Compatibility is defined as the characteristics of different uses or activities or design which allow them to be located near or adjacent to each other in harmony. Some elements affecting compatibility include the following: height, scale, mass and bulk of structures, pedestrian or vehicular traffic, circulation, access and parking impacts, landscaping, lighting, noise, odor and architecture. Compatibility does not mean "the same as." Rather, it refers to the sensitivity of development proposals in maintaining the character of existing development.*

Policy 16.13*: Medium and high density residential and mixed-use development is encouraged to be located along transit emphasis corridors, potential transit corridors on the MPO 2050 Transit Concept Map and collector and arterial roadways within the Urban Service Area.*

Commercial-Locational Criteria

Objective 22: *To avoid strip commercial development, locational criteria for neighborhood serving commercial uses shall be implemented to scale new commercial development consistent with the character of the areas and to the availability of public facilities and the market.*

Policy 22.2: *The maximum amount of neighborhood-serving commercial uses permitted in an area shall be consistent with the locational criteria outlined in the table and diagram below. The table identifies the intersection nodes that may be 33 considered for non-residential uses. The locational criteria is based on the land use category of the property and the classification of the intersection of roadways as shown on the adopted Highway Cost Affordable Long Range Transportation Plan. The maximums stated in the table/diagram may not always be achieved,*

subject to FAR limitations and short range roadway improvements as well as other factors such as land use compatibility and environmental features of the site. In the review of development applications consideration shall also be given to the present and short-range configuration of the roadways involved. The five year transportation Capital Improvement Program, MPO Transportation Improvement Program or Long Range Transportation Needs Plan shall be used as a guide to phase the development to coincide with the ultimate roadway size as shown on the adopted Long Range Transportation Plan.

Policy 22.7: *Neighborhood commercial activities that serve the daily needs of residents in areas designated for residential development in the Future Land Use Element shall be considered provided that these activities are compatible with surrounding existing and planned residential development and are developed in accordance with applicable development regulations, including phasing to coincide with long range transportation improvements. The locational criteria outlined in Policy 22.2 are not the only factors to be considered for approval of a neighborhood commercial or office use in a proposed activity center. Considerations involving land use compatibility, adequacy and availability of public services, environmental impacts, adopted service levels of effected roadways and other policies of the Comprehensive Plan and zoning regulations would carry more weight than the locational criteria in the approval of the potential neighborhood commercial use in an activity center. The locational criteria would only designate locations that could be considered, and they in no way guarantee the approval of a particular neighborhood commercial or office use in a possible activity center.*

Community Design Component

5.0 ***NEIGHBORHOOD LEVEL DESIGN***

5.1 ***COMPATIBILITY***

GOAL 12: *Design neighborhoods which are related to the predominant character of the surroundings.*

OBJECTIVE 12-1: *New developments should recognize the existing community and be designed in a way that is compatible (as defined in FLUE policy 1.4) with the established character of the surrounding neighborhood.*

Staff Analysis of Goals, Objectives and Policies:

The subject property is 13.65 ± acres located at 2301 E. State Road 60, at the southeast quadrant at the intersection of State Road 60 and Valrico Road. The property is located within the Urban Service Area (USA) and is not found within the limits of a Community Plan. The subject site is in process for a Plan Amendment (HC/CPA 21-26) to change the Future Land Use designation from Residential-9 (RES-9) to Residential-20 (RES-20). The Board of County Commissioners instructed staff to process the Plan Amendment concurrently with the Rezoning application. The applicant requests a Major Modification to Planned Development (PD) 03-0644 for the development of a 256-apartment complex and 2,475 sq. ft. of non-residential use.

To the north, northwest, and southwest of the subject site is the Residential-6 (Res-6) Future Land Use (FLU) category. Office Commercial-20 (OC-20) FLU is found to the west of the subject site and east is the Residential-4 (Res-4) FLU category. The subject site is

vacant except for a single-family home and the northern portion of the property contains a vehicle rental service.

Objective 1 of the Future Land Element (FLUE) directs 80% of all population growth to occur within the USA. The property is located within the USA and is serviced by public infrastructure. Policy 1.4 refers to compatibility with the surrounding neighborhood and uses. The policy defines compatibility as the characteristics of different uses or activities or design which allow them to be located near or adjacent to each other in harmony. Some elements affecting compatibility include the following: height, scale, mass and bulk of structures, pedestrian or vehicular traffic, circulation, access and parking impacts, landscaping, lighting, noise, odor, and architecture. Compatibility does not mean "the same as." Rather, it refers to the sensitivity of development proposals in maintaining the character of existing development.

The proposed rezoning is compatible with the surrounding uses. The general vicinity is mostly commercial intensive uses along SR 60 and further south the development pattern transitions to medium density single-family residential. The nearby commercial is mostly retail-oriented, with a developed floor area ratio (FAR) between 0.08 and 0.23. The residential development surrounding the site is mostly composed of quarter acre lots which would be equivalent to four dwelling units to the acre. To the west of the property are two drive-thru restaurants, a pharmacy, a gas station and a full-service car wash. To the east, southwest and southeast is single-family and undeveloped land. North is a sit-down restaurant and a drive-thru restaurant, and a mobile home park community. Northwest is another gas station, pharmacy, and another drive-thru restaurant. Northeast is a Realtor's Office and the United States Postal Service Office.

The rezoning is consistent with Objective 7, Policy 7.1, and Objective 8, which requires development to be consistent with the FLU category. The subject property may potentially have a Future Land Use designation of Residential-20 (RES-20) if the rezoning and CPA are approved by the BOCC. The RES-20 category is intended for high density residential development, as well as urban scale neighborhood commercial, office, multi-purpose projects, and mixed-use developments. The RES-20 FLU category allows up to 20 dwelling units an acre and up to 0.75 floor area ratio. This would allow the property up to 256 dwelling units and 418,176 sq. ft. of non-residential uses. To the north, northwest, and southwest of the subject site is the Residential-6 (Res-6) Future Land Use (FLU) category which allows residential at 6 du/ac and commercial uses at .25 FAR. Office Commercial-20 (OC-20) FLU is found to the west of the subject site and typically allows 0.35 FAR for retail commercial and up to 20 du/ ac. South, southeast, northeast, and east is the Residential-4 (Res-4) FLU category, which allows 4 du/ac and 0.25 FAR.

The rezoning is consistent with Objective 16, Policy 16.1, Policy 16.2, Policy 16.3, and Policy 16.5 which is the need to protect existing, neighborhoods and communities and those that will emerge in the future. The request does protect existing neighborhoods by concentrating the density closer to SR 60. This not only allows transition from the single-family to the south to the intensive commercial uses on SR 60 but it also allows for the use of public transportation significantly reducing vehicular trips generated form the development.

Objective 22 provides location criteria for neighborhood serving commercial uses. One of the criteria is for properties to be within the required distance of a qualifying intersection as shown on the 2040 Highway Cost Affordable Map. The nearest qualifying intersection

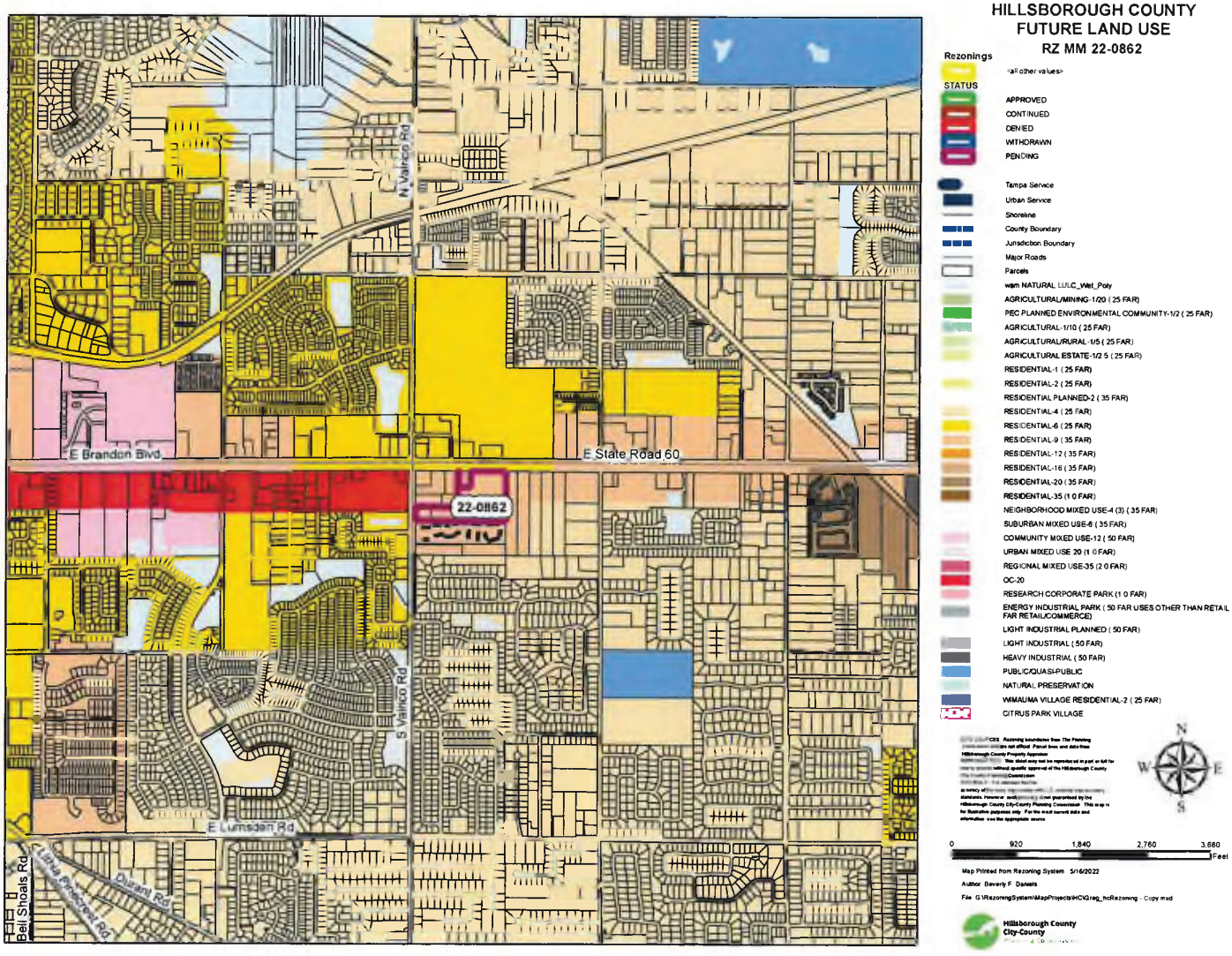
is Valrico Road and State Road 60. The required distance is 300 linear feet from the intersection. The subject site located 1,000 linear feet away and does not meet commercial locational criteria. The applicant has submitted a commercial locational criteria waiver pursuant to Policy 22.7. Staff has reviewed the waiver request and recommends approval of the waiver request. State Road 60 and Valrico Road has significantly changed since the adoption of the 2040 Highway Cost Affordable map. Today, these roads would be considered a principal arterial road and a county collector, qualifying the intersection for a 1,000 linear foot distance requirement, which the subject site would have met.

Per the Community Design Component Objective 1.2 Urban Pattern Characteristics, the proposed request is consistent with the Urban Development Pattern criteria for housing, transportation, and public Services. The rezoning will introduce multi-family housing which is readily seen within the area.

Overall, the proposed Major Modification would allow for development that is consistent with the Goals, Objectives and Policies of the Future Land Use Element of the Unincorporated Hillsborough County Comprehensive Plan.

Recommendation

Based upon the above considerations, the Planning Commission staff finds the proposed Major Modification **CONSISTENT** with the *Future of Hillsborough Comprehensive Plan for Unincorporated Hillsborough County, subject to the conditions proposed by the development Services Department.*


HILLSBOROUGH COUNTY
FUTURE LAND USE
RZ MM 22-0862
Rezonings
<all other values>
STATUS
APPROVED
CONTINUED
DENIED
WITHDRAWN
PENDING
Tampa Service
Urban Service
Shoreline
County Boundary
Jurisdiction Boundary
Major Roads
Parcels
wam NATURAL LULC_Wet_Poly
AGRICULTURAL/MINING-1/20 (25 FAR)
PEC PLANNED ENVIRONMENTAL COMMUNITY-1/2 (25 FAR)
AGRICULTURAL-1/10 (25 FAR)
AGRICULTURAL/RURAL-1/5 (25 FAR)
AGRICULTURAL ESTATE-1/2 5 (25 FAR)
RESIDENTIAL-1 (25 FAR)
RESIDENTIAL-2 (25 FAR)
RESIDENTIAL PLANNED-2 (35 FAR)
RESIDENTIAL-4 (25 FAR)
RESIDENTIAL-6 (25 FAR)
RESIDENTIAL-9 (35 FAR)
RESIDENTIAL-12 (35 FAR)
RESIDENTIAL-16 (35 FAR)
RESIDENTIAL-20 (35 FAR)
RESIDENTIAL-35 (1 0 FAR)
NEIGHBORHOOD MIXED USE-4 (3) (35 FAR)
SUBURBAN MIXED USE-6 (35 FAR)
COMMUNITY MIXED USE-12 (50 FAR)
URBAN MIXED USE 20 (1 0 FAR)
REGIONAL MIXED USE-35 (2 0 FAR)
OC-20
RESEARCH CORPORATE PARK (1 0 FAR)
ENERGY INDUSTRIAL PARK (50 FAR USES OTHER THAN RETAIL FAR RETAIL/COMMERCE)
LIGHT INDUSTRIAL PLANNED (50 FAR)
LIGHT INDUSTRIAL (50 FAR)
HEAVY INDUSTRIAL (50 FAR)
PUBLIC/QUASI-PUBLIC
NATURAL PRESERVATION
WIMAUMA VILLAGE RESIDENTIAL-2 (25 FAR)
CITRUS PARK VILLAGE
N
W
E
S
0
920
1,840
2,760
3,680
Feet
Map Printed from Rezoning System 5/16/2022
Author Beverly F Daniels
File G:\RezoningSystem\MapProjects\HC\GReg_hcRezoning - Copy mxd
Hillsborough County
City-County
E Brandon Blvd
E State Road 60
22-0862
N Valrico Rd
S Valrico Rd
E Lumsden Rd
Bell Shoals Rd
Durant Rd

Application No. MM 22-0862
Name: Belleair
Entered at Public Hearing: ZHM
Exhibit # 3 Date: 7/25/22

BELLEAIR
DEVELOPMENT GROUP

NATIVE engineering, pllc

LINCKS & ASSOCIATES, INC.
Engineers - Planners
Tampa, Florida

STEARNS
WEAVER
MILLER

Major Modification MM 22-0862

Zoning Hearing Master
July 25, 2022

Team Members

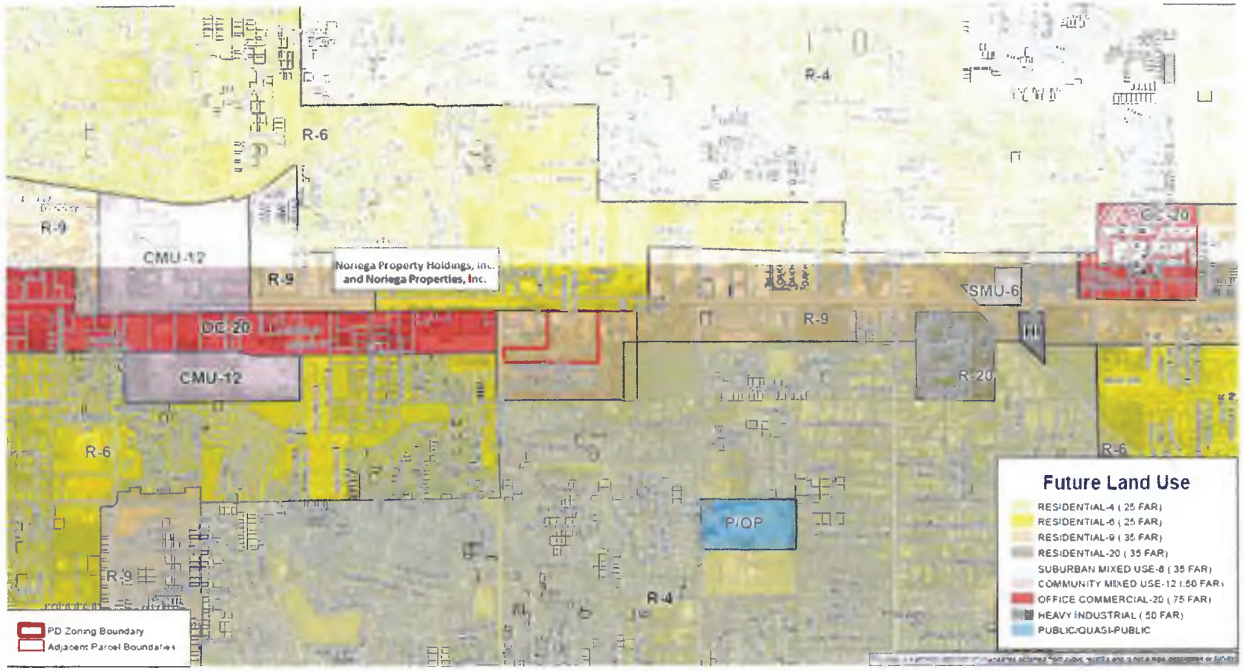
- **Applicant:** Belleair Development, LLC
  - Carlos Yepes
- **Civil Engineer**: Native Engineering, LLC
  - Brian Blazewick, PLA
- **Transportation Engineer**: Lincks & Associates, Inc.
  - Steve Henry, P.E.
- **Legal and Land Planning:** Stearns Weaver Miller
  - Elise Batsel, Esq.
  - Nicole A. Neugebauer, Esq.

General Location

- +/- 13.65 acre property in Valrico
- Generally located south of S.R. 60 east of Valrico Road
- Urban Service Area

Future Land Use Map

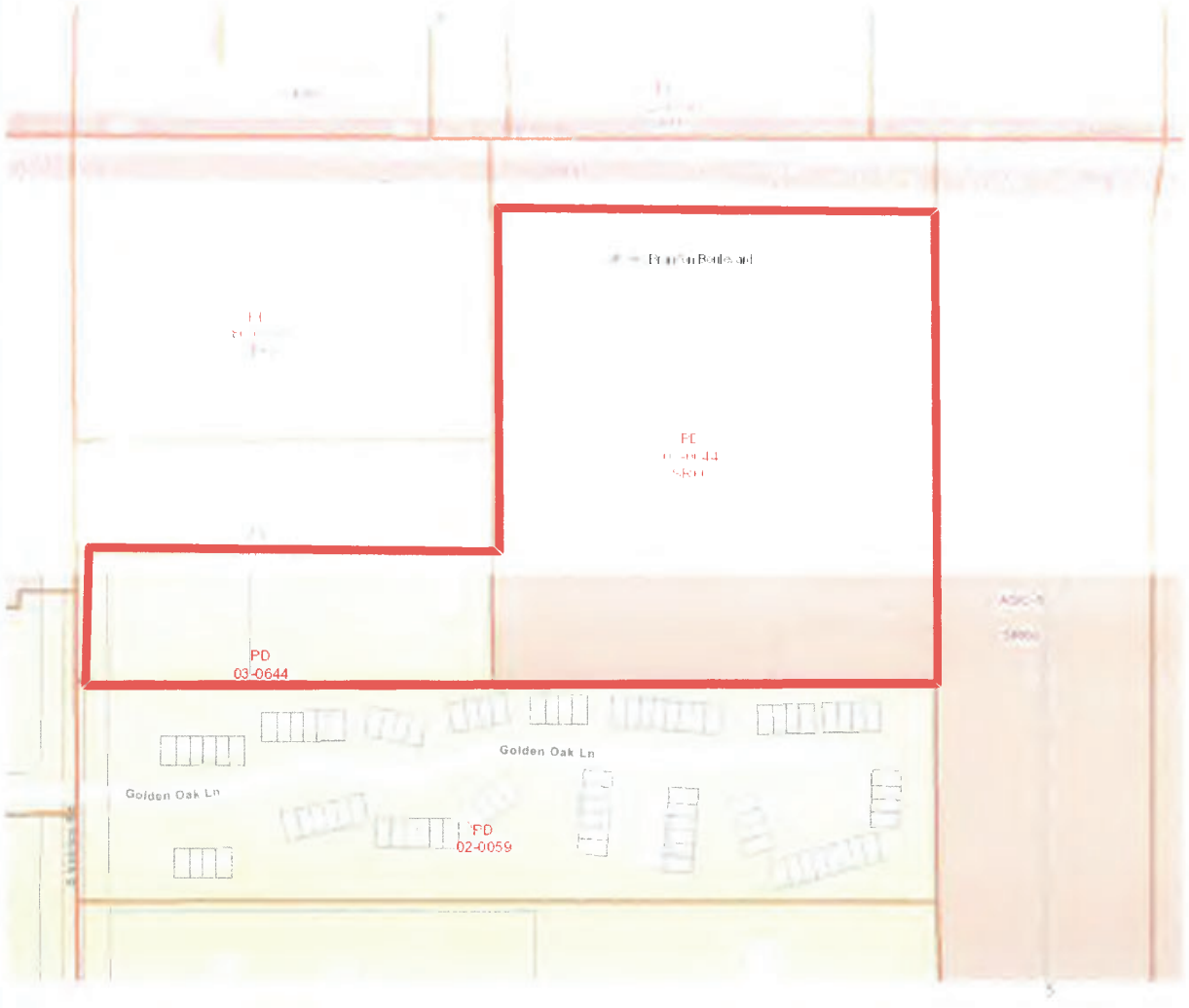
- <u>Existing:</u>
  - RES-9 (9 U/A – 0.50 FAR)
- <u>Proposed (HC/CPA 21-26):</u>
  - RES-20 (20 U/A – 0.75 FAR)



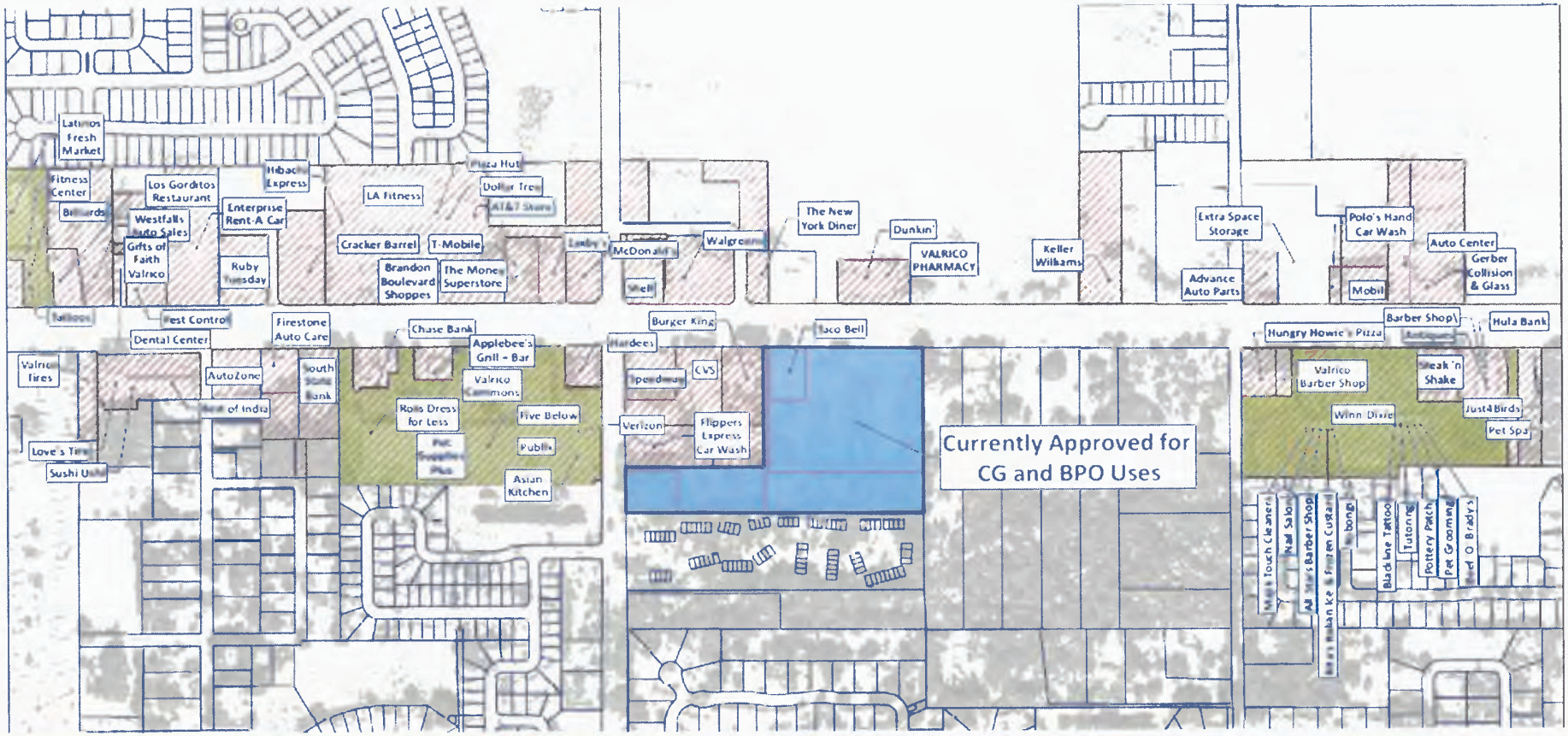
Area Map

Located within:

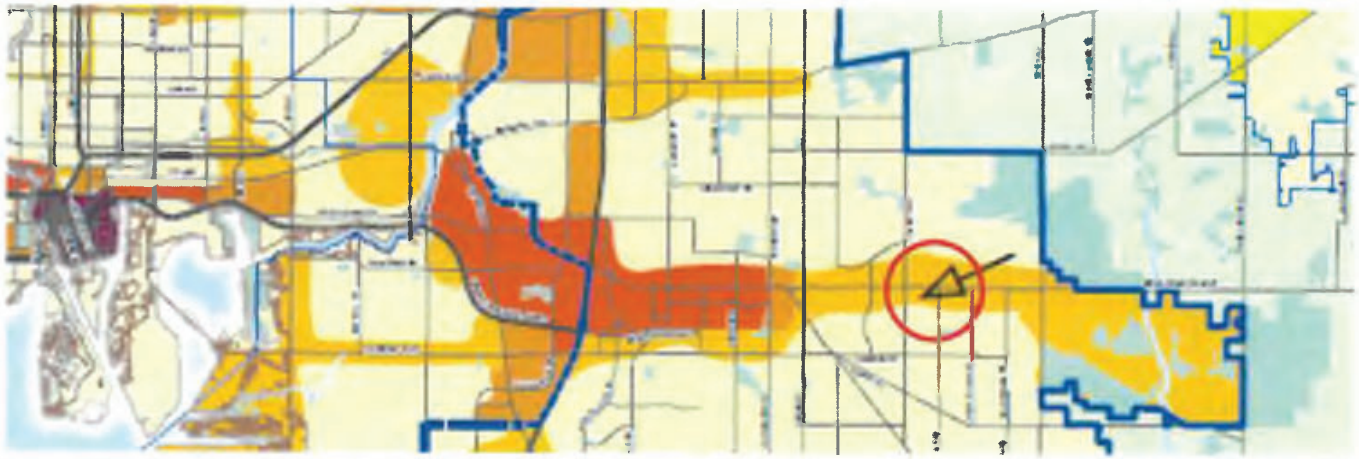
- Urban Service Area
- Partly located in the S.R. 60 (Brandon Boulevard) Overlay District
- NOT located in the Brandon Community Plan



Ideal Infill Development Within the USA



Area Targeted for Growth – Hillsborough Vision Map



According to the Vision Map, the Property is located in an area envisioned for High Intensity Suburban (Level 3).

Area Targeted for Growth in the USA

				Existing (2021)		Future (2045)			
	Population	Population	Population	Population	Population				
	Estimate	Estimate	Estimate	Estimate	Projection				
Sub Areas	2010	2015	2020	2021	2045	2021-2045 New Residents	2021-2045 Expected Percent Change	Expected Growth Share Through 2045	2015-2021 Percent Change
Brandon	135,284	145,770	161,625	161,959	176,644	14,685	9.07%	3.67%	11.11%

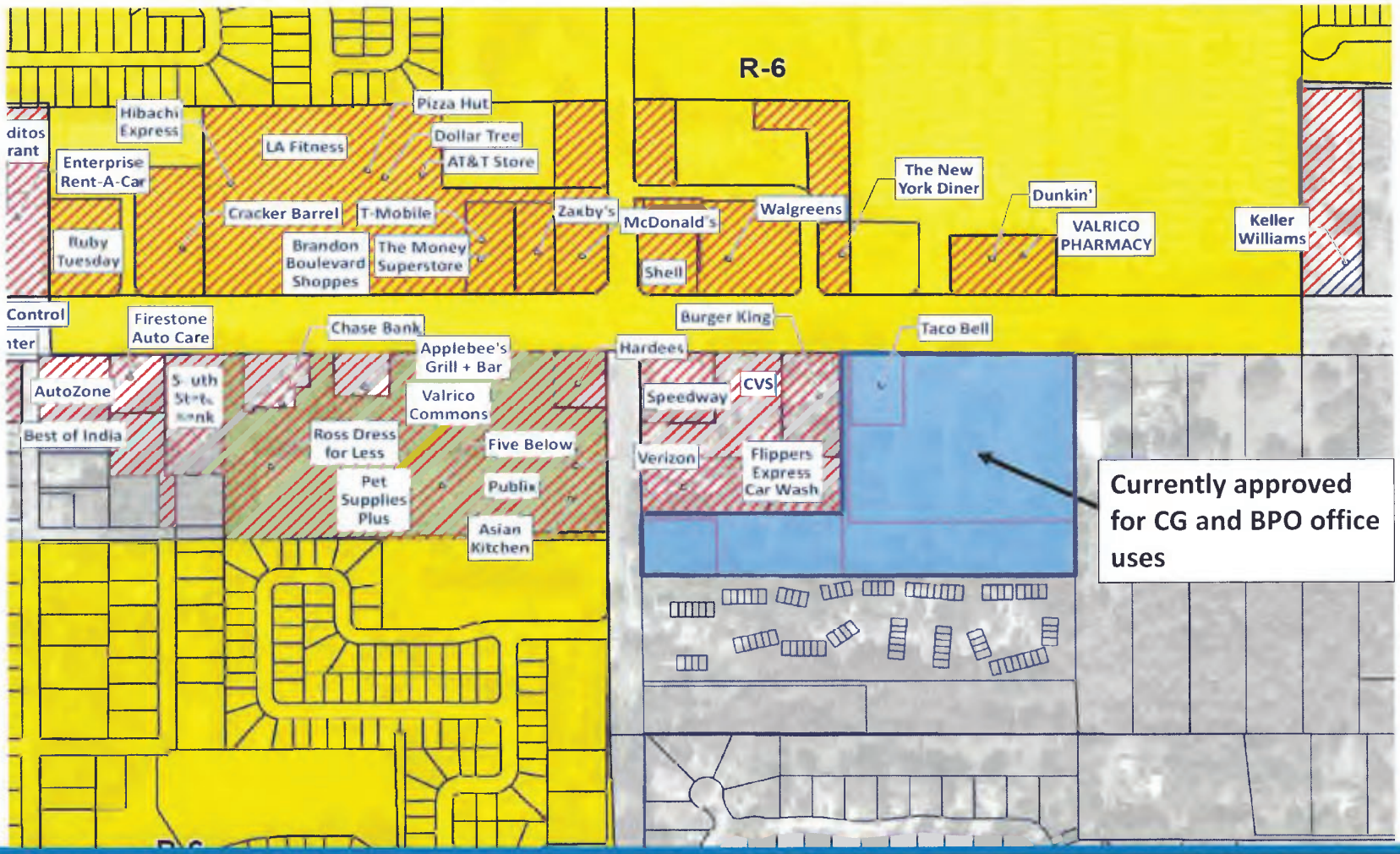
Planning Commission Population Table – Updated April 2022

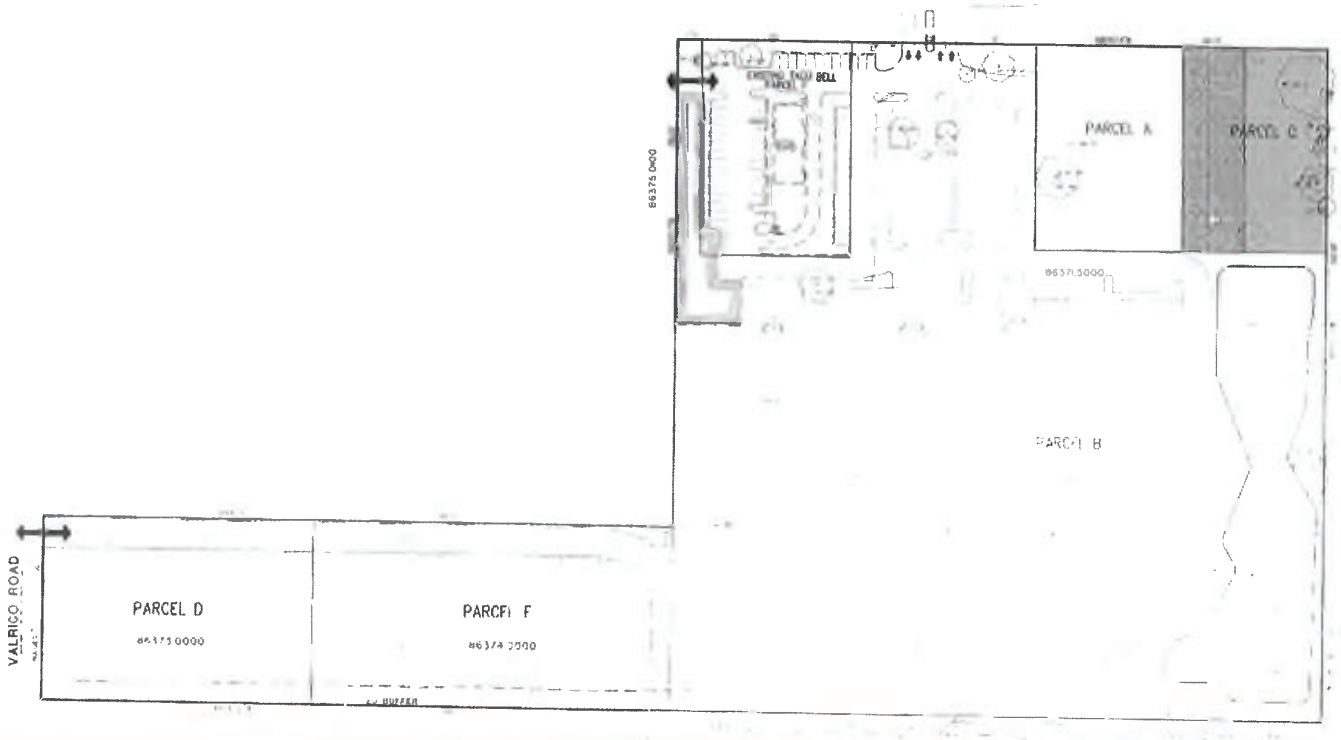
Brandon Area expected to grow by **14,685** new residents by 2045, i.e. about **9%**

This is approximately **3.6%** of the overall expected growth for the County

Adjacent Zonings and Uses

Location	FLU	Zoning	Existing Use
North	R-6 and R-9	CG and PD	Car Wash, CVS Pharmacy, Burger King, Gas Station
South	R-9	PD	Existing Townhomes (Oak Valley)
West	R-6 and OC-20	PD	Valrico Commons (Retail Shopping including Publix)
East	R-9 and R-4	ASC-1	Residential


R-6
Hibachi Express
Pizza Hut
Dollar Tree
AT&T Store
LA Fitness
Enterprise Rent-A-Car
Cracker Barrel
T-Mobile
Zaxby's
McDonald's
Walgreens
The New York Diner
Dunkin'
VALRICO PHARMACY
Keller Williams
Ruby Tuesday
Brandon Boulevard Shoppes
The Money Superstore
Shell
Control
Firestone Auto Care
Chase Bank
Applebee's Grill + Bar
Burger King
Taco Bell
Hardees
AutoZone
Valrico Commons
Speedway
CVS
Best of India
Ross Dress for Less
Five Below
Verizon
Flippers Express Car Wash
Pet Supplies Plus
Publix
Asian Kitchen
Currently approved for CG and BPO office uses



Existing Entitlements (PD)

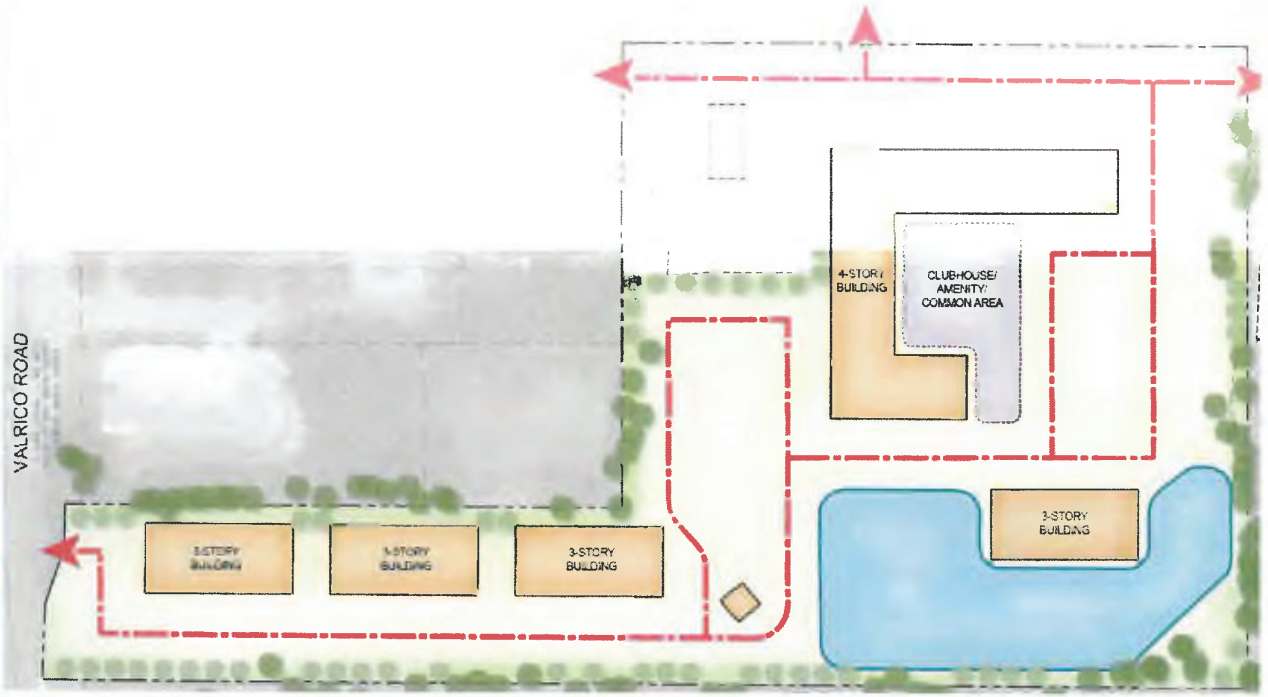
- 89,000 square feet of Commercial General ("CG") uses
- 15,000 square feet of residential support and Business Professional Office ("BPO") uses

Request

- Amend existing approval to:
  - Eliminate 103,525 square feet of non-residential entitlements
  - Maintain approximately 2,475 square feet for the existing Taco Bell restaurant
  - Replace non-residential entitlements with 256 multi-family apartments at a density of 19.9 dwelling units/gross acre
  - Significant reduction of traffic

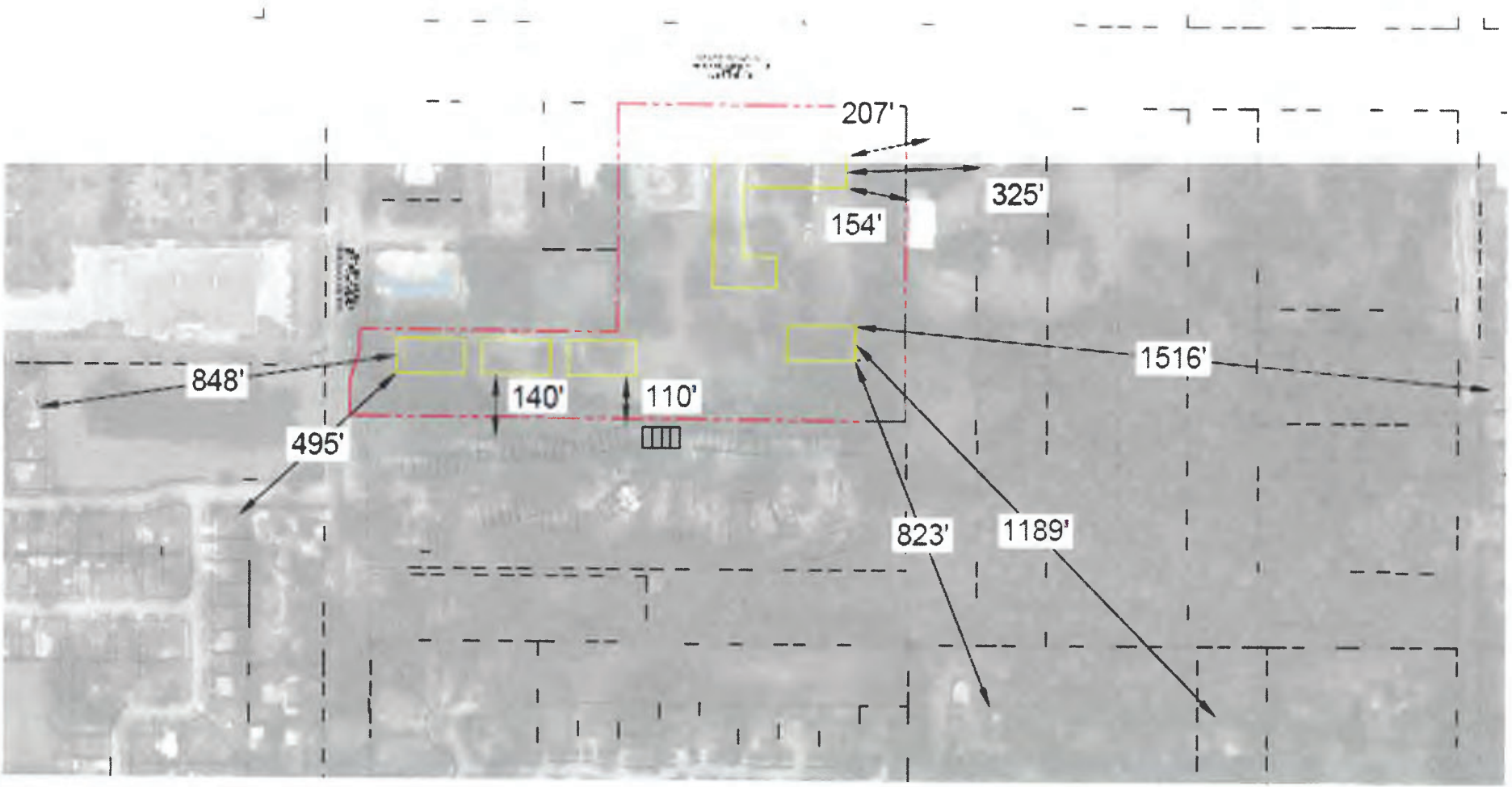
The Project

- Existing Taco Bell
- 256 Multi-Family Units
- 4 – 3-story buildings
- 1 – 4-story building
- Clubhouse/Amenity Area



Community Engagement

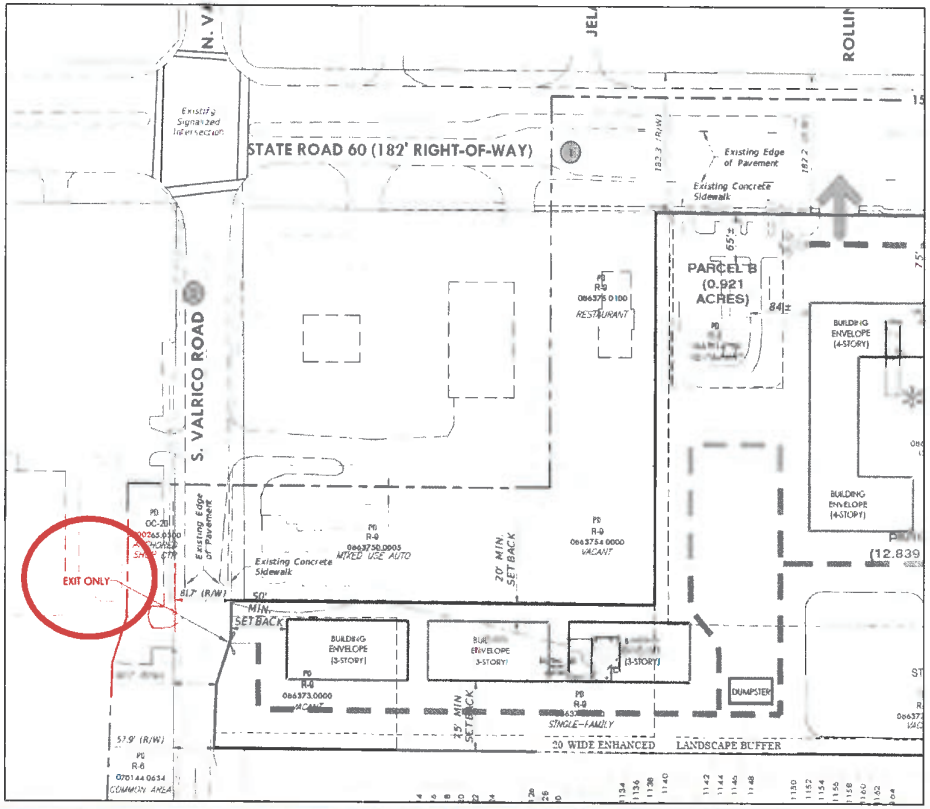
- The applicant has engaged the community on numerous occasions through a community meeting on April 27, 2022 and meeting with the Oak Valley Townhomes HOA on February 16, 2022.
- The community overwhelmingly wanted to see a reduction in traffic onto Valrico Road and State Road 60.
- The community also requested that the proposed buildings be located as far away as possible from the existing residential uses.

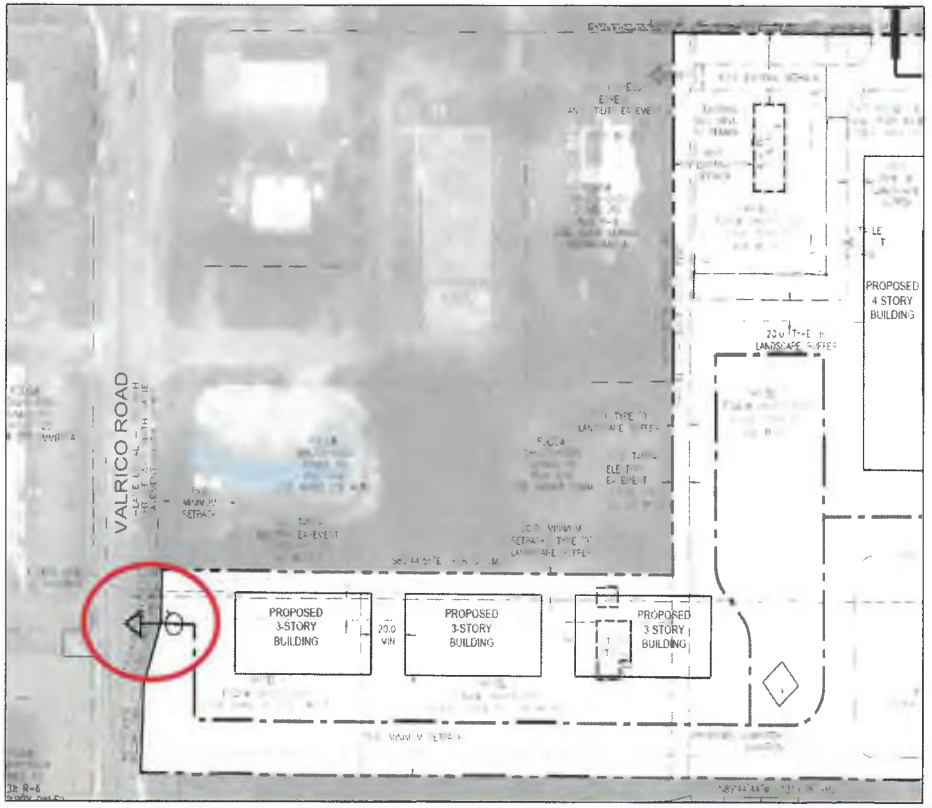

207'
325'
154'
1516'
848'
140'
110'
495'
823'
1189'

Letters of Support

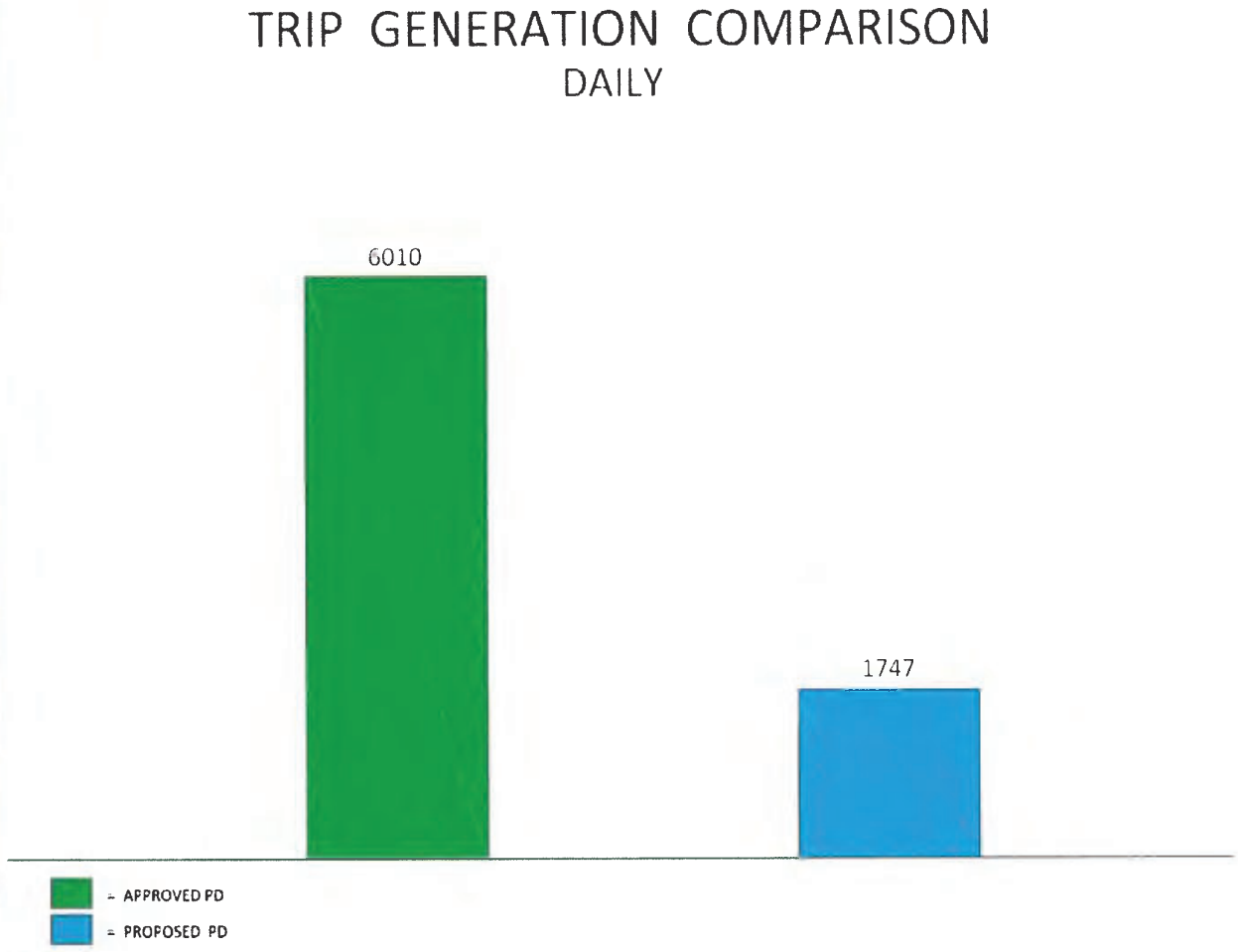
- Store Manager, Walmart Supercenter, located less than 1 mile west of the project;
- Department Manager, Home Depot, located less than 1 mile west of the project;
- General Manager, Esporta Fitness, located across the street from the project;
- Manager, Brandon Honda, located approximately 6.5 miles west of our project;
- Owner, Venture Medical, located approximately 15 miles from our project; and
- Several residents of the Golden Oaks Townhome Community to the south have signed a petition in support of the project.

Full Access On Valrico Road Provided at County Request

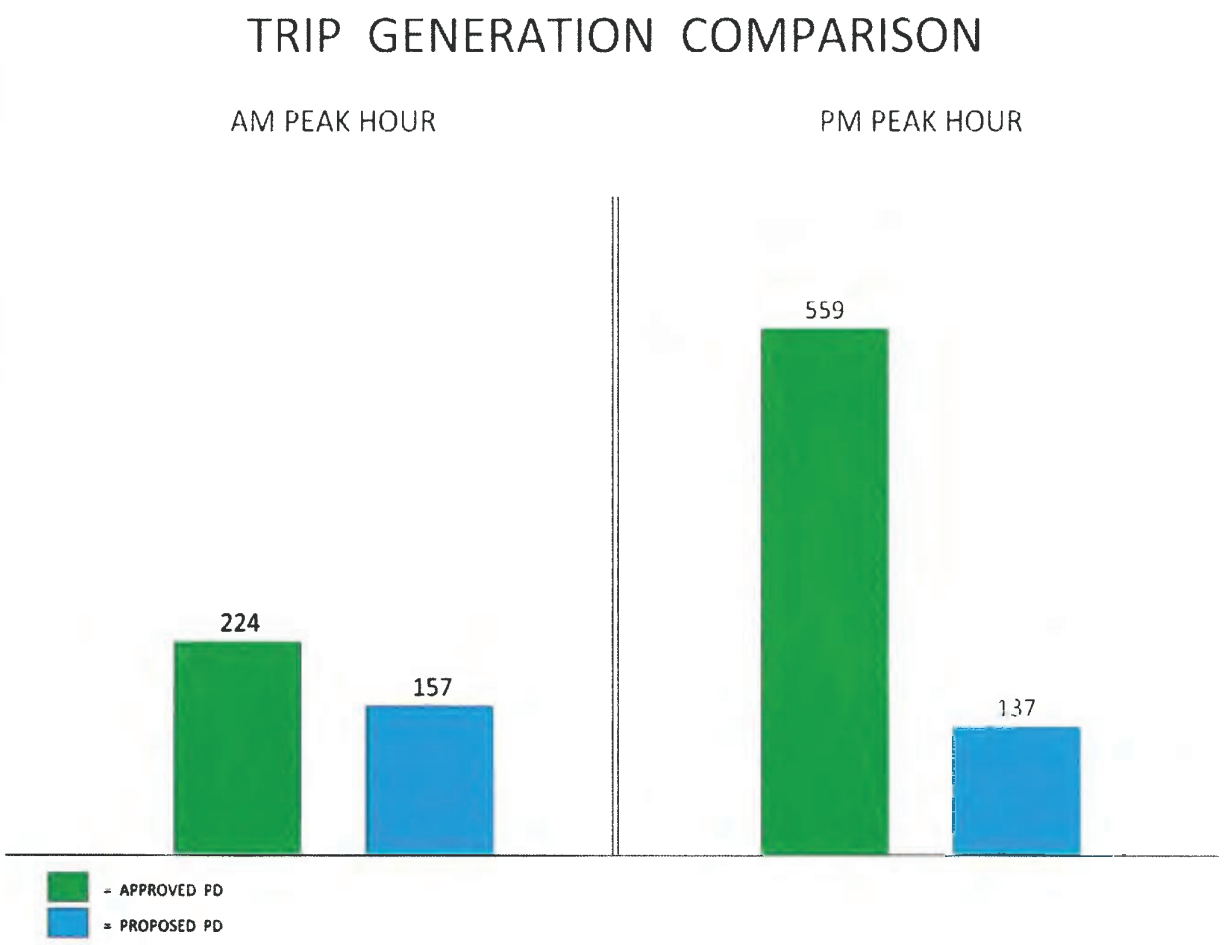




Trip Generation Comparison



Trip Generation Comparison



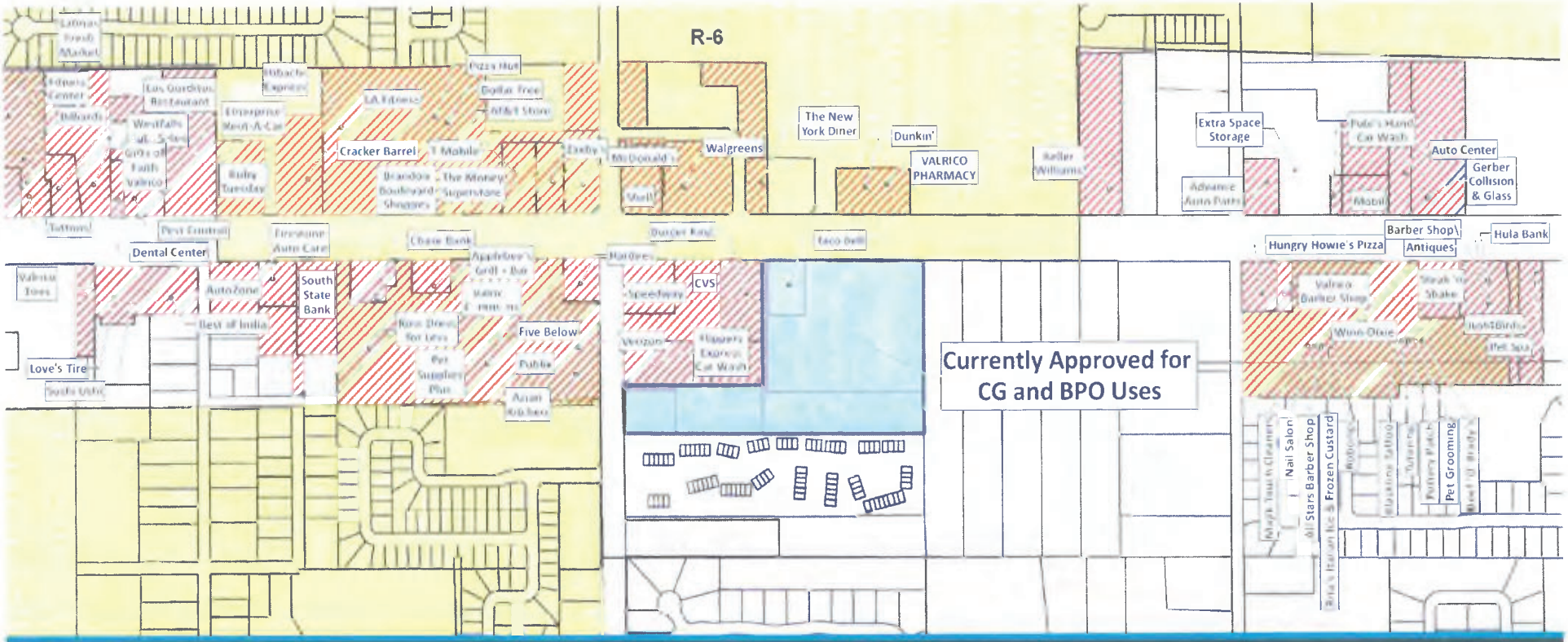
Median Modification

Comprehensive Plan Consistency

- Consistent with the proposed RES-20 Future Land Use Category.
- Consistent with the Urban Service Area Objectives and Policies related to density and **timing of growth**:
  - **Objective 1:** Hillsborough County shall pro-actively direct new growth into the urban service area with the goal that at least 80% of all population growth will occur within the USA during the planning horizon of this Plan. Within the Urban Service Area, Hillsborough County will not impede agriculture. Building permit activity and other similar measures will be used to evaluate this objective.
  - **Policy 1.2:** All new residential or mixed use land use categories within the USA shall have a density of 4 du/ga or greater unless environmental features or existing development patterns do not support those densities. Within the USA and in categories allowing 4 units per acre or greater, new development or redevelopment shall occur at a density of at least 75% of the allowable density of the land use category, unless the development meets the criteria of Policy 1.3.
- Consistent with the Neighborhood/Community Development Objectives and Policies:
  - **Policy 16.13**: Medium and high density residential and mixed-use development is encouraged to be located along transit emphasis corridors, potential transit corridors on the MPO 2050 Transit Concept Map and collector and arterial roadways within the Urban Service Area.
- Consistent with the Land Development Code: ***"Overall, the proposed Major Modification would allow for development that is consistent with the Goals, Objectives and Policies of the Future of Hillsborough Comprehensive Plan for Unincorporated Hillsborough County and is compatible with the existing and planned development pattern found in the surrounding area."*** **– Planning Commission Staff Report**

Waivers

- **No new waivers.**



Waiver of Commercial Locational Criteria

- The applicant is requesting an existing waiver to the Commercial Locational Criteria for the existing Taco Bell.
- According to Planning Commission Staff, the applicant is required to renew its request for the Commercial Locational Criteria waiver.

Conclusion

- Development Services staff recommends **approval**.
- Planning Commission found the Project **consistent**.
  - The project is consistent with the County's vision for Brandon.
  - The project is consistent with the comprehensive plan.
  - The project is compatible with surrounding uses.
- The project will provide much-needed residential in an area with abundant commercial uses on a future transit corridor.
- We respectfully request your recommendation of approval of MM 22-0862.

Questions or Comments?

Belleair Development, LLC
Major Modification Rezoning Application
MM-22-0862

Zoning Hearing Master
July 25, 2022

RESUMES

STEVEN J. HENRY, P.E.
TRANSPORTATION & CIVIL ENGINEER

EDUCATION:	North Carolina State University - 1984 Bachelor of Science in Civil Engineering
REGISTRATION:	Professional Engineer: Florida
RESPONSIBILITIES:	President Senior Project Manager Transportation/Site Planner

PROFESSIONAL EXPERIENCE:

Professional experience includes site engineering, roadway design, and management of engineering studies to evaluate and develop recommendations for public and private projects. Work included the development of final roadway plans for State and City projects, preliminary and final geometric design, interchange design, construction traffic control plans, pavement marking plans, preparing project reports, traffic modelling, Development of Regional Impact Studies, feasibility studies, Environmental Impact Statements, Planned Development Amendment Proposals, Analysis of Development Factors reports, Transportation Analysis studies for rezoning petitions and driveway permits, and site engineering drawings for private developments.

As a former real estate developer, Mr. Henry has been involved in the development of private commercial projects which involved determining the site feasibility, coordination with local and state agencies to obtain approval of projects, and overseeing the construction of the projects.

Mr. Henry has been involved in over 400 rezonings and transportation studies for both private clients and public agencies. Representative projects include:

- Office Depot at Tampa Commons - Coordination of all engineering services for new retail/office complex while being primarily responsible for rezoning and land planning services.
- Luria's - Rezoning, transportation planning, and site engineering services for new site in Tampa, Florida.
- Home Depot - Planning and engineering services for proposed new store sites and relocations throughout Florida.
- Kash n' Karry Food Stores - Development feasibility and transportation planning services for grocery store chain for various sites throughout Florida.
- Barnett Banks, Inc. - Preparation of development feasibility studies, site planning, and transportation engineering services for proposed new bank branches throughout the state.
- University Community Hospital (UCH) and UCH-Carrollwood - Master planning, site engineering, and transportation services, Hillsborough County, Florida.
- Museum of Science & Industry - Transportation and planning services for expansion of existing "hands-on" museum, Hillsborough County, Florida.

- Apollo Beach DRI - Transportation Analysis (2,500 acre planned unit development), Hillsborough County, Florida.
- Trinity Communities DRI - Transportation Analysis (4,000 acre planned unit development), Pasco County, Florida.
- Meadow Point DRI - Transportation Analysis (1,800 acre planned unit development), Pasco County, Florida.
- Lakeview DRI - Transportation Analysis (3,500 acre planned unit development), Polk County, Florida.
- North Palms Village DRI - Transportation Analysis (124 acre planned unit development), Hillsborough County, Florida
- Tri-County Business Park DRI - Transportation Analysis (Industrial Park), Hillsborough County, Florida
- Tampa Palms - Transportation Analysis (8,500 acre planned unit development), Tampa, Florida.
- Polk Power Station - Transportation Analysis (4,000 acre new power station).
- State Road 39 Project Development & Environmental Study.

PROFESSIONAL AFFILIATIONS:

Institute of Transportation Engineers
American Planning Association
Tampa Bay FSUTMS Users Group

PROFESSIONAL ENGAGEMENTS:

1991-Date	Lincks & Associates, Inc. Tampa, Florida
1990-1991	Skorman-Waxman Development Corp. Tampa, Florida
1987-1991	Lincks & Associates, Inc. Tampa, Florida
1985-1987	DSA Group, Inc. Tampa, Florida

NATIVE engineering, pllc

Brian Blazewick, PLA
Landscape Architect

Education
- BSLA, The Ohio State University, 2005

Registrations/Certifications
- Registered Landscape Architect: Florida, RLA6667484

Areas of Specialization
- Full Site Landscape Design
- Site Design/Planning
- PD Design and Standard Development
- Florida Friendly Design
- Site Permitting
- Site Due Diligence
- Graphic Site Representation

Mr. Blazewick has over 14 years of extensive experience working as a landscape designer/ architect throughout central Florida. Mr. Blazewick specializes in Florida Friendly Design, with a unique approach to site design. His experiences range from preliminary site due diligence, conceptual planning, and PD plan development, to full site design/permitting, and through to construction administration. Mr. Blazewick has experience working with numerous regulatory bodies, including but not limited to; Hillsborough County, Pinellas County, the City of Tampa, the City of St. Petersburg, the City of Pinellas Park, the City of Ocala, the City of Orlando, Florida Department of Transportation, and many more. He has coordinated extensively with these municipalities in regards to site layout, landscape design, tree mitigation, code minimum requirements, utilities, site permitting and environmental permitting.

Project Experience

Summerfield Park – Lots, 5, 6, 7 & Adjacent Car Wash, Hillsborough County, FL. This project is 19.47 acres in size and included the design for three commercial buildings: a 28,881 sf Goodwill, a 108-room hotel, and an 18,795 sf Tractor Supply Company, as well as car wash on a connected out parcel. This project also included designing a 750-foot MOL road extension built to County standards, modifying the master drainage system for the overall site, and relocating floodplain compensation areas. In addition to permitting the code required landscaping, we were also contracted by the hotel owner to provide an upgraded beautification landscape plan to give the finished building a more unique Florida look. **Role:** Landscape Architect/Site Planning

The Keys @ Ocala I & II, The City of Ocala, FL. This project consists of two multi-family developments of 10 and 32 acres respectively. We have been responsible for writing, developing and progressing through permitting PD plans and standards for both projects. Each project has a unique connection to the surrounding developments such as the expansion of a city owned FDOT drainage pond, and an anchor point for a larger MPD that is still being planned by the city. We have worked extensively with the city to develop plans that benefit both parties' vision for the projects, while also taking into consideration input from citizens of the surrounding communities. **Role:** Site Planning

SkyCenter One Office Building at Tampa International Airport, Hillsborough County Aviation Authority. This project consists of a new 270,000 square foot multi-story office building and 423,000 square foot multi-story parking garage at Tampa International Airport as part of the new administrative office for the Hillsborough County Aviation Authority. The design includes paving, grading and drainage design for the new building, garage, and associated loading dock serving the facility, utilities designs for water and wastewater services, and sidewalk and multi-use trail design to accommodate multi-modal transportation options. Permitting includes site construction and water and wastewater permitting through the City of Tampa, Environmental Resource Permitting through the Southwest Florida Water Management District, and extensive coordination with adjacent projects as part of TIA's SkyCenter and Gateway Development Area improvements within the south terminal support area. **Role:** Engineering Design Support

Florida Department of Law Enforcement Regional Operations Center, City of Tampa, FL. This project included developing a site conditions assessment and prioritization report for the 120,000 square foot FDLE office building campus. As part of an overall building and site improvement project, the conditions assessment provided recommendations for site improvements including modifying the existing entrances into the parking lot, adding additional parking, evaluating compliance with the Americans with Disabilities Act and improving accessibility into the site and building, improving site security fencing and access gates, and parking lot pavement repair. Design of the improvements following the conditions analysis include the addition of accessible parking spaces, adding new parking spaces within the secured site, improving building and site access, security, and new landscaping and irrigation. **Role:** Landscape Architect/Site Planning

Commercial Development @ College & 43rd, City of Ocala, FL. This commercial development project on 9.4 acres for a 7,600 SF Cheddars Restaurant and a 6,100 SF Wawa service station included the design of a 650-foot two lane divided roadway for the City of Ocala, a turn lane addition onto SR 200 with permitting through the FDOT, and relocation of a large stormwater management pond as part of a land swap with the FDOT. The design also included upgraded landscaping to meet each of the two signature uses unique standard, and streetscaping along SR 200 and the access road. Extensive permitting through the FDOT, SWFWMD, FDEP and City of Ocala was required. **Role:** Landscape Architect/Site Planning

Pinellas County Tax Collector's Office, City of St. Petersburg, FL. Located along the west side of 34th Street North, just north of 22nd Avenue North, in the jurisdictional boundaries of The City of St. Petersburg, this design project was 4 acres in size MOL and included design/permitting for one 41,200 sf (two-story) office building – the new Pinellas County Tax Collector office building. Additional design/permitting included a driver's education driving course, a large parking lot, two dry detention ponds for stormwater treatment, a gravity wastewater system, and a fire/potable water system to serve the new County office use. This new building opened successfully in August 2020. **Role:** Landscape Architect/Site Planning

Belleair Development, LLC
Major Modification Rezoning Application
MM-22-0862

Zoning Hearing Master
July 25, 2022

LETTERS OF SUPPORT

VENTURE MEDICAL
www.venturemedical.com

Venture Medical ReQuip, Inc.
6008 Bonacker Drive
Tampa, FL 33610
800-627-3215
Fax: 800-466-1251

01-08-2022

Hillsborough County Board of County Commissioners
601 E. Kennedy Blvd.
Tampa, FL 33602

Dear Distinguished Members:

I am submitting this letter in support of the application for comp plan amendment for the property located on the SEC of SR60/Valrico Rd. I am the President of Venture Medical ReQuip, located approximately 15 miles from the proposed project. I have spoken to the applicant about their proposed apartment community and believe it would be a benefit to our employees. There is a lack of rental housing options located close to us and I believe having a quality apartment community at this location would be a benefit to our employees.

Sincerely,

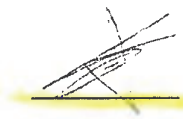
John C. Pritchard II
President
Venture Medical ReQuip, Inc.
800-627-3215
www.venturemedical.com

Hillsborough County Board of County Commissioners
601 E. Kennedy Blvd.
Tampa, FL 33602

Dear Distinguished Members:

I am submitting this letter in support of the application for comp plan amendment for the property located on the SEC of SR60/Valrico Rd. I am the Sam Kaebe at Brandon Honda located on SR 60 approximately 6.5 miles west of the proposed project. I have spoken to the applicant about their proposed apartment community and believe it would be a benefit to our employees. There is a lack of rental housing options located close to us and I believe having a quality apartment community at this location would be a benefit to our employees.

Sincerely,



Date:
1/10/2021

Hillsborough County Board of County Commissioners
601 E. Kennedy Blvd.
Tampa, FL 33602

Dear Distinguished Members:

I am submitting this letter in support of the application for comp plan amendment for the property located on the SEC of SR60/Valrico Rd. I am the Store Manager at the Walmart Supercenter located on SR 60 less than 1 mile west of the proposed project. I have spoken to the applicant about their proposed apartment community and believe it would be a benefit to our employees. There is a lack of rental housing options located close to us and I believe having a quality apartment community at this location would be a benefit to our employees.

Sincerely,

Date: 1/5/2022

Matt Harris

Hillsborough County Board of County Commissioners
601 E. Kennedy Blvd.
Tampa, FL 33602

Dear Distinguished Members:

I am submitting this letter in support of the application for comp plan amendment for the property located on the SEC of SR60/Valrico Rd. I am the Department Manager at the Home Depot located on SR 60 less than 1 mile west of the proposed project. I have spoken to the applicant about their proposed apartment community and believe it would be a benefit to our employees. There is a lack of rental housing options located close to us and I believe having a quality apartment community at this location would be a benefit to our employees.

Sincerely,

Brittney Kabler

Brittney Kabler

Date:
02/5/22

February 1, 2022

Hillsborough County Board of County Commissioners
601 E Kennedy Blvd.
Tampa, FL 33602

Dear Distinguished Members:

We, the residents and members of the community support the application for comp plan amendment for the property located on the SEC of SR 60/Valrico Rd. We have met with the applicant proposing the proposed apartment community and believe it would be a benefit to our community. We have discussed the concerns and potential solutions with the applicant and look forward to seeing this project move forward. Please accept our signatures below as confirmation of our support.

Thank you,

Name:	Signature:	Address:
Mike Sykes		2104 Golden Oak Ln
GLENDA DIXON		2128 Golden Oak Ln
Justin Steward		2132 Golden Oak Ln
Nicholas Wewrzyniakowski		2146 Golden oak Ln
Kirstie Witzler		2214 Golden Oak Ln.
María L Cuevas		2243 Golden Oak Lane Valrico, FL.
Heidi Cetto		2017 Golden Oak Ln valrico FL 33594
JUAN DIEGO PINEDA		206 Golden Pond Ct valrico FL 33594
Martha Wright		2150 Golden Oak Ln 33594
Mike Pauta		2120 Golden Oak Lane Valrico FL 33594

Hillsborough County Board of County Commissioners
601 E. Kennedy Blvd.
Tampa, FL 33602

Dear Distinguished Members:

I am submitting this letter in support of the application for comp plan amendment for the property located on the SEC of SR60/Valrico Rd. I am the General Manager at the Esporta Fitness located across the street from the proposed project. I have spoken to the applicant about their proposed apartment community and believe it would be a benefit to our employees. There is a lack of rental housing options located close to us and I believe having a quality apartment community at this location would be a benefit to our employees.

Sincerely,

Monique W

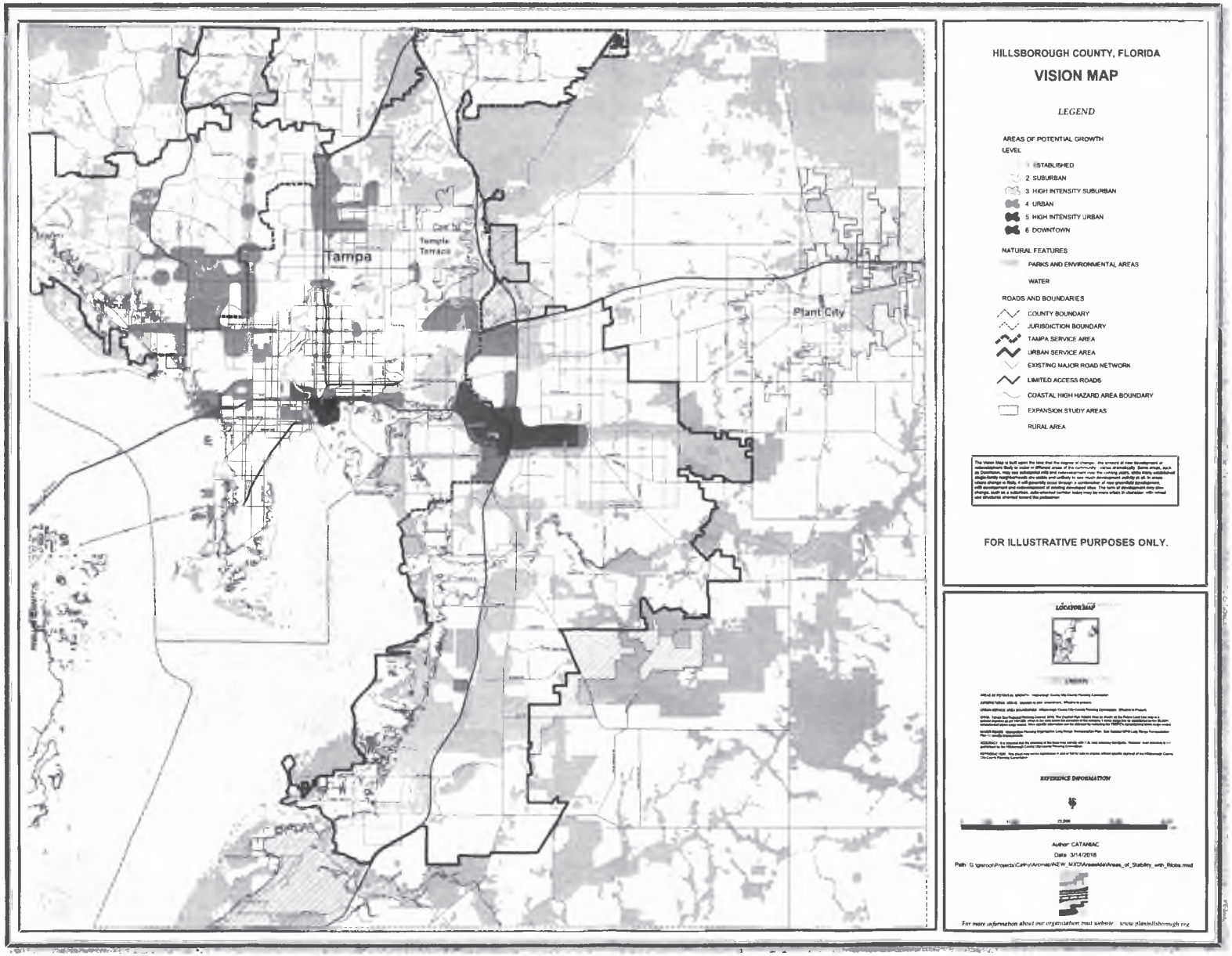
Date: 1-5-2022

Monique Winstead

Belleair Development, LLC
Major Modification Rezoning Application
MM-22-0862

Zoning Hearing Master
July 25, 2022

HILLSBOROUGH COUNTY, FLORIDA
VISION MAP



HILLSBOROUGH COUNTY, FLORIDA

VISION MAP

LEGEND

AREAS OF POTENTIAL GROWTH
LEVEL
- 1 ESTABLISHED
- 2 SUBURBAN
- 3 HIGH INTENSITY SUBURBAN
- 4 URBAN
- 5 HIGH INTENSITY URBAN
- 6 DOWNTOWN

NATURAL FEATURES
- PARKS AND ENVIRONMENTAL AREAS
- WATER

ROADS AND BOUNDARIES
- COUNTY BOUNDARY
- JURISDICTION BOUNDARY
- TAMPA SERVICE AREA
- URBAN SERVICE AREA
- EXISTING MAJOR ROAD NETWORK
- LIMITED ACCESS ROADS
- COASTAL HIGH HAZARD AREA BOUNDARY
- EXPANSION STUDY AREAS
- RURAL AREA

The Vision Map is built upon the idea that the degree of change - the amount of new development or redevelopment likely to occur in different areas of the community - varies dramatically. Some areas, such as Downtown, may see substantial infill and redevelopment over the coming years, while many established single-family neighborhoods are stable and unlikely to see much development activity at all. In areas where change occurs, it will generally occur through a combination of new greenfield developments, infill development and redevelopment of existing developed sites. The form of development may also change, such as a suburban, auto-oriented corridor today may be more urban in character with retrofit use structures oriented toward the pedestrian.

FOR ILLUSTRATIVE PURPOSES ONLY.

LOCATION MAP

REFERENCE INFORMATION

Author: CATAMAC
Date: 3/14/2018
Path: G:\general\Projects\Cathy\Arcmap\NEW_MXD\Vision\Areas_of_Stability_with_Blobs.mxd

For more information about our organization visit website www.planhillsborough.org

Belleair Development, LLC
Major Modification Rezoning Application
MM 22-0862

Zoning Hearing Master
July 25, 2022

BURDEN SHIFTING FRAMEWORK IN QUASI-JUDICIAL ZONING HEARINGS

- The Florida Supreme Court set forth the proper framework in *Board of County Commissioners of Brevard County v. Snyder*, 627 So. 2d 469, 476 (Fla. 1993):

  - [A] landowner seeking to rezone property has the burden of proving that the proposal is consistent with the comprehensive plan and complies with all procedural requirements of the zoning ordinance. At this point, the burden shifts to the governmental board to demonstrate that maintaining the existing zoning classification with respect to the property accomplishes a legitimate public purpose. In effect, the landowners' traditional remedies will be subsumed within this rule, and the board will now have the burden of showing that the refusal to rezone the property is not arbitrary, discriminatory, or unreasonable. If the board carries its burden, the application should be denied.

  * * *

  - . . . . [I]n order to sustain the board's action, upon review by certiorari in the circuit court it must be shown that there was competent substantial evidence presented to the board to support its ruling.

- This framework is critical to the protections of private property rights, since "the effect of labeling rezoning decisions as quasi-judicial is to refer them to an independent forum that is isolated as far as is possible from the more politicized activities of local government, much as the judiciary is constitutionally independent of the legislative and executive branches." *Lee County v. Sunbelt Equities, II, Ltd. P'ship*, 619 So. 2d 996, 1001 (Fla. 2d DCA 1993).

I. The applicant has the burden of demonstrating consistency with the Comprehensive Plan and satisfaction of all procedural requirements in the Land Development Code with competent substantial evidence.

- A rezoning applicant must demonstrate that the application is consistent with the comprehensive plan and all procedural requirements of the zoning ordinance with competent substantial evidence. *Snyder*, 627 So. 2d at 476.

- An initial demonstration by the applicant of consistency with the relevant Comprehensive Plan Future Land Use category is enough to shift the burden to the local government. *Sunbelt Equities*, 619 So. 2d 996, 1007–08 (Fla. 2d DCA 1993).

- Florida courts have held that a prima facie case is established by either government staff reports or the findings of an independent expert reviewer of the application finding that a project is consistent with the comprehensive plan. *Balm Rd. Inv., LLC v. Hillsborough Cty. Bd. of Cty. Comm'rs*, 336 So. 3d 776, 777–78 (Fla. 2d DCA Feb. 11, 2022); *ABG Real Estate Dev. Co. of Fla., Inc. v. St. Johns County*, 608 So. 2d 59, 63 (Fla. 5th DCA 1992).

II. If the applicant satisfies their burden, the local government has the burden of showing there is competent substantial evidence in the record supporting denial of the rezoning application.

- "Competent, substantial evidence" has been described by the Florida Supreme Court:

    - "Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred. We have stated it to be such relevant evidence as a reasonable mind would accept as adequate to support a conclusion....[T]he evidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." *Pollard v. Palm Beach County,* 560 So. 2d 1358, 1359-60 (Fla. 4th DCA 1990) (per curiam) (quoting *DeGroot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957)).

    - And while the facts presented by objectors may be considered, any "subjective" materials may not, and objectors' materials cannot be given a cumulative effect simply because a large number of people agree with those facts or opinions. *Sunbelt Equities*, 619 So. 2d at 999 n.1; *Pollard,* 560 So. 2d at 1360; *Conetta v. City of Sarasota*, 400 So. 2d 1051, 1052 (Fla. 2d DCA 1981).

    - Similarly, speculative concerns about the future zoning of an area or a general desire to maintain the status quo are not allowable. *Apopka v. Orange County*, 299 So. 2d 657 (Fla. 4th DCA 1974).

- *Snyder* places the burden on the County to show "that the refusal to rezone the property is not arbitrary, discriminatory, or unreasonable." 627 So. 2d at 476.

- Such a refusal would be arbitrary if it relies upon criteria absent from its comprehensive plan or land development code. *City of Naples v. Cent. Plaza of Naples, Inc.*, 303 So. 2d 423, 425 (Fla. 2d DCA 1974).

III. If the local government fails to provide competent substantial evidence in support of denial, then the local government must provide competent substantial evidence supporting its legitimate public purpose.

- A legitimate public purpose must be supported by competent substantial evidence. *William F. Sutton Family LLP v. Hillsborough Cty. Bd. of Cty. Comm'rs*, 27 Fla. L. Weekly Supp. 29a (Fla. 13th Cir. Ct. Nov. 29, 2018), *per curiam aff'd*, 273 So. 3d 972 (Fla. 2d DCA 2019).

    - In *Sutton*, which was per curiam affirmed by the Second District Court of Appeal, the Thirteenth Judicial Circuit shifted the burden "to the County to demonstrate that maintaining the existing zoning classification with respect to the property accomplishes a legitimate public purpose" after the circuit court found the County's decision to deny the rezoning application was not supported by competent substantial evidence.

    - In the County's response to the Petition, "the County ma[de] vague allegations as to its desire to prevent urban sprawl, and protect water and other natural resources." *Id.* The circuit court nevertheless determined that these stated "legitimate public purposes" lacked evidentiary support. *Id.*

Belleair Development, LLC
Major Modification Rezoning Application
MM 22-0862

Zoning Hearing Master
July 25, 2022

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BURDEN SHIFTING FRAMEWORK IN QUASI-JUDICIAL ZONING HEARINGS

KeyCite Yellow Flag - Negative Treatment
Declined to Follow by Cabana v. Kenai Peninsula Borough, Alaska, April 27, 2001

627 So.2d 469
Supreme Court of Florida.

BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, Florida, Petitioner,
v.
Jack R. SNYDER, et ux., Respondents.

No. 79720.
|
Oct. 7, 1993.
|
Rehearing Denied Dec. 23, 1993.

Synopsis

Property owners brought original action seeking writ of certiorari after county board denied their application for rezoning of property from general use to medium density multiple-family dwelling use. The District Court of Appeal, 595 So.2d 65, granted petition. On review for direct conflict of decisions, the Supreme Court, Grimes, J., held that: (1) rezoning action which entails application of general rule or policy to specific individuals, interests or activities is quasi-judicial in nature, subject to strict scrutiny on certiorari review; (2) landowner who demonstrates that proposed use of property is consistent with comprehensive plan is not presumptively entitled to such use; (3) landowner seeking to rezone property has burden of proving that proposal is consistent with comprehensive plan, and burden thereupon shifts to zoning board to demonstrate that maintaining existing zoning classification accomplishes legitimate public purpose; and (4) although board is not required to make findings of fact in denying application of rezoning, upon review by certiorari in the circuit court it must be shown there was competent substantial evidence presented to board to support its ruling.

Decision of District Court of Appeal quashed.

Shaw, J., dissented.

West Headnotes (10)

[1] **Counties** ⇨ Appeals from decisions

Legislative action of county board of commissioners is subject to attack in circuit court; however, in deference to policymaking function of board when acting in a legislative capacity, its actions will be sustained as long as they are fairly debatable.

3 Cases that cite this headnote

[2] **Counties** ⇨ Appeals from decisions

Rulings of county board of commissioners acting in its quasi-judicial capacity are subject to review by certiorari and will be upheld only if they are supported by substantial competent evidence.

5 Cases that cite this headnote

[3] **Counties** ⇨ Appeals from decisions

It is character of hearing that determines whether or not county board action is legislative or quasi-judicial, for purposes of judicial review; generally speaking, legislative action results in formulation of a general rule of policy, whereas judicial action results in application of a general rule of policy.

15 Cases that cite this headnote

[4] **Zoning and Planning** ⇨ Certiorari

Zoning and Planning ⇨ Modification or amendment; rezoning

Zoning and Planning ⇨ Modification or amendment; rezoning

Comprehensive rezonings affecting a large portion of the public are legislative in nature, and are subject to "fairly debatable" standard of review; however, rezoning actions which can be viewed as policy application, rather than policy setting, and which have an impact on a limited number of persons or property owners are quasi-judicial in nature and are properly reviewable by petition for certiorari; on such review they

are subject to strict scrutiny and to substantial evidence standard.

37 Cases that cite this headnote

[5] **Zoning and Planning** ⇨ Certiorari

County board's denial of landowner's application to rezone property to zoning classification which would allow construction of 15 residential units per acre was in the nature of a quasi-judicial proceeding, and was properly reviewable by petition for certiorari.

13 Cases that cite this headnote

[6] **Zoning and Planning** ⇨ Right to Permission, and Discretion

Zoning and Planning ⇨ Substantial evidence in general

Even where denial of a zoning application would be inconsistent with comprehensive plan, local government should have discretion to decide that maximum development density should not be allowed provided governmental body approves some development that is consistent with the plan and government's decision is supported by substantial, competent evidence.

14 Cases that cite this headnote

[7] **Zoning and Planning** ⇨ Conformity of change to plan

Landowner who demonstrates that proposed use is consistent with comprehensive zoning plan is not presumptively entitled to such use if opposing governmental agency fails to prove by clear and convincing evidence that specifically stated public necessity requires a more restricted use; property owner is not necessarily entitled to relief by proving such consistency when agency action is also consistent with plan.

9 Cases that cite this headnote

[8] **Zoning and Planning** ⇨ Maps, plats, and plans; subdivision regulations

Growth Management Act was not intended to preclude development but only to ensure that it proceed in an orderly manner. West's F.S.A. § 163.3161 et seq.

[9] **Zoning and Planning** ⇨ Public interest and need; general welfare

Zoning and Planning ⇨ Conformity of change to plan

Zoning and Planning ⇨ Hearing or meeting in general

Landowner seeking to rezone property has burden of proving that proposal is consistent with comprehensive plan and complies with all procedural requirements of zoning ordinance; burden thereupon shifts to governmental board to demonstrate that maintaining existing zoning classification with respect to the property accomplishes a legitimate public purpose; board will have burden of showing refusal to rezone property is not arbitrary, discriminatory, or unreasonable; if board carries burden, application should be denied.

16 Cases that cite this headnote

[10] **Zoning and Planning** ⇨ Filing, publication, and posting; minutes and findings

Zoning and Planning ⇨ Modification or amendment; rezoning

Although zoning board is not required to make findings of fact in making decision on landowner's application to rezone property, it must be shown there was competent substantial evidence presented to the board to support its ruling in order to sustain its action, upon review by certiorari in circuit court.

20 Cases that cite this headnote

Attorneys and Law Firms

*470 Robert D. Guthrie, County Atty., and Eden Bentley, Asst. County Atty., Melbourne, for petitioner.

Frank J. Griffith, Jr., Cianfrogna, Telfer, Reda & Faherty, P.A., Titusville, for respondents.

Denis Dean and Jonathan A. Glogau, Asst. Attys. Gen., Tallahassee, amicus curiae, for Atty. Gen., State of FL.

Nancy Stuparich, Asst. Gen. Counsel, and Jane C. Hayman, Deputy Gen. Counsel, Tallahassee, amicus curiae, for FL League of Cities, Inc.

Paul R. Gougelman, III, and Maureen M. Matheson, Reinman, Harrell, Graham, Mitchell & Wattwood, P.A., Melbourne, amicus curiae, for Space Coast League of Cities, Inc., City of Melbourne, and Town of Indialantic.

Richard E. Gentry, FL Home Builders Ass'n, and Robert M. Rhodes and Cathy M. Sellers, Steel, Hector and Davis, Tallahassee, amicus curiae, for FL Home Builders Ass'n.

David La Croix, Pennington, Wilkinson & Dunlap, P.A., and William J. Roberts, Roberts and Eagan, P.A., Tallahassee, amicus curiae, for FL Ass'n of Counties.

David J. Russ and Karen Brodeen, Asst. Gen. Counsels, Tallahassee, amicus curiae, for FL Dept. of Community Affairs.

Richard Grosso, Legal Director, Tallahassee, and C. Allen Watts, Cobb, Cole and Bell, Daytona Beach, amicus curiae, for 1000 Friends of FL.

Neal D. Bowen, County Atty., Kissimmee, amicus curiae, for Osceola County.

M. Stephen Turner and David K. Miller, Broad and Cassel, Tallahassee, amicus curiae, for Monticello Drug Co.

John J. Copelan, Jr., County Atty., and Barbara S. Monahan, Asst. County Atty. for Broward County, Fort Lauderdale, and Emeline Acton, County Atty. for Hillsborough County, Tampa, amici curiae, for Broward County, Hillsborough County and FL Ass'n of County Attys., Inc.

Thomas G. Pelham, Holland & Knight, Tallahassee, amicus curiae, pro se.

Opinion

GRIMES, Justice.

We review *Snyder v. Board of County Commissioners,* 595 So.2d 65 (Fla. 5th DCA1991), because of its conflict with *Schauer v. City of Miami Beach,* 112 So.2d 838 (Fla.1959); *City of Jacksonville Beach v. Grubbs,* 461 So.2d 160 (Fla. 1st DCA1984), *review denied,* 469 So.2d 749 (Fla.1985); and *Palm Beach County v. Tinnerman,* 517 So.2d 699 (Fla. 4th DCA1987), *review denied,* ***471** 528 So.2d 1183 (Fla.1988). We have jurisdiction under article V, section 3(b)(3) of the Florida Constitution. Jack and Gail Snyder owned a one-half acre parcel of property on Merritt Island in the unincorporated area of Brevard County. The property is zoned GU (general use) which allows construction of a single-family residence. The Snyders filed an application to rezone their property to the RU-2-15 zoning classification which allows the construction of fifteen units per acre. The area is designated for residential use under the 1988 Brevard County Comprehensive Plan Future Land Use Map. Twenty-nine zoning classifications are considered potentially consistent with this land use designation, including both the GU and the RU-2-15 classifications.

After the application for rezoning was filed, the Brevard County Planning and Zoning staff reviewed the application and completed the county's standard "rezoning review worksheet." The worksheet indicated that the proposed multifamily use of the Snyders' property was consistent with all aspects of the comprehensive plan except for the fact that it was located in the one-hundred-year flood plain in which a maximum of only two units per acre was permitted. For this reason, the staff recommended that the request be denied.

At the planning and zoning board meeting, the county planning and zoning director indicated that when the property was developed the land elevation would be raised to the point where the one-hundred-year-flood plain restriction would no longer be applicable. Thus, the director stated that the staff no longer opposed the application. The planning and zoning board voted to approve the Snyders' rezoning request.

When the matter came before the board of county commissioners, Snyder stated that he intended to build only five or six units on the property. However, a number of citizens spoke in opposition to the rezoning request. Their primary concern was the increase in traffic which would be caused by the development. Ultimately, the commission voted to deny the rezoning request without stating a reason for the denial.

The Snyders filed a petition for certiorari in the circuit court. Three circuit judges, sitting en banc, reviewed the petition and

denied it by a two-to-one decision. The Snyders then filed a petition for certiorari in the Fifth District Court of Appeal.

The district court of appeal acknowledged that zoning decisions have traditionally been considered legislative in nature. Therefore, courts were required to uphold them if they could be justified as being "fairly debatable." Drawing heavily on *Fasano v. Board of County Commissioners,* 264 Or. 574, 507 P.2d 23 (1973), however, the court concluded that, unlike initial zoning enactments and comprehensive rezonings or rezonings affecting a large portion of the public, a rezoning action which entails the application of a general rule or policy to specific individuals, interests, or activities is quasi-judicial in nature. Under the latter circumstances, the court reasoned that a stricter standard of judicial review of the rezoning decision was required. The court went on to hold:

> (4) Since a property owner's right to own and use his property is constitutionally protected, review of any governmental action denying or abridging that right is subject to close judicial scrutiny. Effective judicial review, constitutional due process and other essential requirements of law, all necessitate that the governmental agency (by whatever name it may be characterized) applying legislated land use restrictions to particular parcels of privately owned lands, must state reasons for action that denies the owner the use of his land and must make findings of fact and a record of its proceedings, sufficient for judicial review of: the legal sufficiency of the evidence to support the findings of fact made, the legal sufficiency of the findings of fact supporting the reasons given and the legal adequacy, under applicable law (*i.e.,* under general comprehensive zoning ordinances, applicable state and case law and state and federal constitutional provisions) of the reasons given for the result of the action taken.
>
> (5) The initial burden is upon the landowner to demonstrate that his petition or application for use of privately owned ***472** lands, (rezoning, special exception, conditional use permit, variance, site plan approval, etc.) complies with the reasonable procedural requirements of the ordinance and that the use sought is consistent with the applicable comprehensive zoning plan. Upon such a showing the landowner is presumptively entitled to use his property in the manner he seeks unless the opposing governmental agency asserts and proves by clear and convincing evidence that a specifically stated public necessity requires a specified, more restrictive, use. After such a showing the burden shifts to the landowner to assert and prove that such specified more restrictive land use constitutes a taking of his property for public use for which he is entitled to compensation under the taking provisions of the state or federal constitutions.

Snyder v. Board of County Commissioners, 595 So.2d at 81 (footnotes omitted).

Applying these principles to the facts of the case, the court found (1) that the Snyders' petition for rezoning was consistent with the comprehensive plan; (2) that there was no assertion or evidence that a more restrictive zoning classification was necessary to protect the health, safety, morals, or welfare of the general public; and (3) that the denial of the requested zoning classification without reasons supported by facts was, as a matter of law, arbitrary and unreasonable. The court granted the petition for certiorari.

Before this Court, the county contends that the standard of review for the county's denial of the Snyders' rezoning application is whether or not the decision was fairly debatable. The county further argues that the opinion below eliminates a local government's ability to operate in a legislative context and impairs its ability to respond to public comment. The county refers to *Jennings v. Dade County,* 589 So.2d 1337 (Fla. 3d DCA1991), *review denied,* 598 So.2d 75 (Fla.1992), for the proposition that if its rezoning decision is quasi-judicial, the commissioners will be prohibited from obtaining community input by way of ex parte communications from its citizens. In addition, the county suggests that the requirement to make findings in support of its rezoning decision will place an insurmountable burden on the zoning authorities. The county also asserts that the salutary purpose of the comprehensive plan to provide controlled growth will be thwarted by the court's ruling that the maximum use permitted by the plan must be approved once the rezoning application is determined to be consistent with it.

The Snyders respond that the decision below should be upheld in all of its major premises. They argue that the rationale for the early decisions that rezonings are legislative in nature has been changed by the enactment of the Growth Management Act. Thus, in order to ensure that local governments follow the principles enunciated in their comprehensive plans, it is necessary for the courts to exercise stricter scrutiny than would be provided under the fairly debatable rule. The Snyders contend that their rezoning application was consistent with the comprehensive plan. Because there are no findings of fact or reasons given for the denial by the board of

county commissioners, there is no basis upon which the denial could be upheld. Various amici curiae have also submitted briefs in support of their several positions.

Historically, local governments have exercised the zoning power pursuant to a broad delegation of state legislative power subject only to constitutional limitations. Both federal and state courts adopted a highly deferential standard of judicial review early in the history of local zoning. In *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303 (1926), the United States Supreme Court held that "[i]f the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control." 272 U.S. at 388, 47 S.Ct. at 118. This Court expressly adopted the fairly debatable principle in *City of Miami Beach v. Ocean & Inland Co.*, 147 Fla. 480, 3 So.2d 364 (1941).

Inhibited only by the loose judicial scrutiny afforded by the fairly debatable rule, local zoning systems developed in a markedly inconsistent manner. Many land use experts and practitioners have been critical of the local zoning system. Richard Babcock deplored the effect of "neighborhoodism" and ***473** rank political influence on the local decision-making process. Richard F. Babcock, *The Zoning Game* (1966). Mandelker and Tarlock recently stated that "zoning decisions are too often ad hoc, sloppy and self-serving decisions with well-defined adverse consequences without off-setting benefits." Daniel R. Mandelker and A. Dan Tarlock, *Shifting the Presumption of Constitutionality in Land-Use Law,* 24 Urb.Law. 1, 2 (1992).

Professor Charles Haar, a leading proponent of zoning reform, was an early advocate of requiring that local land use regulation be consistent with a legally binding comprehensive plan which would serve long range goals, counteract local pressures for preferential treatment, and provide courts with a meaningful standard of review. Charles M. Haar, *"In Accordance With A Comprehensive Plan,"* 68 Harv.L.Rev. 1154 (1955). In 1975, the American Law Institute adopted the Model Land Development Code, which provided for procedural and planning reforms at the local level and increased state participation in land use decision-making for developments of regional impact and areas of critical state concern.

Reacting to the increasing calls for reform, numerous states have adopted legislation to change the local land use decision-making process. As one of the leaders of this national reform, Florida adopted the Local Government Comprehensive Planning Act of 1975. Ch. 75-257, Laws of Fla. This law was substantially strengthened in 1985 by the Growth Management Act. Ch. 85-55, Laws of Fla.

Pursuant to the Growth Management Act, each county and municipality is required to prepare a comprehensive plan for approval by the Department of Community Affairs. The adopted local plan must include "principles, guidelines, and standards for the orderly and balanced future economic, social, physical, environmental, and fiscal development" of the local government's jurisdictional area. Section 163.3177(1), Fla.Stat. (1991). At the minimum, the local plan must include elements covering future land use; capital improvements generally; sanitary sewer, solid waste, drainage, potable water, and natural ground water aquifer protection specifically; conservation; recreation and open space; housing; traffic circulation; intergovernmental coordination; coastal management (for local government in the coastal zone); and mass transit (for local jurisdictions with 50,000 or more people). *Id.*, § 163.3177(6).

Of special relevance to local rezoning actions, the future land use plan element of the local plan must contain both a future land use map and goals, policies, and measurable objectives to guide future land use decisions. This plan element must designate the "proposed future general distribution, location, and extent of the uses of land" for various purposes. *Id.*, § 163.3177(6)(a). It must include standards to be utilized in the control and distribution of densities and intensities of development. In addition, the future land use plan must be based on adequate data and analysis concerning the local jurisdiction, including the projected population, the amount of land needed to accommodate the estimated population, the availability of public services and facilities, and the character of undeveloped land. *Id.*, § 163.3177(6)(a).

The local plan must be implemented through the adoption of land development regulations that are consistent with the plan. *Id.* § 163.3202. In addition, all development, both public and private, and all development orders approved by local governments must be consistent with the adopted local plan. *Id.*, § 163.3194(1)(a). Section 163.3194(3), Florida Statutes (1991), explains consistency as follows:

> (a) A development order or land development regulation shall be consistent with the comprehensive plan if the land uses, densities or intensities, and other aspects of development permitted by such order or regulation are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government.

Section 163.3164, Florida Statutes (1991), reads in pertinent part:

> (6) "Development order" means any order granting, denying, or granting with conditions an application for a development permit.
>
> *474 (7) "Development permit" includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.

Because an order granting or denying rezoning constitutes a development order and development orders must be consistent with the comprehensive plan, it is clear that orders on rezoning applications must be consistent with the comprehensive plan.

[1] [2] The first issue we must decide is whether the Board's action on Snyder's rezoning application was legislative or quasi-judicial. A board's legislative action is subject to attack in circuit court. *Hirt v. Polk County Bd. of County Comm'rs,* 578 So.2d 415 (Fla. 2d DCA1991). However, in deference to the policy-making function of a board when acting in a legislative capacity, its actions will be sustained as long as they are fairly debatable. *Nance v. Town of Indialantic,* 419 So.2d 1041 (Fla.1982). On the other hand, the rulings of a board acting in its quasi-judicial capacity are subject to review by certiorari and will be upheld only if they are supported by substantial competent evidence. *De Groot v. Sheffield,* 95 So.2d 912 (Fla.1957).

Enactments of original zoning ordinances have always been considered legislative. *Gulf & Eastern Dev. Corp. v. City of Fort Lauderdale,* 354 So.2d 57 (Fla.1978); *County of Pasco v. J. Dico, Inc.,* 343 So.2d 83 (Fla. 2d DCA1977). In *Schauer v. City of Miami Beach,* this Court held that the passage of an amending zoning ordinance was the exercise of a legislative function. 112 So.2d at 839. However, the amendment in that case was comprehensive in nature in that it effected a change in the zoning of a large area so as to permit it to be used as locations for multiple family buildings and hotels. *Id.* In *City of Jacksonville Beach v. Grubbs* and *Palm Beach County v. Tinnerman,* the district courts of appeal went further and held that board action on specific rezoning applications of individual property owners was also legislative. *Grubbs,* 461 So.2d at 163; *Tinnerman,* 517 So.2d at 700.

[3] It is the character of the hearing that determines whether or not board action is legislative or quasi-judicial. *Coral Reef Nurseries, Inc. v. Babcock Co.,* 410 So.2d 648 (Fla. 3d DCA1982). Generally speaking, legislative action results in the *formulation* of a general rule of policy, whereas judicial action results in the *application* of a general rule of policy. Carl J. Peckingpaugh, Jr., Comment, *Burden of Proof in Land Use Regulations: A Unified Approach and Application to Florida,* 8 Fla.St.U.L.Rev. 499, 504 (1980). In *West Flagler Amusement Co. v. State Racing Commission,* 122 Fla. 222, 225, 165 So. 64, 65 (1935), we explained:

> A judicial or quasi-judicial act determines the rules of law applicable, and the rights affected by them, in relation to past transactions. On the other hand, a quasi-legislative or administrative order prescribes what the rule or requirement of administratively determined duty shall be with respect to transactions to be executed in the future, in order that same shall be considered lawful. But even so, quasi-legislative and quasi-executive orders, after they have already been entered, may have a quasi-judicial attribute if capable of being arrived at and provided by law to be declared by the administrative

> agency only after express statutory notice, hearing and consideration of evidence to be adduced as a basis for the making thereof.

[4] [5] Applying this criterion, it is evident that comprehensive rezonings affecting a large portion of the public are legislative in nature. However, we agree with the court below when it said:

> [R]ezoning actions which have an impact on a limited number of persons or property owners, on identifiable parties and interests, where the decision is contingent on a fact or facts arrived at from distinct alternatives presented at a hearing, and where the decision can be functionally viewed as policy application, rather than policy setting, are in the nature of ... quasi-judicial action....

Snyder, 595 So.2d at 78. Therefore, the board's action on Snyder's application was in the nature of a quasi-judicial proceeding and ***475** properly reviewable by petition for certiorari. [1]

We also agree with the court below that the review is subject to strict scrutiny. In practical effect, the review by strict scrutiny in zoning cases appears to be the same as that given in the review of other quasi-judicial decisions. *See Lee County v. Sunbelt Equities, II, Ltd. Partnership,* 619 So.2d 996 (Fla. 2d DCA1993) (The term "strict scrutiny" arises from the necessity of strict compliance with comprehensive plan.). This term as used in the review of land use decisions must be distinguished from the type of strict scrutiny review afforded in some constitutional cases. *Compare Snyder v. Board of County Comm'rs,* 595 So.2d 65, 75-76 (Fla. 5th DCA1991) (land use), *and Machado v. Musgrove,* 519 So.2d 629, 632 (Fla. 3d DCA1987), *review denied,* 529 So.2d 693 (Fla.1988), and *review denied,* 529 So.2d 694 (Fla.1988) (land use), *with In re Estate of Greenberg,* 390 So.2d 40, 42-43 (Fla.1980) (general discussion of strict scrutiny review in context of fundamental rights), *appeal dismissed,* 450 U.S. 961, 101 S.Ct. 1475, 67 L.Ed.2d 610 (1981), *Florida High Sch. Activities Ass'n v. Thomas,* 434 So.2d 306 (Fla.1983) (equal protection), *and Department of Revenue v. Magazine Publishers of America, Inc.,* 604 So.2d 459 (Fla.1992) (First Amendment).

[6] At this point, we depart from the rationale of the court below. In the first place, the opinion overlooks the premise that the comprehensive plan is intended to provide for the *future* use of land, which contemplates a gradual and ordered growth. *See City of Jacksonville Beach,* 461 So.2d at 163, in which the following statement from *Marracci v. City of Scappoose,* 552 P.2d 552, 553 (Or.Ct.App.1976), was approved:

> [A] comprehensive plan only establishes a long-range maximum limit on the possible intensity of land use; a plan does not simultaneously establish an immediate minimum limit on the possible intensity of land use. The present use of land may, by zoning ordinance, continue to be more limited than the future use contemplated by the comprehensive plan.

Even where a denial of a zoning application would be inconsistent with the plan, the local government should have the discretion to decide that the maximum development density should not be allowed provided the governmental body approves some development that is consistent with the plan and the government's decision is supported by substantial, competent evidence.

[7] Further, we cannot accept the proposition that once the landowner demonstrates that the proposed use is consistent with the comprehensive plan, he is presumptively entitled to this use unless the opposing governmental agency proves by clear and convincing evidence that specifically stated public necessity requires a more restricted use. We do not believe that a property owner is necessarily entitled to relief by proving consistency when the board action is also consistent with the plan. As noted in *Lee County v. Sunbelt Equities II, Limited Partnership:*

> [A]bsent the assertion of some enforceable property right, an application for rezoning appeals at least in part to local officials' discretion to accept or reject the applicant's argument that change is desirable. The *right* of judicial review does not *ipso facto* ease the burden on a party seeking to overturn a decision made by a local government, and certainly does not confer any property-based right upon the owner where none previously existed.
>
> ...
>
> Moreover, when it is the zoning classification that is challenged, the comprehensive plan is relevant only when the suggested use is inconsistent with that plan. Where any of several zoning classifications is consistent with the plan, the applicant seeking a change from one to the other is not entitled to judicial relief absent proof the *status quo* is no longer reasonable. It is not enough simply to be "consistent"; the proposed change cannot be *inconsistent,* and will be subject to the "strict ***476** scrutiny" of *Machado* to insure this does not happen.
>
> 619 So.2d at 1005-06.

[8] This raises a question of whether the Growth Management Act provides any comfort to the landowner when the denial of the rezoning request is consistent with the comprehensive plan. It could be argued that the only recourse is to pursue the traditional remedy of attempting to prove that the denial of the application was arbitrary, discriminatory, or unreasonable. *Burritt v. Harris,* 172 So.2d 820 (Fla.1965); *City of Naples v. Central Plaza of Naples, Inc.,* 303 So.2d 423 (Fla. 2d DCA1974). Yet, the fact that a proposed use is consistent with the plan means that the planners contemplated that that use would be acceptable at some point in the future. We do not believe the Growth Management Act was intended to preclude development but only to insure that it proceed in an orderly manner.

[9] Upon consideration, we hold that a landowner seeking to rezone property has the burden of proving that the proposal is consistent with the comprehensive plan and complies with all procedural requirements of the zoning ordinance. At this point, the burden shifts to the governmental board to demonstrate that maintaining the existing zoning classification with respect to the property accomplishes a legitimate public purpose. In effect, the landowners' traditional remedies will be subsumed within this rule, and the board will now have the burden of showing that the refusal to rezone the property is not arbitrary, discriminatory, or unreasonable. If the board carries its burden, the application should be denied.

[10] While they may be useful, the board will not be required to make findings of fact. However, in order to sustain the board's action, upon review by certiorari in the circuit court it must be shown that there was competent substantial evidence presented to the board to support its ruling. Further review in the district court of appeal will continue to be governed by the principles of *City of Deerfield Beach v. Vaillant,* 419 So.2d 624 (Fla.1982).

Based on the foregoing, we quash the decision below and disapprove *City of Jacksonville Beach v. Grubbs* and *Palm Beach County v. Tinnerman,* to the extent they are inconsistent with this opinion. However, in the posture of this case, we are reluctant to preclude the Snyders from any avenue of relief. Because of the possibility that conditions have changed during the extended lapse of time since their original application was filed, we believe that justice would be best served by permitting them to file a new application for rezoning of the property. The application will be without prejudice of the result reached by this decision and will allow the process to begin anew according to the procedure outlined in our opinion.

It is so ordered.

BARKETT, C.J., and OVERTON, McDONALD, KOGAN and HARDING, JJ., concur.

SHAW, J., dissents.

All Citations

627 So.2d 469, 18 Fla. L. Weekly S522

Footnotes

1 One or more of the amicus briefs suggests that Snyder's remedy was to bring a de novo action in circuit court pursuant to section 163.3215, Florida Statutes (1991). However, in *Parker v. Leon County*, 627 So.2d 476 (Fla.1993), we explained that this statute only provides a remedy for third parties to challenge the consistency of development orders.

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619 So.2d 996
District Court of Appeal of Florida,
Second District.

LEE COUNTY, a political subdivision of the State of Florida, Petitioner,

v.

SUNBELT EQUITIES, II, LIMITED PARTNERSHIP, a Pennsylvania limited partnership, Respondent.

No. 92–03948.
|
May 14, 1993.
|
Rehearing Denied June 16, 1993.

Synopsis
Property owner sought to have property currently zoned for agricultural use rezoned for purposes of constructing commercial/office development. Although proposal was apparently consistent with future land use projections as embodied in county comprehensive plan, county commission overruled recommendation of planning staff and hearing examiner and denied rezoning. Owner sought judicial review. The Circuit Court for Lee County, James R. Thompson, J., granted certiorari and found that denial of application was not supported by evidence. County sought further certiorari review. The District Court of Appeal held that: (1) site-specific, owner-initiated rezoning request was sufficiently judicial in character that final administrative order was appropriate for appellate review, and (2) it was not sufficient for property owner to show that proposed use was consistent with comprehensive plan, and decision to deny could be sustained if record reflected substantial competent evidence favoring continuation of status quo.

Petition granted, order quashed, case remanded.

West Headnotes (14)

[1] **Zoning and Planning** ⇨ Finality; ripeness

Site-specific, owner-initiated rezoning requests are sufficiently judicial in character that final administrative orders are thereafter appropriate for appellate review.

1 Cases that cite this headnote

[2] **Zoning and Planning** ⇨ Modification or amendment

Any party adversely affected by rezoning decision is entitled to some form of direct appellate review.

[3] **Zoning and Planning** ⇨ Grounds for grant or denial in general

All zoning and development permitting must be consistent with comprehensive plan of city or county in question. West's F.S.A. § 163.3161(5).

[4] **Administrative Law and Procedure** ⇨ Review for arbitrary, capricious, unreasonable, or illegal actions in general

Administrative Law and Procedure ⇨ Wisdom, judgment, or opinion in general

Administrative Law and Procedure ⇨ Substantial evidence

At circuit level of judicial review of local government administrative action, questions to be asked are whether due process was afforded, whether administrative body applied correct law, and whether body's findings are supported by competent substantial evidence, i.e., whether record contains necessary quantum of evidence, and circuit court

is not permitted to go farther and reweigh evidence or to substitute its judgment about what should be done for that of administrative agency. U.S.C.A. Const.Amend. 14.

7 Cases that cite this headnote

[5] **Administrative Law and Procedure** ⇨ Review for arbitrary, capricious, unreasonable, or illegal actions in general

Following judicial review at circuit level of local government administrative action, questions to be asked on further review by certiorari in District Court of Appeal are whether due process was afforded and whether circuit court applied incorrect principle of law. U.S.C.A. Const.Amend. 14.

2 Cases that cite this headnote

[6] **Zoning and Planning** ⇨ Zoning and planning distinguished

Comprehensive planning and zoning are interrelated but different functions of local government.

[7] **Zoning and Planning** ⇨ Validity of regulations in general

Zoning and Planning ⇨ Regulations in general

Both comprehensive zoning plan and zoning classification are presumptively valid, and one seeking change in either has burden of showing its invalidity.

[8] **Zoning and Planning** ⇨ Conformity of change to plan

Zoning and Planning ⇨ Classification of property; size and boundary of zones

When zoning classification is challenged, comprehensive plan is relevant only when suggested use is inconsistent with that plan; where any of several classifications is consistent with plan, applicant seeking change from one to the other is not entitled to judicial relief absent proof that status quo is no longer reasonable, and proposed change cannot be inconsistent and will be subject to strict scrutiny.

5 Cases that cite this headnote

[9] **Zoning and Planning** ⇨ Modification or amendment; rezoning

On judicial review of denial of rezoning request, which is quasi-judicial decision, after applicant has met initial burden of showing that proposal is consistent with comprehensive plan, local government must show by substantial competent evidence that existing zoning classification was enacted in furtherance of some legitimate public purpose and that public interest is legitimately served by continuing that classification; if ordinance was constitutional from outset and remains constitutional in face of changes prompting applicant to request rezoning, rezoning may be refused provided local government can justify such conclusion with evidence on the record, and burden shifts back to applicant to prove that ordinance is confiscatory.

3 Cases that cite this headnote

[10] **Zoning and Planning** ⇨ Validity of regulations in general

Land use restrictions must substantially advance some legitimate state interest or they are invalid.

[11] **Zoning and Planning** ⇨ Deprivation of property

Zoning and Planning ⇨ Nonconforming Uses

Land use restrictions cannot be so intrusive as to deprive landowner of reasonable economic use of property, and

previously permissible or grandfathered uses should not be incautiously rescinded.

[12] **Municipal Corporations** ⇨ Public safety and welfare

Assuming regulation is necessary for welfare of public, and is not physically invasive or confiscatory of some existing property right, it is probably within government's police power to enact it.

[13] **Zoning and Planning** ⇨ Modification or amendment; rezoning

In reviewing rezoning application, court should not presume that landowner does or can assert enforceable property right that triggers application of clear and convincing evidence standard of proof to zoning body every time more intensive use of property is sought; instead, landowner must prove existence of such right, not just consistency with comprehensive plan, before so rigorous a burden will be imposed upon zoning body.

3 Cases that cite this headnote

[14] **Zoning and Planning** ⇨ Agricultural uses, woodlands and rural zoning

Zoning and Planning ⇨ Modification or amendment; rezoning

On judicial review of denial of application to rezone property from agricultural to allow for construction of commercial/office development, it was not sufficient for applicant to show that rezoning would be consistent with future land use projections embodied in county comprehensive plan; rather, it was sufficient to sustain county's decision to deny application that record reflect substantial competent evidence favoring continuation of status quo.

Attorneys and Law Firms

***998** James G. Yaeger, County Atty., and Thomas L. Wright, Asst. County Atty., Fort Myers, for petitioner.

Steven C. Hartsell, Pavese, Garner, Haverfield, Dalton, Harrison & Jensen, Fort Myers, for respondent.

Opinion

PER CURIAM.

We review Lee County's petition for writ of certiorari pursuant to *Education Development Center, Inc. v. City of West Palm Beach Zoning Board of Appeals*, 541 So.2d 106 (Fla.1989) and *City of Deerfield Beach v. Vaillant*, 419 So.2d 624 (Fla.1982). Finding that the circuit court did not apply the correct law to the facts and issues presented in this case, we grant the petition.

I. BACKGROUND

This action stems from a request for rezoning submitted by respondent Sunbelt Equities II (hereafter "Sunbelt"). Sunbelt owns a parcel currently zoned for agricultural use, upon which it wishes to construct a commercial/office development. Apparently the proposal is consistent with future land use projections as embodied in the Lee County comprehensive plan. However, opponents of the proposal have asserted that continuing the present zoning classification is preferable, at least for the time being.[1] Although county planning staff and a hearing examiner recommended approval of the ***999** proposal with changes, the county commission overruled that recommendation and denied the rezoning. In so doing the commission issued a written resolution which made three separate findings of fact:[2]

(1) The proposal is inconsistent with the site location standards for Neighborhood Commercial Development as set forth in ... the Lee County Comprehensive Land Use Plan ... which requires Neighborhood Commercial Developments to be located at the intersection of a collector and arterial or an arterial and arterial road so as to allow access to two roads.

> (2) The proposal would result in unreasonable development expectations which may not be achievable because of commercial acreage limitations on the "Year 2010 Overlay [map]" for the subdistrict in question in violation of.... the Lee County Comprehensive Land Use Plan.
>
> (3) The proposal would permit a commercial development to locate in such a way as to open new areas to premature, scattered, or strip development....

Sunbelt then sought relief in circuit court via a proceeding the county aptly describes as a "hybrid."[3] The circuit court granted certiorari, "find [ing] that there was no substantial, competent evidence to support the decision of the Lee County Board of County Commissioners in ... denying [Sunbelt]'s application for rezoning." The county now asks us to review that decision.

II. REZONING: LEGISLATIVE OR JUDICIAL PROCEEDING?

[1] The circuit court, in asserting its power to review the matter via certiorari, appears to have relied upon *Snyder v. Board of County Commissioners of Brevard County,* 595 So.2d 65 (Fla. 5th DCA 1991), *jdn. accepted,* 605 So.2d 1262 (Fla.1992), which states that owner-initiated, site-specific rezoning proceedings are quasi-judicial in nature. The county had moved to dismiss Sunbelt's petition because, in its view, all zoning decisions are legislative rather than judicial. The difference between these concepts affects both the accepted method of subsequent judicial review and the scope of that review.

(a) Is there conflict between *Snyder v. Brevard County* and prior holdings of this court?

The county contends that *Snyder* conflicts with cases from this court describing rezoning as a legislative activity. *See, e.g., Lee County v. Morales,* 557 So.2d 652 (Fla. 2d DCA), *rev. denied,* 564 So.2d 1086 (Fla.1990); *Hirt v. Polk County Board of County Commissioners,* 578 So.2d 415 (Fla. 2d DCA 1991).[4] Sunbelt disputes that conflict exists, and notes that our court has employed certiorari review in settings factually similar to the present case. *Manatee County v. Kuehnel,* 542 So.2d 1356 (Fla. 2d DCA), *rev. denied,* 548 So.2d 663 (Fla.1989).

We agree that no material conflict arises between *Lee County v. Morales* and *Snyder. Morales* involved a comprehensive downzoning of an environmentally sensitive barrier island initiated by the county, and did not involve an owner-initiated zoning change. Moreover, any conflict between *Snyder* and *Hirt v. Polk County* exists only in dicta. *Hirt* was not a rezoning, but rather a neighboring property owner's challenge to approval of a Planned Unit Development. The case was disposed of on procedural grounds —the circuit court had dismissed Hirt's certiorari petition, and ***1000** this court, finding the county's construction of applicable rules to have been a "judicial" undertaking, ordered the petition reinstated and decided on its merits.

In *Hirt* Judge Scheb engaged in a functional analysis of the underlying administrative proceedings quite similar to that in *Snyder* (and which was cited with approval in *Snyder). Hirt* states that the legislative *versus* judicial determination turns on (1) the nature of the challenge; and (2) the manner in which the zoning authority went about making its decision. *Snyder,* Sunbelt urges, is "the logical culmination of [this] functional analysis." However, Judge Scheb did remark in passing that rezonings were "legislative." 578 So.2d at 417. He did not distinguish between a county-initiated, broad-based rezoning, as in *Morales,* and a site-specific, owner-initiated rezoning as in *Kuehnel.*

(b) When, if ever, is rezoning a "judicial" matter?

Florida's appellate courts are neither unanimous nor consistent on the question whether rezonings are legislative or quasi-judicial.[5] Neither are they consistent about the method or scope of review. For example, in *St. Johns County v. Owings,* 554 So.2d 535 (Fla. 5th DCA 1989), *rev. denied,* 564 So.2d 488 (Fla.1990), and *Palm Beach County v. Tinnerman,* 517 So.2d 699 (Fla. 4th DCA 1987), *rev. denied,* 528 So.2d 1183 (Fla.1988), the courts applied the "fairly debatable" standard appropriate for legislative

decisions, but reviewed the proceedings by certiorari as if they were judicial in nature.

"A judicial inquiry investigates, declares, and enforces liabilities as they stand on present facts and under laws supposed already to exist ... Legislation, on the other hand, looks to the future and changes existing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power." *Prentis v. Atlantic Coast Line Co.*, 211 U.S. 210, 226, 29 S.Ct. 67, 69, 53 L.Ed. 150, 158 (1908), quoted in *Jennings v. Dade County,* 589 So.2d 1337, 1343 (Fla. 3d DCA 1991), *rev. denied,* 598 So.2d 75 (Fla.1992) (Ferguson, J., concurring). A judicial decision involves a controversy over how *existing* law affects a set of facts—what Judge Scheb called "enforcing" the current ordinance. 578 So.2d at 417. Placed in the zoning/code enforcement context, the court or agency asks: "Has the party done something in violation of the law?" or "Will the law allow the party to do what it wants?" By contrast, legislation *changes* the existing law. Arguably, it is immaterial whether such change stems from the fiat of the governing body (*e.g.* a comprehensive rezoning) or from an individual request to "change the law for me" (the *Snyder*/Sunbelt rezonings).

Snyder, in concluding that owner-initiated rezoning proceedings are nevertheless quasi-judicial in character, borrows heavily from two sources. One, *Coral Reef Nurseries, Inc. v. Babcock Co.*, 410 So.2d 648, 652 (Fla.3d DCA 1982), declares that "it is the character of the administrative hearing leading to the action of the administrative body that determines the label to be attached to the action...." The court in *Coral Reef* was deciding whether "administrative *res judicata*" operated to bar a second rezoning application; though they eventually determined that the nature of these rezoning hearings made them "judicial," the court went on to afford considerable deference to the local government in deciding whether circumstances had sufficiently changed to defeat application of the *res judicata* principle.

Another source is the widely-cited opinion of the Oregon Supreme Court, *Fasano v. Board of County Commissioners of Washington County,* 264 Or. 574, 507 P.2d 23 (1973). The plaintiffs in *Fasano* had unsuccessfully opposed a zoning change before their county commission, but prevailed at all levels of the Oregon court ***1001** system because the rezoning was not shown to be consistent with the local comprehensive plan. The supreme court began its analysis by stating, "Any meaningful decision as to the proper scope of judicial review of a zoning decision must start with a characterization of the nature of that decision." 507 P.2d at 25–26. Most jurisdictions, including Oregon itself, heretofore had "state[d] that a zoning ordinance is a legislative act and is thereby entitled to presumptive validity." 507 P.2d at 26. This approach, however, may have been "ignoring reality." *Id.*

> Ordinances laying down general policies without regard to a specific piece of property are usually an exercise of legislative authority, are subject to limited review and may only be attacked upon constitutional grounds for an arbitrary use of authority. On the other hand, a determination whether the permissible use of a specific piece of property should be changed is usually an exercise of judicial authority and its propriety is subject to an altogether different test.

Id.[6]

It is notable that *Fasano,* like most of the "consistency" cases we will discuss, involved a challenge to a rezoning that (initially) was successfully obtained despite a claim it was not only bad policy but not in compliance with the law. That is, *Fasano* (like *Hirt*) asked the question, unarguably judicial in character, "Does the existing law permit it?"

> The fact remains, however, that many rezoning decisions *are* properly reviewable by certiorari. While legislative authority (that is, the discretion to determine what the law should be) may not be delegated, a legislative body may delegate to a board or official the authority to apply the law if sufficient standards and procedural safeguards are adopted to ensure a proper application of legislative intent. Most zoning ordinances delegate, with standards, the authority to decide such things as variances or conditional use approvals, and these quasi-judicial determinations are reviewable by certiorari. Similarly, the authority to decide what zoning district to apply to each property could, with adequate standards, become a delegated, quasi-judicial determination. Far more often, however,

> rezoning decisions are held to be reviewable by certiorari merely because a zoning ordinance, charter or special act provides that they shall be.

LaCroix, *The Applicability of Certiorari Review to Decisions on Rezoning,* Fla.B.J., June 1991, at 105 (*footnotes omitted*).

We believe a fair and workable solution is to adopt the functional analysis of *Snyder,* which is consistent procedurally with our prior decision in *Manatee County v. Kuehnel.* That is, we agree that site-specific, owner-initiated rezoning requests are sufficiently judicial in character that final administrative orders are thereafter appropriate for appellate review.

(c) What Does It Mean to Label a Proceeding "Judicial"?

Our decision to adopt this portion of the *Snyder* opinion will measurably affect those local governments who, in continuing to regard *Snyder*-type rezonings as purely legislative, may utilize overly informal procedures when considering such requests. "When acting in a truly legislative function, a legislative body ... is not required to make findings of fact and statement of reasons supporting its decision as is necessary in order for the courts to effectively review governmental action for compliance with constitutional and statutory rights and limitations." *Snyder,* 595 So.2d at 68.

The effect of labeling rezoning decisions as quasi-judicial is to refer them to an independent forum that is isolated as far as is possible from the more politicized activities of local government, much as the judiciary is constitutionally independent of the legislative and executive branches. Because ***1002** these decisions today are inextricably linked with property rights-related claims, we view this shift toward enforced neutrality as salutary. The evolving law of property rights, exemplified by *Lucas v. South Carolina Coastal Council,* 505 U.S. 1003, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992), does not augur well for local governments who are reluctant to justify their decisions with explicit references to evidence and public policy. If reached under a veil of silence, even honest land-use decisions are vulnerable to charges of arbitrariness or improper motive.

Moreover, it is debatable whether the new procedural requirements implicit in our adoption of *Snyder* should be viewed either as onerous or as infringing upon powers traditionally reserved for local elected officials.

> [W]e note that the quality of due process required in a quasi-judicial hearing is not the same as that to which a party to a full judicial hearing is entitled. Quasi-judicial proceedings are not controlled by strict rules of evidence and procedure. Nonetheless, certain standards of basic fairness must be adhered to in order to afford due process.... A quasi-judicial hearing generally meets basic due process requirements if the parties are provided notice of the hearing and an opportunity to be heard. In quasi-judicial zoning proceedings, the parties must be able to present evidence, cross-examine witnesses, and be informed of all the facts upon which the commission acts.

Jennings v. Dade County, 589 So.2d at 1340.

III. THE SCOPE OF REVIEW AT THE CIRCUIT AND D.C.A. LEVELS

[2] It necessarily follows that any party adversely affected by a rezoning decision is entitled to some form of direct appellate review. Therefore, we turn to the standard of review that should be employed by the circuit and district courts when presented with such cases. At the outset we acknowledge the existence of several terms of art which warrant (and may sometimes lack) clear definition, among them "fairly debatable," "substantial competent evidence," and, in the wake of mandatory statewide comprehensive planning, "consistency" and "strict scrutiny." All come into play in *Snyder* and in the present case.

(a) "Fairly debatable" and "substantial competent evidence"

The terms "fairly debatable"—generally applied to sustain actions thought of as legislative—and "substantial competent evidence"—which must exist to support quasi-judicial determinations—may in fact be more similar than some decisional and textual authorities suggest.

> The "fairly debatable" rule is a rule of reasonableness; it answers the question of whether, upon the evidence presented to the municipal body, the municipality's action is reasonably based. The primary purpose of the "fairly debatable" test is to allocate decision-making authority over zoning matters between the legislative municipal body and the judiciary. The test purports to prevent the court from substituting its judgment *with regard to zoning ordinance enactments* for that of the zoning authority. In other words, the "fairly debatable" test was created to review the *legislative*-type enactments of zoning ordinances.

Town of Indialantic v. Nance, 400 So.2d 37, 39 (Fla.5th DCA 1981), *approved,* 419 So.2d 1041 (Fla.1982) (*citations omitted; emphasis in original*).

> At issue in *DeGroot [v. Sheffield,* 95 So.2d 912 (Fla.1957),] was the proper method and scope of review of a quasi-judicial county board determination. The *DeGroot* court held that where ... notice and hearing are required and the judgment of the board is contingent on the showing made at the hearing, the action is judicial or quasi-judicial ... The court then explained that "competent substantial evidence" was evidence a reasonable mind would accept as adequate to support a conclusion. The *DeGroot* "competent substantial evidence" standard of review of quasi-judicial action effectively provides the same standard the "fairly debatable" test provides for review of legislative municipal zoning action: For ***1003** the action to be sustained, it must be reasonably based in the evidence presented."

400 So.2d at 40 (*citations omitted*).[7]

(b) "Consistency" and "Strict Scrutiny"

[3] In Florida, all zoning and development permitting must now be consistent with the comprehensive plan of the city or county in question. *See* § 163.3161(5), Fla.Stat. (1991). The comprehensive plan has been likened to a "constitution" and has been described as "a limitation on a local government's otherwise broad zoning powers." *Machado v. Musgrove,* 519 So.2d 629, 632 (Fla.3d DCA 1987), *rev. denied,* 529 So.2d 693 (Fla.1988).[8] *See also, Hillsborough County v. Putney,* 495 So.2d 224 (Fla.2d DCA 1986). *And cf. City of Cape Canaveral v. Mosher,* 467 So.2d 468, 471 (Cowart, J., concurring specially).

According to *Machado,* "where a zoning action is challenged as violative of the comprehensive land use plan, the burden of proof is on the one seeking a change to show by competent and substantial evidence that the proposed development conforms strictly to the comprehensive plan and its elements." *Id.* Thus arises the term "strict scrutiny." Apparently there is conflict, between *Machado* and *Southwest Ranches Homeowners Association, Inc. v. Broward County,* 502 So.2d 931 (Fla.4th DCA), *rev. denied,* 511 So.2d 999 (Fla.1987), as to when "strict scrutiny" should be employed. *See* Mitchell, "In Accordance With a Comprehensive Plan: The Rise of Strict Scrutiny in Florida," 6 Fla.St.U.J.Land Use & Envtl.L. 79 (1990).[9]

(c) Scope of judicial review

The standards for judicial review of local government administrative actions were established by our supreme court in *Education Development Center v West Palm Beach* and *Deerfield Beach v. Vaillant.*

[4] At the circuit level, three questions are asked: whether due process was afforded, whether the administrative body applied the correct law, and whether its findings are supported by competent substantial evidence. This last requirement is susceptible to misunderstanding. It involves a purely legal question: whether the record contains the necessary quantum of evidence. The circuit court is not permitted to go farther and reweigh that evidence (*e.g.,* where there may be conflicts in the evidence), or to substitute its judgment about what should be done for that of the administrative agency. *Bell v. City of Sarasota,* 371 So.2d 525 (Fla.2d DCA 1979).

[5] On further review by certiorari in the District Courts of Appeal, only the first two questions are considered. Where (as in the present case) there is no suggestion of a due process violation in the initial appeal, the district court determines only whether the circuit court "applied an incorrect principle of law." *Education Development Center,* 541 So.2d at 108. We may not exceed these extremely restrictive parameters

and "disagree[ ] with the circuit court's evaluation of the evidence." 541 So.2d at 108–9. Thus, if the correct rule of law for a circuit court to apply were the "substantial competent evidence" standard, ***1004** and the court did apply that standard, its decision should be sustained. Our power of review would entitle us to quash the circuit court's decision only if it imposed a *different* standard upon the parties than that required by law. *Kuehnel.*

Our reading of *Snyder* convinces us that the district court in that case, having reached a supportable conclusion that site-specific rezonings are quasi-judicial proceedings, thereafter embarked upon a considerable departure from prior holdings in the realm of land use law. We decline to adopt the remainder of the *Snyder* decision, for reasons we will explain in due course. Accordingly, by imposing upon Lee County certain burdens of proof required by *Snyder,* the circuit court did apply the incorrect law to the dispute between the county and Sunbelt, justifying our issuance of a writ of certiorari.

IV. WHERE *SNYDER* HAS DEPARTED FROM PRECEDENT

(a) What Must Be Shown Under *Snyder*

After a lengthy discussion of related legal issues ranging from the legislative/judicial distinction to private property rights, the *Snyder* court stated its conclusions, beginning with the statement that "[t]he initial burden is on the landowner to demonstrate that ... the use sought is consistent with the applicable comprehensive zoning plan." 595 So.2d at 81. Assuming this can be done,

> the landowner is presumptively entitled to use his property in the manner he seeks unless the opposing governmental agency asserts and proves *by clear and convincing evidence* that a specifically stated public necessity requires a specified, more restrictive use. After such a showing the burden shifts to the landowner to assert and prove that such specified more restrictive land use constitutes a taking of his property for public use for which he is entitled to compensation....

Id. (*emphasis ours; footnote omitted*).

(b) The Distinction Between Zoning and Comprehensive Planning

[6] Perhaps we read too much into the use, in *Snyder,* of the term "comprehensive zoning plan," but it gives us pause. As is made clear in *Machado* and other "consistency" cases, comprehensive planning and zoning are interrelated but different functions of local government. "As the court in [*Jacksonville Beach v.*] *Grubbs* noted, the purpose of a comprehensive plan is to set general guidelines for future development, and not necessarily to accomplish immediate land use changes." *Southwest Ranches,* 502 So.2d at 936. A comprehensive plan might accommodate a range of permissible zoning categories for a given area. In a case decided after the advent of comprehensive planning but before the 1985 Growth Management Act mandated such planning statewide, the Third District Court of Appeal held that it is within the discretion of a local government to impose a zoning category at the low end of that range. *Dade County v. Inversiones Rafamar, S.A.,* 360 So.2d 1130 (Fla.3d DCA 1978). Until *Snyder* there was no reason to suspect this was not still a correct statement of law.[10]

In contrast to *Inversiones Rafamar, Snyder* seems to place little credence in zoning classifications, as opposed to the broader land use projections embodied in a comprehensive plan, particularly where the zoning in question would allow only low-intensity uses of the land. Perhaps this skepticism might be supportable based on record evidence presented in the *Snyder* hearings and circuit court proceedings, but we find the district court's pronouncements unacceptably overbroad if intended for general application to all jurisdictions statewide:

> Most communities in actual practice have zoned their undeveloped land under a highly restrictive classification such as ***1005** "general use" and agriculture.... The original intent was not to permanently preclude more intensive development but to adopt a "wait and see attitude toward the direction of future development. Most government officials have little motivation to incur the "wrath of neighbors by zoning vacant land for industrial,

> commercial, or intensive residential development in advance of an actual proposal for development."
>
> In reality, therefore, at the inception of zoning most land was zoned according to its then use, exceptions were grandfathered in and most vacant land was under-zoned or "short-zoned." In order for development to proceed, rezoning becomes not the exception, but the rule ... [R]ezoning is granted not solely on the basis of the land's suitability to the new zoning classification and compatibility with the use of surrounding acreage, but, also and perhaps foremost, on local political considerations including who the owner is, who the objectors are, the particular and exact land improvement and use that is intended to be made and whose ox is being fattened or gored by the granting or denial of the rezoning request.

595 So.2d at 72–3 (*citations omitted*).[11]

It has long been the law that when the applicant makes a threshold showing that existing zoning is unreasonable, the local government must prove otherwise. *See, e.g., City of St. Petersburg v. Aikin,* 217 So.2d 315 (Fla.1968); *City of Jacksonville Beach v. Grubbs,* 461 So.2d 160 (Fla.1st DCA 1984), *rev. denied,* 469 So.2d 749 (Fla.1985). However, absent the assertion of some enforceable property right, an application for rezoning appeals at least in part to local officials' discretion to accept or reject the applicant's argument that change is desirable. The *right* of judicial review does not *ipso facto* ease the burden on a party seeking to overturn a decision made by a local government, and certainly does not confer any property-based right upon the owner where none previously existed.

[7] An old saying has it, "If you bought a swamp, there is some presumption you wanted a swamp." Put another way, there must be some presumption, even if only an easily rebuttable one, that land zoned for agricultural use is best suited for that purpose. This does not mean that comprehensive planners, with an eye toward conditions years hence, might not expect that same land someday to be crowded with houses, industrial plants, or commercial establishments. Nor does it mean that zoning authorities, during their initial (and truly "legislative") attempts to classify properties, always act wisely or fairly in designating low-intensity uses. However, implicit in *Snyder* is a suggestion that the future-oriented comprehensive planning process[12] always will result in a more accurate and appropriate use designation than will the more immediate act of zoning a specific parcel. We believe that *both* a comprehensive plan and a zoning classification are presumptively valid, and that one seeking a change in either has the burden of showing its invalidity.

[8] Moreover, when it is the zoning classification that is challenged, the comprehensive plan is relevant only when the ***1006** suggested use is inconsistent with that plan. Where any of several zoning classifications is consistent with the plan, the applicant seeking a change from one to the other is not entitled to judicial relief absent proof the *status quo* is no longer reasonable. It is not enough simply to be "consistent"; the proposed change cannot be *inconsistent,* and will be subject to the "strict scrutiny" of *Machado* to insure this does not happen.

(c) "Clear and Convincing Evidence"

[9] The use, in *Snyder,* of the term "clear and convincing evidence" (as opposed to "substantial competent evidence") is derived from *Department of Law Enforcement v. Real Property,* 588 So.2d 957 (Fla.1991), and numerous other cases, all of which involve a clear and acknowledged deprivation of property or other fundamental legal rights. *See* 595 So.2d at 81 n. 70. Heretofore it has never been a requirement in zoning cases that an existing classification be substantiated to this degree.[13] We believe this shift in the burden of proof derives from an incorrect assumption about the nature and extent of a landowner's property rights.

[10] **[11]** **[12]** It has never been the law that a landowner is always entitled to the "highest and best" use of his land. *See Penn Central Transportation Co. v. City of New York,* 438 U.S. 104, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978). This is not to suggest that a local government, in enacting land use codes, may disregard the landowner's rights. First of all, land use restrictions must substantially advance some legitimate state interest, or they are invalid. *Nollan v. California Coastal Commission,* 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987). Second, they

cannot be so intrusive as to deprive the landowner of reasonable economic use of the property, nor should previously permissible or "grandfathered" uses be incautiously rescinded. *Lucas.* However, assuming a regulation is necessary for the welfare of the public, and is not physically invasive or confiscatory of some existing property right, it is probably within the government's "police power" to enact it. *Village of Euclid, Ohio v. Ambler Realty Co.,* 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303 (1926).

It must be remembered that zoning ordinances, comprehensive plans, and similar enactments are (or should be) debated in a public forum with all affected parties having the right to be heard. Thereafter, the dissatisfied landowner has several avenues of redress, including injunctive relief against the enforcement of the offending ordinance or a suit for inverse condemnation. Even the landowner who is temporarily satisfied with the *status quo* is not without options when conditions change and undercut what once were reasonable expectations of fruitful use. This is the occasion for the *Snyder*-type individualized rezoning application, which we now declare to be quasi-judicial and therefore subject to procedural safeguards.

That such a system is not flawless is to be expected—repairing the errors that sometimes occur may expend resources and judicial labor. The alternative, however, is to reject or at least fundamentally undercut the power of local governments to superintend the use of real property. The Supreme Court, whose most "conservative" statement may have come in *Lucas,* has never interpreted the Fifth Amendment ***1007** "just compensation" clause (the source of "takings jurisprudence") as demanding this. In the wake of *Lucas, Nollan,* and related cases, those favoring land use restrictions may find their activities the subject of heightened scrutiny into their reasonableness and intrusiveness. However, and despite the apprehensions (or hopes) of some observers, more fundamental change than this did not occur in *Lucas.*[14]

(d) Reconciling Our Views with the Procedure Adopted in *Snyder*

[13] The courts, reviewing a rezoning application, should not presume the landowner does or can assert an enforceable property right, one which triggers application of the "clear and convincing evidence" standard, every time a more intensive use of the property is sought. Instead, the landowner must prove the existence of such a right, not just consistency with a comprehensive plan, before so rigorous a burden will be imposed upon the local government. The question arises, however, just how much the landowner must prove before the burden shifts.

In this regard, we have no quarrel with the procedure adopted in *Snyder* up to a point. *Snyder* accepts, for example, that the initial burden is still upon the applicant, who must demonstrate something more than that a rezoning is subjectively desirable. Before the advent of mandatory statewide comprehensive planning, that "something" was whether "the existing ordinance was confiscatory in effect." *St. Petersburg v. Aikin,* 217 So.2d at 317. For the most part *Snyder* can be interpreted as easing this burden without actually changing the law. Its emphasis on "consistency" means that wherever planners have determined a particular use is *someday* acceptable, the local government must now prove that the present zoning *is not* confiscatory rather than requiring the landowner to prove it *is* confiscatory.

So far this shifting of burdens, which emphasizes that governments must bear some responsibility to act carefully when restricting property rights, can be accommodated without abandoning traditional notions about the "police power" that underlies all zoning ordinances. It is at this point that *Snyder* most clearly departs from precedent. According to *Snyder,* once a rezoning proposal is shown to be "consistent," the local government must prove *by clear and convincing evidence,* that "public necessity requires a ... more restrictive use." Instead, we believe that the local government is required only to show *by substantial competent evidence* that the existing (obviously more restrictive) zoning classification was enacted in furtherance of some legitimate public purpose and that the public interest is legitimately served by continuing that classification. If the zoning ordinance was constitutional *ab initio,* and it remains constitutional in the face of whatever changes have prompted the landowner to request rezoning, the rezoning may be refused provided the local government can justify this conclusion with evidence on the record. Assuming

it can do that, *Snyder* thereafter correctly shifts the burden back to the landowner "to assert and prove ... a taking"—that is, that the ordinance is confiscatory.

V. RESOLVING THE SUNBELT REZONING APPLICATION

[14] Implicit in the circuit court's holding is an acceptance of Sunbelt's argument that its design is consistent with the Lee County comprehensive plan. There is evidence to support this argument, albeit contradicted by the county commission ordinance. Although Sunbelt's property is currently zoned "agricultural," a Future Land Use Map depicts the surrounding area as "suburban." Such a designation limits commercial development to "neighborhood centers," which in turn are limited to a maximum of 100,000 square feet. Sunbelt ***1008** has projected only 65,000 square feet of commercial space.[15] A hearing officer did find that a final development order cannot be issued until after certain amendments are made to the Sunbelt application; Sunbelt "is fully aware of this impediment," and the mere acts of rezoning and approval of the "master concept plan" do not *ipso facto* "bestow or vest any development rights."

However, if (as we believe) *Snyder* is incorrect, it is not enough that Sunbelt's proposal is consistent with what Lee County planners envision as the eventual buildout of this area. One must also look to the *present* character of the area, which is reflected in the existing zoning classification. This aspect of the comprehensive plan represents, in effect, a future ceiling above which development should not proceed. It does not give developers *carte blanche* to approach that ceiling immediately, or on their private timetable, any more than a city or county is entitled to view its planning and zoning responsibilities as mere make-work.

Nothing in this opinion is intended to imply that Sunbelt, after remand, cannot establish a present right to the rezoning it desires. However, the mere fact of consistency with the comprehensive plan, even if undisputed by the county, would not mandate such a result. To sustain the county's decision to deny, it is sufficient that the record reflect substantial competent evidence favoring continuation of the *status quo.*[16] This decision likely will require analysis of the reasons underlying the present zoning classification—whether it represents a considered belief that agriculture is the most appropriate use, or was idly chosen as the court suggested had occurred in *Snyder.*

The petition for writ of certiorari is hereby granted, the order of the circuit court is quashed, and this case is remanded for further proceedings consistent with this opinion.

HALL, A.C.J., and THREADGILL and BLUE, JJ., concur.

All Citations

619 So.2d 996, 18 Fla. L. Weekly D1260

Footnotes

1 A collateral issue in the proceedings below was Sunbelt's contention that "the real reason the application was denied" was the vocal opposition of residents of a neighboring development. Clearly, such opposition, to the extent it reflects a subjective "polling" rather than a discrete legal argument, is not a valid basis for denying a permit or rezoning application. *Pollard v. Palm Beach County,* 560 So.2d 1358 (Fla.4th DCA 1990). However, accepting the notion that rezonings are quasi-judicial does not operate to exclude the public from those proceedings where such applications are considered on their merits. The need to allow such public access, which includes the right to voice objections (at least on the part of those claiming to be substantially affected by the pending action), points out the difficulty in completely depoliticizing such proceedings. The requirement of providing specific reasons for a ruling, in accord with the characterization of such proceedings as quasi-judicial, should diminish (if not altogether eliminate) the likelihood those mandatory findings will only mask the "real reason [an] application was denied."

2 Sunbelt attempts to depict all three of these findings as "erroneous." It may be that the circuit court agreed with Sunbelt's evaluation. If this were the only issue before us, we would be compelled to uphold the circuit

court so long as it otherwise applied the correct principle of law. That is, we would not reweigh the circuit court's determination whether or not adequate evidence was presented.

3 In addition to a petition for certiorari, Sunbelt filed an original action pursuant to § 163.3215, Fla.Stat. (1991). The county claims that certain statutory prerequisites were overlooked which require dismissal of the civil action. Because the circuit court addressed the certiorari petition on its merits, the second case is not before us at this time.

4 *But see Grady v. Lee County,* 458 So.2d 1211 (Fla.2d DCA 1984) (discussing the effect of a Lee County zoning ordinance which prescribes review by certiorari).

5 If, indeed, such distinction can be clearly drawn. As one commentator concluded, after a lengthy analysis of the functional approach of *Fasano v. Washington County, infra,* "some zoning decisions are difficult to characterize as distinctly legislative or quasi-judicial." Peckingpaugh, "Burden of Proof in Land Use Regulation: A Unified Approach and Application to Florida," 8 Fla.St.U.L.R. 499 (1980).

6 *Fasano* is not universally accepted as a correct statement of law or desirable judicial policy. One commentator, comparing decisions from "major comprehensive planning states," notes that California continues to adhere to the "legislative" option, and describes *Fasano* as "significantly discredited." Gougelman, *The Death of Zoning As We Know It,* Fla.B.J., March 1993, at 31 n. 35.

7 In fact the terms were employed virtually interchangeably in *Shaughnessy v. Metropolitan Dade County,* 238 So.2d 466, 469 (Fla.3d DCA 1970), wherein the court found "competent, substantial evidence that the granting of the unusual or special use was at least fairly debatable."

8 *But see* § 163.3161(8), Fla.Stat. (1991): "It is the intent of the legislature that [this Act] shall not be interpreted to limit or restrict the powers of municipal or county officials, but shall be interpreted as a recognition of their broad statutory and constitutional powers to plan for and regulate the use of land."

9 In *Southwest Ranches,* neighbors of a proposed solid waste facility objected that the rezoning which permitted the facility was more intensive than, and therefore inconsistent with, the comprehensive plan. The district court held that "[w]here the zoning authority approves a use *more intensive than that proposed by the plan* . . the decision must be subject to stricter scrutiny than the fairly debatable standard contemplates." 502 So.2d at 936 (*emphasis ours*). *See also Jacksonville Beach v. Grubbs,* 461 So.2d 160, 163 n. 2 (Fla.1st DCA). By contrast, *Machado* holds that strict scrutiny applies "to [all] cases addressing the consistency of a development order with a comprehensive plan, regardless of the direction of the change." Mitchell, at 89.

10 For example, § 163.3164(22), Fla.Stat. (1991), defining "land development regulations," implies the persistence of legislative recognition of the separate concept of zoning.

11 Contrast such timid politics as described in *Snyder* with the reaction of the *Fasano* court to suggestions that "planning authorities be vested with the ability to adjust more freely to changed conditions": "[H]aving weighed the dangers of making desirable change more difficult against the dangers of the almost irresistible pressures that can be asserted by private economic interests on local government, we believe that the latter dangers are more to be feared." 507 P.2d at 29–30. And see *Machado* at 519 So.2d 634: "[T]he opponents, neighboring landowners, contend that conditions change in rapid and uncontrolled fashion in Dade County, increasing the need for costly public services and facilities, due to loose enforcement of the land use planning scheme." As we have elsewhere implied, most "strict scrutiny" cases prior to *Snyder* have invoked "consistency" to place brakes on development some thought too intensive, rather than to enforce a right to more intensive development than has been allowed. Reassessing site-specific rezonings as quasi-judicial should help place limits both on questionable runaway development *and* on intransigent, unrealistic under-zoning of developable property.

12 *See, e.g.,* §§ 163.3167(1), 163.3177(1), and 163.3177(6)(a), Fla.Stat. (1991), all of which are distinctly future-oriented.

13 Definitions of "clear and convincing evidence" abound. For example, the supreme court, in *The Florida Bar v. Rayman,* 238 So.2d 594 (Fla.1970), appears to have contemplated something stronger than the "preponderance of evidence" standard ordinarily seen in civil cases, but less than the criminal "reasonable doubt" standard. Perhaps the best-known attempt to define the term occurs in *Slomowitz v. Walker,* 429 So.2d 797, 800 (Fla.4th DCA 1983), wherein the court spoke of evidence or testimony that is "credible," "distinctly remembered," "precise," and "explicit"—evidence which "must be of such weight that it produces in the mind of the trier of fact a firm belief and conviction, without hesitancy, as to the truth of the allegation sought to be established." This would appear to us to be considerably more rigorous a standard of proof

procedural requirements of zoning ordinance; requested use was permitted use by exception, staff report of county planning and zoning department indicated that reduction in total square footage which owner proposed would negate any traffic increase created by the fast food restaurant, and staff report of county planning and zoning department made finding that there was no conflict with comprehensive plan.

[6] **Zoning and Planning** ⇨ Maps, plats, or plans; subdivisions

Once property owner made prima facie showing that its requested use of its land was consistent with county's comprehensive plan and complied with procedural requirements of zoning ordinance, burden shifted to zoning authority to show, based on clear and convincing evidence shown by adequate record, that specifically stated public necessity required a more restrictive use.

[7] **Zoning and Planning** ⇨ Maps, plats, or plans; subdivisions

Decision of Board of County Commissioners to deny property owner's application for modification of final development plan for commercial village within Planned Unit Development (PUD) was arbitrary and unreasonable; owner presented prima facie case that its requested use of its land was consistent with county's comprehensive plan and complied with procedural requirements of zoning ordinance, and Board merely parroted the "health, safety and welfare" standard when it denied the requested exception, without bringing forward specific reasons supported by findings of fact.

[8] **Certiorari** ⇨ Particular proceedings in civil actions

Certiorari ⇨ Acts and Proceedings of Public Officers and Boards and Municipalities

District Court of Appeal would grant property owner's petition for certiorari challenging Board of County Commissioners' denial of application for modification of final development plan for commercial village within Planned Unit Development (PUD), where Board's decision was arbitrary and unreasonable, and circuit court applied incorrect law to approve the Board's decision.

2 Cases that cite this headnote

[9] **Certiorari** ⇨ Determination and disposition of cause

Court's certiorari review power does not extend to directing that any particular action be taken, but is limited to quashing order reviewed, and, thus, District Court of Appeal could not grant property owner's request in its petition for certiorari that Board of County Commissioners be directed to grant property owner's application for modification of final development plan for commercial village within Planned Unit Development (PUD), even though Court did grant the owner's petition for certiorari.

6 Cases that cite this headnote

Attorneys and Law Firms

***60** Terry A. Moore, Sidney F. Ansbacher and Robert M. Murphy, Brant, Moore, Sapp, MacDonald & Wells, P.A., Jacksonville, for petitioner.

James G. Sisco, County Atty. and Linda R. Hurst, Asst. County Atty., St. Augustine, for respondent.

Opinion

COBB, Judge.

This petition for writ of common law certiorari seeks review of the circuit court acting in its appellate capacity in a zoning matter. The circuit court's order upheld a decision of the St. Johns Board of County Commissioners ("Board"), which denied an application by ABG Real Estate Development Company of Florida ("ABG") to modify a final

than the relatively deferential "competent substantial evidence" test applied to the quasi-judicial decisions of administrative bodies. This test requires "such relevant evidence as a reasonable mind would accept as adequate to support a conclusion." *DeGroot v. Sheffield,* 95 So.2d 912, 916 (Fla.1957).

14 This portion of our opinion analyzes the tension between regulation and property rights in light of decisions interpreting relevant portions of the United States Constitution. The test for "takings" under the Florida Constitution is substantially the same. *See Graham v. Estuary Properties,* 399 So.2d 1374 (Fla.), *cert. denied sub nom. Taylor v. Graham,* 454 U.S. 1083, 102 S.Ct. 640, 70 L.Ed.2d 618 (1981).

15 Sunbelt also wants to construct an additional 85,000 square feet for offices. Opponents of the project argued that the office space should be counted when calculating the total square footage, but a hearing officer found that the county's planning policy clearly dictates otherwise.

16 Though the circuit court's order states that no such evidence was presented to support denial of the rezoning, the record suggests that the court did hold the county to the more rigorous burden of proof required by *Snyder.* There appears to have been no examination or consideration of the reasonableness of the existing zoning classification.

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2022 WL 413683

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District Court of Appeal of Florida, Second District.

BALM ROAD INVESTMENT, LLC; Cassidy Holdings, LLC; Ballen Investment, LLC; Highway 301 Investors, LLC; and McGrady Road Investment, LLC, Petitioners,

v.

HILLSBOROUGH COUNTY BOARD OF COUNTY COMMISSIONERS, Respondent.

No. 2D21-1033

|

February 11, 2022

Synopsis

Background: Property owners sought first-tier certiorari relief from county commission's denial of rezoning application. The Circuit Court, 13th Judicial Circuit, Hillsborough County, denied petition, and property owners petitioned for second-tier certiorari relief.

[Holding:] The District Court of Appeal, Lucas, J., held that property owners were not entitled to relief on second-tier certiorari review.

Petition denied.

Northcutt, J., concurred in result only.

Procedural Posture(s): Petition for Writ of Certiorari; Review of Administrative Decision.

West Headnotes (2)

[1] **Zoning and Planning** ⇦ Certiorari

Zoning and Planning ⇦ Questions of fact; findings

Property owners whose rezoning application was denied by county commission were not entitled to relief on second-tier certiorari review; owners were not entitled to plenary review of commission's decision, and to extent that circuit court erred in denying petition for first-tier certiorari relief, such error was only in court's assessment of evidence, which appellate court could not review.

[2] **Certiorari** ⇦ Appeal or Other Proceedings for Review

It is not the function of the appellate court on second-tier certiorari to correct error or reweigh the evidence.

Petition for Writ of Certiorari to the Circuit Court for the Thirteenth Judicial Circuit for Hillsborough County; sitting in its appellate capacity.

Attorneys and Law Firms

Hala Sandridge of Buchanan Ingersoll & Rooney PC, Tampa, for Petitioners.

Carly J. Schrader, Gregory T. Stewart, and Elizabeth Desloge Ellis of Nabors, Giblin & Nickerson, P.A., Tallahassee, for Respondent.

Jacob T. Cremer and Nicole A. Neugebauer of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A., Tampa, for Amici Curiae Hillsborough County Farm Bureau, Inc., and Florida Farm Bureau Federation.

Clayton T. Osteen, Anthony D. Tilton, Patrick S. Bickford, and Benjamin B. Bush of Ausley & McMullen, P.A., Tallahassee, for Amicus Curiae Florida Home Builders Association.

Opinion

LUCAS, Judge.

*1 Balm Road Investment, LLC; Cassidy Holdings, LLC; Ballen Investment, LLC; Highway 301 Investors, LLC; and McGrady Road Investment, LLC, have filed a second-tier petition for certiorari challenging the Hillsborough County Board of County Commissioners' denial of their development

application. Because of the narrow scope of second-tier review, we must deny their petition.

The petitioners in this case, a group of landowners, hoped to develop a "planned village" community[1] in a rural area of southern Hillsborough County. Not one county agency, office, or adjacent governmental entity that reviewed the petitioners' rezoning application—whether it was the county's transportation staff, Development Services Department, Water Resource Services, the Hillsborough County School Board, the Hillsborough Area Regional Transit Authority, the Conservation and Environmental Lands Management Department, or the Environmental Protection Commission—had any objection to the planned development. The Hillsborough County Planning Commission reviewed the application and concluded that it complied with the requirements of the county's comprehensive plan, as well as "the vision of the Balm Community Plan" and that it met all the zoning requirements for this type of designation. The zoning hearing master who considered the application and the evidence recommended the application's approval.

When the application came before the Hillsborough County Commission at a public hearing, four local residents spoke out against it.[2] After hearing their objections and the petitioners' presentation, a divided Hillsborough County Commission voted to reject the application outright.

The petitioners then sought first-tier certiorari relief in the circuit court. The court below rendered an extensive written order denying the petition. The court acknowledged that the petitioners' application "appears to approach stated goals in terms of the clustering ratios, buffers, and land dedicated for commercial and servicer-oriented uses." Nevertheless, according to the court, the landowners failed to meet their initial burden of showing their proposed rezoning was consistent with the county's comprehensive plan. *Accord Bd. of Cnty. Comm'rs of Brevard Cnty. v. Snyder*, 627 So. 2d 469, 476 (Fla. 1993).

***2** With all due respect to the circuit court, that conclusion simply cannot be justified. These petitioners met their evidentiary burden. Indeed, the evidence below was overwhelming that this proposed development was consistent with the requirements of the planned development zoning classification and the comprehensive plan.[3] The circuit court concluded to the contrary only because it plucked one point of data from the petitioners' traffic study about anticipated car trips on a county road, looked at an aerial picture of the area around the proposed development, and remarked that "the project shows heavy reliance on the automobile for transportation."[4]

[1] **[2]** We are of the opinion that the court below erred in its assessment of the evidence. But our court cannot give relief to the petitioners despite that error. *See Custer Med. Ctr. v. United Auto. Ins. Co.*, 62 So. 3d 1086, 1092 (Fla. 2010) ("[W]hen a district court considers a petition for second-tier certiorari review, the 'inquiry is limited to whether the circuit court afforded procedural due process and whether the circuit court applied the correct law,' or, as otherwise stated, departed from the essential requirements of law." (quoting *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995))); *Biscayne Marine Partners LLC v. City of Miami*, 273 So. 3d 97, 101 (Fla. 3d DCA 2019) ("Our review on second-tier certiorari is extremely limited."); *Alvey v. City of North Miami Beach*, 206 So. 3d 67, 70 (Fla. 3d DCA 2016) (granting second-tier certiorari but noting "we are not reweighing the evidence—which we cannot do"). "[I]t is not the function of this Court on second-tier certiorari to correct error or reweigh the evidence." *City of Miami v. Hervis*, 65 So. 3d 1110, 1115 (Fla. 3d DCA 2011).

***3** This extreme deference is grounded in part upon the historic nature of certiorari relief, *see Custer Med. Ctr.*, 62 So. 3d at 1092-93, and in part upon the purported expertise of agency fact-finding in zoning determinations, *see Wiggins v. Fla. Dep't of Highway Safety & Motor Vehicles*, 209 So. 3d 1165, 1171 (Fla. 2017) ("This Court has deferred to the findings of an agency fact-finder in the context of zoning and policy determinations, as the agency fact-finder in theory has the requisite experience, skill, and perspective to adequately adjudicate specialized proceedings.").[5] We recognize that certiorari review of zoning decisions can sometimes lead to troubling and anomalous results. *See generally Evans Rowing Club, LLC v. City of Jacksonville*, 300 So. 3d 1249, 1250-56 (Fla. 1st DCA 2020) (B.L. Thomas, J., concurring specially) (Makar, J., concurring). It certainly seems so in the case at bar. The petitioners' private property rights have been curtailed for what appears to be simply a general distaste for development rather than any codified standards. But because these landowners cannot obtain a plenary review of the Commission's decision, we are constrained by the highly deferential standard of second-tier certiorari review to deny this petition.

Petition denied.

SILBERMAN, J., Concurs.

NORTHCUTT, J., Concurs in result only.

All Citations

--- So.3d ----, 2022 WL 413683, 47 Fla. L. Weekly D395

Footnotes

1 The property is zoned Residential Planned-2 (RP-2), a land use category that would permit a planned village designed development.

2 One other resident submitted a written objection. It was appropriate for the Commission to hear and consider their presentations—which pertained to generalized concerns about the development's impact on traffic, the overall rural character of the area, and their ability to see the stars at night—but the statements of the neighbors did not provide competent, substantial evidence that would have supported denial of the 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. 4th 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))).

3 The court went on to rule that even if the petitioners had met their initial burden, the commission would have been justified denying the application because "maintaining the existing zoning classification" would have been consistent with "preserving the land for agricultural use, discouraging development outside the Urban Service Area, and protecting the rural character of the community." *Accord Sarasota County v. BDR Invs., LLC*, 867 So. 2d 605, 607 (Fla. 2d DCA 2004) (noting that once a landowner meets its initial burden to prove consistency with the comprehensive plan and compliance with the applicable zoning ordinances, the burden shifts to the government to show there is "a legitimate public purpose behind maintaining the existing zoning classification" (citing *Snyder*, 627 So. 2d at 476)). The same evidentiary shortcomings belie the court's alternative finding. Moreover, based on the zoning classification, the comprehensive plan, and this record, the "public purpose" the circuit court identified is not a legitimate one because what it amounts to is, at bottom, a moratorium on "planned village" developments in this area. *Cf. City of Sanibel v. Buntrock*, 409 So. 2d 1073, 1075 (Fla. 2d DCA 1981) ("If an ordinance substantially affects land use, it must be enacted under the procedures which govern zoning and rezoning. To entirely prohibit a person from building upon his property even temporarily is a substantial restriction upon land use."); *City of Gainesville v. GNV Invs., Inc.*, 413 So. 2d 770, 771-72 (Fla. 1st DCA 1982) (holding that city's adoption of a moratorium on skating centers without complying with specific notice requirements for the adoption of new zoning ordinances was invalid). Perhaps not coincidentally, not long after the denial of the petitioners' application, the County Commission adopted an ordinance imposing just such a moratorium.

4 This last point would be true for any residential development, of any size, in Florida, since the vast majority of commuting in Florida is by automobile. *See* Fla. Dep't of Transp., 2019 Commuting Trends in Florida: A Special Report from FDOT Forecasting and Trends Office (2020).

5 This case gives the lie to the expertise justification by turning it on its head. The decision before us is *contrary* to the recommendations of all the professionals who reviewed the application, and yet we are constrained in our consideration to defer to it as if it were otherwise.

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608 So.2d 59
District Court of Appeal of Florida,
Fifth District.

ABG REAL ESTATE DEVELOPMENT COMPANY OF FLORIDA, INC.,
a Florida corporation, Petitioner,
v.
ST. JOHNS COUNTY, Florida, etc., Respondent.

No. 92–1297.
|
Sept. 25, 1992.
|
Rehearing Denied Nov. 13, 1992.

Synopsis

Property owner brought petition for writ of common-law certiorari seeking review of decision of order which had upheld decision of Board of County Commissioners which denied application by owner to modify development plan for commercial village within Planned Unit Development (PUD). The District Court of Appeal, Cobb, J., held that: (1) property owner presented prima facie case of its entitlement to modification of the final development plan; (2) circuit court applied incorrect standard of law; and (3) owner's petition would be granted, but Board would not be directed to grant the application.

Petition for certiorari granted; order of circuit court quashed.

W. Sharp, J., concurred in result only.

Procedural Posture(s): On Appeal.

West Headnotes (9)

[1] **Zoning and Planning** ⇨ Maps, plats, or plans; subdivisions

Staff report of county planning and zoning department supporting approval of property owner's application for modification of development plan for commercial village within planned unit development (PUD) was strong evidence that granting of owner's application for modification to add fast food restaurant would not significantly increase traffic already generated by shopping center alone; the report found that reduction in total square footage which owner proposed would negate any traffic increase generated by the fast food restaurant.

[2] **Zoning and Planning** ⇨ Maps, plats, or plans; subdivisions

Where owner makes prima facie showing that it is entitled to a modification of final development plan for commercial village within Planned Unit Development (PUD), Board of County Commissioners is required to bring forward clear and convincing evidence of some public necessity to overcome the owner's prima facie case.

[3] **Zoning and Planning** ⇨ Maps, plats, or plans; subdivisions

Circuit court is required to find that there is "competent substantial evidence" to support Board of County Commissioners' denial of application for modification of final development plan for commercial village within Planned Unit Development (PUD) when the owner has come forward with a prima facie case.

[4] **Zoning and Planning** ⇨ Maps, plats, or plans; subdivisions

Circuit court's apparent use of the "fairly debatable" standard when reviewing a Board of County Commissioners' denial of an application to modify a final development plan for commercial village within Planned Unit Development (PUD) was clearly erroneous; fairly debatable standard is used only for review of legislative-type enactments of zoning ordinances.

[5] **Zoning and Planning** ⇨ Maps, plats, or plans; subdivisions

Property owner presented prima facie case that its requested use of its land to add fast food restaurant was consistent with county's comprehensive plan and complied with

development plan for a commercial village within a Planned Unit Development ("PUD").

In 1986, the Board approved a final development plan for Sawgrass Village, a commercial area (shopping center) which includes the site herein at issue. It is agreed that a McDonald's restaurant is a "permitted use by exception" at the proposed ***61** site. Therefore, denial of the application required a finding by the Board that the proposed restaurant would be contrary to public health, safety or welfare. ABG already had been allocated commercial retail space under the PUD, and the modification would have permitted it to relocate that space within the shopping complex so as to allow development of the restaurant in an area previously designated as "future parking." In exchange for the relocation space, ABG offered to relinquish 7,325 square feet of its remaining unused commercial development rights under the PUD.

The Planning and Zoning Advisory Board ("PZAB") considered ABG's application at a public hearing and denied the application. The resolution of denial found that the request was "contrary to public health, safety and welfare and incompatible with the neighborhood in that development...." The St. Johns County Planning and Zoning Department ("Staff") issued its report and recommendations to the Board after the PZAB decision. The Staff report supported approval of ABG's application without making an outright recommendation. The report found that the reduction in total square footage which ABG proposed would negate any traffic increase created by the fast food restaurant. The report went on to say that the PUD development order did not appear to preclude the applicant's request:

> [T]he original PUD Ordinance 75–15 stated that the Sawgrass Village Center 'shall be developed under the CG district regulations,' and ... the Board of County Commissioners has previously interpreted (*i.e.*, Jax Liquors) that the PUD permitted all CG uses including those by exceptions, including fast food or drive-in restaurants.

The Staff report noted that there did not appear to be substantial evidence that a fast food establishment would be detrimental to the public welfare; on the contrary, such a restaurant would provide supportive service to lower income personnel of the shopping center and visitors. Accompanying the report was a Traffic Impact Analysis prepared for the applicant by a Jacksonville corporation. It mentioned that Sawgrass Village already included a Publix, an Eckerds, an ABC/Jax Liquors with a drive-through lane, a bank with three drive-through lanes, two restaurants, retail stores, and professional offices. The analysis concluded that, based on square footage measurements, traffic counts, and projections of future traffic volumes, the requested location of the McDonald's restaurant would produce no greater traffic impact than if the shopping center were completed with retail stores only. A Traffic Impact Review prepared by the County's Transportation Planner found that acceptable levels of service would continue if the McDonald's restaurant were built.

The matter then moved to the Board on appeal from the PZAB denial, and the Board held a public hearing. At that hearing, local residents voiced generalized complaints regarding increased traffic, declination of property values, noise, litter and aesthetic concerns. However, no specific evidence was offered to support these apprehensions. Nevertheless, the Board unanimously upheld the PZAB's denial of the application "on the basis of incompatibility with the neighborhood and that it seriously interferes with the health, safety and welfare of the people in the community." The Board made no findings of fact and gave no additional reasons for upholding the denial. In a lengthy order, the circuit court denied ABG's petition for certiorari review, and the instant petition for review was filed with this court.

The controlling case is *Snyder v. Board of County Commissioners of Brevard County, Florida,* 595 So.2d 65 (Fla. 5th DCA 1991), wherein we emphasized the requirement that a zoning authority must produce clear and convincing evidence in order to defeat a landowner's prima facie showing of entitlement to a particular use of his land. In that case the landowner sought to rezone a parcel of "general use" land to a "medium density multiple-family dwelling" zoning classification. The Zoning Department staff found that the rezoning application was consistent with the Brevard County Comprehensive Plan and Future Land Use Designation and was not ***62** objectionable for other reasons, but denied the application because the rezoning would create a density greater than that allowed in the 100–year flood plain. The Planning and Zoning Board subsequently recommended approval when it was shown that the area was not within the flood plain. After a public hearing, however, the Board of County Commissioners denied the zoning request without giving any reason.

The landowners then filed a petition for writ of certiorari in the circuit court, alleging that the rezoning was consistent with the County Comprehensive Zoning Plan and that its denial was arbitrary and unreasonable. In its response, the

County did not argue that the denial was proper because the subject land was in a flood plain or that the rezoning application was inconsistent with the Comprehensive Plan, but instead rather summarily stated that the existing general use zoning was consistent with the Comprehensive Plan and the denial of the rezoning was proper. Just as in this case, the circuit court in *Snyder* denied the petition, and the landowners filed a petition for writ of certiorari in this court, arguing that the circuit court had departed from the essential requirements of law in failing to require the County Commission to make findings of fact and give reasons for disapproving the rezoning application.

The *Snyder* opinion stated that when the rezoning question was before the Commission, the burden was on the landowners initially to present a prima facie case that the application for use of privately owned land complied with the reasonable procedural requirements of the zoning ordinance and with the applicable Comprehensive Zoning Plan. ABG's application complied with the procedural requirements in the instant case, and no one has ever argued that the modification sought would conflict in any way with the Comprehensive Zoning Plan.

The circuit court's order in this case indicates a misunderstanding of *Snyder* when it says:

> There is no necessity to have PUD, if major modifications as here found by the court can be readily available to the owner, upon a mere prima facie showing of the desired change being consistent with existing usage.

Pursuant to *Snyder,* after ABG had presented a prima facie case, the burden shifted to the zoning authority to prove by clear and convincing evidence that a specifically stated public necessity required a more restrictive use. Moreover, *Snyder* placed the burden on the zoning authority to assure that an adequate record of this evidence is prepared. Judicial review of quasi-judicial actions denying or abridging landowners' constitutionally protected rights to use of their land should involve close judicial scrutiny of this record.

[1] [2] [3] Here, the record fails to show clear and convincing evidence of any public necessity which would justify restricting the owner's use of his land. Although an adverse traffic impact attributable to the proposed McDonald's restaurant initially may have been a concern, the staff report is strong evidence that the addition of the McDonald's would not significantly increase traffic already generated by the shopping center alone. The circuit court apparently did not recognize that "clear and convincing" evidence of some public necessity was required to overcome ABG's prima facie case. Moreover, the court did not even find that there was "competent substantial evidence" to support the Board's decision, a standard required by cases preceding *Snyder.* *Educ. Dev. Center, Inc. v. City of West Palm Beach Zoning Bd. of Appeals,* 541 So.2d 106 (Fla.1989); *BML Inv. v. City of Casselberry,* 476 So.2d 713 (Fla. 5th DCA 1985), *rev. den.,* 486 So.2d 595 (Fla.1986). In addition, there was no compliance with *Snyder's* mandate that a zoning agency

> must state reasons for action that denies the owner the use of his land and must make findings of fact and a record of its proceedings, sufficient for judicial review of: the legal sufficiency of the evidence to support the findings of fact made, the legal sufficiency of the findings of fact supporting the reasons given and the legal adequacy, under applicable law (*i.e.,* under general comprehensive zoning ordinances, ***63** applicable state and case law and state and federal constitutional provisions) of the reasons given for the result of the action taken.

Snyder at 81. The Board in the instant case made no findings of fact, oral or written; it offered only a vague statement that the requested modification would be incompatible with the neighborhood and that "the proposed use seriously interferes with the health, safety, and welfare of the people in the community."

In *Snyder* we found that the landowners had met their burden of proving that their proposed use was consistent with the county ordinance and that the Commission had not met its burden of proving by clear and convincing evidence that a public necessity mandated that the landowners' use of the property be restricted. This court therefore concluded

that "the petitioning landowners were entitled to the zoning classification sought and its denial without written reasons supported by facts was, as a matter of law, arbitrary and unreasonable and judicially reviewable and reversible." *Snyder* at 81.

[4] The circuit court's apparent use in the instant case of a "fairly debatable" standard was clearly erroneous. The "fairly debatable" standard is used only for the review of legislative-type enactments of zoning ordinances, and not acts of a judicial or quasi-judicial nature such as those involved in the instant case (the granting of exceptions or variances). *See Snyder; Bernard v. Town Council of Palm Beach,* 569 So.2d 853 (Fla. 4th DCA 1990) (proper standard of review of a variance decision is whether there was competent substantial evidence to support the agency's determination, and not a "fairly debatable" standard); *Metro. Dade County v. Betancourt,* 559 So.2d 1237 (Fla. 3d DCA 1990); *Town of Indialantic v. Nance,* 400 So.2d 37 (Fla. 5th DCA 1982), *aff'd,* 419 So.2d 1041 (Fla.1982).

The problems inherent in the circuit court's reasoning are further spotlighted by the following paragraph taken from its order:

> If the case under review ... involved the mere shift within a commercially zoned area, no basis could be sustained by the governing agency to deny the request. McDonald's is certainly no more or less of an impact than Publix, the bank, a liquor store or restaurant. Under that circumstance the owner should prevail.

Those words are, in effect, an affirmation that ABG was entitled to the "mere shift within a commercially zoned area"—which is what it requested in the first place. We remind the trial court that:

> A zoning authority's insistence on considering the owner's specific use of a parcel of land constitutes not zoning but direct governmental control of the actual use of each parcel of land which is inconsistent with constitutionally guaranteed private property rights.

Porpoise Point Partnership v. St. Johns County, 470 So.2d 850, 851 (Fla. 5th DCA 1985).

[5] [6] [7] In summary, the property owner presented a prima facie case that the requested use of its land was consistent with the County's Comprehensive Plan and complied with the procedural requirements of the zoning ordinance. All conceded that the requested modification was a permitted use by exception. The prima facie case is shown not only by the application and the existing ordinances, but also by the staff report and by the undisputed finding of the PZAB that there was no conflict with the Comprehensive Plan. The burden then shifted to the zoning authority to show, based on clear and convincing evidence shown by an adequate record, that a specifically stated public necessity required a more restrictive use. *See Snyder* at 80, 81. The parties appear to agree on the "health, safety and welfare" standard for granting or denying the requested exception, but the mere parroting of this standard, without sufficient specific reasons supported by findings of fact, is "as a matter of law, arbitrary and unreasonable and judicially reviewable and reversible." *Snyder* at 82.

[8] [9] Because the Board's decision was arbitrary and unreasonable, and because the circuit court applied incorrect law to ***64** approve the Board's decision, we grant ABG's petition for certiorari, and quash the order of the circuit court. However, we cannot grant ABG's request that we direct the Board to grant ABG's application. A court's certiorari review power does not extend to directing that any particular action be taken, but is limited to quashing the order reviewed. *See City of Miramar v. Amoco Oil Company,* 524 So.2d 506 (Fla. 4th DCA 1988); *Gulf Oil Realty Co. v. Windover Ass'n,* 403 So.2d 476 (Fla. 5th DCA 1981).

PETITION FOR CERTIORARI GRANTED; ORDER OF CIRCUIT COURT QUASHED.

GOSHORN, C.J., concurs.

W. SHARP, J., concurs in result only.

All Citations

608 So.2d 59, 17 Fla. L. Weekly D2226

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560 So.2d 1358
District Court of Appeal of Florida, Fourth District.

Patricia POLLARD, Petitioner,

v.

PALM BEACH COUNTY, a political subdivision of the State of Florida, Respondent.

No. 88-1827.

|

May 9, 1990.

Synopsis

Owner of residential property applied for special exception to use property as adult congregate living facility for elderly. The Circuit Court for Palm Beach County, William C. Williams, III, J., denied owner's petition for writ of certiorari to review denial of application, and owner petitioned for review. The District Court of Appeal held that opinions of neighbors that proposed use would cause traffic problems, would cause light and noise pollution, and would generally have unfavorable impact on area provided no competent substantial evidence to support denial of petition.

Certiorari granted, order quashed, and matter remanded with instructions.

Stone, J., dissented with opinion.

West Headnotes (3)

[1] **Zoning and Planning** ⚿ Public interest or welfare

Special exception is permitted use to which applicant is entitled unless zoning authority determines according to standards of zoning ordinance that use would adversely affect public interest.

2 Cases that cite this headnote

[2] **Zoning and Planning** ⚿ Rights of objecting owners; continuity of regulation

Opinions of residents are not factual evidence and not sound basis for denial of zoning change application.

3 Cases that cite this headnote

[3] **Zoning and Planning** ⚿ Residential facilities and daycare

Opinions of neighbors of residential property, for which special exception was requested, that proposed use of property as adult congregate living facility for elderly would cause traffic problems, would cause light and noise pollution, and would generally have unfavorable impact on area established no competent substantial evidence to support decision of zoning authority denying application.

8 Cases that cite this headnote

Attorneys and Law Firms

*1359 Bruce G. Kaleita, West Palm Beach, for petitioner.

Richard W. Carlson, Jr. and Thomas P. Callan, Asst. County Attys., West Palm Beach, for respondent.

Opinion

PER CURIAM.

This is a petition to review denial of an application for a special exception. The real property in question is located in an area zoned residential. The use for which a special exception was requested is an adult congregate living facility for the elderly, a use permitted by special exception in a residential area.

Certain procedural shortcomings having been remedied, we now treat only the merits, being satisfied that this court has jurisdiction.

After making appropriate application, petitioner obtained approval of the County Zoning Department and, subsequently, the approval of the County Planning Commission. Approval was based upon documentary evidence and expert opinion.

In public hearings before the County Commission, various neighbors expressed their opinion that the proposed use would cause traffic problems, light and noise pollution and generally would impact unfavorably on the area. The County Commission denied the application and the circuit court denied certiorari to review that denial. We grant the writ and quash the order under review.

[1] [2] [3] We explained the respective burdens of an applicant for a special exception and the zoning authority in *Rural New Town, Inc. v Palm Beach County,* 315 So.2d 478, 480 (Fla. 4th DCA 1975), as follows:

> In rezoning, the burden is upon the *applicant* to clearly establish such right (as hereinabove indicated). In the case of a special exception, where the applicant has otherwise complied with those conditions set forth in the zoning code, the burden is upon the *zoning authority* to demonstrate by competent substantial evidence that the special exception *is adverse to the public interest.* Yokley on Zoning, vol. 2, p. 124. A special exception is a permitted use to which the applicant is entitled *unless* the zoning authority determines according to the standards of the zoning ordinance that such use would adversely affect the public interest.

(Emphasis in original; some citations omitted.)

The supreme court, in *De Groot v. Sheffield,* 95 So.2d 912, 916 (Fla.1957), explained in the following language what is meant by the term "competent substantial evidence" in the context of certiorari review:

> Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred. We have stated it to be such relevant evidence as a reasonable mind would accept as adequate to support a conclusion. *Becker v. Merrill,* 155 Fla. 379, 20 So.2d 912; *Laney v. Board of Public Instruction,* 153 Fla. 728, 15 So.2d 748. In employing the adjective "competent" to modify the word "substantial," we are aware of the familiar rule that in administrative proceedings the formalities in the introduction of testimony common to the courts of justice are not strictly employed. *Jenkins v. Curry,* 154 Fla. 617, 18 So.2d 521. We are of the view, however, that the evidence relied upon to ***1360** sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. To this extent the "substantial" evidence should also be "competent."

(Some citations omitted.)

In *City of Apopka v. Orange County,* 299 So.2d 657, 660 (Fla. 4th DCA 1974), the "evidence" in opposition to petitioner's application for special exception consisted, as in the present case, of the opinions of neighbors, and in that case we explained:

> The evidence in opposition to the request for exception was in the main laymen's opinions unsubstantiated by any competent facts. Witnesses were not sworn and cross examination was specifically prohibited. Although the Orange County Zoning Act requires the Board of County Commissioners to make a finding that the granting of the special exception shall not adversely affect the public interest, the Board made no finding of facts bearing on the question of the effect the proposed airport would have on the public interest; it simply stated as a conclusion that the exception would adversely affect the public interest. Accordingly we find it impossible to conclude that on an issue as important as the one before the board, there was substantial competent evidence to conclude that the public interest would be adversely affected by granting the appellants the special exception they had applied for.

Earlier in that opinion we also noted:

> As pointed out by Professor Anderson in Volume 3 of his work, American Law Of Zoning, § 15.27, pp. 155-56:

> "It does not follow, ... that either the legislative or the quasi-judicial functions of zoning should be controlled or unduly influenced by opinions and desires expressed by interested persons at public hearings. Commenting upon the role of the public hearing in the processing of permit applications, the Supreme Court of Rhode Island said:
>
> 'Public notice of the hearing of an application for exception ... is not given for the purpose of polling the neighborhood on the question involved, but to give interested persons an opportunity to present facts from which the board may determine whether the particular provision of the ordinance, as applied to the applicant's property, is reasonably necessary for the protection of ... public health.... The board should base their determination upon facts which they find to have been established, instead of upon the wishes of persons who appear for or against the granting of the application.'
>
> The objections of a large number of residents of the affected neighborhood are not a sound basis for the denial of a permit. The quasi-judicial function of a board of adjustment must be exercised on the basis of the facts adduced; numerous objections by adjoining landowners may not properly be given even a cumulative effect."

299 So.2d at 659.

Our review of the record leads us to conclude that there is literally no competent substantial evidence to support the conclusion reached below. The circuit court overlooked the law which says that a special exception is a permitted use to which the applicant is entitled unless the zoning authority determines according to the standards of the zoning ordinance that the use would adversely affect the public interest. *Rural New Town,* 315 So.2d at 480. It also overlooked the law which says that opinions of residents are not factual evidence and not a sound basis for denial of a zoning change application. *See City of Apopka,* 299 So.2d at 660.

For these reasons we grant certiorari, quash the order and remand with instructions that the special exception be granted.

HERSEY, C.J., and ANSTEAD, J., concur.

STONE, J., dissents with opinion.

***1361** STONE, Judge, dissenting.

I would deny certiorari. In my judgment, the record supports the decision of the circuit court upholding the action of the county. I also do not conclude that the trial court overlooked the law.

All Citations

560 So.2d 1358, 15 Fla. L. Weekly D1272

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Distinguished by Carraway v. Armour & Co., Fla., September 11, 1963

95 So.2d 912
Supreme Court of Florida, En Banc.

Peter DE GROOT, Appellant,
v.
L. S. SHEFFIELD et al., Appellees.

May 29, 1957.
As Amended on Denial of Rehearing June 26, 1957.

Synopsis

Mandamus proceeding to compel petitioner's reinstatement to classified service position of supervisor of construction for county school board. From judgment of Circuit Court, Duval County, Charles A. Luckie, J., dismissing petition, the petitioner appealed. The Supreme Court, Thornal, J., held that where approval of Civil Service Board was required as condition precedent to abolition of petitioner's job, order of Civil Service Board declining to abolish position of supervisor of construction was subject to appropriate review by certiorari but could not be collaterally attacked in mandamus proceeding.

Judgment reversed.

West Headnotes (12)

[1] **Administrative Law and Procedure** ⇨ Nature, Scope, or Effect of Agency Action

When notice and a hearing are required and the judgment of board is contingent on the showing made at the hearing, then its judgment becomes judicial or quasi judicial as distinguished from being purely executive, and such judgment is subject to judicial review.

24 Cases that cite this headnote

[2] **Public Employment** ⇨ Jurisdiction

Where an officer or employee is removed pursuant to purely executive authority, the courts will do no more than examine into the existence of jurisdictional facts to determine only the question of the existence of executive jurisdiction.

2 Cases that cite this headnote

[3] **Public Employment** ⇨ Further Judicial Review

Where Civil Service Board arrived at decision based on evidence submitted after a full hearing pursuant to notice, the Board was exercising quasi judicial function and its decision was subject to judicial review in an appropriate proceeding.

16 Cases that cite this headnote

[4] **Certiorari** ⇨ Nature and scope of remedy in general

Certiorari ⇨ Existence of Remedy by Appeal or Writ of Error

Certiorari is a discretionary writ bringing up for review by an appellate court the record of an inferior tribunal or agency in a judicial or quasi judicial proceeding and is available to obtain review in situations when no other method of appeal is available.

37 Cases that cite this headnote

[5] **Certiorari** ⇨ Questions of fact

In certiorari, the reviewing court does not reweigh or evaluate the evidence but merely examines the record to determine whether the tribunal or agency had before it competent substantial evidence to support its findings and judgment, which also must accord with the essential requirements of the law.

132 Cases that cite this headnote

[6] **Certiorari** ⇨ Nature and scope of remedy in general

Certiorari is in the nature of an appellate process.

1 Cases that cite this headnote

[7] **Evidence** ⇦ Substantial Evidence

"Substantial evidence" is such relevant evidence as a reasonable mind would accept as adequate to support a conclusion.

95 Cases that cite this headnote

[8] **Administrative Law and Procedure** ⇦ Rules of evidence

In administrative proceedings, the formalities in the introduction of testimony common to the courts of justice are not strictly employed.

5 Cases that cite this headnote

[9] **Administrative Law and Procedure** ⇦ Substantial evidence

Ultimate findings of an administrative body should be sustained by competent substantial evidence.

32 Cases that cite this headnote

[10] **Mandamus** ⇦ Nature and existence of rights to be protected or enforced

Mandamus ⇦ Nature of acts to be commanded

Mandamus is an original proceeding to enforce a clear legal right to the performance of a clear legal duty.

8 Cases that cite this headnote

[11] **Action** ⇦ Course of procedure in general

Procedural formalities are not necessarily sacrosanct merely because they are time-honored.

2 Cases that cite this headnote

[12] **Mandamus** ⇦ Defenses and grounds of opposition in general

Public Employment ⇦ Exclusive, Concurrent, and Conflicting Remedies

Where approval of Civil Service Board was required as condition precedent to abolition of job in classified service, order of Board declining to abolish position of supervisor of construction for county school board was subject to appropriate review by certiorari but could not be collaterally attacked as defense to mandamus proceeding brought to compel school board to reinstate petitioner, who had been dismissed when position had been abolished. Acts 1943, c. 22263, § 7.

9 Cases that cite this headnote

Attorneys and Law Firms

*913 Coffee & Coffee, Jacksonville, for appellant.

Elliott Adams and McCarthy, Lane & Adams, Jacksonville, for appellees.

Opinion

THORNAL, Justice.

Appellant DeGroot, who was relator below, seeks reversal of an order of the Circuit Judge dismissing his petition for a writ of mandamus which was sought to compel the appellees to reinstate the relator as an employee of the Duval County School Board.

The determining question is whether the action of the County Civil Service Board, which supervises the county merit system, can be reviewed and collaterally assaulted as a defense to a mandamus proceeding.

Relator Peter DeGroot had been an employee of the Duval County School Board for about eighteen years prior to February 9, 1955. For the last ten years he held the position of 'Supervisor of Construction.' Since 1943 he was in the classified service under the Duval County Civil Service Act. See Chapter 22263, Laws of Florida, Acts of 1943. On August 4, 1954, the School Board, with the approval of the Civil Service Board, created the position of 'Supervising Architect' and filled the job by appointment of a registered architect named Broadfoot. On February 9, 1955, the School Board adopted a resolution delineating the functions of the Supervising Architect, many of which had theretofore been performed by DeGroot, as Supervisor of Construction. By the same resolution the School Board proposed that the position of Supervisor of Construction be abolished.

Section 7, Chapter 22263, Laws of Florida, Acts of 1943, provides in part as follows:
'* * * No position in the classified [service] shall be abolished without the approval of the Civil Service Board. Positions may be abolished only in good faith.'

Pursuant to this requirement, the School Board resolution was submitted to the County Civil Service Board which, after an extended hearing, declined to approve the resolution defining the duties of the Architect and abolishing the position of Supervisor of Construction.

Despite the action of the Civil Service Board, the School Board proceeded to dismiss DeGroot from his employment. He thereupon instituted this action in mandamus to compel reinstatement. In the mandamus proceeding the parties stipulated that the transcript of the testimony offered ***914** before the Civil Service Board could be filed in evidence. A motion to quash the alternative writ was likewise filed. Upon consideration of the record thereby presented, the trial judge concluded that regardless of the judgment of the Civil Service Board, the action of the School Board in resolving to abolish the position of Supervisor of Construction was taken in good faith and that therefore DeGroot was subject to dismissal. He thereupon granted the respondents-appellees' motion to dismiss the petition in mandamus and entered final judgment in their favor. Reversal of this judgment is here sought.

It is contended by the appellant-relator that the decision of the Civil Service Board was not subject to collateral attack by the respondents in the mandamus proceeding. He further contends that if review of that order were desired by the respondents, they should have proceeded by way of certiorari and that in all events the trial judge could not re-weigh the evidence presented to the Civil Service Board.

It is the position of the appellees that the order of the Civil Service Board should not be enforced in the absence of supporting substantial evidence and that the decision of the Board could be reviewed by the Circuit Judge regardless of the nature of the proceeding to determine whether there was substantial evidence in support thereof.

We are here squarely confronted with the problem of determining the appropriate procedure for obtaining review of an order of an administrative agency. Although administrative agencies have been known to the law for many years, it has only been within fairly recent years that a substantial body of jurisprudence has developed with reference to so-called 'administrative law.' Because of the expansion of the number of boards, commissions, bureaus and officials having authority to make orders or determinations which directly affect both public and private rights, there has been an increasing number of cases involving the extent of the authority of these agencies as well as the validity or correctness of their conclusions in particular instances. We are told that in our state government there are over one hundred boards, bureaus and officials engaged in administrative activities affecting the rights and property of individuals as well as the public. See French's Research in Florida Law, p. 54; 1 Florida Law and Practice, Administrative Law, Sec. 30. In addition there are innumerable county and city boards and agencies such as Civil Service Boards and other boards that perform similar functions.

Although over the years many cases in one form or another have come to this court involving the correctness of orders of administrative agencies, we are unaware of any that has squarely and directly raised the problems presented by the instant appeal. Despite the local nature of the particular problem at hand, it appears to us that it is appropriate to undertake to reconcil many of our previous apparently divergent opinions in an offort to establish for the future some orderly procedure in disposing of problems of this nature. We do this also in fairness to the trial judge who undoubtedly was confronted with some of these conflicting viewpoints but who did not have available the opportunity for detailed research that accompanies appellate review. Nonetheless, as pointed out by Kenneth Culp Davis in 44 Illinois Law Review p. 565, 'No branch of administrative law is more seriously in need of reform than the law concerning methods of judicial review.' This author then observes, 'No other branch is so easy to reform.' The reviewability of an administrative order depends on whether the function of the agency involved is judicial or quasi-judicial in which its orders are reviewable or on the contrary whether the function of the agency is executive in which event its decisions are not reviewable by the courts except on the sole ground of lack of jurisdiction. In the latter event the order is, of course, subject to direct or collateral attack.

[1] **[2]** It is in some measure insisted in the case before us that the decision of the ***915** Civil Service Board is beyond the scope of judicial review. The contention to this end is that the ultimate decision of the Board is executive in nature and beyond the reach of the court. In Bryan v. Landis, 106 Fla. 19, 142 So. 650, it was pointed out that where one holds office at the pleasure of the appointing power and the power of appointment is coupled with the power of removal contingent only on the exercise of personal judgment by the

appointing authority, then the decision to remove or dismiss is purely executive and not subject to judicial review. In the same opinion, however, we pointed out that if removal or suspension of a public employee is contingent upon approval by an official or a board after notice and hearing, then the ultimate judgment of such official or board based on the showing made at the hearing is subject to appropriate judicial review. The reason for the difference is that when notice and a hearing are required and the judgment of the board is contingent on the showing made at the hearing, then its judgment becomes judicial or quasi-judicial as distinguished from being purely executive. See also, Owen v. Bond, 83 Fla. 495, 91 So. 686; Simmans v. Owen, 87 Fla. 485, 100 So. 734; State ex rel. Tullidge v. Hollingsworth, 103 Fla. 801, 138 So. 372; State ex rel. Hatton v. Joughin, 103 Fla. 877, 138 So. 392; State ex rel. Pinellas Kennel Club v. State Racing Commission, 116 Fla. 143, 156 So. 317. In the same cases and similar ones it was held that where an officer or employee is removed pursuant to purely executive authority, the courts will do no more than examine into the existence of jurisdictional facts to determine only the question of the existence of executive jurisdiction.

[3] Applying the rule of these cases to the situation before us it is perfectly obvious that in deciding upon the advisability of abolishing a position in the classified service, the Civil Service Board was exercising a quasi-judicial function. This is so for the reason that it arrived at its decision after a full hearing pursuant to notice based on evidence submitted in accordance with the statute here involved. This being so its ultimate decision was subject to judicial review in an appropriate proceeding. State ex rel. Williams v. Whitman, 116 Fla. 196, 150 So. 136, 156 So. 705, 95 A.L.R. 1416; West Flagler Amusement Co. v. State Racing Commission, 122 Fla. 222, 165 So. 64; State ex rel. Hathaway v. Williams, 149 Fla. 48, 5 So.2d 269; Hammond v. Curry, 153 Fla. 245, 14 So.2d 390.

Having determined the nature of the order under consideration we next proceed to ascertain the appropriate method of obtaining review as well as the scope of review available. It must be conceded that over the years orders of administrative agencies have been placed under scrutiny in Florida in both mandamus and certiorari cases. Admittedly, little attention has been given to the propriety of the procedure in particular cases. Hence the resultant confusion. We interpolate that we pretermit in this instance any discussion of the proper use of the equity injunction and the writ of prohibition. Injunction has been many times employed to assault legislative action at the state and local level where such action allegedly impinged on some constitutional right. Attacks on municipal zoning ordinances are typical. Prohibition has at times been employed as against quasi-judicial action of administrative agencies where the agency proposed to exceed its jurisdiction or exercise jurisdiction which it did not have. We further mention that we are discussing herewith appellate review in situations where applicable statutes fail to provide specific methods of review as was the case here. When the statute provides the appellate procedure, that course should be followed. Curry v. Shields, Fla.1952, 61 So.2d 326, 327; State ex rel. Coleman v. Simmons, Fla.1957, 92 So.2d 257.

[4] [5] [6] Recurring to the problem at hand we are reminded that certiorari is a discretionary writ bringing up for review by an appellate court the record of an inferior tribunal or agency in a judicial or quasi- *916 judicial proceeding. The writ is available to obtain review in such situations when no other method of appeal is available. Lorenzo v. Murphy, 159 Fla. 639, 32 So.2d 421. In certiorari the reviewing court will not undertake to re-weigh or evaluate the evidence presented before the tribunal or agency whose order is under examination. The appellate court merely examines the record made below to determine whether the lower tribunal had before it competent substantial evidence to support its findings and judgment which also must accord with the essential requirements of the law. It is clear that certiorari is in the nature of an appellate process. It is a method of obtaining review, as contrasted to a collateral assault.

[7] [8] [9] We have used the term 'competent substantial evidence' advisedly. Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred. We have stated it to be such relevant evidence as a reasonable mind would accept as adequate to support a conclusion. Becker v. Merrill, 155 Fla. 379, 20 So.2d 912; Laney v. Board of Public Instruction, 153 Fla. 728, 15 So.2d 748. In employing the adjective 'competent' to modify the word 'substantial,' we are aware of the familiar rule that in administrative proceedings the formalities in the introduction of testimony common to the courts of justice are not strictly employed. Jenkins v. Curry, 154 Fla. 617, 18 So.2d 521. We are of the view, however, that the evidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. To this extent the 'substantial' evidence should also be

'competent.' Schwartz, American Administrative Law, p. 88; The Substantial Evidence Rule by Malcolm Parsons, Fla. Law Review, Vol. IV, No. 4, p. 481; United States Casualty Company v. Maryland Casualty Company, Fla.1951, 55 So.2d 741; Consolidated Edison Co. of New York v. National Labor Relations Board, 305 U.S. 197, 59 S.Ct. 206, 83 L.Ed. 126.

[10] As contrasted to certiorari, mandamus is an original proceeding to enforce a clear legal right to the performance of a clear legal duty. It is not an appellate writ. As in any original proceeding the record and evidence are made and offered in that proceeding. While it is by nature discretionary it is not an appropriate process to obtain a review of an order entered by a judicial or quasi-judicial agency acting within its jurisdiction. When thus analyzed it is obvious that certiorari and mandamus serve two entirely different functions.

[11] In delineating the distinctions between certiorari and mandamus we disclaim any allegiance to the formalities and technicalities of the past. Procedural formalities are not necessarily sacrosanct merely because they are time-honored. Nonetheless, in situations such as the one before us, the distinctions have a present and vital importance in determining the issues presented by the litigants and considered by the trial court. We think the lines of demarcation are justifiable in a field such as administrative law which is still in its formative stages of development.

[12] Applying the foregoing general rules to the situation presented by this record it becomes apparent that the assault made by the respondents-appellees on the order of the Civil Service Board as a defense to the mandamus proceeding was entirely collateral to the quasi-judicial proceeding had before the Civil Service Board itself. No direct review of the order of the Civil Service Board was sought by the appellees. The Civil Service Act specifically required the approval of the Civil Service Board as a condition precedent to the abolition of the job in the classified service. Prior to dismissing the appellant-relator the School Board had failed in its effort to obtain such approval. It is had been dissatisfied with the order of the Civil Service *917 Board such order was subject to appropriate review by certiorari. When the mandamus proceeding was filed by the relator, the order of the Civil Service Board declining to abolish the job held by the relator was in full force and effect. There is no assault on the jurisdiction of that board. The job therefore had not been legally abolished. This being so, the relator under the Civil Service Act was entitled to continue to fill the job and his dismissal was without justification. Freeman on Judgments (5th ed.) Vol. 3, Sec. 1258; 42 Am.Jur., Public Administrative Law, Sec. 159, 160;

State ex rel. Spruck v. Civil Service Board, 226 Minn. 240, 32 N.W.2d 574.

We mention in passing that there were no charges before the Civil Service Board that relator had failed in any measure to perform his job well. The sole issue revolved around abolishing the job that he held.

In view of the foregoing, from the showing made by this record, the relator was entitled to the issuance of a peremptory writ. It was error to dismiss his petition therefor. The judgment under review is therefore——

Reversed.

TERRELL, C. J., and THOMAS, HOBSON, ROBERTS, DREW and O'CONNELL, JJ., concur.

On Rehearing

PER CURIAM.

The last sentence of our opinion of May 29, 1957, is amended to read as follows:
'The judgment under review is therefore reversed without prejudice to any rights which the appellees may have under the rules announced in State ex rel. Dresskell v. City of Miami, 153 Fla. 90, 13 So.2d 707'.

When addressed to the opinion as amended, the petition for rehearing is denied.

TERRELL, C. J., and THOMAS, ROBERTS and THORNAL, JJ., concur.

All Citations

95 So.2d 912

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400 So.2d 1051
District Court of Appeal of
Florida, Second District.

Doris CONETTA, Appellant,

v.

CITY OF SARASOTA, Appellee.

No. 80-2176.

July 15, 1981.

Synopsis

Petitioner appealed from an order of the Circuit Court, Sarasota County, Robert E. Hensley, J., which denied her petition for certiorari to review a decision of a city commission denying her application for a special exception to build a guest house on her property. The District Court of Appeal, Boardman, J., held that denial of special exception allowing petitioner to build guest house on her property, which was based on objections of several residents which did not bear on any of the relevant criteria set forth in applicable section of city zoning code, was improper.

Reversed and remanded.

West Headnotes (2)

[1] **Zoning and Planning** ⇐ Decisions of boards or officers in general

Courts will not interfere with administrative decisions of zoning authorities unless such decisions are arbitrary, discriminatory, or unreasonable.

4 Cases that cite this headnote

[2] **Zoning and Planning** ⇐ Family or multiple dwellings

Denial of special exception allowing applicant to build guest house on her property, which was based on objections of several residents which did not bear on any of the relevant criteria set forth in applicable section of city zoning code, was improper.

8 Cases that cite this headnote

Attorneys and Law Firms

*1051 Stanley Hendricks of Dent, Pflugner, Rosin & Haben, Sarasota, for appellant.

Robert M. Fournier of Hereford, Taylor & Steves, Sarasota, for appellee.

Opinion

BOARDMAN, Judge.

Doris Conetta, petitioner in the circuit court, appeals the denial of her petition for certiorari to review a decision of the Sarasota City Commission denying her application for a special exception to build a guest house on her property. We reverse.

Appellant petitioned appellee City of Sarasota for a special exception allowing her to build a guest house on her property. Appellant also furnished the city with a letter stating that the guest house would not be rented, would be used by members of her family only, would not have any cooking *1052 facilities, would not have a separate utility meter, and would be built in accordance with all applicable city ordinances. This letter constituted a promise of compliance with each requirement of the ordinance for the issuance of a special exception.

On January 9, 1980, the city Planning Board met, heard attorney John Dent speak on behalf of appellant's request, and heard several persons speak against the granting of the requested special exception.

A decision was deferred until the January 23, 1980, meeting, at which time counsel for appellant and two of the people who had previously spoken against the special exception appeared. In addition, letters in opposition from several residents of the area were brought to the board's attention.

Many of those opposed to a special exception for appellant gave no reason for their objections. One of

the major reasons for objection that was stated was that appellant's guest house would not conform to the rest of the area. This was because the structure was to be raised on stilts to twelve feet above ground level. This aspect of the design was not of appellant's own choosing, however; it was mandated by the flood plan zoning currently in effect. Moreover, there was at least one other parcel of property in the neighborhood that contained a raised structure. The other major objection involved the concern that despite appellant's assurances that she would not rent her guest house, she might later sell her property, and the new owner might rent the guest house. Both a member of the Planning Board and City Manager Thompson noted that the proscription against renting guest houses was difficult to enforce. However, at no time was there any question of appellant's good faith in regard to her promise not to rent her guest house.

The board ultimately recommended denial of the special exception, and the matter came before the City Commission on April 21, 1980. The City Commission denied the special exception on the basis of the Planning Board's recommendation. Appellant then filed a petition for certiorari with the circuit court, seeking review of the City Commission's decision. The circuit court denied the petition, and this appeal followed timely.

[1] [2] It is well settled that the courts will not interfere with administrative decisions of zoning authorities unless such decisions are arbitrary, discriminatory, or unreasonable. City of Naples v. Central Plaza of Naples, Inc., 303 So.2d 423 (Fla.2d DCA 1974). However, the only criteria upon which the Planning Board or the City Commission could rely in passing upon appellant's special exception request were those spelled out in the pertinent ordinance. North Bay Village v. Blackwell, 88 So.2d 524 (Fla.1956); City of Naples v. Central Plaza of Naples, Inc., supra. They nevertheless decided the matter on the basis of the objections of several residents, none of which objections bears on any of the relevant criteria set forth in section 43-12(8) (f), the applicable section of the city zoning code.

Appellant complied with the terms of the ordinance. This being so, the Planning Board and the City Commission then had the burden of establishing that the use she proposed would adversely affect the public interest. Rural New Town, Inc. v. Palm Beach County, 315 So.2d 478 (Fla.4th DCA 1975). The court there noted:

> There is a distinction between seeking rezoning and seeking a special exception; each involves somewhat different considerations. In rezoning, the burden is upon the applicant to clearly establish such right (as hereinabove indicated). In the case of a special exception, where the applicant has otherwise complied with those conditions set forth in the zoning code, the burden is upon the zoning authority to demonstrate by competent substantial evidence that the special exception is adverse to the public interest. Yokley on Zoning, vol. 2, p. 124. A special exception is a permitted use to which the applicant is entitled unless the zoning authority determines according to the standards in the zoning ordinance that ***1053** such use would adversely affect the public interest.

Id. at 480.

In the instant case, neither the Planning Board nor the City Commission met their burden. Their decision appears to be based primarily on the sentiments of other residents of Siesta Key as to whether the special exception should be granted. It amounted to no more than a popularity poll of the neighborhood.

In City of Apopka v. Orange County, 299 So.2d 657, 659-660 (Fla.4th DCA 1974), the court quoted with approval from 3 Anderson, American Law of Zoning, s 15.27 as follows:

> "The objections of a large number of residents of the affected neighborhood are not a sound basis for the denial of a permit. The quasi-judicial function of a board of adjustment must be exercised on the basis of the facts adduced; numerous objections by adjoining landowners may not properly be given even a cumulative effect. While the facts disclosed by objecting neighbors should be considered, the courts have said that:
>
> > 'A mere poll of the neighboring landowners does not serve to assist the board in determining whether the exception applied for is consistent with the public convenience or welfare or whether

it will tend to devaluate the neighboring property.' "

The denial of the special exception was based solely on (a) its unpopularity with some Siesta Key residents and (b) the conjecture that a grantee of appellant might thereafter violate the ordinance coupled with the recognition that the proscription against renting guest houses is difficult to enforce. As to the enforcement problem, the remedy would simply be to amend the ordinance to exclude special exceptions for guest houses, as City Manager Thompson recommended to the commission at the hearing.

Lastly, the city urges that the special exception should be denied because the structure would not be compatible and in harmony with the neighborhood. This contention is without merit because under the present zoning ordinance any new buildings constructed in the area would be required to be erected twelve feet above ground level.

There being no proper basis for the City Commission's denial of the special exception requested by appellant, we REVERSE the circuit court's denial of appellant's petition for writ of certiorari and REMAND with directions to grant the writ.

HOBSON, Acting C. J., and GRIMES, J., concur.

All Citations

400 So.2d 1051

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299 So.2d 657
District Court of Appeal of
Florida, Fourth District.

The CITY OF APOPKA, Florida, et al., Appellants,

v.

ORANGE COUNTY, a political subdivision of the State of Florida, and Clarcona Improvement Association, Appellees.

No. 73-273.
|
Feb. 22, 1974.
|
On Rehearing April 11, 1974.

Synopsis

Application submitted by three communities for special exception to allow construction of airport on extraterritorial land owned by them was denied by the zoning board of adjustment and the board of county commissioners affirmed. Municipalities' petition for certiorari was denied by the Circuit Court, Orange County, Parker Lee McDonald, J., and municipalities appealed. The District Court of Appeal, Downey, J., held that it was not the function of the board of county commissioners to hold a plebiscite on the application for special exception and that board's duty was to make finding as to how construction and operation of proposed airport would affect public interest and base its granting or denial of the special exception on those findings; and that evidence which consisted mainly of laymen's opinions which were unsubstantiated by competent facts and which were submitted at hearing where witnesses were not sworn and where cross-examination was specifically prohibited did not support conclusion that public interest would be adversely affected by the granting of the special exception.

Reversed and remanded with directions.

West Headnotes (3)

[1] **Zoning and Planning** ⇨ Notice

Zoning and Planning ⇨ Hearings in general

Although notice to, and hearing of, the proponents and opponents of application for special exception for construction of airport was essential and all interested parties should have been given full and fair opportunity to express their views, it was not the function of the board of county commissioners to hold a plebiscite on the application for the special exception.

4 Cases that cite this headnote

[2] **Zoning and Planning** ⇨ Findings, reasons, conclusions, minutes or records

Purpose of board of county commissioners, in ruling on application for special exception to zoning ordinance, was to make findings as to how construction and operation of the proposed airport would affect the public and it was board's duty to base its granting or denial of the special exception upon those findings.

7 Cases that cite this headnote

[3] **Zoning and Planning** ⇨ Aviation and airports

Where evidence in opposition to request for special exception for construction of airport consisted mainly of laymen's opinions, unsubstantiated by any competent facts, where witnesses were not sworn and cross-examination was specifically prohibited and where board of county commissioners made no findings of fact bearing on the question of the effect of the proposed airport on the public interest, there was no substantial competent evidence to support conclusion that public interest would be adversely

affected by granting the special permit. West's F.S.A. § 332.01 et seq.; Sp.Acts 1963, c. 63-1716 as amended.

16 Cases that cite this headnote

Attorneys and Law Firms

*657 William G. Mitchell, of Giles, Hedrick & Robinson, Orlando, for appellants.

*658 Steven R. Bechtel, of Mateer & Harbert, Orlando, for appellee Orange county.

Carter A. Bradford, of Bradford, Oswald, Tharp & Fletcher, Orlando, for appellee Clarcona Improvement Assn.

Opinion

DOWNEY, Judge.

This is an appeal by the cities of Apopka, Ocoee, and Winter Garden and the Tri-City Airport Authority from a final judgment of the circuit court denying their petition for certiorari which sought review of an order denying appellants' application for a special exception. This is a companion appeal to those consolidated appeals numbered 72-1204 and 72-1209, 299 So.2d 652.

The appellant cities formed the appellant Tri-City Airport Authority pursuant to Chapter 332, F.S.1971, F.S.A., commonly known as The Airport Law of 1945, for the purpose of building an airport to serve the three cities and the surrounding area. Appropriate engineering studies were made and various sites for the proposed airport were considered. Finally, the Authority determined that a parcel of property located in Orange County outside any municipality and zoned A-1 was the most suitable site for the proposed airport. The Authority thereafter obtained options to buy that property. Orange County's zoning legislation permits construction and operation of 'airplane landing fields and helicopter ports with accessory facilities for private or public use' in an A-1 district as a special exception. Thus, the three cities and the Authority filed an application for a special exception with the Orange County Zoning Board of Adjustment to build their proposed airport. Without entering any finding of fact, the Zoning Board of Adjustment denied the application on the ground that granting it 'would be adverse to the general public interest.' On appeal to the Board of County Commissioners a de novo hearing was held with the following result:

'A motion was made by Commissioner Pickett, seconded by Commissioner Poe, and carried, that the decision of the Board of Zoning Adjustment on December 2, 1971 denying application No. 2 for a Special Exception in an A-1 District for the construction of a proposed Tri-City Airport be affirmed and upheld on the grounds that the granting of the proposed Special Exception would adversely affect the general public and would be detrimental to the public health, safety, comfort, order, convenience, prosperity and general welfare and, therefore, not in accordance with the Comprehensive Zoning Plan of Orange County.'

Appellants then filed a petition for a writ of certiorari in the circuit court in accordance with the provisions of the Orange County Zoning Act, Chapter 63-1716, Laws of Florida, as amended, to obtain review of the foregoing decision of the Board of County Commissioners. While the petition for certiorari was pending appellants filed another action in the Circuit Court of Orange County. The new action sought a declaration that implementation of Chapter 332, F.S.1971, F.S.A., by the appellants constituted a governmental function thereby exempting appellants from the operation of Orange County zoning regulations.

In order to determine whether there was substantial competent evidence to support the decision below we must of necessity resort to the evidence introduced at the hearing before the Board of County Commissioners. The appellants adduced evidence from (a) the Tri-City Airport Authority consulting engineer, (b) a representative of the Federal Aviation Agency, (c) and a representative of the Florida Department of Transportation, Mass Transit Division. Their testimony showed that there was a definite public need for the airport; that serious in depth studies had been made to determine the most appropropriate location for the airport; that the location in question was the best available considering such factors as (1) convenience to users, (2) land and area requirements,

(3) general *659 topography, (4) 'compatability with existing land use, plans and land users', (5) land costs, (6) air space and objections, (7) availability of utilities, (8) noise problems, (9) bird habitats and other ecological problems. The mayors of the three municipalities and the members of the Airport Authority also demonstrated that the selection of the site in question resulted from long study and competent advice on the subject. Approval had been received from every interested government agency including the Federal Aviation Administration, the Florida Department of Transportation, and the Florida Department of Air and Water Pollution Control.

The evidence upon which the Board of County Commissioners relied to deny appellants' application came from one abutting owner, Richard Byrd; several other owners within a two to five mile radius of the proposed airport site; a petition signed by some two hundred members of the Clarcona Improvement Association; and approximately thirty-five people in attendance at the hearing who objected but did not testify. Byrd's testimony was mainly directed to his opinion of what the airport would do to construction costs in the area and his opinion of what would happen to zoning in the area as a result of the proposed use. It also developed that Byrd is interested in buying the property proposed to be used as the airport. Several other property owners speculated about what would happen to the area's zoning, complained about the anticipated noise, and generally wanted to keep the status quo in the area. One witness who admitted he was a layman with no special training or experience advised the Board about his opinion of the damage to the Florida aquifer which would result from the proposed airport.

[1] [2] Although notice to and hearing of the proponents and opponents of an application for a special exception or other zoning change are essential and all interested parties should be given a full and fair opportunity to express their views, it was not the function of the Board of County Commissioners to hold a plebiscite on the application for the special exception. Rockville Fuel and Feed Co. v. Board of Appeals, 257 Md. 183, 262 A.2d 499, 504 (1970). As pointed out by Professor Anderson in Volume 3 of his work, American Law of Zoning, s 15.27, pp. 155-156: 'It does not follow, . . . that either the legislative or the quasi-judicial functions of zoning should be controlled or even unduly influenced by opinions and desires expressed by interested persons at public hearings. Commenting upon the role of the public hearing in the processing of permit applications, the Supreme Court of Rhode Island said:

'Public notice of the hearing of an application for exception . . . is not given for the purpose of polling the neighborhood on the question involved, but to give interested persons an opportunity to present facts from which the board may determine whether the particular provision of the ordinance, as applied to the applicant's property, is reasonably necessary for the protection of . . . public health . . .. The board should base their determination upon facts which they find to have been established, instead of upon the wishes of persons who appear for or against the granting of the application.'

The objections of a large number of residents of the affected neighborhood are not a sound basis for the denial of a permit. The quasi-judicial function of a board of adjustment must be exercised on the basis of the facts adduced; numerous objections by adjoining landowners may not properly be given even a cumulative effect. While the facts disclosed by objecting neighbors should be considered, the courts have said that:

'A mere poll of the neighboring landowners does not serve to assist the board in determining whether the exception *660 applied for is consistent with the public convenience or welfare or whether it will tend to devaluate the neighboring property."

(Footnotes omitted.)

Instead the Board's purpose was to make findings as to how construction and operation of the proposed airport would affect the public and base its granting or denial of the special exception on those findings. Cf. Laney v. Holbrook, 150 Fla. 622, 8 So.2d 465, 146 A.L.R. 202 (1942); Veasey v. Board of Public Instruction, Fla.App.1971, 247 So.2d 80.

[3] The evidence in opposition to the request for exception was in the main laymen's opinions unsubstantiated by any competent facts. Witnesses were not sworn and cross examination was specifically prohibited. Although the Orange County Zoning Act requires the Board of County Commissioners to make

a finding that the granting of the special exception shall not adversely affect the public interest, the Board made no finding of facts bearing on the question of the effect the proposed airport would have on the public interest; it simply stated as a conclusion that the exception would adversely affect the public interest. Accordingly, we find it impossible to conclude that on an issue as important as the one before the board, there was substantial competent evidence to conclude that the public interest would be adversely affected by granting the appellants the special exception they had applied for.

The judgment appealed from is therefore reversed and remanded to the circuit court with directions to grant the writ of certiorari and to remand the cause to the board of county commissioners for another de novo hearing on the application for special exception.

If the decision of the board is deemed to be arbitrary or unreasonable the aggrieved party will then have the option of a judicial review by certiorari pursuant to Florida Appellate Rules or a trial de novo in the circuit court pursuant to the Rules of Civil Procedure, Section 163.250 F.S.1971, F.S.A.

Reversed and remanded with directions.

WALDEN and MAGER, JJ., concur.

ON PETITIONS FOR REHEARING.

PER CURIAM.

On petitions for rehearing the parties have advised this court that Orange County has not taken formal suitable action declaring its election to proceed under the provisions of Part II of the act entitled County and Municipal Planning For Future Development (163.160-163.315, F.S.1971, F.S.A.). Accordingly, the petitions for rehearing filed by the parties are granted and we recede from all references in our opinion of February 22, 1974, to the availability of Section 163.250, F.S.1971, F.S.A., in this case.

We maintain the view however, that the judgment appealed from should be reversed with directions to grant the writ of certiorari and to remand the cause to the board of county commissioners for another de novo hearing on the application for a special exception, at which time said board will have the opportunity to apply the balance-of-interests test to the evidence adduced before it. Thereafter, any aggrieved party may have that decision reviewed by the circuit court on petition for certiorari pursuant to the provisions of Chapter 63-1716, Special Acts of Florida, as amended.

WALDEN, MAGER and DOWNEY, JJ., concur.

All Citations

299 So.2d 657

End of Document

303 So.2d 423
District Court of Appeal of Florida, Second District.

CITY OF NAPLES, a municipal corporation of the State of Florida, Appellant,
v.
CENTRAL PLAZA OF NAPLES, INC., a Florida corporation, Appellee.

No. 74—752.
|
Nov. 8, 1974.
|
Rehearing Denied Dec. 11, 1974.

Synopsis

Action for declaratory relief and mandatory injunction following denial by city council of petition for special exception to zoning code to construct apartments. The Circuit Court, Collier County, William Lamar Rose, J., entered order directing city to grant special exception, and city appealed. The District Court of Appeal, Grimes, J., held that city did not have right to consider evidence that erection of apartments would substantially increase traffic on main commercial street and that construction could result in overpopulation of area creating excessive demands on utilities and other services where applicable ordinance did not refer to effect on ability of city to furnish utilities and other supporting services, and only referred to traffic with respect to minor residential streets.

Affirmed.

Procedural Posture(s): On Appeal.

West Headnotes (3)

[1] **Zoning and Planning** ⇨ Arbitrary, Capricious, or Unreasonable Action

Courts will not interfere with the decisions of zoning authorities acting in their administrative capacity unless such decisions are arbitrary, discriminatory or unreasonable.

5 Cases that cite this headnote

[2] **Zoning and Planning** ⇨ Evidence in general

City council, in considering petition for special exception to zoning code, did not have right to consider evidence that erection of apartments would substantially increase traffic on main commercial street and that construction could result in overpopulation of the area creating excessive demands on utilities and other services where applicable ordinance did not refer to effect upon ability of city to furnish utilities and other supporting services and only referred to traffic with respect to minor residential streets.

1 Cases that cite this headnote

[3] **Zoning and Planning** ⇨ Grounds for grant or denial in general

In considering petition for special exception to zoning code, city council could legally base its decision only on criteria set forth in applicable ordinance.

4 Cases that cite this headnote

Attorneys and Law Firms

*424 Charles K. Allan, City Atty., Naples, for appellant.

Thomas E. Maloney, Naples, and George L. Hollahan, Miami, for appellee.

Opinion

GRIMES, Judge.

This is an appeal from an order directing the City of Naples to grant a special exception to the City Zoning Code so as to permit the appellee to construct certain multifamily housing.

Appellee is the owner of an essentially square piece of property which is located between the Gordon River and Goodlette Road in the City of Naples. The property protrudes into the river to the extent that it is bordered by water on three sides. A large shopping center fronting west on Goodlette Road occupies the bulk of the property. Appellee desires to build three four-story multifamily residences on the balance of the property which faces the river. According to the plans, access to the residential complex would be directly into Goodlette Road by means of a boulevard built along the north edge of the property so that there would be no direct vehicle

access between the residential area and the shopping center. A row of pine trees would serve as a buffer between the shopping center and the apartments. The appellee agreed to limit permanent residency in the units to persons over the age of sixteen years.

Appellee's entire property is zoned K-a Industrial. The ordinance provides that as a special exception in this zone multiple family residences 'may be permitted by the City Council after a joint public hearing with due public notice has been held and a recommendation from the Planning Board has been submitted to the City Council.' Appellee filed a petition for a special exception and provided the necessary supporting documents. A joint public hearing was held by the Planning Board and the Naples City Council, at which time there was comprehensive discussion concerning the advisability of granting the exception. Ultimately, the Planning Board by a vote of four to one recommended approval of the exception. Three of the six members of the Council present voted in favor of the exception; the other three voted against it. Upon the advice of the City Attorney, the Mayor declared that the motion for approval had failed by virtue of the tie vote. [1]

Appellee thereafter filed suit seeking a variety of remedies including declaratory relief and a mandatory injunction. The parties agreed to allow the court to decide the case solely upon the transcript of the testimony taken at the joint public hearing and certain exhibits which were stipulated into evidence. The court found that the City's evidence did not substantially controvert the evidence presented by appellee. Concluding that the question of whether to grant the petition was not fairly debatable, the court held that the denial of the petition was arbitrary, unreasonable and capricious.

With respect to special exceptions, the City Zoning Code provides:

'(C) Standards: Prior to granting a special exception, the Planning Board and City Council shall find that the proposed special exception is necessary and/or appropriate to the area in which it is proposed, that it will be reasonably compatible with surrounding uses; that any nuisance or hazardous feature involved is suitably separated and buffered from adjacent uses; that it will no hinder development of nearby vacant properties; that excessive traffic will not be generated on minor residential streets; that a parking problem will not be created; and that the land and/or building which are involved is adequate.

District standards for lots, yards, floor area, height, etc., are designed *425 for permitted uses, not special exceptions. Appropriate standards shall be determined and made a part of a permit for a special exception.'

Neither party questions the validity of these standards. Therefore, this case is unlike The City of St. Petersburg v. Schweitzer, Fla.App.2d, 1974, 297 So.2d 74, in which a portion of the zoning code which permitted the granting of special exceptions was held invalid for the failure to include sufficient guidelines to be followed in the granting of these exceptions. The position of appellee below and on this appeal is that its petition for special exception fully complied with all of the applicable standards.

[1] [2] [3] It is well settled that the courts will not interfere with the decisions of zoning authorities acting in their administrative capacity unless such decisions are arbitrary, discriminatory or unreasonable. E.g., Jemco Mastercraft Homes, Inc. v. Metropolitan Dade Cty., Fla.App.3rd, 1972, 267 So.2d 873. In support of its argument that there was a reasonable basis for the denial of appellee's petition, the City points to the evidence presented which indicated that the erection of these apartments would substantially increase the amount of traffic travelling on Goodlette Road. Likewise, there was also some evidence that the construction could result in an overpopulation of the area creating excessive demands on utilities and other services. Yet, as pertinent as these matters may seem to be, the City Council did not have a right to consider them in making its determination. See 2 A. Rathkopf, The Law of Zoning and Planning, 54—27 (3d ed. 1972). The only criteria upon which the Council could legally base its decision were those set forth in the ordinance. North Bay Village v. Blackwell, Fla.1956, 88 So.2d 524.

The only reference to traffic among the enumerated standards is with respect to minor residential streets. The record clearly shows that Goodlette Road is a main commercial artery and not a minor residential street. There is no reference whatever to the effect that a proposed exception might have upon the ability of the City to furnish utilities and other supporting services. Therefore, the impact of the proposed project on these matters was legally irrelevant.

It has not been seriously argued that the project is inappropriate to the area in which it is proposed. There was no evidence that a properly appointed multiresidential complex bounded on three sides by water and catering to older people would be incompatible with a shopping center where these people might be expected to obtain their necessities. Since the evidence reflects that appellee's petition was in full

compliance with all of the standards which were prescribed for the granting of the exception, it should have been granted.

The judgment is affirmed.

McNULTY, C.J., and SIDWELL, BENJAMIN C., Associate Judge, concur.

All Citations

303 So.2d 423

Footnotes

1 Appellee does not challenge the propriety of this ruling.

End of Document

27 Fla. L. Weekly Supp. 29a

Online Reference: FLWSUPP 2701SUTT

Counties -- Zoning -- Rezoning -- Denial -- Because county commission's decision that rezoning application was inconsistent with comprehensive plan due to smaller lot size relative to other developments and increase in traffic was not supported by competent substantial evidence, burden shifted to county to demonstrate that maintaining existing zoning classification for property accomplished legitimate public purpose -- County's allegations that denial of rezoning would prevent urban sprawl, protect water and other natural resources, and avoid increased traffic were not supported by competent substantial evidence -- Petition for writ of certiorari is granted

WILLIAM F. SUTTON FAMILY LLP and WILLIAM SUTTON, JR. and CAROL SUTTON, Petitioners, v. HILLSBOROUGH COUNTY BOARD OF COUNTY COMMISSIONERS, Respondent. Circuit Court, 13th Judicial Circuit (Appellate) in and for Hillsborough County, General Civil Division. Case No. 17-CA-9223, Division B. November 29, 2018. Counsel: Hala A. Sandridge, Buchanan Ingersoll & Rooney PC, Tampa, for Petitioner. Louis Whitehead, III, Tampa, for Respondent.

On Motion for Rehearing.

In light of the parties' Motions for Rehearing, the Court withdraws its original opinion and substitutes the opinion below. The result is unchanged.

ORDER GRANTING PETITION FOR WRIT OF CERTIORARI

(FOSTER, J.) This case is before the Court on the Sutton Family LLP and William Sutton, Jr. and Carol Sutton's Petition for Writ of Certiorari. The Petition seeks review of the Hillsborough County Board of County Commissioners' decision to reject its rezoning application despite complete administrative approval, because the decision, as memorialized in Resolution RR17-106 is unsupported by competent, substantial evidence. This court has jurisdiction to review this final agency action. *Haines City Comm'ty Development v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995) [20 Fla. L. Weekly S318a] (common-law certiorari available to review quasi-judicial orders of local agencies and boards not made subject to the Administrative Procedure Act when no other method of review is provided). This Court reviews the petition to determine (1) whether procedural due process is accorded; (2) whether the essential requirements of law have been observed; and (3) whether the administrative findings and judgment are supported by competent substantial evidence." *Id.* There is no due process challenge in this proceeding.

The initial burden of the landowner to obtain a zoning and the subsequent burden of the landowner appealing a zoning decision are set forth in *Bd. of County Commissioners of Brevard County v. Snyder*, 627 So. 2d 469, 476 (Fla. 1993). It provides:

> . . . a landowner seeking to rezone property has the burden of proving that the proposal is consistent with the comprehensive plan and complies with all procedural requirements of the zoning ordinance. At this point, the burden shifts to the governmental board to demonstrate that maintaining the existing zoning classification with respect to the property accomplishes a legitimate public purpose. In effect, the landowners' traditional remedies will be subsumed within this rule, and the board will now have the burden of showing that the refusal to rezone the property is not arbitrary, discriminatory, or unreasonable. If the board carries its burden, the application should be denied.
>
> . . . . [I]n order to sustain the board's action, upon review by certiorari in the circuit court it must be shown that there was competent substantial evidence presented to the board to support its ruling.

Because the County's decision is unsupported by competent substantial evidence such that the denial of the rezoning departed from the essential requirements of law, this Court must grant the Petition.

THE APPLICATION:

The subject parcel is comprised of 55 acres in a more rural part of Hillsborough County, About 32 percent of the parcel is, however, in the County's Urban Service Area. In 1993, Hillsborough County adopted the Urban Service Area as part of the County's long-range comprehensive plan. The Urban Service Area allows the County to maximize infrastructure investments within a boundary where services are available and most needed as growth continues, rather than allow growth where there are few or no planned urban services.[1]

Under Comp Plan Policy 1.9, parcels under 100 acres with more than 25 percent located in the Urban Service Area are required to connect any development to public water and sewer, thus avoiding the use of septic tanks, which are discouraged under the Comp Plan and the County's Land Development Code. Comp Plan Policy 1.5; §§3.04.02(A); 6.01.06, LDC. With 32 percent of their property within the Urban Service Area, the Sutton property would be required to connect to county water and sewer. The Suttons' property also falls within the Comp Plan's Keystone-Odessa and the Carrollwood-Northdale Community Plans. The Keystone-Odessa Community Plan likewise encourages developments on larger acreages to cluster in order to achieve areas of meaningful open space.

In July 2016, the Suttons submitted a rezoning application for their 55.01 acres, consisting of two parcels located in Odessa. Under the Future Land Use Element of the Hillsborough County Comprehensive Plan ("Comp Plan"), the Suttons are entitled to a density of up to 71 dwelling units on their property. Their rezoning application sought to change the current zoning from ASC-1 (Agricultural Single Family Conventional at 1 unit/acre) to PD (Planned Development) to allow for the development of 67 dwelling units on the property, consistent with the allowable density under the Comp Plan.

The Suttons' initial rezoning application requested one large estate lot of one acre in size, with the remaining 66 lots ranging from 8400 to 9600 square feet. The community was designed around the wetlands to both avoid wetlands and create meaningful open space, resulting in a density of 1.2 dwelling units per acre, less than the 1.29 allowed by the Comp Plan. The proposed development is consistent and compatible with the surrounding pattern of development, as it abuts other Planned Developments with clustered homes and similar densities. The lot sizes in the surrounding areas range from 10,450 square feet to one acre. During the rezoning process, the Suttons further increased the minimum lot size to a minimum of 10,000 square feet, with a majority of the lots at 12,000 square feet. The rezoning proposed a 35-foot maximum building height, which is 15-feet less than the adjacent zoning's 50-foot height.

PUBLIC HEARINGS

Land Use Hearing #1

Under the Hillsborough Land Development Code ("LDC"), a Land Use Hearing Officer ("LUHO") must hold an evidentiary hearing to make findings and recommendation to the BOCC on rezoning applications. The first LUHO public hearing on the Suttons' application took place on October 17, 2016. Neighbors in the area were unhappy with the proposed development. At the scheduled public hearing, the opponents expressed concerns about increased traffic, flooding and general compatibility with the surrounding area. Notably, several of the opponents and the president of the Keystone Civic Association criticized Plan Policy 1.9, which has been in place since 2008, as a "loophole."[2]

In response to citizens' concerns about traffic, the evidence showed transportation issues were reviewed by County staff. Evidence showed the development would cause only a negligible increase in trips. Roads were already operating well below capacity, and the impact would come nowhere near exceeding their capacity. No evidence indicated the presence of any transportation issues. To the extent impacted roads were substandard, the Suttons would be required to improve them.

The Suttons also presented an engineer to address storm-water drainage in response to neighbors' concern about flooding. This expert indicated that before the Suttons filed their application, they met with the neighbors to understand their concerns. The engineer said the development would be required to obtain permits from Hillsborough County, Southwest Florida Water Management District, the Environmental Protection Commission, and the Army Corps [of Engineers]. The developer is required to convey storm water to a pond for collection and treatment. There was no rebuttal to the Suttons' evidence. In addition, every reviewing agency and county staff reviewing the application recommended approval of the rezoning. Flooding was not mentioned as a basis for denial of the application.

The LUHO recommended approval of the proposed project. She said the neighbors' concerns about Policy 1.9 were immaterial because the policy was part of the Comprehensive Plan, and the application must be viewed against policies in effect at the time of the application. In addition, she determined the expert evidence showed the roads would be safer when the developer completed all required roadwork, a condition for approval. She further indicated the proposed clustered development was compatible with the existing surrounding area, which included Planned Developments on smaller lots, and its clustered design was encouraged by the Keystone Community plant to promote open space.

BOCC Hearing #1

Thereafter the application went to the Board of County Commissioners (BOCC) for approval. As noted by the County in its response to the Petition, the Land Development Code characterizes this as a public meeting, but one that provides notice only to those who participated in the LUHO hearing. Its decision must be based on evidence in the record. LDC §10.03.04. It is not itself an evidentiary proceeding. Despite significant evidence supporting the project and its consistency with the Keystone-Odessa and Carrollwood-Northdale Community Plans, the BOCC remanded the matter back to the LUHO to reconsider the neighbors' traffic safety concerns.

After the first hearing, unhappy neighbors undertook to amend the County's Comprehensive Plan, specifically Policy 1.9, in hopes of removing the project from the Urban Service Area. The same Planning Commission that had previously found the Suttons' rezoning application consistent with the Comp Plan recommended approval of an amendment to Policy 1.9. In its July 24, 2017, executive summary of the amendment, the Planning Commission staff expressly acknowledged that the amendment was "intended to address a concern regarding a proposed rezoning in the Keystone-Odessa area that could potentially meet the existing criteria of Policy 1.9."

LUHO Hearing #2

On remand before the LUHO, the Suttons revised their plan to increase the number of access points to the proposed development, which the LUHO determined furthered compliance with the Comp Plan. In addition, the Suttons' traffic consultant, who has been qualified by the Department of Transportation as a transportation expert, testified that the improvements to roads required as a condition of the rezoning would improve traffic safety. In addition, staff from the Development Services Department, Planning Commission, and Public Works Department testified that the development was in compliance and would be safer with the proposed conditions. The neighbors voiced their concerns over increased traffic and compatibility but offered no expert evidence to support their concerns or rebut the Suttons' evidence. Again, the LUHO recommended approval based on the new information and conditions.

BOCC Hearing #2

Following the LUHO proceeding, the matter went back to the BOCC for a second hearing. By that time, the site plan reduced the number of sites to 63 and increased the minimum lot size from 8400 to 10,000 square feet, with the average lot size being 12,000 square feet. This lot size was as large and in some cases larger than many lots in similar surrounding developments. The Suttons again presented evidence regarding the impact -- or relative lack of it -- on traffic in the surrounding area. The neighbors offered no contrary evidence, instead focusing on their proposed amendment to Policy 1.9, which had not been adopted. The version of Policy 1.9 in place at the time of the application allowed the proposed development. Admonished by one county commissioner to work things out, the parties were unable to reach a compromise, even after the Suttons reduced the number to 55 lots,

effecting a one-home-per-acre average density on the property. The same commissioner who advised the neighbors to work it out opined there was no legal reason to deny the application. Thereafter, however, the BOCC, including the aforementioned commissioner, denied the rezoning application. The Board's stated reason was the project's incompatibility with development in the surrounding area.

ANALYSIS:

Section 125.022, Fla. Stat. requires that "when a county denies an application for a development permit, the county shall give written notice to the applicant. *The notice must include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority for the denial of the permit.*" Under §125.022 (3), which incorporates §163.3164, "development permit" includes any "zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land." Here, the decision was reduced to writing in the form of Resolution RR17-106 as required. §10.03.04.G, LDC. This court determines that the requested modification falls under this definition. In so doing, the County was required to set forth reasons for the denial. Section 162.022, Fla. Stat.

In the resolution, the BOCC determined the application was inconsistent with the Comp Plan. One of the reasons for this determination was the smaller size of the lots in comparison with other developments, which the BOCC said was incompatible with surrounding development and would increase traffic. None of these findings is supported by the evidence. Indeed several developments nearby are Planned Developments with lots similar in size than the 10-12,000 square foot lot size requested by the Suttons. The clustering of homes is encouraged by the Keystone-Odessa Community Plan and facilitates compliance with Policy 1.9. No evidence supports that traffic would significantly increase or that any increase would exceed existing roads' capacity. To the extent any roadway was determined to be substandard, a condition of approval is that the developer improve them.

Testimony by a member of the Hillsborough County City-County Planning Commission expressly indicated the application met all of the provisions of the Future Land Use Element and key components of the Keystone Community Plan. Although the same individual noted the lots were (at least initially) smaller than platted lots in the general area, they are not incompatible. He further noted that Policy 1.4 clearly states that "compatibility does not mean 'the same as.' "

The staff report prepared by the County's Development Services Department and signed by its Zoning Administrator noted that properties to the east of the proposed development were about 10,450 square feet, smaller than the 12,000 square feet of the amended proposal. Another development to the south of the proposed project contained lots ranging from 10,000 to 14,000 square feet. Because the proposed project was designed to provide significant buffers between smaller lots and adjacent properties with larger lots, county staff concluded the project was compatible with surrounding development.

Similarly, the LUHO, in two separate hearings concluded the request was compatible with the character of the area and the intent of the County's Land Development Code and the Comp Plan. In short, there was substantial evidence to support approval of the proposed project; none supports its denial.

Under *Snyder*, a landowner seeking to rezone property has the burden of proving that the proposal is consistent with the comprehensive plan and complies with all procedural requirements of the zoning ordinance. If met, the burden then shifts to the governmental board to demonstrate that maintaining the existing zoning classification with respect to the property accomplishes a legitimate public purpose. In order to sustain the board's action, upon review by certiorari in the circuit court it must be shown that there was competent substantial evidence presented to the board to support its ruling. Competent, substantial evidence is evidence that is sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. *DeGroot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957). Here, the Suttons provided substantial evidence as to the minimal traffic impact of the development along with its general consistency with area community plans and the Comp Plan, securing approval from every agency from which approval was required.

In contrast, neither the County nor the neighbors offered any experts, independent traffic study, agency representative or staff person to support concerns raised against the project. Rather, the neighbors offered, and

the County accepted, their opinions that the development would create more traffic and was somehow incompatible with the surrounding area. Fact-based lay testimony can and should be considered by administrative bodies making zoning decisions. *Marion County v. Priest*, 786 So. 2d 623, 625 (Fla. 5th DCA 2001) [26 Fla. L. Weekly D1098b] (quashing decision of the circuit court not considering whether the testimony of neighbors was competent and substantial evidence supporting county's decision); *City of Jacksonville Beach v. Car Spa, Inc.*, 772 So. 2d 630, 631-32 (Fla. 1st DCA 2000) [25 Fla. L. Weekly D2867a] (circuit court erred in rejecting testimony of individuals regarding noise levels and negative impact, existing traffic problems, and adverse impact upon property values as essentially irrelevant). But complaints and objections constituting opinions, without more, do not amount to competent evidence and should be rejected. *Conetta v. City of Sarasota*, 400 So. 2d 1051, 1053 (Fla. 2d DCA 1981) and *Pollard v. Palm Beach County*, 560 So. 2d 1358, 1359-60 (Fla. 4th DCA 1990).

Because the County's decision is not supported by competent substantial evidence, the burden shifted to the County to demonstrate that maintaining the existing zoning classification with respect to the property accomplishes a legitimate public purpose. In its response to the Petition, the County makes vague allegations as to its desire to prevent urban sprawl, and protect water and other natural resources. These stated bases for denying the application also lack evidentiary support. Residential development is already contemplated by the Comp Plan, and connection to urban services such as sewer and water are required. In the challenged plan 63-units are contemplated on parcels averaging nearly a half-acre in size. By clustering the homes, the design creates more green space, protects trees, water and the flood plain, and promotes a more efficient connection to water and sewer services. Moreover, neither the County nor the neighbors have presented evidence that the Suttons' plan is less efficient, less green, creates more traffic, or that the design currently allowed would promote agricultural use.

With regard to traffic, which forms the main stated basis for the neighbors' objection and the County's rejection, the difference between the 63 lots originally proposed as compared with 55 allowed under the current zoning, would result in an additional nine trips during morning rush hour and 12 during the evening rush hour, a negligible increase. Moreover, conditions the County imposed required that improvements be made to Copeland Road that would result in better conditions there. Both county staff and the Suttons's expert agreed the project addresses and mitigates any traffic impacts. Several roads in the surrounding area were operating so far below capacity that they could easily accommodate this development. As such, the County has failed to satisfy its shifting burden. For all the reasons expressed above, the Suttons' Petition for Writ of Certiorari is granted and the order of the County is quashed.

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[1]http://www.planhillsborough.org/urban-service-area/.

[2]Again, Policy 1.9 required the development, located in the Urban Service Area, to connect to county utilities.

* * *

273 So.3d 972 (Table)
Unpublished Disposition
(This unpublished disposition is referenced in the Southern Reporter.)
District Court of Appeal of Florida, Second District.

HILLSBOROUGH COUNTY BOARD OF COUNTY COMMISSIONERS, Petitioner,

v.

WILLIAM F. SUTTON FAMILY, LLP, William Sutton, Jr., and Carol Sutton, Respondents.

Case No. 2D18-5121

Opinion filed May 24, 2019.

Petition for Writ of Certiorari to the Circuit Court for Hillsborough County; Robert A. Foster, Jr., Judge.

Attorneys and Law Firms

Louis Whitehead, III, of Hillsborough County Attorney's Office, Tampa, for Petitioner.

Hala A. Sandridge and Andrea E. Zelman of Buchanan, Ingersoll, & Rooney, P.C., Tampa, for Respondents.

Opinion

PER CURIAM.

*1 Denied.

NORTHCUTT, SILBERMAN, and BADALAMENTI, JJ., Concur.

All Citations

273 So.3d 972 (Table), 2019 WL 2246809

End of Document

Belleair Development, LLC
Major Modification Rezoning Application
MM 22-0862

Zoning Hearing Master
July 25, 2022

PRINCIPLES OF CITIZEN TESTIMONY IN QUASI-JUDICIAL HEARINGS

- "A quasi-judicial hearing generally meets basic due process requirements if the parties are provided notice of the hearing and an opportunity to be heard. In quasi-judicial zoning proceedings, the parties must be able to present evidence, cross-examine witnesses, and be informed of all the facts upon which the commission acts." *Jennings v. Dade County*, 589 So. 2d 1337, 1340 (Fla. 3d DCA 1991).

    - While "parties" in a quasi-judicial hearing are provided basic due process rights, "participants" are only provided with the right to attend the hearing and the right to be heard. Participants are not provided with other due process rights, such as the right to cross-examine witnesses. *Carillon Community Residential v. Seminole County*, 45 So. 3d 7, 9–10 (Fla. 5th DCA 2010); *Miromar Development Corp. v. Lee County*, No. 15-CA-1261, 2016 WL 4464076 (Fla. Cir. Ct. June 30, 2016).

- All quasi-judicial hearings must be decided based upon "competent, substantial evidence," which has been described by the Florida Supreme Court:

    > "Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred. We have stated it to be such relevant evidence as a reasonable mind would accept as adequate to support a conclusion....[T]he evidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." *Pollard v. Palm Beach County,* 560 So. 2d 1358, 1359-60 (Fla. 4th DCA 1990) (per curiam) (quoting *DeGroot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957)).

- To constitute competent, substantial evidence, all testimony in quasi-judicial hearings—from both laypersons and experts alike—must be specific and fact-based, rather than

mere generalized opposition. *Hialeah Gardens v. Miami-Dade Charter Found., Inc.*, 857 So. 2d 202, 204 (Fla. 3d DCA 2003).

- Therefore, "bare allegations"; matter that merely "creates a suspicion"; and matter that is merely "[s]urmise, conjecture or speculation" are not enough. *Fla. Rate Conf. v. Fla. R.R. & Pub. Utils. Comm'n*, 108 So. 2d 601, 607-08 (Fla. 1959).

- And while the facts presented by objectors may be considered, any "subjective" materials may not, and objectors' materials cannot be given a cumulative effect simply because a large number of people agree with those facts or opinions. *Lee County v. Sunbelt Equities, II, Ltd. P'ship*, 619 So. 2d 996, 999 n.1 (Fla. 2d DCA 1993); *Pollard,* 560 So. 2d at 1360; *Conetta v. City of Sarasota*, 400 So. 2d 1051, 1052 (Fla. 2d DCA 1981).

- Similarly, speculative concerns about the future zoning of an area or a general desire to maintain the status quo are not allowable. *Apopka v. Orange County*, 299 So. 2d 657 (Fla. 4th DCA 1974).

- Moreover, lay testimony cannot be accepted on technical matters that would require an expert opinion. *Katherine's Bay, LLC v. Fagan*, 52 So. 3d 19, 30 (Fla. 1st DCA 2010); *Jesus Fellowship, Inc. v. Miami-Dade County*, 752 So. 2d 708, 710 (Fla. 3d DCA 2000); *see also Miami-Dade County v. Omnipoint Holdings, Inc.*, 863 So. 2d 375, 377 (Fla. 3d DCA 2003).

  - For example, lay speculation about potential problems, such as traffic issues, light and noise pollution, general unfavorable impacts, and property value, does not constitute competent, substantial evidence. *Fagan*, 52 So. 3d at 30.

Belleair Development, LLC
Major Modification Rezoning Application
MM 22-0862

Zoning Hearing Master
July 25, 2022

PRINCIPLES OF CITIZEN TESTIMONY IN QUASI-JUDICIAL HEARINGS

TABLE OF CONTENTS

589 So.2d 1337
District Court of Appeal of Florida,
Third District.

Milton S. JENNINGS, Appellant,
v.
DADE COUNTY and Larry Schatzman, Appellees.

Nos. 88–1324, 88–1325.
|
Aug. 6, 1991.
|
On Rehearing Granted Dec. 17, 1991.

Synopsis
Landowner petitioned for writ of certiorari to challenge trial court order which dismissed landowner's count alleging due process violation as result of ex parte communication between adjacent landowner's lobbyist and county commissioners before vote approving use variance for adjacent landowner, which gave to landowner leave to amend complaint only against county, and which denied motion to dismiss count alleging nuisance as result of permitted use. The District Court of Appeal, Nesbitt, J., held on rehearing that: (1) landowner's timely petition activated common-law certiorari jurisdiction; (2) lobbyist's ex parte communication could violate due process despite landowner's actual and constructive knowledge of ex parte communication; and (3) landowner's prima facie case of ex parte contacts would give rise to presumption of prejudice and shift burden to adjacent landowner and county to rebut the presumption.

Quashed and remanded.

Ferguson, J., filed concurring opinion upon grant of rehearing.

West Headnotes (18)

[1] **Zoning and Planning** ⇨ Further Review

Landowner's timely petition activated common-law certiorari jurisdiction to review trial court order which dismissed count alleging ex parte communication between adjacent landowner's lobbyist and county commissioners prior to approval of variance, which gave to landowner leave to amend complaint only against county and to transfer matter to appellate division of circuit court, and which denied motion to dismiss count alleging that use permitted by variance constituted nuisance; order was departure from essential requirements of law and required plaintiff landowner to litigate putative claim in proceeding that could not afford relief requested.

1 Cases that cite this headnote

[2] **Zoning and Planning** ⇨ Further Review

No impediment existed to exercise of jurisdiction over defendant landowner, in that common-law certiorari jurisdiction was activated by plaintiff landowner's timely petition.

[3] **Constitutional Law** ⇨ Notice and Hearing

Quality of due process required in quasi-judicial hearing is not same as that to which party to full judicial hearing is entitled. West's F.S.A. Const. Art. 1, § 9; U.S.C.A. Const.Amends. 5, 14.

7 Cases that cite this headnote

[4] **Administrative Law and Procedure** ⇨ Judicial Procedure in General, Applicability

Administrative Law and Procedure ⇨ Rules of evidence

Quasi-judicial proceedings are not controlled by strict rules of evidence and procedure.

2 Cases that cite this headnote

[5] **Constitutional Law** ⇨ Decision or determination

Quasi-judicial decision based upon record is not conclusive if minimal standards of due process are denied. West's F.S.A. Const. Art. 1, § 9; U.S.C.A. Const.Amends. 5, 14.

1 Cases that cite this headnote

[6] **Constitutional Law** ⇨ Notice and Hearing

Quasi-judicial hearing generally meets basic due process requirements if parties are provided notice of hearing and opportunity to be heard. West's F.S.A. Const. Art. 1, § 9; U.S.C.A. Const.Amends. 5, 14.

12 Cases that cite this headnote

[7] **Zoning and Planning** ⇨ Hearings and meetings in general

In quasi-judicial zoning proceedings, parties must be able to present evidence, cross-examine witnesses, and be informed of all facts upon which commission acts.

7 Cases that cite this headnote

[8] **Constitutional Law** ⇨ Proceedings and review

Ex parte communication between landowner's lobbyist and county commissioners before they voted to approve use variance for landowner could violate due process despite adjacent landowner's actual or constructive knowledge of communication and failure to subpoena lobbyist. West's F.S.A. Const. Art. 1, § 9; U.S.C.A. Const.Amends. 5, 14.

[9] **Administrative Law and Procedure** ⇨ Nature of Disqualifying Relationship, Conduct, or Circumstance

Ex parte communications are inherently improper and are anathema to quasi-judicial proceedings; quasi-judicial officer should avoid all such contacts where they are identifiable.

1 Cases that cite this headnote

[10] **Administrative Law and Procedure** ⇨ Nature of Disqualifying Relationship, Conduct, or Circumstance

Occurrence of ex parte communication in quasi-judicial proceeding does not mandate automatic reversal.

1 Cases that cite this headnote

[11] **Administrative Law and Procedure** ⇨ Nature of Disqualifying Relationship, Conduct, or Circumstance

Allegation of prejudice resulting from ex parte contacts with decision makers in quasi-judicial proceeding states cause of action.

[12] **Administrative Law and Procedure** ⇨ Nature of Disqualifying Relationship, Conduct, or Circumstance

Administrative Law and Procedure ⇨ Presumptions and burdens of proof

Upon aggrieved party's proof that ex parte contact occurred with decision makers in quasi-judicial proceeding, its effect is presumed to be prejudicial, unless defendant proves contrary by competence evidence. West's F.S.A. § 90.304.

[13] **Constitutional Law** ⇨ Hearings and adjudications

In determining prejudicial effect of ex parte communication allegedly violating due process in quasi-judicial proceeding, trial court should consider the following criteria: what was gravity of ex parte communication; whether contacts may have influenced agency's ultimate decision; whether party making improper contacts benefited from agency's ultimate decision; whether contents of communications were unknown to opposing parties; and whether vacating of agency's decision on remand for new proceedings would serve useful purpose. West's F.S.A. Const. Art. 1, § 9; U.S.C.A. Const.Amends. 5, 14.

[14] **Counties** ⇨ Appeals from decisions

Allegation of prejudicial ex parte communication in quasi-judicial proceeding before county commission enables party to maintain original equitable cause of action to establish its claim.

1 Cases that cite this headnote

[15] **Counties** ⇨ Appeals from decisions

Once claim of prejudicial ex parte communication in quasi-judicial proceeding before county commission is established, offending party will be required to prove absence of prejudice.

1 Cases that cite this headnote

[16] **Zoning and Planning** ⇨ Variances and exceptions

Landowner's prima facie case of ex parte contact between adjacent landowner's lobbyist and county commissioners before they voted to approve use variance for adjacent landowner would give rise to presumption of prejudice. West's F.S.A. § 90.304.

[17] **Zoning and Planning** ⇨ Rebuttal of presumptions

Landowner's prima facie case of ex parte contacts between adjacent landowner's lobbyist and commissioners before they voted to approve use variance for adjacent landowner would shift burden to county and adjacent landowner to rebut presumption of prejudice. West's F.S.A. § 90.304.

[18] **Zoning and Planning** ⇨ Rebuttal of presumptions

To rebut presumption of prejudice from ex parte contacts between landowner's lobbyist and county commissioners before they voted to approve use variance for landowner, landowner could rely on any favorable evidence presented during adjacent landowner's case-in-chief, including that adduced during cross-examination of adjacent landowner's witnesses. West's F.S.A. § 90.304.

Attorneys and Law Firms

*1339 John G. Fletcher, South Miami, for appellant.

Robert D. Korner and Roland C. Robinson, Miami, Robert A. Ginsburg, County Atty., and Eileen Ball Mehta and Craig H. Coller, Asst. County Attys., for appellees.

Joel V. Lumer, Miami, for The Sierra Club as Amicus Curiae.

Before BARKDULL,* NESBITT and FERGUSON, JJ.

ON REHEARING GRANTED

NESBITT, Judge.

The issue we confront is the effect of an ex parte communication upon a decision emanating from a quasi-judicial proceeding of the Dade County Commission. We hold that upon proof that a quasi-judicial officer received an ex parte contact, a presumption arises, pursuant to section 90.304, Florida Statutes (1989), that the contact was prejudicial. The aggrieved party will be entitled to a new and complete hearing before the commission unless the defendant proves that the communication was not, in fact, prejudicial. For the reasons that follow, we quash the order under review with directions.

Respondent Schatzman applied for a variance to permit him to operate a quick oil change business on his property adjacent to that of petitioner Jennings. The Zoning Appeals Board granted Schatzman's request. The county commission upheld the board's decision. Six days prior to the commission's action, a lobbyist Schatzman employed to assist him in connection with the proceedings registered his identity as required by section 2–11.1(s) of the Dade County Ordinances. Jennings did not attempt to determine the content of any communication between the lobbyist and the commission or otherwise challenge the propriety of any communication prior to or at the hearing.

Following the commission order, Jennings filed an action for declaratory and injunctive relief in circuit court wherein he alleged that Schatzman's lobbyist communicated with some or all of the county commissioners prior to the vote, thus denying Jennings due process both under the United States and Florida constitutions as well as section (A)(8) of the Citizens' Bill of Rights, Dade County Charter. Jennings requested ***1340** the court to conduct a hearing to establish the truth of the allegations of the complaint and upon a favorable determination then to issue an injunction prohibiting use of the property as allowed by the county. Based upon the identical allegations, Jennings also claimed in the second count of his complaint that Schatzman's use of the permitted variance constituted a nuisance which he requested the court to enjoin. The trial court dismissed Count I of the complaint, against both Dade County and Schatzman. The court gave Jennings leave only against Dade County to amend the complaint and to transfer the matter to the appellate division of the circuit court. The trial court denied Schatzman's motion to dismiss Count II and required him to file an answer. Jennings then timely filed this application for common law certiorari.

[1] **[2]** We have jurisdiction based on the following analysis. The trial court's order dismissed Jennings' equitable claim of non-record ex parte communications while it simultaneously reserved jurisdiction for Jennings to amend his complaint so as to seek common law certiorari review pursuant to *Dade County v. Marca, S.A.*, 326 So.2d 183 (Fla.1976). Under *Marca,* Jennings would be entitled solely to a review of the record as it now exists. However, since the content of ex parte contacts is not part of the existing record, such review would prohibit the ascertainment of the contacts' impact on the commission's determination. This order has the effect then of so radically altering the relief available to Jennings that it is the functional equivalent of requiring him to litigate in a different forum. Thus, Jennings' timely petition activates our common law certiorari jurisdiction because the order sought to be reviewed a) constitutes a departure from the essential requirements of law, and b) requires him to litigate a putative claim in a proceeding that cannot afford him the relief requested and for that reason does not afford him an adequate remedy. *See Tantillo v. Miliman,* 87 So.2d 413 (Fla.1956); *Norris v. Southern Bell Tel. & Tel. Co.*, 324 So.2d 108 (Fla. 3d DCA 1960). The same reasoning does not apply against Schatzman. Nonetheless, because we have jurisdiction, there is no impediment to our exercising it over Schatzman as a party.

[3] **[4]** **[5]** **[6]** **[7]** At the outset of our review of the trial court's dismissal, we note that the quality of due process required in a quasi-judicial hearing is not the same as that to which a party to full judicial hearing is entitled. *See Goss v. Lopez,* 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975); *Hadley v. Department of Admin.*, 411 So.2d 184 (Fla.1982). Quasi-judicial proceedings are not controlled by strict rules of evidence and procedure. *See Astore v. Florida Real Estate Comm'n,* 374 So.2d 40 (Fla. 3d DCA

1979); *Woodham v. Williams,* 207 So.2d 320 (Fla. 1st DCA 1968). Nonetheless, certain standards of basic fairness must be adhered to in order to afford due process. *See Hadley,* 411 So.2d at 184; *City of Miami v. Jervis,* 139 So.2d 513 (Fla. 3d DCA 1962). Consequently, a quasi-judicial decision based upon the record is not conclusive if minimal standards of due process are denied. *See Morgan v. United States,* 298 U.S. 468, 480–81, 56 S.Ct. 906, 911–12, 80 L.Ed. 1288 (1936); *Western Gillette, Inc. v. Arizona Corp. Comm'n,* 121 Ariz. 541, 592 P.2d 375 (Ct.App.1979). A quasi-judicial hearing generally meets basic due process requirements if the parties are provided notice of the hearing and an opportunity to be heard. In quasi-judicial zoning proceedings, the parties must be able to present evidence, cross-examine witnesses, and be informed of all the facts upon which the commission acts. *Coral Reef Nurseries, Inc. v. Babcock Co.,* 410 So.2d 648, 652 (Fla. 3d DCA 1982).[1]

The reported decisions considering the due process effect of an ex parte communication upon a quasi-judicial decision are conflicting. Some courts hold that an ex parte communication does not deny due process where the substance of the communication was capable of discovery by the complaining party in time to rebut it on the record. *See, e.g.,* ***1341** *Richardson v. Perales,* 402 U.S. 389, 410, 91 S.Ct. 1420, 1431–32, 28 L.Ed.2d 842 (1971); *United Air Lines, Inc. v. C.A.B.,* 309 F.2d 238 (D.C.Cir.1962); *Jarrott v. Scrivener,* 225 F.Supp. 827, 834 (D.D.C.1964). Other courts focus upon the nature of the ex parte communication and whether it was material to the point that it prejudiced the complaining party and thus resulted in a denial of procedural due process. *E.g., Waste Management v. Pollution Control Bd.,* 175 Ill.App.3d 1023, 125 Ill.Dec. 524, 530 N.E.2d 682 (Ct.App.1988), *appeal denied,* 125 Ill.2d 575, 130 Ill.Dec. 490, 537 N.E.2d 819 (1989); *Professional Air Traffic Controllers Org. (PATCO) v. Federal Labor Relations Auth.,* 685 F.2d 547, 564–65 (D.C.Cir.1982); *Erdman v. Ingraham,* 28 A.D.2d 5, 280 N.Y.S.2d 865, 870 (Ct.App.1967).

[8] The county adopts the first position and argues that Jennings was not denied due process because he either knew or should have known of an ex parte communication due to the mandatory registration required of lobbyists. The county further contends that Jennings failed to avail himself of section 33–316 of the Dade County Code to subpoena the lobbyist to testify at the hearing so as to detect and refute the content of any ex parte communication. We disagree with the county's position.

[9] [10] [11] [12] Ex parte communications are inherently improper and are anathema to quasi-judicial proceedings. Quasi-judicial officers should avoid all such contacts where they are identifiable. However, we recognize the reality that commissioners are elected officials in which capacity they may unavoidably be the recipients of unsolicited ex parte communications regarding quasi-judicial matters they are to decide. The occurrence of such a communication in a quasi-judicial proceeding does not mandate automatic reversal. Nevertheless, we hold that the allegation of prejudice resulting from ex parte contacts with the decision makers in a quasi-judicial proceeding states a cause of action. *E.g., Waste Management; PATCO.* Upon the aggrieved party's proof that an ex parte contact occurred, its effect is presumed to be prejudicial unless the defendant proves the contrary by competent evidence. § 90.304. *See generally Caldwell v. Division of Retirement,* 372 So.2d 438 (Fla.1979) (for discussion of rebuttable presumption affecting the burden of proof). Because knowledge and evidence of the contact's impact are peculiarly in the hands of the defendant quasi-judicial officer(s), we find such a burden appropriate. *See Technicable Video Sys. v. Americable,* 479 So.2d 810 (Fla. 3d DCA 1985); *Allstate Finance Corp. v. Zimmerman,* 330 F.2d 740 (5th Cir.1964).

[13] In determining the prejudicial effect of an ex parte communication, the trial court should consider the following criteria which we adopt from *PATCO,* 685 F.2d at 564–65:

> [w]hether, as a result of improper ex parte communications, the agency's decisionmaking process was irrevocably tainted so as to make the ultimate judgment of the agency unfair, either as to an innocent party or to the public interest that the agency was obliged to protect. In making this determination, a number of considerations may be relevant: the gravity of the ex parte communications; whether the contacts may have influenced the agency's ultimate decision; whether the party making the improper contacts benefited from the agency's ultimate decision; whether the

contents of the communications were unknown to opposing parties, who therefore had no opportunity to respond; and whether vacation of the agency's decision and remand for new proceedings would serve a useful purpose. Since the principal concerns of the court are the integrity of the process and the fairness of the result, mechanical rules have little place in a judicial decision whether to vacate a voidable agency proceeding. Instead, any such decision must of necessity be an exercise of equitable discretion.

Accord E & E Hauling, Inc. v. Pollution Control Bd., 116 Ill.App.3d 586, 71 Ill.Dec. 587, 603, 451 N.E.2d 555, 571 (Ct.App.1983), *aff'd*, 107 Ill.2d 33, 89 Ill.Dec. 821, 481 N.E.2d 664 (1985).

[14] **[15]** Accordingly, we hold that the allegation of a prejudicial ex parte communication ***1342** in a quasi-judicial proceeding before the Dade County Commission will enable a party to maintain an original equitable cause of action to establish its claim. Once established, the offending party will be required to prove an absence of prejudice.[2]

[16] **[17]** **[18]** In the present case, Jennings' complaint does not allege that any communication which did occur caused him prejudice. Consequently, we direct that upon remand Jennings shall be afforded an opportunity to amend his complaint. Upon such an amendment, Jennings shall be provided an evidentiary hearing to present his prima facie case that ex parte contacts occurred. Upon such proof, prejudice shall be presumed. The burden will then shift to the respondents to rebut the presumption that prejudice occurred to the claimant. Should the respondents produce enough evidence to dispel the presumption, then it will become the duty of the trial judge to determine the claim in light of all the evidence in the case.[3,4]

For the foregoing reasons, the application for common law certiorari is granted. The orders of the circuit court are quashed[5] and remanded with directions.

BARKDULL, J., concurs.

FERGUSON, Judge (concurring).

I concur in the result and write separately to address two arguments of the appellees: (1) This court in *Coral Reef Nurseries, Inc. v. Babcock Co.*, 410 So.2d 648 (Fla. 3d DCA 1982), rejected attempts to categorize county commission hearings on district boundary changes as "legislative," while treating hearings on applications for special exceptions or variances as "quasi-judicial"; and (2) the petitioner does not state a cause of action by alleging simply that a lobbyist discussed the case in a private meeting with members of the County Commission prior to the hearing. It is clear from Judge Nesbitt's opinion for the court that neither argument is accepted.

Legislative and Quasi–Judicial Functions Distinct

In support of its argument, that "[t]his Court has previously rejected attempts to categorize county commission hearings on district boundary changes as 'legislative', while treating hearings on applications for special exceptions or variances as 'quasi-judicial'," Dade County cites *Coral Reef Nurseries, Inc. v. Babcock Company*, 410 So.2d 648 (Fla. 3d DCA 1982). The argument is made for the purpose of bringing this case within what the respondents describe as a legislative-function exception to the rule against ex parte communications. Indeed, there is language in the *Coral Reef* opinion, particularly the dicta that "it is the character of the administrative hearing leading to the action of the administrative body that determines the label" as legislative or quasi-judicial, *Coral Reef* at 652, which, when read out of context, lends support to Dade County's contentions. As an abstract proposition, the statement is inaccurate.

Whereas the character of an administrative hearing will determine whether the proceeding is quasi-judicial or executive, *De Groot v. Sheffield*, 95 So.2d 912, 915 (Fla.1957), it is the nature of the act performed that determines its character as legislative or otherwise. *Suburban Medical Center v. Olathe Community Hosp.*, 226 Kan. 320, 328, 597 P.2d 654, 661 (1979). *See also* ***1343** *Walgreen Co. v. Polk County*, 524 So.2d 1119, 1120 (Fla. 2d DCA 1988) ("The quasi-judicial nature of a proceeding is not altered by mere procedural flaws.").

> A judicial inquiry investigates, declares and enforces liabilities as they stand on present facts and under laws supposed already to exist. That is its purpose and end. Legislation, on the other hand, looks to the future and changes existing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power.

Suburban Medical Center, 597 P.2d at 661 (quoting *Prentis v. Atlantic Coast Line Co.,* 211 U.S. 210, 226, 29 S.Ct. 67, 69, 53 L.Ed. 150 (1908)).[1]

It is settled that the enactment and amending of zoning ordinances is a legislative function—by case law, *Schauer v. City of Miami Beach,* 112 So.2d 838 (Fla.1959); *Machado v. Musgrove,* 519 So.2d 629 (Fla. 3d DCA 1987) (en banc), *rev. denied,* 529 So.2d 694 (Fla.1988), by statute, sections 163.3161 and 166.041, Florida Statutes (1989), and by ordinance, Dade County Code § 35–303. *See also* Anderson, *Law of Zoning,* § 1.13 (2d Ed.1976) (zoning is a legislative act representing a legislative judgment as to how land within the city should be utilized and where the lines of demarcation between the several zones should be drawn); 101 C.J.S. *Zoning and Land Planning* § 1 (1958) (same). It is also fairly settled in this state that the granting of variances,[2] and special exceptions or permits, are quasi-judicial actions.[3] *Walgreen Co. v. Polk County,* 524 So.2d 1119, 1120 (Fla. 2d DCA 1988); *City of New Smyrna Beach v. Barton,* 414 So.2d 542 (Fla. 5th DCA) (Cowart, J., concurring specially), *rev. denied,* 424 So.2d 760 (Fla.1982); *City of Apopka v. Orange County,* 299 So.2d 657 (Fla. 4th DCA 1974); *Sun Ray Homes, Inc. v. County of Dade,* 166 So.2d 827 (Fla. 3d DCA 1964).

A variance contemplates a nonconforming use in order to alleviate an undue burden on the individual property owner caused by the existing zoning. Rezoning contemplates a change in existing zoning rules and regulations within a district, subdivision or other comparatively large area in a given governmental unit. *Troup v. Bird,* 53 So.2d 717 (Fla.1951); *Mayflower Property, Inc. v. City of Fort Lauderdale,* 137 So.2d 849 (Fla. 2d DCA 1962); 101A C.J.S. *Zoning and Land Planning* § 231 (1979).

Coral Reef Case Clarified

Coral Reef involved a legislative action. The issue before the court was whether ***1344** there was a showing of substantial and material changes in a 1979 application for a rezoning so that a 1978 denial of an application for the same changes, on the same parcel, by the same applicant, would not be precluded by res judicata principles. It was not necessary to hold the 1978 hearing quasi-judicial in character in order to find that the 1978 resolution had preclusive effect on the 1979 zoning hearing. There is a requirement for procedural fairness in all land use hearings, whether on an application for a boundary change or a variance. Adherence to that constitutional standard, however, does not alter the distinct legal differences between quasi-judicial and legislative proceedings in land use cases.

We clarify *Coral Reef,* in accordance with its facts, as holding only that legislation denying an application for rezoning has a preclusive effect on a subsequent application for the same rezoning, unless the applicant can show substantial and material changes in circumstances. *Treister v. City of Miami,* 575 So.2d 218 (Fla. 3d DCA 1991), relying on *Coral Reef.* An interpretation of *Coral Reef* as holding that there is no longer a distinction between legislative actions and quasi-judicial actions of a county commission in land use cases goes far beyond the actual holding of the case, and is clearly erroneous. *See* note 1 *supra.*

Reliance by the respondents on *Izaak Walton League of America v. Monroe County,* 448 So.2d 1170 (Fla. 3d DCA 1984), is similarly misplaced. In that case we held that county commissioners, when acting in their legislative capacities, have the right to publicly state their views on pending legislative matters. *Izaak Walton League* does not address the issue of ex parte communications or prehearing pronouncements in quasi-judicial proceedings.

Lobbying

Jennings argues here that the behind-the-scenes lobbying[4] of the commissioners by Schatzman, for the

purpose of influencing the outcome of an appeal from a quasi-judicial proceeding, violated the Citizens' Bill of Rights[5] of the Dade County Charter, as well as the due process provisions of the United States and Florida Constitutions. We agree, obviously, that the lobbying actions were unlawful. Dade County and Schatzman respond that Jennings is entitled to no relief because he has not alleged and demonstrated a resulting prejudice. In the opinion on rehearing this court now clearly rejects that argument.

Prejudice is to be presumed, without further proof, from the mere fact that any county commissioner granted a private audience to a lobbyist, whose purpose was to solicit the commissioner to vote a certain way in an administrative proceeding for reasons not necessarily addressed solely to the merits of the petition, and that the commissioner did vote accordingly. Starting with the legal definition of lobbying, ***1345** *see* note 4 *supra,* and applying common knowledge as to how the practice works, there is a compelling reason for placing the burden of proving no prejudice on the party responsible for the ex parte communication.

Although an ex parte communication with a quasi-judicial tribunal makes its final action voidable, rather than void *per se,* the presumption which is drawn from the fact of the improper conduct, is applied to promote a strong social policy and is sufficient evidence to convince the fact-finder that the innocent party has been prejudiced; the rebuttable presumption imposes upon the party against whom it operates the burden of proof concerning the nonexistence of the presumed fact.[6] § 90.304, Fla.Stat. (1991); *Department of Agriculture & Consumer Servs. v. Bonanno,* 568 So.2d 24, 31–32 (Fla.1990); Black's Law Dictionary 1349 (4th ed. 1968).

Ex parte lobbying of an administrative body acting quasi-judicially denies the parties a fair, open, and impartial hearing. *Suburban Medical Center v. Olathe Community Hosp.,* 226 Kan. 320, 597 P.2d 654 (1979). Adherence to procedures which insure fairness "is essential not only to the legal validity of the administrative regulation, but also to the maintenance of public confidence in the value and soundness of this important governmental process." *Id.* 597 P.2d at 662 (citing 2 Am.Jur.2d *Administrative Law* § 351). The constitutional compulsions which led to the establishment of rules regarding the disqualification of judges apply with equal force to every tribunal exercising judicial or quasi-judicial functions. 1 Am.Jur.2d *Administrative Law* § 64, at 860 (1962); *City of Tallahassee v. Florida Pub. Serv. Comm'n,* 441 So.2d 620 (Fla.1983) (standard used in disqualifying agency head is same standard used in disqualifying judge). *See also Rogers v. Friedman,* 438 F.Supp. 428 (E.D.Tex.1977) (rule as to disqualification of judges is same for administrative agencies as it is for courts) (citing K. Davis, *Administrative Law* § 12.04, at 250 (1972)). *Ritter v. Board of Comm'rs of Adams County,* 96 Wash.2d 503, 637 P.2d 940 (1981) (same).

All Citations

589 So.2d 1337, 16 Fla. L. Weekly D2059, 17 Fla. L. Weekly D26

Footnotes

* Judge Barkdull participated in decision only.

* Judge Barkdull participated in decision only.

1 It was conceded at oral argument that the hearing before the commission in this case was quasi-judicial.

2 In such a proceeding, the principles and maxims of equity are applicable. *See* 22 Fla.Jur.2d *Equity* §§ 44, et seq. (1980).

3 In rebutting the presumption of prejudice, respondent may rely on any favorable evidence presented during the claimant's case-in-chief, including that adduced during respondent's cross-examination of claimant's witnesses.

4 Under the *PATCO* test adopted, one of the primary concerns is whether the ex parte communication had sufficient impact upon the decision and, therefore, whether the vacation of the agency's decision and remand for a new proceeding would be likely to change the result.

5 Nothing in this decision shall affect our holding in *Izaak Walton League of America v. Monroe County,* 448 So.2d 1170 (Fla. 3d DCA 1984) (county commission acting in a legislative capacity).

1 Relying on *Coral Reef,* the majority opinion refers to "quasi-judicial zoning proceedings," a confounding phrase which has its genesis in *Rinker Materials Corp. v. Dade County,* 528 So.2d 904, 906, n. 2 (Fla. 3d DCA 1987). There Dade County argued to this court that the according of "procedural due process" converts a legislative proceeding into a quasi-judicial proceeding, citing *Coral Reef.* That proposition runs afoul of an entire body of administrative law. If an act is in essence legislative in character, the fact of a notice and a hearing does not transform it into a judicial act. If it would be a legislative act without notice and a hearing, it is still a legislative act with notice and a hearing. *See Prentis v. Atlantic Coast Line Co.,* 211 U.S. 210, 29 S.Ct. 67, 53 L.Ed. 150 (1908); *Reagan v. Farmers' Loan & Trust Co.,* 154 U.S. 362, 14 S.Ct. 1047, 38 L.Ed. 1014 (1894).

2 A variance is a modification of the zoning ordinance which may be granted when such variance will not be contrary to the public interest and when, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship. 7 FlaJur2d, *Building, Zoning, and Land Controls,* § 140 (1978).

The normal function of a variance is to permit a change in "building restrictions or height and density limitations" but not a change in "use classifications". *George v. Miami Shores Village,* 154 So.2d 729 (Fla. 3d DCA 1963).

3 An administrative body acts quasi-judicially when it adjudicates private rights of a particular person after a hearing which comports with due process requirements, and makes findings of facts and conclusions of law on the disputed issues. Reviewing courts scrutinize quasi-judicial acts by non-deferential judicial standards. *See City of Apopka v. Orange County,* 299 So.2d 657 (Fla. 4th DCA 1974).

On review of legislative acts, the court makes a deferential inquiry, *i.e.,* is the exercise of discretionary authority "fairly debatable." *Southwest Ranches Homeowners Ass'n v. Broward County,* 502 So.2d 931 (Fla. 4th DCA), *rev. denied,* 511 So.2d 999 (Fla.1987). Further, there is no requirement that a governmental body, acting in its legislative capacity, support its actions with findings of fact and conclusions of law.

4 " 'Lobbying' is defined as any personal solicitation of a member of a legislative body during a session thereof, by private interview, or letter or message, or other means and appliances *not [necessarily] addressed solely to the judgment,* to favor or oppose, or to vote for or against, any bill, resolution, report, or claim pending, or to be introduced ..., by any person ... who is employed for a consideration by a person or corporation interested in the passage or defeat of such bill, resolution, or report, or claim, for the purpose of procuring the passage or defeat thereof." Black's Law Dictionary 1086 (rev. 4th ed. 1968). (Emphasis supplied). The work of lobbying is performed by lobbyists.

A lobbyist is one who makes it a business to "see" members of a legislative body and procure, by persuasion, importunity, or the use of inducements, the passing of bills, public as well as private, which involve gain to the promoters. *Id.*

5 Section a(8), Citizens' Bill of Rights, Dade County Charter, provides in pertinent part:

> At any zoning or other hearing in which review is exclusively by certiorari, a party or his counsel shall be entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. The decision of any such agency, board, department or authority must be based upon the facts in the record.

6 *PATCO v. Federal Labor Relations Authority,* 685 F.2d 547 (D.C.Cir.1982), relied on by Judge Nesbitt, supports this view. There the court was construing section 557(d)(1) of the Administrative Procedure Act, governing ex parte communications. The Act provides, in subsection (C), that a member of the body involved in the decisional process who receives any prohibited communication shall place the contents of the communication on public record. Subsection (D) states that where the communication was knowingly made by a party in violation of this subsection, the party may be required "to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation." 5 U.S.C.A. § 557(d)(1)(C), (D).

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45 So.3d 7
District Court of Appeal of Florida,
Fifth District.

CARILLON COMMUNITY RESIDENTIAL, etc., et al., Petitioners,
v.
SEMINOLE COUNTY, Florida, AHG Group, LLC., et al., Respondents.

No. 5D09-3789.
|
July 2, 2010.
|
Rehearing Denied Oct. 6, 2010.

Synopsis

Background: Residential association sought judicial review of board of county commissioners' decision amending planned unit development. The Circuit Court, Seminole County, upheld the decision of the board, and association petitioned for certiorari review.

[Holding:] The District Court of Appeal held that board afforded association procedural due process.

Petition denied.

West Headnotes (9)

[1] **Constitutional Law** ⇨ Proceedings and review

Zoning and Planning ⇨ Maps, plats, or plans; subdivisions

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applications
92XXVII(G)3 Property in General
92k4091 Zoning and Land Use
92k4096 Proceedings and review
414 Zoning and Planning
414VIII Permits, Certificates, and Approvals
414VIII(C) Effect of Determination of Permits, Certificates, or Approvals; Revocation
414k1454 Revocation or Modification
414k1459 Maps, plats, or plans; subdivisions

Board of county commissioners afforded petitioners procedural due process, even though board did not allow petitioners to cross examine witnesses at quasi judicial hearing on amendment to planned unit development, where petitioners were participants, but were not parties to the proceedings, and were not being deprived of the use of their property, whereas parties to the proceeding had a compelling interest in developing the property in question, and board permitted participants to direct questions to the board, which in turn were addressed to appropriate individuals. U.S.C.A. Const.Amend. 14.

[2] **Constitutional Law** ⇨ Notice and Hearing

92 Constitutional Law
92XXVII Due Process
92XXVII(B) Protections Provided and Deprivations Prohibited in General
92k3878 Notice and Hearing
92k3879 In general

The core of due process is the right to notice and an opportunity to be heard. U.S.C.A. Const.Amend. 14.

2 Cases that cite this headnote

[3] **Constitutional Law** ⇨ Protections Provided and Deprivations Prohibited in General

92 Constitutional Law
92XXVII Due Process
92XXVII(B) Protections Provided and Deprivations Prohibited in General
92k3865 In general

When assessing whether or not a violation of due process has occurred the court must first decide whether the complaining party has been deprived of a constitutionally protected liberty or property interest;

absent such a deprivation there can be no denial of due process. U.S.C.A. Const.Amend. 14.

1 Cases that cite this headnote

[4] **Constitutional Law** ⚿ Procedural due process in general

Constitutional Law ⚿ Factors considered; flexibility and balancing

92 Constitutional Law
92XXVII Due Process
92XXVII(B) Protections Provided and Deprivations Prohibited in General
92k3867 Procedural due process in general
92 Constitutional Law
92XXVII Due Process
92XXVII(B) Protections Provided and Deprivations Prohibited in General
92k3875 Factors considered; flexibility and balancing

Due process is a flexible concept and requires only that the proceeding be essentially fair. U.S.C.A. Const.Amend. 14.

4 Cases that cite this headnote

[5] **Constitutional Law** ⚿ Factors considered; flexibility and balancing

92 Constitutional Law
92XXVII Due Process
92XXVII(B) Protections Provided and Deprivations Prohibited in General
92k3875 Factors considered; flexibility and balancing

The extent of procedural due process protection varies with the character of the interest and nature of the proceeding involved. U.S.C.A. Const.Amend. 14.

6 Cases that cite this headnote

[6] **Constitutional Law** ⚿ Factors considered; flexibility and balancing

92 Constitutional Law
92XXVII Due Process
92XXVII(B) Protections Provided and Deprivations Prohibited in General
92k3875 Factors considered; flexibility and balancing

There is no single unchanging test which may be applied to determine whether the requirements of procedural due process have been met; courts instead consider the facts of the particular case to determine whether the parties have been accorded that which the state and federal constitutions demand. U.S.C.A. Const.Amend. 14.

5 Cases that cite this headnote

[7] **Constitutional Law** ⚿ Hearings and adjudications

92 Constitutional Law
92XXVII Due Process
92XXVII(F) Administrative Agencies and Proceedings in General
92k4027 Hearings and adjudications

When applying the general due process principles to the specific context of quasi-judicial administrative hearings, it is important to distinguish between parties and participants; the extent of procedural due process afforded to a party in a quasi-judicial hearing is not as great as that afforded to a party in a full judicial hearing. U.S.C.A. Const.Amend. 14.

2 Cases that cite this headnote

[8] **Constitutional Law** ⚿ Notice and Hearing

92 Constitutional Law
92XXVII Due Process
92XXVII(B) Protections Provided and Deprivations Prohibited in General
92k3878 Notice and Hearing
92k3879 In general

Because the extent of procedural due process afforded to a party in a quasi-judicial hearing is not as great as that afforded to a party in a full judicial hearing, such hearings are not controlled by strict rules of evidence and procedure. U.S.C.A. Const.Amend. 14.

3 Cases that cite this headnote

[9] **Constitutional Law** ⇨ Hearings and adjudications

92 Constitutional Law
92XXVII Due Process
92XXVII(F) Administrative Agencies and Proceedings in General
92k4027 Hearings and adjudications

Due process requires that a party to a quasi-judicial hearing, by virtue of its direct interest that will be affected by official action, must be able to present evidence, cross-examine witnesses, and be informed of all the facts upon which the commission acts. U.S.C.A. Const.Amend. 14.

2 Cases that cite this headnote

Attorneys and Law Firms

*8 David A. Theriaque, S. Brent Spain, and Leslie E. Bryson, of Theriaque & Spain, Tallahassee, for Petitioners.

Robert A. McMillan, County Attorney, and Kathleen Furey-Tran, Assistant County Attorney, Sanford, for Respondent Seminole County.

Michael V. Elsberry and Janet M. Courtney, of Lowndes, Drosdick, Doster, Kantor & Reed, P.A., Orlando, for Respondents AHG Group LLC and University of Central Florida Foundations, Inc.

Opinion

*9 PER CURIAM.

Petitioners, Carillon Community Residential Association, Inc., and Ken Hofer, its President, seek second-tier certiorari review of a circuit court order upholding the approval by the Seminole County Board of County Commissioners ("BCC") of an amendment to the Carillon Planned Unit Development ("Carillon PUD"). The amendment allows a mixed-use development, including a four-story, 600 bed University of Central Florida student housing complex, to be built on two parcels of land adjacent to Petitioners' subdivision. Based upon our limited scope of review, we conclude that the circuit court afforded Petitioners procedural due process and did not depart from the essential requirements of law. *State Farm Fla. Ins. Co. v. Lorenzo*, 969 So.2d 393 (Fla. 5th DCA 2007). Accordingly, we deny their petition.

[1] [2] [3] We write further to address one issue which merits discussion, which is whether Petitioners were denied due process when the BCC denied their request to cross-examine witnesses at the quasi-judicial hearing in which the amendment was approved. The "core" of due process is the right to notice and an opportunity to be heard. *LaChance v. Erickson*, 522 U.S. 262, 118 S.Ct. 753, 139 L.Ed.2d 695 (1998); *see also* *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). When assessing whether or not a violation of due process has occurred "the court must first decide whether the complaining party has been deprived of a constitutionally protected liberty or property interest. Absent such a deprivation there can be no denial of due process." *Economic Dev. Corp. of Dade County, Inc. v. Stierheim*, 782 F.2d 952, 953-54 (11th Cir.1986).

[4] [5] [6] Due process is a flexible concept and requires only that the proceeding be "essentially fair." *See* *Gilbert v. Homar*, 520 U.S. 924, 117 S.Ct. 1807, 138 L.Ed.2d 120 (1997) (recognizing that "it is now well-established that 'due process unlike some legal rules is not a technical conception with a fixed content unrelated to time, place and circumstances' ") (quoting *Cafeteria and Restaurant Workers Union, Local 473, AFL-CIO v. McElroy*, 367 U.S. 886, 81 S.Ct. 1743, 6 L.Ed.2d 1230 (1961)). The extent of procedural due process protection varies with the character of the interest and nature of the proceeding involved. There is, therefore, no single unchanging test which may be applied to determine whether the requirements of procedural due process have been met. Courts instead consider the facts of the particular case to determine whether the parties have been accorded that which the state and federal constitutions demand. *Hadley*, 411 So.2d at 187; *see also*, *Cleveland*

Bd. of Educ. v. Loudermill, 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985) (citing *Boddie v. Connecticut*, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971) ("[t]he formality and procedural requisites for the hearing can vary, depending upon the importance of the interests involved and the nature of the subsequent proceedings.")).

The United States Supreme Court has held that there are three distinct factors to consider in the analysis of whether the due process accorded in any proceeding was constitutionally sufficient: 1) the private interest that will be affected by the official action; 2) the risk of an erroneous deprivation of such interest through the procedures used; and 3) the probable value, if any, of additional or substitute procedural safeguards.

Mathews v. Eldridge, 424 U.S. 319, 334-35, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). The government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail should also be considered. *Id.*

[7] [8] When applying these general due process principles to the specific context of ***10** quasi-judicial administrative hearings, it is important to distinguish between parties and participants. The extent of procedural due process afforded to a party in a quasi-judicial hearing is not as great as that afforded to a party in a full judicial hearing. *Seminole Entertainment, Inc. v. City of Casselberry*, 811 So.2d 693, 696 (Fla. 5th DCA 2001) ("*Seminole I*"); *see also Hadley v. Department of Administration.*, 411 So.2d 184, 187 (Fla.1982). Consequently, such hearings are not controlled by strict rules of evidence and procedure. *Seminole I* at 696.

[9] Nevertheless, a party to a quasi-judicial hearing, by virtue of its direct interest that will be affected by official action, "must be able to present evidence, cross-examine witnesses, and be informed of all the facts upon which the commission acts." *Kupke v. Orange County*, 838 So.2d 598, 599 (Fla. 5th DCA 2003) (citing *Lee County v. Sunbelt Equities, II, Ltd. Partnership*, 619 So.2d 996 (Fla. 2d DCA 1993)). For example, in *Kupke*, this court held that a farmer who had been cited for operating an unauthorized junkyard and was facing daily fines, was entitled to present witnesses in his defense as part of his basic right to be heard before a property right was taken from him. *See also Seminole I* (holding that party facing business license revocation was denied right to cross-examine witnesses against it).

Oftentimes, however, such quasi-judicial hearings are attended by more than just the parties. They are open to the public. In the case of rezoning hearings, neighboring landowners may attend and want to be heard on a proposed zoning change to a nearby property. Our court has previously stated that "[a] participant in a quasi-judicial proceeding is clearly entitled to some measure of due process ... The issue of what process is due depends on the function of the proceeding as well as the nature of the interests affected." *Water Servs. Corp. v. Robinson*, 856 So.2d 1035, 1039 (Fla. 5th DCA 2003).

Petitioners incorrectly assert that Florida law requires that all *participants* in quasi-judicial proceedings be allowed to cross-examine witnesses. Florida law has no such requirement. In support of their assertion, Petitioners cite several cases appearing to require cross-examination in quasi-judicial proceedings. However, a close reading of these cases reveals that they cannot support such a broad proposition.

First, many cases asserted by Petitioners as broadly affording the right of cross-examination in quasi-judicial proceedings involved parties, not participants. Thus, any effort to extend application of such due process protections to participants is beyond the scope of the facts in those cases. *See, e.g., Kupke* (farmer facing fines for unauthorized use of property); *Seminole I* (business licensee facing license revocation); *Sunbelt Equities* (property owner applying for rezoning); *Bd. of County Comm'rs of Hillsborough County v. Casa Development, Ltd.*, 332 So.2d 651 (Fla. 2d DCA 1976) (developer applying for water and sewer service); *Harris v. Goff*, 151 So.2d 642 (Fla. 1st DCA 1963) (landowners directly subject to zoning change).

Petitioners cite three cases which involve adjoining landowners and state that basic notions of due process in a quasi-judicial hearing include the right to cross-examine witnesses. *Jennings v. Dade County*, 589 So.2d 1337 (Fla. 3d DCA 1991); *Hirt v. Polk County Bd. of County Comm'rs*, 578 So.2d 415 (Fla. 2d DCA 1991); *Coral Reef Nurseries, Inc. v. Babcock Co.*, 410 So.2d 648 (Fla. 3d DCA 1982). However, none of these cases hold that an *adjoining landowner* has a due process right to cross-examine witnesses in a quasi-judicial rezoning hearing. To the contrary, *Jennings* states, in dictum, the *11 general proposition that *parties* to quasi-judicial hearings "must be able to present evidence, cross-examine witnesses, and be informed of all the facts upon which the commission acts." [1] Then circuit judge Evander, in *Schopke v. City of Melbourne*, case no. 92-12637-AP, Eighteenth Judicial Circuit Court, Brevard County, correctly distinguished *Jennings* in addressing the same argument raised in this case. He stated:

> [P]etitioners contend the city council wrongfully refused to allow them the opportunity to "cross-examine" a particular Daily Bread representative at the July 14th public hearing. Such argument apparently arises from an overbroad and erroneous interpretation of *Jennings v. Dade County*, 589 So.2d 1337 (Fla. 3d DCA 1991). In *Jennings*, the court noted that the quality of due process required in the quasi-judicial zoning proceeding is not the same as that to which a party to a full judicial hearing is entitled. The court stated "a quasi-judicial hearing generally meets basic due process requirements if the parties have provided notice of the hearing and an opportunity to be heard. In quasi-judicial zoning proceedings, the parties must be able to present evidence, cross-examine witnesses, and be informed of all the facts upon which the (government agency) acts".
>
> The "parties" referenced in such opinion are the applicant and the government agency. The Jennings decision does not, in any way, recognize a right on behalf of all neighboring property owners to cross-examine any and all individuals who may speak for or against the zoning application. To recognize such a right on behalf of all "interested persons" would create a cumbersome, unwieldy procedural nightmare for local government bodies.

Petitioners cite one circuit court decision, *Sorrento Ranches Homeowners Association, Inc. v. City of Venice*, 15 Fla. L. Weekly Supp. 877 (Fla. 12th Cir.Ct.2008)*Sorrento Ranches Homeowners Association, Inc. v. City of Venice*, 15 Fla. L. Weekly Supp. 877 (Fla. 12th Cir.Ct.2008) as holding that "neighboring landowners" were denied their due process right to cross-examine witnesses in a quasi-judicial zoning proceeding. This decision was not binding on the circuit court in this case. In addition, it does not stand for the proposition asserted by Petitioners, as nowhere does it describe the petitioners in that case as "neighboring landowners." It only describes them as residents of Sorrento Ranches, but it is not clear whether Sorrento Ranches was part of the "46-acre tract of land" subject to the proposed zoning change. Without knowing the petitioners' status in relation to the rezoning application, the decision offers no assistance.

The commission's attorney denied the petitioners in that case an opportunity to cross-examine witnesses because they were not parties. If we were to infer from that statement, that the petitioners were in fact neighboring landowners, as Petitioners in this case assert, we would conclude that the issue was wrongly decided. Because the decision fails to apply the *Mathews* factors, we do not know what private interest the residents of Sorrento Ranches had that would have entitled them the level of due process afforded by the court.

In this case, the circuit court applied the correct law by thoughtfully considering and applying the *Mathews* factors. It stated:

> [w]hile arguably the Petitioners' enjoyment of their property will be impacted *12 by the action of the BCC, they are not being deprived of the use of their property, whereas, the

developers have a compelling interest in developing the property in question. The risk of an erroneous deprivation is low. The Petitioners were able to present their witnesses. Furthermore, while the BCC did not permit the cross-examination, it did permit questions to be directed to the board, which in turn would address the questions to the appropriate individuals. Thus, while the questioning might not have been the form the Petitioners preferred, they were provided with an opportunity to present questions to the developer's witnesses. Finally, land use hearings are not in the same form as traditional adversarial hearings during which opposing parties are clearly delineated and those entitled to cross-examine witnesses can be clearly identified. Rather, land use hearings are public hearings during which any member of the public has a right to participate. At the hearing in question, in addition to the witnesses for the developers and the petitioners, twenty-five community members spoke at the hearing. It would be impractical to grant each interested party the right to cross-examine the witnesses at such a hearing, especially in light of the fact that the BCC provides a procedure by which the witnesses can be questioned.

Finding that the circuit court afforded the parties procedural due process and applied the correct law, we deny the petition.

PETITION DENIED.

MONACO, C.J., PALMER and LAWSON, JJ., concur.

All Citations

45 So.3d 7, 35 Fla. L. Weekly D1467

Footnotes

1 In both *Hirt* and *Coral Reef*, the determinative issues before the courts were whether the underlying administrative proceedings were legislative or quasi-judicial in nature. In making those determinations, the courts in both cases noted that local ordinances expressly afforded "interested parties" the right to cross-examine witnesses in a quasi-judicial hearing. No such ordinance exists in this case.

End of Document

2016 WL 4464076 (Fla.Cir.Ct.) (Trial Order)
Circuit Court of Florida.
Twentieth Judicial Circuit
Civil Action
Lee County

MIROMAR DEVELOPMENT CORPORATION, Miromar Lakes, LLC, and Dr. Russell Beckett, Petitioners,

v.

LEE COUNTY, a political subdivision of the State of Florida, and Alico West Fund, LLC, A Florida limited liability company, Respondents.

No. 15-CA-1261.
June 30, 2016.

Order Denying Petition for Writ of Certiorari

Marty Steinberg & Melissa Levitt, msteinberg@bilszin.com; marty.steinberg@hoganlovells.com; Naomi.tanaka@hogan; melissa.levit@hoganlovells.com; Justin Brenner & David Massey, Justin.brener@hoganlovells.com; patricia.courtney@hoganlovells.com; david.massey@hoganlovells.com; Edward K. Cheffy, ekcheffy@naplesIw.com, for petitioners.

Hala Sandridge, hala.sandridge@bipc.com; joanne.volpe@bipc.com; Carl Joseph Coleman, joe.coleman@bipc.com; nichole.jayne@bipc.com; Charles Basinait & Robert C. Shearman, Charles.basinait@henlaw.com; Robert.shearman@henlaw.com, for respondent.

Mark A. Trank, (Counsel for Lee County per various service lists contained in court file).

Elizabeth V. Krier, Judge.

*1 THIS CAUSE comes before the Court on Petitioners' petition for writ of certiorari, filed May 11, 2015. Respondent Alico West Fund (Alico) filed a response on March 9, 2016. Respondent Lee County (County) filed a response on March 2, 2016. Petitioners filed a consolidated reply on May 13, 2016. Having reviewed the pleadings, the record, and the applicable law, the Court finds as follows:

1. Petitioners are challenging the County's resolution granting Alico's application for rezoning. Petitioners argue that they were denied due process, and that the County's decision departed from the essential requirements of law.

2. Alico filed an application for rezoning on December 20, 2013 to change the property designation to compact community planned development for a project called CenterPlace, which would allow 1,950 residential units, 250 hotel rooms, commercial retail space, office space, and research and development space.

3. On July 9, 2014, County staff issued their report to the hearing officer, recommending approval.

4. The hearing officer held hearings on July 23-25, August 13, 15 and 19, 2014.

5. Petitioners filed a petition for writ of prohibition challenging the hearing officer's denial of their motion to disqualify. By order dated February 5, 2015, the Court granted a motion to dismiss the petition, finding that Petitioners did not have standing.

6. The hearing officer issued a recommendation on March 10, 2015 that the application be granted.

7. The Board of County Commissioners (BOCC) held a public hearing on April 8, 2015, and approved the application by resolution Z-14-021.

8. The applicable standard of review by a circuit court of an administrative agency decision is limited to: (1) whether procedural due process was accorded; (2) whether the essential requirements of law have been observed; and (3) whether the administrative findings and judgment are supported by competent substantial evidence. The Court is not entitled to reweigh the evidence, to reevaluate the credibility of the evidence, or to substitute its judgment for that of the agency. *Haines City Community Development v. Heggs*, 658 So. 2d 523 (Fla. 1995).

DUE PROCESS

9. Petitioners argued that their property was adjacent to the development, and that a Lake Use agreement existed between Petitioner Miromar, FGCU, and Alico which provided reciprocal easements on the two shared lakes for recreational and drainage use of the lakes, but specifically provided no right for the general public to use the lakes. Petitioners were concerned with the potential environmental impact of the development on the lakes, that their "world class resort" community would be across the lakes from college student housing, and because "the North and South Lakes are connected, CenterPlace would afford public access" to the shared lakes that Petitioners considered their "private property."

10. For these reasons, Petitioners challenged the application below. Petitioners argued that they were deprived of due process because the hearing officer did not permit them to cross-examine witnesses. Petitioners also argued that they were only permitted five minutes to make a presentation to the BOCC, and were limited to their prior testimony before the hearing officer.

2 11. Respondents argued that Petitioners were afforded with due process when they were treated as participants, because they were given a full and fair opportunity to be heard. Respondents noted that only the applicant and County are parties to a zoning action, and that public participants had no due process rights at a zoning hearing. Respondents cited to Administrative Code 2-6, Sec. 2.4.B and *Carillion Community Res. v. Seminole County*, 45 So.3d 7, 10 (Fla. 5th DCA 2010). Alico further noted that Petitioners were allowed unlimited time to present testimony and argument before the hearing officer, presented multiple witnesses and experts, and presented 750 pages of exhibits. Respondents argued that Petitioners submitted 30 proposed conditions to the application, several of which were incorporated into the resolution. For all these reasons, Respondents argued that Petitioners were not deprived of due process.

12. Petitioners relied on *Renard v. Dade County*, 261 So. 2d 832 (Fla. 1972), but this case does not hold that an entity considering itself an aggrieved party has any standing in the underlying proceeding prior to the BOCC's decision. The Court finds persuasive *Carillion Community Res. v. Seminole County*, 45 So.3d 7, 10 (Fla. 5th DCA 2010), which held that neighboring landowners have a due process right to attend and be heard at open public hearings on a zoning issue, but had no other due process rights. Therefore, the Court finds that Petitioners are not a party under the Administrative Code, had no due process rights in the proceeding below beyond being permitted to attend and be heard. Petitioners were given a full and fair opportunity to be heard as participants and to raise their

objections to the rezoning application and proposed development. That several of Petitioners' proposed conditions were incorporated into the resolution indicates that Petitioners' concerns were heard and considered. Petitioners were not denied due process.

ESSENTIAL REQUIREMENTS OF LAW

13. Petitioners argued that the BOCC departed from the essential requirements of law because it: (a) violated their fundamental right to exclude; (b) limited their testimony before the BOCC; (c) delegated the BOCC's authority; (d) allowed a research and development (R&D) lot through illegal deviation; and (e) allowed the application to proceed without a deed dedicating roadway right of way prior to the hearing officer's approval.

14. The Court notes that pursuant to the order granting in part Petitioner's motion to strike the Respondents' responses, the roadway dedication claim and responses were stricken, and will not be considered.

15. As it relates to (a), Petitioners argued that property rights include the right to exclude others. Petitioners argued that the Lake Use agreement provides them with easements which excluded general public use. Petitioners stated that they presented the agreement to the hearing officer, who nonetheless recommended public accessibility to the BOCC, which accepted that recommendation. Petitioners contend that they must be compensated for the deprivation of their property rights.

16. Alico argued that the Lake Use agreement included a non-exclusive easement which did not include the right to exclude the public, but only gave Petitioners the right to use the lakes. Alico argued that any other interpretation would violate the Plan, which encourages allowing public use of private waterways. The County argued that enforcement of a private easement agreement would be through civil court action, not a challenge to an unrelated zoning decision.

17. The Court agrees with the County that the appropriate remedy for Petitioners would be to seek enforcement of the agreement in court, not to challenge the resolution by claiming that the BOCC did not honor an agreement to which it was not a party. Petitioners failed to present any legal authority that the hearing officer or BOCC were in any way required to consider and honor a private easement agreement between the applicant and entities not a party to the rezoning proceedings. Therefore, the Court finds that the BOCC did not depart from the essential requirements of law as to this claim.

***3** 18. As to (b), Petitioners argued that the essential requirements of law were not met when the BOCC failed to follow the ordinance and limited their presentation at the public hearing to only the testimony they presented to the hearing officer. Petitioners cite to the Land Development Code (LDC) 34-83(b)(7), which allows a witness to testify regarding the correctness of the hearing officer's findings.

19. Alico argued that the BOCC did not improperly limit testimony because great weight is to be given to an agency's interpretation of an ordinance when that agency is charged with enforcement of the ordinance, citing *Falk v. Beard*, 614 So. 2d 1086 (Fla. 1993); *PIE Ventures, Inc. v. Nichols*, 533 So. 2d 281 (Fla. 1988).

20. In the LDC version in effect at the time, section 34-83(b)(7) provides that:

In matters that were first heard by the Hearing Examiner, ... the testimony presented to the Board will be limited to the testimony presented to the Hearing Examiner, testimony concerning the correctness of the findings of fact or conclusions of law contained in the record, ***or*** to allege the discovery of new, relevant information which was not available at the time of the hearing before the Hearing Examiner.

(Emphasis added). The Court finds that the use of "or" in the list of permitted testimony means that the BOCC could limit testimony to one of those categories if it chose to do so. Petitioners failed to present any legal authority that required the BOCC to allow all three types of testimony despite the use of "or" in the section. Therefore, the Court finds that the BOCC did not depart from the essential requirements of law in limiting Petitioners' testimony at the public hearing.

21. As to (c), Petitioners argued that the BOCC departed from the essential requirements of law when it delegated its authority to the County Attorney. Petitioners argued that they requested additional conditions be imposed, under the authority of LDC 34-83(b)(4), but the County Attorney told the BOCC that additional conditions had to be based on competent substantial evidence and rationally related to impacts of the development. Petitioners contend that conditions must only be rationally related. Petitioners also argued that when two Commissioners wanted to remand, the County Attorney stated that a remand could only be imposed for the purpose of acquiring additional information. Petitioners argued that the BOCC abdicated its responsibilities to the County Attorney.

22. Alico argued that section 34-83(b)(4)(a)(1) provides that the Board is to render decisions based upon competent substantial evidence, and subsection (3) provides that conditions may be attached if they are reasonably related to the requested action, such that the County Attorney did not misadvise the BOCC.

23. In the LDC version in effect at the time, section 34-83(b)(4)(a)(1) provides that the BOCC "may render its own decision based upon competent substantial evidence presented in the Record." Section 34-83(b)(4)(a)(3) provides that the BOCC has the authority to attach conditions to any rezoning request, and that those "conditions and requirements must be reasonably related to the action requested." The plain language of the LDC supports Alico's argument that the County Attorney did not misadvise the BOCC. Section (b)(4)(a)(1) provides that the BOCC may approve the request, deny the request, or remand the case to the hearing officer for further proceedings. The Court finds that the County Attorney did not misadvise the BOCC on this matter, as the LDC appears to allow for a remand only to the hearing officer for further proceedings. The Court further finds that the BOCC did not delegate its authority to the County Attorney, and that it did not depart from the essential requirements of law merely because it accepted or relied on advice by the County Attorney. The Court notes that several of the conditions Petitioners requested below were, in fact, incorporated into the resolution. The BOCC did not depart from the essential requirements of law merely because it did not accede to all of Petitioners' requests.

***4** 24. As it relates to (d), Petitioners argued that the resolution approved a deviation to permit a research and development (R&D) lot, but that lot type was not a permissible lot type, and that the BOCC could not create a new lot type without going through procedures to adopt a municipal ordinance. Petitioners further argued that LDC section 32-377 permitting the BOCC to grant a deviation is legally deficient, as it lacks objective criteria for the BOCC to use in its decision making.

25. Alico argued that this claim was not preserved for review because it was not raised below. Alico further argued that an R&D lot was allowed pursuant to LDC section 34- 622(c)(41). Alico cited Fla. Stat. §166.041 in support of its argument that the BOCC does not need to adopt an ordinance when an action affects only a specific property and is quasi judicial, not legislative, such as for rezoning actions. See also *BOCC of Brevard County v. Snyder*, 627 So. 2d 469 (Fla. 1993). Finally, Alico argued that the deviation provision of the LDC is constitutional, citing *Nostimo, Inc. v. City of Clearwater*, 594 So. 2d 779 (Fla. 2d DCA 1992). The County argued that LDC section 32-502(d)(5) provides for deviations to include additional lot types, with the criteria for deviations provided in chapters 10 and 34 of the LDC.

26. The Court agrees that this claim was not preserved for review because it was not raised to the BOCC below. See *Fort Lauderdale Board of Adjustment v. Nash*, 425 So. 2d 578 (Fla. 4th DCA 1982). However, even if it had been preserved, it appears that the BOCC did not depart from the essential requirements of law. As argued by Respondents, the LDC permits deviations of additional lot types, including an R&D lot type. The Court finds that LDC section 32-377 is constitutional. This section provides factors for the BOCC to consider, and does not allow the BOCC "unbridled discretion." *Nostimo*, 594 So. 2d at 780-781.

Accordingly, it is

ORDERED AND ADJUDGED that Petitioners' petition for writ of certiorari is DENIED.

DONE AND ORDERED in Chambers in Fort Myers, Lee County on this *29* day of *June*, 2016.

<<signature>>

Elizabeth V. Krier

Circuit Judge

560 So.2d 1358
District Court of Appeal of Florida,
Fourth District.

Patricia POLLARD, Petitioner,

v.

PALM BEACH COUNTY, a political subdivision of the State of Florida, Respondent.

No. 88-1827.
|
May 9, 1990.

Synopsis

Owner of residential property applied for special exception to use property as adult congregate living facility for elderly. The Circuit Court for Palm Beach County, William C. Williams, III, J., denied owner's petition for writ of certiorari to review denial of application, and owner petitioned for review. The District Court of Appeal held that opinions of neighbors that proposed use would cause traffic problems, would cause light and noise pollution, and would generally have unfavorable impact on area provided no competent substantial evidence to support denial of petition.

Certiorari granted, order quashed, and matter remanded with instructions.

Stone, J., dissented with opinion.

West Headnotes (3)

[1] **Zoning and Planning** ⇨ Public interest or welfare

Special exception is permitted use to which applicant is entitled unless zoning authority determines according to standards of zoning ordinance that use would adversely affect public interest.

2 Cases that cite this headnote

[2] **Zoning and Planning** ⇨ Rights of objecting owners; continuity of regulation

Opinions of residents are not factual evidence and not sound basis for denial of zoning change application.

3 Cases that cite this headnote

[3] **Zoning and Planning** ⇨ Residential facilities and daycare

Opinions of neighbors of residential property, for which special exception was requested, that proposed use of property as adult congregate living facility for elderly would cause traffic problems, would cause light and noise pollution, and would generally have unfavorable impact on area established no competent substantial evidence to support decision of zoning authority denying application.

8 Cases that cite this headnote

Attorneys and Law Firms

*1359 Bruce G. Kaleita, West Palm Beach, for petitioner.

Richard W. Carlson, Jr. and Thomas P. Callan, Asst. County Attys., West Palm Beach, for respondent.

Opinion

PER CURIAM.

This is a petition to review denial of an application for a special exception. The real property in question is located in an area zoned residential. The use for which a special exception was requested is an adult congregate living facility for the elderly, a use permitted by special exception in a residential area.

Certain procedural shortcomings having been remedied, we now treat only the merits, being satisfied that this court has jurisdiction.

After making appropriate application, petitioner obtained approval of the County Zoning Department and, subsequently, the approval of the County Planning Commission. Approval was based upon documentary evidence and expert opinion.

In public hearings before the County Commission, various neighbors expressed their opinion that the proposed use would cause traffic problems, light and noise pollution and generally would impact unfavorably on the area. The County Commission denied the application and the circuit court denied certiorari to review that denial. We grant the writ and quash the order under review.

[1] [2] [3] We explained the respective burdens of an applicant for a special exception and the zoning authority in *Rural New Town, Inc. v. Palm Beach County,* 315 So.2d 478, 480 (Fla. 4th DCA 1975), as follows:

> In rezoning, the burden is upon the *applicant* to clearly establish such right (as hereinabove indicated). In the case of a special exception, where the applicant has otherwise complied with those conditions set forth in the zoning code, the burden is upon the *zoning authority* to demonstrate by competent substantial evidence that the special exception *is adverse to the public interest.* Yokley on Zoning, vol. 2, p. 124. A special exception is a permitted use to which the applicant is entitled *unless* the zoning authority determines according to the standards of the zoning ordinance that such use would adversely affect the public interest.

(Emphasis in original; some citations omitted.)

The supreme court, in *De Groot v. Sheffield,* 95 So.2d 912, 916 (Fla.1957), explained in the following language what is meant by the term "competent substantial evidence" in the context of certiorari review:

> Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred. We have stated it to be such relevant evidence as a reasonable mind would accept as adequate to support a conclusion. *Becker v. Merrill,* 155 Fla. 379, 20 So.2d 912; *Laney v. Board of Public Instruction,* 153 Fla. 728, 15 So.2d 748. In employing the adjective "competent" to modify the word "substantial," we are aware of the familiar rule that in administrative proceedings the formalities in the introduction of testimony common to the courts of justice are not strictly employed. *Jenkins v. Curry,* 154 Fla. 617, 18 So.2d 521. We are of the view, however, that the evidence relied upon to ***1360** sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. To this extent the "substantial" evidence should also be "competent."

(Some citations omitted.)

In *City of Apopka v. Orange County,* 299 So.2d 657, 660 (Fla. 4th DCA 1974), the "evidence" in opposition to petitioner's application for special exception consisted, as in the present case, of the opinions of neighbors, and in that case we explained:

> The evidence in opposition to the request for exception was in the main laymen's opinions unsubstantiated by any competent facts. Witnesses were not sworn and cross examination was specifically prohibited. Although the Orange County Zoning Act requires the Board of County Commissioners to make a finding that the granting of the special exception shall not adversely affect the public interest, the Board made no finding of facts bearing on the question of the effect the proposed airport would have on the public interest; it simply stated as a conclusion that the exception would adversely affect the public interest. Accordingly we find it impossible to conclude that on an issue as important as the one before the board, there was substantial competent evidence to conclude that the public interest would be adversely affected by granting the appellants the special exception they had applied for.

Earlier in that opinion we also noted:

> As pointed out by Professor Anderson in Volume 3 of his work, American Law Of Zoning, § 15.27, pp. 155-56:

> "It does not follow, ... that either the legislative or the quasi-judicial functions of zoning should be controlled or unduly influenced by opinions and desires expressed by interested persons at public hearings. Commenting upon the role of the public hearing in the processing of permit applications, the Supreme Court of Rhode Island said:
>
> 'Public notice of the hearing of an application for exception ... is not given for the purpose of polling the neighborhood on the question involved, but to give interested persons an opportunity to present facts from which the board may determine whether the particular provision of the ordinance, as applied to the applicant's property, is reasonably necessary for the protection of ... public health.... The board should base their determination upon facts which they find to have been established, instead of upon the wishes of persons who appear for or against the granting of the application.'
>
> The objections of a large number of residents of the affected neighborhood are not a sound basis for the denial of a permit. The quasi-judicial function of a board of adjustment must be exercised on the basis of the facts adduced; numerous objections by adjoining landowners may not properly be given even a cumulative effect."

299 So.2d at 659.

Our review of the record leads us to conclude that there is literally no competent substantial evidence to support the conclusion reached below. The circuit court overlooked the law which says that a special exception is a permitted use to which the applicant is entitled unless the zoning authority determines according to the standards of the zoning ordinance that the use would adversely affect the public interest. *Rural New Town,* 315 So.2d at 480. It also overlooked the law which says that opinions of residents are not factual evidence and not a sound basis for denial of a zoning change application. *See City of Apopka,* 299 So.2d at 660.

For these reasons we grant certiorari, quash the order and remand with instructions that the special exception be granted.

HERSEY, C.J., and ANSTEAD, J., concur.

STONE, J., dissents with opinion.

***1361** STONE, Judge, dissenting.

I would deny certiorari. In my judgment, the record supports the decision of the circuit court upholding the action of the county. I also do not conclude that the trial court overlooked the law.

All Citations

560 So.2d 1358, 15 Fla. L. Weekly D1272

End of Document

857 So.2d 202
District Court of Appeal of Florida,
Third District.

CITY OF HIALEAH GARDENS, Petitioner,

v.

MIAMI–DADE CHARTER FOUNDATION, INC., and Luis Machado, Respondents.

No. 3D03–1056.
|
July 23, 2003.
|
Rehearing and Rehearing En Banc Denied Oct. 17, 2003.

Synopsis
City petitioned for certiorari review of decision of the Circuit Court, Miami-Dade County, Appellate Division, Sidney B. Shapiro, Celeste H. Muir, and David C. Miller, JJ., quashing city's denial of application for special exception use resolution permitting construction and operation of charter elementary school. The District Court of Appeal, Wells, J., held that competent substantial evidence supported city's finding that proposed special exception use resolution did not meet city's criteria.

Petition granted.

West Headnotes (4)

[1] **Zoning and Planning** ⇨ Schools and education

Competent substantial evidence supported city's finding that proposed special exception use resolution permitting construction of elementary school in area zoned BU did not meet city's criteria, where chief of police, director of public works, and chief zoning official utilized their professional experiences and personal observations, as well as proponent's application, site plan, and traffic study, as basis for their testimony that location of school on congested roadway was not appropriate.

3 Cases that cite this headnote

[2] **Zoning and Planning** ⇨ Right to variance or exception, and discretion

Zoning and Planning ⇨ Weight and sufficiency of evidence

Once a special exception applicant demonstrates consistency with a zoning authority's land use plan and meets code criteria, the decision-making body may deny the request only where the party opposing the application shows by competent substantial evidence that the proposed exception does not meet the published criteria.

1 Cases that cite this headnote

[3] **Zoning and Planning** ⇨ Schools and education

City's chief of police, director of public works, and chief zoning official were not required to submit charts, statistical studies, or other materials to support their testimony opposing grant of special use exception allowing construction of elementary school on congested roadway; experts could derive factual basis for their testimony from relevant portions of the record or from other relevant factual information detailed in the application itself.

1 Cases that cite this headnote

[4] **Administrative Law and Procedure** ⇨ Substantial evidence

In reviewing local administrative action, circuit courts are constrained to determine only whether the agency's determination is supported by competent substantial evidence.

1 Cases that cite this headnote

Attorneys and Law Firms

***202** Citrin & Walker and J. Frost Walker, III, Coral Gables, for petitioner.

Tannebaum, Plans & Weiss and Daniel A. Weiss, for respondents.

Before FLETCHER, and WELLS, and NESBITT, Senior Judge.

Opinion

WELLS, Judge.

The City of Hialeah Gardens petitions for certiorari review of a decision of the circuit court, appellate division, quashing ***203** the City's denial of an application for a special exception use resolution. We grant the petition and quash the circuit court's decision.

Luis Machado and the Miami–Dade Charter Foundation, Inc. (collectively "Machado") sought a permit from the City of Hialeah Gardens for a "special exception use" resolution permitting the construction and operation of a charter elementary school on approximately 2.1 acres of property fronting Northwest 103rd Street, a main highway artery and extension of West 49th Street in neighboring Hialeah. Under the City's code, the use of this property for a school, due to its location in a BU zone, is authorized upon adoption of a resolution granting a special exception use, which must be found by the City Council to comply with the following requirements:

(1) The use is a permitted special use as set forth in the special exception uses for that district.

(2) The use is so designed, located and proposed to be operated that the public health, safety, welfare and convenience will be protected.

(3) The use will not cause substantial injury to the value of other property in the neighborhood where it is to be located.

(4) The use will be compatible with adjoining developments and the proposed character of the district where it is to be located.

(5) Adequate landscaping and screening is provided as required in this chapter, or as otherwise required.

(6) Adequate off-street parking and loading is provided. Ingress and egress is designed so as to cause minimum interference with traffic on abutting streets and the use has adequate frontage on a public or approved private street.

(7) The use conforms with all applicable regulations governing the district where located, except as may otherwise be determined for planned unit developments.

§ 78–132, City of Hialeah Gardens Code.

In the course of the three public hearings held on the matter, Machado presented two site plans and introduced both lay and expert testimony in support of the request. The City's professional staff explained why they could not support the placement of an elementary school on what was characterized as one of the busiest, most congested roadways in Miami–Dade County. Ultimately, the City rejected Machado's application.

The City's decision was overturned by the circuit court, appellate division, primarily for two reasons: first, because the City's testimony addressing "the traffic risks associated with placing a school on a well traveled thoroughfare" was "not based on specific expert competent evidence," and second, because the testimony of staff members, while "cast[ing] doubt" on the evidence presented by Machado, did not overcome Machado's evidence.

Our scope of review of the circuit court's decision is limited to determining whether the circuit court applied the correct law or legal standard, that is, whether it departed from the essential requirements of the law. *See Haines City Cmty. Dev. v. Heggs,* 658 So.2d 523, 530 (Fla.1995); *City of Deerfield Beach v. Vaillant,* 419 So.2d 624, 626 (Fla.1982); *Metropolitan Dade County v. Blumenthal,* 675 So.2d 598, 608–09 (Fla. 3d DCA 1995). We agree with the City that the circuit court applied the wrong law or incorrect legal standard, first,

by rejecting the City's decision as not being "based on specific expert competent evidence," and second, by re-weighing the evidence, and in the process, ignoring the evidence supporting the City's decision. *See* ***204** *Vaillant,* 419 So.2d at 626; *see also Dusseau v. Metro. Dade County Bd. of County Comm'rs,* 794 So.2d 1270, 1275 (Fla.2001); *Fla. Power & Light Co. v. City of Dania,* 761 So.2d 1089, 1093 (Fla.2000). We therefore exercise our certiorari jurisdiction because the circuit court violated clearly established principles of law resulting in a substantial miscarriage of justice. *See Ivey v. Allstate Ins. Co.,* 774 So.2d 679, 682–83 (Fla.2000).

A.

[1] **[2]** Once a special exception applicant demonstrates consistency with a zoning authority's land use plan and meets code criteria, the decision-making body may deny the request only where "the party opposing the application (i.e., either the agency itself or a third party) ... show[s] by competent substantial evidence that the proposed exception does not meet the published criteria." *Fla. Power & Light Co.,* 761 So.2d at 1092; *see Irvine v. Duval County Planning Comm'n,* 495 So.2d 167 (Fla.1986); *Jesus Fellowship, Inc. v. Miami–Dade County,* 752 So.2d 708 (Fla. 3d DCA 2000). In this context, competent evidence is evidence sufficiently relevant and material to the ultimate determination "that a reasonable mind would accept it as adequate to support the conclusion reached." *DeGroot v. Sheffield,* 95 So.2d 912, 916 (Fla.1957). Substantial evidence is evidence that provides a factual basis from which a fact at issue may reasonably be inferred. *Id.; Blumenthal,* 675 So.2d at 608; *see also Pollard v. Palm Beach County,* 560 So.2d 1358, 1359–60 (Fla. 4th DCA 1990) ("evidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. To this extent the 'substantial' evidence should also be 'competent.' ").

Under this standard, generalized statements in opposition to a land use proposal, even those from an expert, should be disregarded. *See Div. of Admin. v. Samter,* 393 So.2d 1142, 1145 (Fla. 3d DCA 1981) ("[n]o weight may be accorded an expert opinion which is totally conclusory in nature and is unsupported by any discernible, factually-based chain of underlying reasoning"). However, contrary to the circuit court's decision, relevant fact-based statements, whether expert or not, are to be considered. *See Blumenthal,* 675 So.2d at 607 ("[u]nder the correct legal standard, citizen testimony in a zoning matter is perfectly permissible and constitutes substantial competent evidence, so long as it is fact-based"); *see also Metro. Dade County v. Sportacres Dev. Group,* 698 So.2d 281, 282 (Fla. 3d DCA 1997)(holding that materials in the record in conjunction with neighbors' testimony could constitute competent substantial evidence). Here, the Chief of Police, the Director of Public Works, and the Chief Zoning Official, gave specific fact-based reasons for their recommendations that the application be rejected.[1] Their observations were relevant, ***205** material, and fact-based and not merely, "generalized statement[s] of opposition." *Blumenthal,* 675 So.2d at 607; *see Jesus Fellowship,* 752 So.2d at 709; *Miami–Dade County v. Walberg,* 739 So.2d 115, 117 (Fla. 3d DCA 1999)(citing *Blumenthal,* 675 So.2d at 607). In sum, these witnesses were "no group of 'Apopka Witnesses,' i.e., local residents who simply wished the facility to be established elsewhere" but were experts providing fact-based, relevant and material evidence. *Blumenthal,* 675 So.2d at 608, *quoting City of Apopka v. Orange County,* 299 So.2d 657 (Fla. 4th DCA 1974); *see also Allapattah Cmty. Ass'n v. Miami,* 379 So.2d 387, 393 (Fla. 3d DCA 1980)(citing to "expert opinion" of planning department).

[3] Inherent in the circuit court's conclusion that the City's denial had to be based on "specific expert competent testimony," is the incorrect assumption that the expert testimony of those opposing Machado's application had to be distilled from the experts' *own* studies or reports. This is incorrect. The fact that these professionals did not submit, as the circuit court noted, their own "countervailing" charts, statistical studies or other materials did not diminish the sufficiency of their testimony.

The "facts" upon which such testimony rests may derive from relevant portions of the record or from other relevant factual information detailed in the application itself. *See Sportacres Dev. Group,* 698 So.2d at 282 (holding that "the County Commission

had access to a record which contained maps, reports and other information which, in conjunction with the testimony of the neighbors, if believed by the Commission, constituted competent substantial evidence").

Here, the testifying staff members utilized their professional experiences and personal observations, as well as Machado's application, site plan, and traffic study, as the basis for their testimony. These record materials, along with the staff presentations, combined to provide evidence "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." *DeGroot,* 95 So.2d at 916. Ignoring this standard constituted a departure from the essential requirements of the law.

B.

[4] A circuit court may not re-weigh the evidence. In reviewing local administrative action, circuit courts are constrained to determine only whether the agency's determination is *supported* by competent substantial evidence. A circuit court may not re-weigh the evidence to substitute its judgment for that of the agency by determining whether the evidence *shows* that the application was deficient:

> At the circuit court level, a solitary judge quashed the Commission decision, ruling as follows: "The [homeowners] failed to show by competent substantial evidence that such use [was inconsistent with the Dania Code]" (emphasis added). This ruling was improper. Under *Vaillant,* the circuit court was constrained to determine simply whether the Commission's decision was supported by competent substantial evidence. The circuit court instead decided anew whether the homeowners had shown by competent ***206** substantial evidence that the proposed use was deficient. In other words, a single judge conducted his own de novo review of the application and, based on the cold record, substituted his judgment for that of the Commission as to the relative weight of the conflicting testimony. The circuit court thus usurped the fact-finding authority of the agency.

City of Dania, 761 So.2d at 1093; *see Vaillant,* 419 So.2d at 626.

Re-weighing of the evidence is precisely what the circuit court did when it held:

> At best, the testimony by Hialeah Gardens' staff members cast doubt upon the conclusions and evidence submitted by Machado....
>
> * * * *
>
> The opponents of the special exception use did not show, by competent substantial evidence, that the proposed use was adverse to the public interest.

Consideration of the fact-based testimony of the Director of Public Works and the Chief of Police, as well as other record materials, including the pretzel-like diagram of the proposed site and the memo of the Chief Zoning Officer, was, as the Florida Supreme Court has confirmed, where the circuit court's analysis should have ended:

> We reiterate that the "competent substantial evidence" standard cannot be used by a reviewing court 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. The issue before the court is not whether the agency's decision is the "best" decision or the "right" decision or even a "wise" decision, for these are technical and policy-based determinations properly within the purview of the agency. The circuit court has no training or experience—and is inherently unsuited—to sit as a roving "super agency" with plenary oversight in such matters.
>
> The sole issue before the court on first-tier certiorari review is whether the agency's decision is lawful. The court's task vis-a-vis the third prong of *Vaillant* is simple: The court must review the record to assess the evidentiary support for the agency's decision. Evidence contrary to the agency's decision is outside the scope of the inquiry at this point, for the reviewing court above all cannot reweigh the "pros and cons" of conflicting evidence. While contrary evidence may be relevant to the wisdom of the decision, it is irrelevant to the lawfulness of the decision. As long as the record contains competent substantial evidence to support the

> agency's decision, the decision is presumed lawful and the court's job is ended.

Dusseau, 794 So.2d at 1275–76 (citation omitted).

In this case, the circuit court substituted its judgment as to the weight of the evidence for that of the City Council, which is contrary to the law and synonymous with failing to observe the essential requirements of the law. *See Blumenthal,* 675 So.2d at 609; *see also City of Dania,* 761 So.2d at 1093; *Heggs,* 658 So.2d at 530.

Accordingly, we grant the Petition for Certiorari, quash the decision of the circuit court, and return this case to the circuit court for final determination consistent with this opinion. *See City of Dania,* 761 So.2d at 1093–94; *see also Allstate Ins. Co. v. Kaklamanos,* 843 So.2d 885, 889 (Fla.2003)("district court should exercise its discretion to grant certiorari review only when there has been a violation of a clearly established principle of law resulting ***207** in a miscarriage of justice"); *Blumenthal* 675 So.2d at 608; *Maturo v. City of Coral Gables,* 619 So.2d 455, 457 (Fla. 3d DCA 1993); *Orange County v. Lust,* 602 So.2d 568, 572 (Fla. 5th DCA 1992); *Herrera v. City of Miami,* 600 So.2d 561, 563 (Fla. 3d DCA 1992); *City of Ft. Lauderdale v. Multidyne Med. Waste Mgmt. Inc.,* 567 So.2d 955, 958 (Fla. 4th DCA 1990); *City of Deland v. Benline Process Color Co.,* 493 So.2d 26, 28 (Fla. 5th DCA 1986); *Bd. of County Comm'rs of Pinellas County v. City of Clearwater,* 440 So.2d 497, 499 (Fla. 2d DCA 1983); *Town of Mangonia Park v. Palm Beach Oil, Inc.,* 436 So.2d 1138, 1139 (Fla. 4th DCA 1983).

All Citations

857 So.2d 202, 28 Fla. L. Weekly D1686

Footnotes

1 Based on personal observation and experience and from a review of Machado's site plans, the Director of Public Works testified that Machado's plan, which called for traffic entering the school property from Northwest 103rd Street to cross over the traffic attempting to exit following drop-off, back onto Northwest 103rd Street, would cause "stacking" of traffic in the westbound lane of Northwest 103rd street.
The Chief of Police testified, based on his 27 years as a policeman and observations of behavior during drop-off and pick-up at other Hialeah Gardens schools, that placing a school at this site was dangerous.
The Chief Zoning Officer's memo concluded that she, as well as the Public Works Director and Chief of Police all agreed:

> [t]he additional vehicles related to six hundred (600) students and forty-two (42) staff members during peak hours would cause extreme traffic congestion. Individuals making a left or right turn into the school would back up traffic in both directions on NW 103rd Street. In addition, the exiting of the school onto 103rd Street would cause chaos.

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108 So.2d 601
Supreme Court of Florida.

FLORIDA RATE CONFERENCE, a non-profit corporation, The Traffic and Rate Bureau of St. Petersburg, Florida, The Tampa Chamber of Commerce, The Broward County Traffic Association, The Greater Miami Traffic Association, and The Jacksonville Traffic Bureau, Petitioners,

v.

FLORIDA RAILROAD AND PUBLIC UTILITIES COMMISSION. The Florida Intrastate RateBureau, Respondents.

Jan. 9, 1959.
|
Rehearing Denied Feb. 23, 1959.

Synopsis

Proceeding on certiorari to review an order of the Railroad Commission granting a rate increase to common carrier motor freight lines. The Supreme Court, Hobson, J., held that where Railroad Commission after determining total amount of additional revenue that it would take in its judgment to give motor carriers involved a reasonable return on their investment, stated that the study of an alleged representative carrier did not follow the stipulated procedure and was therefore unreliable, but the commission was required to make some use of it because it had no other source from which to draw in making the necessary apportionment of the revenues and expenses, the commission's order was invalid on the ground that it showed on its face that it was not supported by competent substantial evidence.

Petition for certiorari granted and order quashed.

Roberts, J., dissented.

West Headnotes (9)

[1] **Carriers** ⇨ Proceedings to Enforce or to Prevent Enforcement of Regulations

The determinations of the Railroad Commission with respect to rates for carriers when duly made are clothed with a presumption that they are prima facie reasonable and just and on review, such presumption of validity can only be overcome when either the invalidity of the Commission's decision appears plainly on the face of the order, regulation or schedule, or where such weakness appears by clear and satisfactory evidence. F.S.A. § 350.12(2) (m).

4 Cases that cite this headnote

[2] **Automobiles** ⇨ Fares

Substantial evidence supported order of the Railroad Commission granting a rate increase to eleven motor carriers on the basis of evidence submitted by one carrier where the selection of such carrier as the most representative carrier was not arbitrary or unreasonable. F.S.A. § 350.12(2) (m).

[3] **Automobiles** ⇨ Fares

Where the Railroad Commission in determining the total amount of additional revenue that it would take in its judgment to give all the motor carriers involved a reasonable return on their investment used the study of a single representative carrier, use of the study by the Commission was a sound exercise of its decisional powers. F.S.A. § 350.12(2) (m).

1 Cases that cite this headnote

[4] **Certiorari** ⇨ Questions of fact

On certiorari, the Supreme Court will not reweigh the evidence presented to

an administrative body whose order is under examination, but the court is charged with the duty of examining the record to determine whether the agency's order is in accordance with the essential requirements of law and whether the agency had before it competent substantial evidence to support its findings and conclusions.

21 Cases that cite this headnote

[5] **Automobiles** ⇦ Proceedings to enforce or to prevent enforcement of regulations

On petition for certiorari to review an order of the Railroad Commission granting a rate increase to common motor freight carriers, petitioners had the duty either to satisfactorily and clearly show the errors upon which they relied or to show that such error plainly appeared on the face of the order of the Commission. F.S.A. § 350.12(2) (m).

1 Cases that cite this headnote

[6] **Public Utilities** ⇦ Certiorari to review orders of commission

If there is competent substantial evidence to sustain findings and conclusions of the Railroad Commission and no rule of law is violated and the whole record does not disclose an arbitrary action, the findings and conclusions of the Commission will not be set aside on certiorari even though the reviewing court might have reached different conclusions on the evidence. F.S.A. § 350.12(2) (m).

4 Cases that cite this headnote

[7] **Carriers** ⇦ Proceedings before officers and commissions

Where a rate, rule or regulation is made without statutory authority or without giving the carrier affected by it reasonable opportunity to be heard, or without obtaining or considering any substantial evidence, where investigation, inquiry and evidence are necessary as a basis for the Commission's action taken, the proceeding is not had in due course of law and the Supreme Court will not enforce it. F.S.A. § 350.12(2) (m).

1 Cases that cite this headnote

[8] **Automobiles** ⇦ Fares

Where Railroad Commission, after determining total amount of additional revenue that it would take in its judgment to give motor carriers involved a reasonable return on their investment, stated that the study of an alleged representative carrier did not follow the stipulated procedure and was therefore unreliable, but the Commission was required to make some use of it because it had no other source from which to draw in making the necessary apportionment of the revenues and expenses, the Commission's order was invalid on the ground that it showed on its face that it was not supported by competent substantial evidence. F.S.A. § 350.12(2) (m).

1 Cases that cite this headnote

[9] **Evidence** ⇦ Sufficiency to support verdict or finding

The "substantial evidence rule" is not satisfied by evidence which merely creates a suspicion or which gives equal support to inconsistent inferences, and evidence to be substantial must possess something of substantial and relevant consequence and must not consist of vague or irrelevant matter not carrying the quality of proof or having fitness to induce conviction.

6 Cases that cite this headnote

Attorneys and Law Firms

*602 Ben F. Overton, Em. Davis, of Baynard, Baynard & McLeod, St. Petersburg, for petitioners.

Lewis W. Petteway, General. Counsel for Florida Railroad and Public Utilities Commission, Tallahassee, A. Pickens Coles, John M. Allison, Tampa, for Florida Intrastate Rate Bureau, for respondents.

Opinion

HOBSON, Justice.

This case was brought before us on a writ of certiorari requesting that we review an order of the respondent Florida Railroad and Public Utilities Commission granting a rate increase of 8.72% to the applicant Florida Intrastate Rate Bureau on behalf of all common carrier motor freight lines participating in Motor Freight Tariff FR&PUC MF No. 7.

The Intrastate Rate Bureau, representing eleven common carrier motor freight lines, originally applied to the Commission on behalf of these common carriers for a rate increase of 10% in all Class and Commodity Rates and Charges. The petitioners appeared at the hearing on the Rate Bureau's application as protestants for and on behalf of the shipping public in their respective metropolitan areas. Information as to petitioners' position in this case is best gleaned from the following excerpts of Order 3910 of the Commission, granting the 8.72% increase:

'Some time prior to the initial hearing in these Dockets, a prehearing conference was held in the offices of the Commission at Tallahassee, Florida between the motor freight carriers participating herein and the Commission's Staff for the purpose of simplifying the *603 issue as much as possible, determining the nature and scope of the exhibits to be offered at the hearing by various parties, and developing a separation procedure to be used by the carriers in ascertaining the inter-intrastate relationship of their operations. A separation procedure was agreed upon, reduced to writing and was subsequently received in evidence herein as Exhibit No. 92. The basis factors for the separation procedure were to be the actual revenues, truck and tractor miles and tons of revenue freight carried. At the conference representatives of Central Truck Lines stated that they could make a separation between interstate and intrastate operations on the basis of actual revenues, truck and tractor miles and tons of revenue freight carried. Because of this representation, and because Central appeared to be the most representative carrier participating herein with both interstate and intrastate operations, Central Truck Lines was selected to make the separation study which would be accepted as representing the inter-intrastate relationship of the carriers as a group.

'During the hearings it developed that the basic factors used in making the separation study were not actual as required by Exhibit No. 92, aforesaid. On the contrary a very simple but completely unreliable method was employed to determine interstate revenues, truck and tractor miles and tons of revenue freight carried. Schedules which originated or terminated at points outside the State of Florida were considered as exclusively interstate. These interstate schedules all originate or terminate at the carrier's basic terminals in Florida. The factors developed from this simple method did not comprehend shipments interchanged at Jacksonville with R. C. Motor Lines and other carriers. Neither did such factors take into consideration the miles and tonnage involved in transporting purely interstate shipments between such Florida terminals and Florida points of origin or destination. Miles of tonnage of this character were considered as intrastate in nature. All schedules moving between points within the state were considered as exclusively intrastate even though they might be transporting interstate shipments.

'Applicant's witnesses readily admitted the foregoing discrepancies but attempted to minimize their effect by expressing the unsupported opinion that intrastate operations were favored by the method used because intrastate received credit for revenues that would have been credited to interstate operations under a complete and accurate analysis. This conclusion of the witnesses is a matter of opinion, is not predicated upon any reliable facts presented at the hearing, and is not shared by the Commission.

'Transportation companies seldom, if ever, make a satisfactory showing before the Commission for increases in their intrastate rates and charges. They appear always to be convinced that their revenue problems result from intrastate rate deficiencies but

the proof of that situation inevitably leaves much to be desired. Carriers must find some reliable approach to the problem of demonstrating the results revenue wise of the intrastate portion of their operations. Once a sound and reliable approach is found it must be observed and followed completely in every detail.

'We are sounding the warning now to the common carrier motor freight lines that future cases of this kind must be supported by more reliable separation techniques. We believe the procedure outlined in Exhibit No. 92 aforesaid would have produced more satisfactory results had the separation procedure outlined therein been followed ***604** as intended. It is the purpose of this Commission to require the common carrier motor freight lines participating in this case to begin a continuing and permanent separation study with monthly reports to the Commission so that we may be fully and accurately advised concerning the revenue results of intrastate operations. The procedures to be observed in this continuing study will be announced in sufficient time for the study to be commenced in July of this year.

'In the meantime, system-wide exhibits of the various carriers, and their annual and quarterly reports filed with the Commission, strongly indicate that some of the carriers are in need of rate relief. The operating ratio is the most frequently used measure of a motor carrier's revenue needs and financial condition. * * *'[1]

The Commission determined that the applicants as a group were in need of total additional revenue (intrastate and interstate) in the amount of $1,540,994. The Commission, in its order, then said:
'Apportioning these additional revenue requirements between interstate and intrastate services poses the most difficult part of the problem. The separation study already mentioned herein was intended to simplify this problem. While we feel that the study did not follow the stipulated procedure, and is therefore unreliable, we must make some use of it because we have no other source from which to draw in making the necessary apportionment of revenues and expenses.' (Emphasis supplied.)

The Commission, in its order, then made the necessary computation to enable it to enter the following finding:

'Based upon the record herein, including the quarterly and annual reports filed with the Commission by the participating carriers, the Commission finds as follows:

'(1) The common carrier motor freight lines participating in Motor Freight Tariff FR&PUC MF No. 7 are in need of additional intrastate revenues in the total sum of $971,549 on the basis of 1956 operations adjusted for revenue and expense increases occurring during that year and comprehending 1957 wage increases actually committed and agreed to by contract.

'(2) The additional revenues needed by the carriers can be produced by increasing minimum charges twenty-five cents (25¢) per shipment, and by increasing Class and Commodity Rates and Charges by 8.72%

'(3) The rates and charges when increased as aforesaid will be fair, just, reasonable, and compensatory.

'(4) Overseas Transportation Company should be require to discontinue assessing the arbitrary described above for a test period of one year. At the end of the test period the effect of the discontinuance of the arbitrary on the carrier's operating ratio will be determined as the basis for further action concerning the reinstatement or elimination of said arbitrary.

'(5) The increased rates and charges herein authorized should become effective upon proper tariff publication by applicant.'

***605** One of petitioners' contentions is that it was improper for the Commission to grant this rate increase to eleven carriers on the basis of evidence submitted by one carrier (Central Truck Lines, Inc.), particularly when this carrier is not representative of the other carriers involved.

[1] This contention of the petitioners has been carefully considered and found to be without merit. The Legislature has authorized the Commission to determine facts in making and enforcing administrative rates, rules and regulations. Such determinations when duly made are, by statute, clothed with a presumption that they are prima facie reasonable and just. F.S.A. s 350.12(2)(m). On review this presumption of validity can only be overcome when

either the invalidity of the Commission's decision appears plainly on the face of the order, rule, regulation or schedule, or where such weakness is made to appear by clear and satisfactory evidence.

[2] Our examination of the record upon which the Commission based its order discloses that the Commission had before it evidence which included the annual and quarterly financial reports of all eleven carriers, as well as their current operating ratios. The Commission's determination that a rate increase was needed was based on competent substantial evidence supplied by the various carriers involved, including Central Truck Lines.

The record also shows that the selection of Central Truck Lines as the most representative carrier involved with both intra and interstate operations was not arbitrary or unreasonable. Even if we accept petitioners' assertions that Central Truck Line's operating expenses in certain areas are higher percentage-wise than those of the other carriers involved, we do not believe the petitioners have, by clear and satisfactory evidence, shown that Central Truck Lines was not sufficiently representative to provide the material it was selected to present. The petitioners have failed to overcome this statutory presumption in favor of the validity of the Commission's decision and, therefore, cannot prevail as to this point.

The major issue in this petition concerns the validity of the separation study prepared by Central Truck Lines, Inc. As indicated by the Commission's order, Central was selected to prepare a separation study designed to separate its revenues and expenses incident to intrastate operations from those connected with its interstate operations.

The petitioners assume the position that when a common carrier operates in both intrastate and interestate commerce, its revenue and expenses must be separated between intra and interstate by competent evidence before an intrastate rate increase can be granted by the Railroad and Public Utilities Commission. In support of this contention they cite that portion of the case of State ex rel. Railroad Com'rs v. Louisville and Nashville R. Co., 1912, 62 Fla. 315, 57 So. 175, 190, wherein this court said:

'Where the same property, labor, and management are used at the same time by a common carrier in interstate and intrastate commerce the value of the property and labor and management used should be properly apportioned in determining the reasonableness of the compensation for service rendered by the carrier in the intrastate business taken separately and as an entirety, or in connection with the interstate business concurrently done.'

See also State ex rel. Railroad Com'rs v. Seaboard Air Line R. Co., 1904, 48 Fla. 129, 37 So. 314, 320.

The reason behind this rule was explained in the following section of American Jurisprudence, where it is said:
'A state cannot justify unreasonably low rates for domestic transportation, considered alone, upon the ground that the carrier is earning large profits on its interstate business, nor can the carrier impose unreasonably high rates on ***606** domestic business in order to meet losses on interstate business; the reasonableness of the rates to be fixed by the state must be decided with reference exclusively to what is just and reasonable in respect of domestic business.' 9 Am.Jur., p. 520, s 130.

[3] We believe the Commission's statement on this subject in the disputed order is of compelling significance. The Commission, after determining the total amount of additional revenue that it would take in its judgment to give all the carriers involved a reasonable return on their investment, said:
'While we feel that the study did not follow the stipulated procedure, and is therefore unreliable, we must make some use of it because we have no other source from which to draw in making the necessary apportionment of revenues and expenses.' (Emphasis supplied.)

This court recognizes that the Railroad Commission has the difficult and highly technical duty of regulating motor highway common carriers. Over the years it has gained a great deal of experience and knowledge in this field. In the instant case we are content that its characterization of the separation study as being 'necessary' to its establishment of a reasonable rate, was a sound exercise of its decisional powers.

We have now reached the very fulcrum of this case. For we are asked to pass upon the validity of a Commission order which, by its own terms, has used an 'unreliable' separation study to support a 'necessary' apportionment of revenues and expenses because it 'had no other source from which to draw this information'.[2]

[4] The scope and procedure of the review of administrative orders has been often set forth. From the cases it is clear that on certiorari this court will not undertake to re-weigh or re-evaluate the evidence presented to the administrative body whose order is under examination. This court is charged with the duty of examining the record to determine whether the agency's order is in accord with the essential requirements of law and whether the agency had before it competent substantial evidence to support its findings and conclusions. De Groot v. Sheffield, Fla.1957, 95 So.2d 912, 916.

[5] With reference to actions by the Railroad & Public Utilities Commission, the Legislature has clothed the orders with a presumption of validity. Section 350.12(2)(m), F.S.A., reads in part as follows:
'Every rule, regulation, schedule or order heretofore or hereafter made by the commissioners shall be deemed and held to be within their jurisdiction and their powers, and to be reasonable and just and such as ought to have been made in the premises and to have been properly made and arrived at in due form of procedure and such as can and ought to be executed, unless the contrary plainly appears on the face thereof of or be made to appear by clear and satisfactory evidence, and shall not be set aside or held invalid unless the contrary so appears. All presumptions shall be in favor of every action of the commissioners and all doubts as to *607 their jurisdiction and powers shall be resolved in their favor, it being intended that the laws relative to the railroad commissioners shall be deemed remedial laws to be construed liberally to further the legislative intent to regulate and control public carriers in the public interest.'

It is clear that the above statutory injunction imposes a duty upon petitioners to either satisfactorily and clearly show the errors upon which they rely, or to show that such error plainly appears on the face of the order.

[6] [7] If there is competent substantial evidence to sustain the findings and conclusions of the Commission, and no rule of law was violated in the proceedings, and the whole record does not disclose an abuse of authority or arbitrary action, the findings and conclusions of the Commission will not be set aside on certiorari, even though the reviewing court might have reached different conclusions on the evidence. Florida Motor Lines v. State Railroad Commission, 1931, 101 Fla. 1018, 132 So. 851, 862. It is equally clear that the reverse of this holds true, for we have held that where a rate, rule or regulation is made without statutory authority or without giving the carrier affected by it, reasonable opportunity to be heard, or without obtaining or considering any substantial evidence, where investigation, inquiry and evidence are necessary as a basis for the action taken, the proceeding is not had in due course of law and this court will not enforce it. State ex rel. Railroad Com'rs v. Florida East Coast R. Co., 1912, 64 Fla. 112, 59 So. 385, 393.

[8] In the instant case we are blessed with the unique opportunity to inspect the precise evidence which led the Commission to it findings and conclusions, for the Commission has in its order discussed in detail the logical processes and data used in arriving at its findings. The Commission's error, if any, thus plainly shows upon the face of its order. By its own statements the Commission has found the disputed separation study 'necessary' to its conclusions. Further, the Commission has measured the separation study against its experience in this field and determined the study was 'unreliable'. And last, but not least, the Commission has stated it must make some use of this 'unreliable' study 'because (it had) no other source from which to draw' in making the apportionment between intra and interstate expenses and revenue. The question is clearly whether or not the Railroad Commission may ground an essential portion of its order solely on evidence it characterizes as unreliable. We think not. Although we are fully aware of the statutory presumption in favor of such orders and know our obligation to resolve all doubt in favor of the validity of the Commission's actions, it is our opinion that Order 3910 clearly shows upon its face that it is not supported by competent substantial evidence.

[9] Although the terms 'substantial evidence' or 'competent substantial evidence' have been variously defined, past judicial interpretation indicates that an order which bases an essential finding or conclusion solely on unreliable evidence should be held insufficient.

In the case of N. L. R. B. v. A. S. Abell Co., 4 Cir., 1938, 97 F.2d 951, 958, a federal court said that the substantial evidence rule is not satisfied by evidence which merely creates a suspicion or which gives equal support to inconsistent inferences. And in Milford Copper Co. of Utah v. Industrial Commission, 1922, 61 Utah 37, 210 P. 993, 994, the court said that evidence to be substantial must possess something of substantial and relevant consequence and must not consist of vague, uncertain, or irrelevant matter not carrying the quality of proof or having fitness to induce conviction. Surmise, conjecture or speculation have been held not to be substantial evidence. White v. Valley Land Company, 1958, 64 N.M. 9, 322 P.2d 707, 709.

And in this state in the recent case of De Groot v. Sheffield, supra, Mr. Justice Thornal ***608** capably defined the term and its usage when he wrote
'We have used the term 'competent substantial evidence' advisedly. Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred. We have stated it to be such relevant evidence as a reasonable mind would accept as adequate to support a conclusion. Becker v. Merrill, 155 Fla. 379, 20 So.2d 912; Laney v. Board of Public Instruction, 153 Fla. 728, 15 So.2d 748. In employing the adjective 'competent' to modify the word 'substantial,' we are aware of the familiar rule that in administrative proceedings the formalities in the introduction of testimony common to the courts of justice are not strictly employed. Jenkins v. Curry, 154 Fla. 617, 18 So.2d 521. We are of the view, however, that the evidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. To this extent the 'substantial' evidence should also be 'competent.' Schwartz, American Administrative Law, p. 88; The Substantial Evidence Rule by Malcolm Parsons, Fla.Law Review, Vol. IV, No. 4, p. 481; United States Casualty Company v. Maryland Casualty Company, Fla.1951, 55 So.2d 741; Consolidated Edison Co. of New York v. National Labor Relations Board, 305 U.S. 197, 59 S.Ct. 206, 83 L.Ed. 126.'

The evidence relied upon to sustain the ultimate finding in this case has been characterized by the Railroad and Public Utilities Commission as 'unreliable'. Webster's New International Dictionary (2nd Edition) defines unreliable to mean not reliable; undependable; untrustworthy.

Our administrative evidentiary standard is competent substantial evidence. It is clear that the use of unreliable evidence as the sole foundation of an essential portion of the Commission's findings fails to meet this standard. This order is not grounded upon competent substantial evidence legally sufficient to support the Commission's findings and conclusions. This fatal deficiency is etched boldly upon the face of the order herein challenged.

For this reason the petition for writ of certiorari is granted and Order 3910 of the Florida Railroad and Public Utilities Commission is quashed.

TERRELL, C. J., and THOMAS and O'CONNELL, JJ., concur.

ROBERTS, J., dissents.

All Citations

108 So.2d 601

Footnotes

1 The operating ratio is the proportion which operating expense bears to operating income. Stated another way, the operating ratio represents the number of cents required to be expended as operating expenses in producing one revenue dollar. An operating ratio in excess of 100 would indicate that operating expenses

exceeded operating revenues. Just how low the operating ratio should be is one of the problems of motor carrier rate making. (Taken from Railroad & Public Utilities Commission's Order No. 3910, June 5, 1957.

2 The record discloses that a five day actual traffic study of all 11 carriers was conducted. This exhibit was designed to show how the present revenue was split between intra and interstate commerce and what effect on future revenue the proposed increases would have. This exhibit does not contain a separation of interstate and intrastate costs and expenses. The results of such short period studies was stated to be unreliable by a member of the Commission staff. We mention this study here merely to show that were it not for the Commission's own statements, in the order, informing us of the evidence upon which it based its findings and conclusions, we would be presented with the more difficult problem of determining whether or not the other evidence of record was sufficient to support the Commission's findings and conclusions.

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619 So.2d 996
District Court of Appeal of Florida,
Second District.

LEE COUNTY, a political subdivision of the State of Florida, Petitioner,

v.

SUNBELT EQUITIES, II, LIMITED PARTNERSHIP, a Pennsylvania limited partnership, Respondent.

No. 92–03948.
|
May 14, 1993.
|
Rehearing Denied June 16, 1993.

Synopsis
Property owner sought to have property currently zoned for agricultural use rezoned for purposes of constructing commercial/office development. Although proposal was apparently consistent with future land use projections as embodied in county comprehensive plan, county commission overruled recommendation of planning staff and hearing examiner and denied rezoning. Owner sought judicial review. The Circuit Court for Lee County, James R. Thompson, J., granted certiorari and found that denial of application was not supported by evidence. County sought further certiorari review. The District Court of Appeal held that: (1) site-specific, owner-initiated rezoning request was sufficiently judicial in character that final administrative order was appropriate for appellate review, and (2) it was not sufficient for property owner to show that proposed use was consistent with comprehensive plan, and decision to deny could be sustained if record reflected substantial competent evidence favoring continuation of status quo.

Petition granted, order quashed, case remanded.

West Headnotes (14)

[1] **Zoning and Planning** ⇦ Finality; ripeness

Site-specific, owner-initiated rezoning requests are sufficiently judicial in character that final administrative orders are thereafter appropriate for appellate review.

1 Cases that cite this headnote

[2] **Zoning and Planning** ⇦ Modification or amendment

Any party adversely affected by rezoning decision is entitled to some form of direct appellate review.

[3] **Zoning and Planning** ⇦ Grounds for grant or denial in general

All zoning and development permitting must be consistent with comprehensive plan of city or county in question. West's F.S.A. § 163.3161(5).

[4] **Administrative Law and Procedure** ⇦ Review for arbitrary, capricious, unreasonable, or illegal actions in general

Administrative Law and Procedure ⇦ Wisdom, judgment, or opinion in general

Administrative Law and Procedure ⇦ Substantial evidence

At circuit level of judicial review of local government administrative action, questions to be asked are whether due process was afforded, whether administrative body applied correct law, and whether body's findings are supported by competent substantial evidence, i.e., whether record contains necessary quantum of evidence, and circuit court

is not permitted to go farther and reweigh evidence or to substitute its judgment about what should be done for that of administrative agency. U.S.C.A. Const.Amend. 14.

7 Cases that cite this headnote

[5] **Administrative Law and Procedure** ⇨ Review for arbitrary, capricious, unreasonable, or illegal actions in general

Following judicial review at circuit level of local government administrative action, questions to be asked on further review by certiorari in District Court of Appeal are whether due process was afforded and whether circuit court applied incorrect principle of law. U.S.C.A. Const.Amend. 14.

2 Cases that cite this headnote

[6] **Zoning and Planning** ⇨ Zoning and planning distinguished

Comprehensive planning and zoning are interrelated but different functions of local government.

[7] **Zoning and Planning** ⇨ Validity of regulations in general

Zoning and Planning ⇨ Regulations in general

Both comprehensive zoning plan and zoning classification are presumptively valid, and one seeking change in either has burden of showing its invalidity.

[8] **Zoning and Planning** ⇨ Conformity of change to plan

Zoning and Planning ⇨ Classification of property; size and boundary of zones

When zoning classification is challenged, comprehensive plan is relevant only when suggested use is inconsistent with that plan; where any of several classifications is consistent with plan, applicant seeking change from one to the other is not entitled to judicial relief absent proof that status quo is no longer reasonable, and proposed change cannot be inconsistent and will be subject to strict scrutiny.

5 Cases that cite this headnote

[9] **Zoning and Planning** ⇨ Modification or amendment; rezoning

On judicial review of denial of rezoning request, which is quasi-judicial decision, after applicant has met initial burden of showing that proposal is consistent with comprehensive plan, local government must show by substantial competent evidence that existing zoning classification was enacted in furtherance of some legitimate public purpose and that public interest is legitimately served by continuing that classification; if ordinance was constitutional from outset and remains constitutional in face of changes prompting applicant to request rezoning, rezoning may be refused provided local government can justify such conclusion with evidence on the record, and burden shifts back to applicant to prove that ordinance is confiscatory.

3 Cases that cite this headnote

[10] **Zoning and Planning** ⇨ Validity of regulations in general

Land use restrictions must substantially advance some legitimate state interest or they are invalid.

[11] **Zoning and Planning** ⇨ Deprivation of property

Zoning and Planning ⇨ Nonconforming Uses

Land use restrictions cannot be so intrusive as to deprive landowner of reasonable economic use of property, and

previously permissible or grandfathered uses should not be incautiously rescinded.

[12] **Municipal Corporations** ⇨ Public safety and welfare

Assuming regulation is necessary for welfare of public, and is not physically invasive or confiscatory of some existing property right, it is probably within government's police power to enact it.

[13] **Zoning and Planning** ⇨ Modification or amendment; rezoning

In reviewing rezoning application, court should not presume that landowner does or can assert enforceable property right that triggers application of clear and convincing evidence standard of proof to zoning body every time more intensive use of property is sought; instead, landowner must prove existence of such right, not just consistency with comprehensive plan, before so rigorous a burden will be imposed upon zoning body.

3 Cases that cite this headnote

[14] **Zoning and Planning** ⇨ Agricultural uses, woodlands and rural zoning

Zoning and Planning ⇨ Modification or amendment; rezoning

On judicial review of denial of application to rezone property from agricultural to allow for construction of commercial/office development, it was not sufficient for applicant to show that rezoning would be consistent with future land use projections embodied in county comprehensive plan; rather, it was sufficient to sustain county's decision to deny application that record reflect substantial competent evidence favoring continuation of status quo.

Attorneys and Law Firms

***998** James G. Yaeger, County Atty., and Thomas L. Wright, Asst. County Atty., Fort Myers, for petitioner.

Steven C. Hartsell, Pavese, Garner, Haverfield, Dalton, Harrison & Jensen, Fort Myers, for respondent.

Opinion

PER CURIAM.

We review Lee County's petition for writ of certiorari pursuant to *Education Development Center, Inc. v. City of West Palm Beach Zoning Board of Appeals,* 541 So.2d 106 (Fla.1989) and *City of Deerfield Beach v. Vaillant,* 419 So.2d 624 (Fla.1982). Finding that the circuit court did not apply the correct law to the facts and issues presented in this case, we grant the petition.

I. BACKGROUND

This action stems from a request for rezoning submitted by respondent Sunbelt Equities II (hereafter "Sunbelt"). Sunbelt owns a parcel currently zoned for agricultural use, upon which it wishes to construct a commercial/office development. Apparently the proposal is consistent with future land use projections as embodied in the Lee County comprehensive plan. However, opponents of the proposal have asserted that continuing the present zoning classification is preferable, at least for the time being.[1] Although county planning staff and a hearing examiner recommended approval of the ***999** proposal with changes, the county commission overruled that recommendation and denied the rezoning. In so doing the commission issued a written resolution which made three separate findings of fact:[2]

(1) The proposal is inconsistent with the site location standards for Neighborhood Commercial Development as set forth in ... the Lee County Comprehensive Land Use Plan ... which requires Neighborhood Commercial Developments to be located at the intersection of a collector and arterial or an arterial and arterial road so as to allow access to two roads.

> (2) The proposal would result in unreasonable development expectations which may not be achievable because of commercial acreage limitations on the "Year 2010 Overlay [map]" for the subdistrict in question in violation of.... the Lee County Comprehensive Land Use Plan.
>
> (3) The proposal would permit a commercial development to locate in such a way as to open new areas to premature, scattered, or strip development....

Sunbelt then sought relief in circuit court via a proceeding the county aptly describes as a "hybrid."[3] The circuit court granted certiorari, "find [ing] that there was no substantial, competent evidence to support the decision of the Lee County Board of County Commissioners in ... denying [Sunbelt]'s application for rezoning." The county now asks us to review that decision.

II. REZONING: LEGISLATIVE OR JUDICIAL PROCEEDING?

[1] The circuit court, in asserting its power to review the matter via certiorari, appears to have relied upon *Snyder v. Board of County Commissioners of Brevard County,* 595 So.2d 65 (Fla. 5th DCA 1991), *jdn. accepted,* 605 So.2d 1262 (Fla.1992), which states that owner-initiated, site-specific rezoning proceedings are quasi-judicial in nature. The county had moved to dismiss Sunbelt's petition because, in its view, all zoning decisions are legislative rather than judicial. The difference between these concepts affects both the accepted method of subsequent judicial review and the scope of that review.

(a) Is there conflict between *Snyder v. Brevard County* and prior holdings of this court?

The county contends that *Snyder* conflicts with cases from this court describing rezoning as a legislative activity. *See, e.g., Lee County v. Morales,* 557 So.2d 652 (Fla. 2d DCA), *rev. denied,* 564 So.2d 1086 (Fla.1990); *Hirt v. Polk County Board of County Commissioners,* 578 So.2d 415 (Fla. 2d DCA 1991).[4] Sunbelt disputes that conflict exists, and notes that our court has employed certiorari review in settings factually similar to the present case. *Manatee County v. Kuehnel,* 542 So.2d 1356 (Fla. 2d DCA), *rev. denied,* 548 So.2d 663 (Fla.1989).

We agree that no material conflict arises between *Lee County v. Morales* and *Snyder. Morales* involved a comprehensive downzoning of an environmentally sensitive barrier island initiated by the county, and did not involve an owner-initiated zoning change. Moreover, any conflict between *Snyder* and *Hirt v. Polk County* exists only in dicta. *Hirt* was not a rezoning, but rather a neighboring property owner's challenge to approval of a Planned Unit Development. The case was disposed of on procedural grounds —the circuit court had dismissed Hirt's certiorari petition, and ***1000** this court, finding the county's construction of applicable rules to have been a "judicial" undertaking, ordered the petition reinstated and decided on its merits.

In *Hirt* Judge Scheb engaged in a functional analysis of the underlying administrative proceedings quite similar to that in *Snyder* (and which was cited with approval in *Snyder). Hirt* states that the legislative *versus* judicial determination turns on (1) the nature of the challenge; and (2) the manner in which the zoning authority went about making its decision. *Snyder,* Sunbelt urges, is "the logical culmination of [this] functional analysis." However, Judge Scheb did remark in passing that rezonings were "legislative." 578 So.2d at 417. He did not distinguish between a county-initiated, broad-based rezoning, as in *Morales,* and a site-specific, owner-initiated rezoning as in *Kuehnel.*

(b) When, if ever, is rezoning a "judicial" matter?

Florida's appellate courts are neither unanimous nor consistent on the question whether rezonings are legislative or quasi-judicial.[5] Neither are they consistent about the method or scope of review. For example, in *St. Johns County v. Owings,* 554 So.2d 535 (Fla. 5th DCA 1989), *rev. denied,* 564 So.2d 488 (Fla.1990), and *Palm Beach County v. Tinnerman,* 517 So.2d 699 (Fla. 4th DCA 1987), *rev. denied,* 528 So.2d 1183 (Fla.1988), the courts applied the "fairly debatable" standard appropriate for legislative

decisions, but reviewed the proceedings by certiorari as if they were judicial in nature.

"A judicial inquiry investigates, declares, and enforces liabilities as they stand on present facts and under laws supposed already to exist ... Legislation, on the other hand, looks to the future and changes existing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power." *Prentis v. Atlantic Coast Line Co.*, 211 U.S. 210, 226, 29 S.Ct. 67, 69, 53 L.Ed. 150, 158 (1908), quoted in *Jennings v. Dade County,* 589 So.2d 1337, 1343 (Fla. 3d DCA 1991), *rev. denied,* 598 So.2d 75 (Fla.1992) (Ferguson, J., concurring). A judicial decision involves a controversy over how *existing* law affects a set of facts—what Judge Scheb called "enforcing" the current ordinance. 578 So.2d at 417. Placed in the zoning/code enforcement context, the court or agency asks: "Has the party done something in violation of the law?" or "Will the law allow the party to do what it wants?" By contrast, legislation *changes* the existing law. Arguably, it is immaterial whether such change stems from the fiat of the governing body (*e.g.* a comprehensive rezoning) or from an individual request to "change the law for me" (the *Snyder*/Sunbelt rezonings).

Snyder, in concluding that owner-initiated rezoning proceedings are nevertheless quasi-judicial in character, borrows heavily from two sources. One, *Coral Reef Nurseries, Inc. v. Babcock Co.*, 410 So.2d 648, 652 (Fla.3d DCA 1982), declares that "it is the character of the administrative hearing leading to the action of the administrative body that determines the label to be attached to the action...." The court in *Coral Reef* was deciding whether "administrative *res judicata*" operated to bar a second rezoning application; though they eventually determined that the nature of these rezoning hearings made them "judicial," the court went on to afford considerable deference to the local government in deciding whether circumstances had sufficiently changed to defeat application of the *res judicata* principle.

Another source is the widely-cited opinion of the Oregon Supreme Court, *Fasano v. Board of County Commissioners of Washington County,* 264 Or. 574, 507 P.2d 23 (1973). The plaintiffs in *Fasano* had unsuccessfully opposed a zoning change before their county commission, but prevailed at all levels of the Oregon court ***1001** system because the rezoning was not shown to be consistent with the local comprehensive plan. The supreme court began its analysis by stating, "Any meaningful decision as to the proper scope of judicial review of a zoning decision must start with a characterization of the nature of that decision." 507 P.2d at 25–26. Most jurisdictions, including Oregon itself, heretofore had "state[d] that a zoning ordinance is a legislative act and is thereby entitled to presumptive validity." 507 P.2d at 26. This approach, however, may have been "ignoring reality." *Id.*

> Ordinances laying down general policies without regard to a specific piece of property are usually an exercise of legislative authority, are subject to limited review and may only be attacked upon constitutional grounds for an arbitrary use of authority. On the other hand, a determination whether the permissible use of a specific piece of property should be changed is usually an exercise of judicial authority and its propriety is subject to an altogether different test.

Id.[6]

It is notable that *Fasano,* like most of the "consistency" cases we will discuss, involved a challenge to a rezoning that (initially) was successfully obtained despite a claim it was not only bad policy but not in compliance with the law. That is, *Fasano* (like *Hirt*) asked the question, unarguably judicial in character, "Does the existing law permit it?"

> The fact remains, however, that many rezoning decisions *are* properly reviewable by certiorari. While legislative authority (that is, the discretion to determine what the law should be) may not be delegated, a legislative body may delegate to a board or official the authority to apply the law if sufficient standards and procedural safeguards are adopted to ensure a proper application of legislative intent. Most zoning ordinances delegate, with standards, the authority to decide such things as variances or conditional use approvals, and these quasi-judicial determinations are reviewable by certiorari. Similarly, the authority to decide what zoning district to apply to each property could, with adequate standards, become a delegated, quasi-judicial determination. Far more often, however,

> rezoning decisions are held to be reviewable by certiorari merely because a zoning ordinance, charter or special act provides that they shall be.

LaCroix, *The Applicability of Certiorari Review to Decisions on Rezoning,* Fla.B.J., June 1991, at 105 (*footnotes omitted*).

We believe a fair and workable solution is to adopt the functional analysis of *Snyder,* which is consistent procedurally with our prior decision in *Manatee County v. Kuehnel.* That is, we agree that site-specific, owner-initiated rezoning requests are sufficiently judicial in character that final administrative orders are thereafter appropriate for appellate review.

(c) What Does It Mean to Label a Proceeding "Judicial"?

Our decision to adopt this portion of the *Snyder* opinion will measurably affect those local governments who, in continuing to regard *Snyder*-type rezonings as purely legislative, may utilize overly informal procedures when considering such requests. "When acting in a truly legislative function, a legislative body ... is not required to make findings of fact and statement of reasons supporting its decision as is necessary in order for the courts to effectively review governmental action for compliance with constitutional and statutory rights and limitations." *Snyder,* 595 So.2d at 68.

The effect of labeling rezoning decisions as quasi-judicial is to refer them to an independent forum that is isolated as far as is possible from the more politicized activities of local government, much as the judiciary is constitutionally independent of the legislative and executive branches. Because ***1002** these decisions today are inextricably linked with property rights-related claims, we view this shift toward enforced neutrality as salutary. The evolving law of property rights, exemplified by *Lucas v. South Carolina Coastal Council,* 505 U.S. 1003, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992), does not augur well for local governments who are reluctant to justify their decisions with explicit references to evidence and public policy. If reached under a veil of silence, even honest land-use decisions are vulnerable to charges of arbitrariness or improper motive.

Moreover, it is debatable whether the new procedural requirements implicit in our adoption of *Snyder* should be viewed either as onerous or as infringing upon powers traditionally reserved for local elected officials.

> [W]e note that the quality of due process required in a quasi-judicial hearing is not the same as that to which a party to a full judicial hearing is entitled. Quasi-judicial proceedings are not controlled by strict rules of evidence and procedure. Nonetheless, certain standards of basic fairness must be adhered to in order to afford due process.... A quasi-judicial hearing generally meets basic due process requirements if the parties are provided notice of the hearing and an opportunity to be heard. In quasi-judicial zoning proceedings, the parties must be able to present evidence, cross-examine witnesses, and be informed of all the facts upon which the commission acts.

Jennings v. Dade County, 589 So.2d at 1340.

III. THE SCOPE OF REVIEW AT THE CIRCUIT AND D.C.A. LEVELS

[2] It necessarily follows that any party adversely affected by a rezoning decision is entitled to some form of direct appellate review. Therefore, we turn to the standard of review that should be employed by the circuit and district courts when presented with such cases. At the outset we acknowledge the existence of several terms of art which warrant (and may sometimes lack) clear definition, among them "fairly debatable," "substantial competent evidence," and, in the wake of mandatory statewide comprehensive planning, "consistency" and "strict scrutiny." All come into play in *Snyder* and in the present case.

(a) "Fairly debatable" and "substantial competent evidence"

The terms "fairly debatable"—generally applied to sustain actions thought of as legislative—and "substantial competent evidence"—which must exist to support quasi-judicial determinations—may in fact be more similar than some decisional and textual authorities suggest.

> The "fairly debatable" rule is a rule of reasonableness; it answers the question of whether, upon the evidence presented to the municipal body, the municipality's action is reasonably based. The primary purpose of the "fairly debatable" test is to allocate decision-making authority over zoning matters between the legislative municipal body and the judiciary. The test purports to prevent the court from substituting its judgment *with regard to zoning ordinance enactments* for that of the zoning authority. In other words, the "fairly debatable" test was created to review the *legislative*-type enactments of zoning ordinances.

Town of Indialantic v. Nance, 400 So.2d 37, 39 (Fla.5th DCA 1981), *approved,* 419 So.2d 1041 (Fla.1982) (*citations omitted; emphasis in original*).

> At issue in *DeGroot [v. Sheffield,* 95 So.2d 912 (Fla.1957),] was the proper method and scope of review of a quasi-judicial county board determination. The *DeGroot* court held that where ... notice and hearing are required and the judgment of the board is contingent on the showing made at the hearing, the action is judicial or quasi-judicial ... The court then explained that "competent substantial evidence" was evidence a reasonable mind would accept as adequate to support a conclusion. The *DeGroot* "competent substantial evidence" standard of review of quasi-judicial action effectively provides the same standard the "fairly debatable" test provides for review of legislative municipal zoning action: For ***1003** the action to be sustained, it must be reasonably based in the evidence presented."

400 So.2d at 40 (*citations omitted*).[7]

(b) "Consistency" and "Strict Scrutiny"

[3] In Florida, all zoning and development permitting must now be consistent with the comprehensive plan of the city or county in question. *See* § 163.3161(5), Fla.Stat. (1991). The comprehensive plan has been likened to a "constitution" and has been described as "a limitation on a local government's otherwise broad zoning powers." *Machado v. Musgrove,* 519 So.2d 629, 632 (Fla.3d DCA 1987), *rev. denied,* 529 So.2d 693 (Fla.1988).[8] *See also, Hillsborough County v. Putney,* 495 So.2d 224 (Fla.2d DCA 1986). *And cf. City of Cape Canaveral v. Mosher,* 467 So.2d 468, 471 (Cowart, J., concurring specially).

According to *Machado,* "where a zoning action is challenged as violative of the comprehensive land use plan, the burden of proof is on the one seeking a change to show by competent and substantial evidence that the proposed development conforms strictly to the comprehensive plan and its elements." *Id.* Thus arises the term "strict scrutiny." Apparently there is conflict, between *Machado* and *Southwest Ranches Homeowners Association, Inc. v. Broward County,* 502 So.2d 931 (Fla.4th DCA), *rev. denied,* 511 So.2d 999 (Fla.1987), as to when "strict scrutiny" should be employed. *See* Mitchell, "In Accordance With a Comprehensive Plan: The Rise of Strict Scrutiny in Florida," 6 Fla.St.U.J.Land Use & Envtl.L. 79 (1990).[9]

(c) Scope of judicial review

The standards for judicial review of local government administrative actions were established by our supreme court in *Education Development Center v. West Palm Beach* and *Deerfield Beach v. Vaillant.*

[4] At the circuit level, three questions are asked: whether due process was afforded, whether the administrative body applied the correct law, and whether its findings are supported by competent substantial evidence. This last requirement is susceptible to misunderstanding. It involves a purely legal question: whether the record contains the necessary quantum of evidence. The circuit court is not permitted to go farther and reweigh that evidence (*e.g.,* where there may be conflicts in the evidence), or to substitute its judgment about what should be done for that of the administrative agency. *Bell v. City of Sarasota,* 371 So.2d 525 (Fla.2d DCA 1979).

[5] On further review by certiorari in the District Courts of Appeal, only the first two questions are considered. Where (as in the present case) there is no suggestion of a due process violation in the initial appeal, the district court determines only whether the circuit court "applied an incorrect principle of law." *Education Development Center,* 541 So.2d at 108. We may not exceed these extremely restrictive parameters

and "disagree[ ] with the circuit court's evaluation of the evidence." 541 So.2d at 108–9. Thus, if the correct rule of law for a circuit court to apply were the "substantial competent evidence" standard, ***1004** and the court did apply that standard, its decision should be sustained. Our power of review would entitle us to quash the circuit court's decision only if it imposed a *different* standard upon the parties than that required by law. *Kuehnel.*

Our reading of *Snyder* convinces us that the district court in that case, having reached a supportable conclusion that site-specific rezonings are quasi-judicial proceedings, thereafter embarked upon a considerable departure from prior holdings in the realm of land use law. We decline to adopt the remainder of the *Snyder* decision, for reasons we will explain in due course. Accordingly, by imposing upon Lee County certain burdens of proof required by *Snyder,* the circuit court did apply the incorrect law to the dispute between the county and Sunbelt, justifying our issuance of a writ of certiorari.

IV. WHERE *SNYDER* HAS DEPARTED FROM PRECEDENT

(a) What Must Be Shown Under *Snyder*

After a lengthy discussion of related legal issues ranging from the legislative/judicial distinction to private property rights, the *Snyder* court stated its conclusions, beginning with the statement that "[t]he initial burden is on the landowner to demonstrate that ... the use sought is consistent with the applicable comprehensive zoning plan." 595 So.2d at 81. Assuming this can be done,

> the landowner is presumptively entitled to use his property in the manner he seeks unless the opposing governmental agency asserts and proves *by clear and convincing evidence* that a specifically stated public necessity requires a specified, more restrictive use. After such a showing the burden shifts to the landowner to assert and prove that such specified more restrictive land use constitutes a taking of his property for public use for which he is entitled to compensation....

Id. (*emphasis ours; footnote omitted*).

(b) The Distinction Between Zoning and Comprehensive Planning

[6] Perhaps we read too much into the use, in *Snyder,* of the term "comprehensive zoning plan," but it gives us pause. As is made clear in *Machado* and other "consistency" cases, comprehensive planning and zoning are interrelated but different functions of local government. "As the court in [*Jacksonville Beach v.*] *Grubbs* noted, the purpose of a comprehensive plan is to set general guidelines for future development, and not necessarily to accomplish immediate land use changes." *Southwest Ranches,* 502 So.2d at 936. A comprehensive plan might accommodate a range of permissible zoning categories for a given area. In a case decided after the advent of comprehensive planning but before the 1985 Growth Management Act mandated such planning statewide, the Third District Court of Appeal held that it is within the discretion of a local government to impose a zoning category at the low end of that range. *Dade County v. Inversiones Rafamar, S.A.,* 360 So.2d 1130 (Fla.3d DCA 1978). Until *Snyder* there was no reason to suspect this was not still a correct statement of law.[10]

In contrast to *Inversiones Rafamar, Snyder* seems to place little credence in zoning classifications, as opposed to the broader land use projections embodied in a comprehensive plan, particularly where the zoning in question would allow only low-intensity uses of the land. Perhaps this skepticism might be supportable based on record evidence presented in the *Snyder* hearings and circuit court proceedings, but we find the district court's pronouncements unacceptably overbroad if intended for general application to all jurisdictions statewide:

> Most communities in actual practice have zoned their undeveloped land under a highly restrictive classification such as ***1005** "general use" and agriculture.... The original intent was not to permanently preclude more intensive development but to adopt a "wait and see attitude toward the direction of future development. Most government officials have little motivation to incur the "wrath of neighbors by zoning vacant land for industrial,

> commercial, or intensive residential development in advance of an actual proposal for development."
>
> In reality, therefore, at the inception of zoning most land was zoned according to its then use, exceptions were grandfathered in and most vacant land was under-zoned or "short-zoned." In order for development to proceed, rezoning becomes not the exception, but the rule ... [R]ezoning is granted not solely on the basis of the land's suitability to the new zoning classification and compatibility with the use of surrounding acreage, but, also and perhaps foremost, on local political considerations including who the owner is, who the objectors are, the particular and exact land improvement and use that is intended to be made and whose ox is being fattened or gored by the granting or denial of the rezoning request.

595 So.2d at 72–3 (*citations omitted*).[11]

It has long been the law that when the applicant makes a threshold showing that existing zoning is unreasonable, the local government must prove otherwise. *See, e.g., City of St. Petersburg v. Aikin,* 217 So.2d 315 (Fla.1968); *City of Jacksonville Beach v Grubbs,* 461 So.2d 160 (Fla.1st DCA 1984), *rev. denied,* 469 So.2d 749 (Fla.1985). However, absent the assertion of some enforceable property right, an application for rezoning appeals at least in part to local officials' discretion to accept or reject the applicant's argument that change is desirable. The *right* of judicial review does not *ipso facto* ease the burden on a party seeking to overturn a decision made by a local government, and certainly does not confer any property-based right upon the owner where none previously existed.

[7] An old saying has it, "If you bought a swamp, there is some presumption you wanted a swamp." Put another way, there must be some presumption, even if only an easily rebuttable one, that land zoned for agricultural use is best suited for that purpose. This does not mean that comprehensive planners, with an eye toward conditions years hence, might not expect that same land someday to be crowded with houses, industrial plants, or commercial establishments. Nor does it mean that zoning authorities, during their initial (and truly "legislative") attempts to classify properties, always act wisely or fairly in designating low-intensity uses. However, implicit in *Snyder* is a suggestion that the future-oriented comprehensive planning process[12] always will result in a more accurate and appropriate use designation than will the more immediate act of zoning a specific parcel. We believe that *both* a comprehensive plan and a zoning classification are presumptively valid, and that one seeking a change in either has the burden of showing its invalidity.

[8] Moreover, when it is the zoning classification that is challenged, the comprehensive plan is relevant only when the ***1006** suggested use is inconsistent with that plan. Where any of several zoning classifications is consistent with the plan, the applicant seeking a change from one to the other is not entitled to judicial relief absent proof the *status quo* is no longer reasonable. It is not enough simply to be "consistent"; the proposed change cannot be *inconsistent,* and will be subject to the "strict scrutiny" of *Machado* to insure this does not happen.

(c) "Clear and Convincing Evidence"

[9] The use, in *Snyder,* of the term "clear and convincing evidence" (as opposed to "substantial competent evidence") is derived from *Department of Law Enforcement v. Real Property,* 588 So.2d 957 (Fla.1991), and numerous other cases, all of which involve a clear and acknowledged deprivation of property or other fundamental legal rights. *See* 595 So.2d at 81 n. 70. Heretofore it has never been a requirement in zoning cases that an existing classification be substantiated to this degree.[13] We believe this shift in the burden of proof derives from an incorrect assumption about the nature and extent of a landowner's property rights.

[10] **[11]** **[12]** It has never been the law that a landowner is always entitled to the "highest and best" use of his land. *See Penn Central Transportation Co. v City of New York,* 438 U.S. 104, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978). This is not to suggest that a local government, in enacting land use codes, may disregard the landowner's rights. First of all, land use restrictions must substantially advance some legitimate state interest, or they are invalid. *Nollan v. California Coastal Commission,* 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987). Second, they

cannot be so intrusive as to deprive the landowner of reasonable economic use of the property, nor should previously permissible or "grandfathered" uses be incautiously rescinded. *Lucas.* However, assuming a regulation is necessary for the welfare of the public, and is not physically invasive or confiscatory of some existing property right, it is probably within the government's "police power" to enact it. *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303 (1926).

It must be remembered that zoning ordinances, comprehensive plans, and similar enactments are (or should be) debated in a public forum with all affected parties having the right to be heard. Thereafter, the dissatisfied landowner has several avenues of redress, including injunctive relief against the enforcement of the offending ordinance or a suit for inverse condemnation. Even the landowner who is temporarily satisfied with the *status quo* is not without options when conditions change and undercut what once were reasonable expectations of fruitful use. This is the occasion for the *Snyder*-type individualized rezoning application, which we now declare to be quasi-judicial and therefore subject to procedural safeguards.

That such a system is not flawless is to be expected—repairing the errors that sometimes occur may expend resources and judicial labor. The alternative, however, is to reject or at least fundamentally undercut the power of local governments to superintend the use of real property. The Supreme Court, whose most "conservative" statement may have come in *Lucas,* has never interpreted the Fifth Amendment ***1007** "just compensation" clause (the source of "takings jurisprudence") as demanding this. In the wake of *Lucas, Nollan,* and related cases, those favoring land use restrictions may find their activities the subject of heightened scrutiny into their reasonableness and intrusiveness. However, and despite the apprehensions (or hopes) of some observers, more fundamental change than this did not occur in *Lucas.*[14]

(d) Reconciling Our Views with the Procedure Adopted in *Snyder*

[13] The courts, reviewing a rezoning application, should not presume the landowner does or can assert an enforceable property right, one which triggers application of the "clear and convincing evidence" standard, every time a more intensive use of the property is sought. Instead, the landowner must prove the existence of such a right, not just consistency with a comprehensive plan, before so rigorous a burden will be imposed upon the local government. The question arises, however, just how much the landowner must prove before the burden shifts.

In this regard, we have no quarrel with the procedure adopted in *Snyder* up to a point. *Snyder* accepts, for example, that the initial burden is still upon the applicant, who must demonstrate something more than that a rezoning is subjectively desirable. Before the advent of mandatory statewide comprehensive planning, that "something" was whether "the existing ordinance was confiscatory in effect." *St. Petersburg v. Aikin,* 217 So.2d at 317. For the most part *Snyder* can be interpreted as easing this burden without actually changing the law. Its emphasis on "consistency" means that wherever planners have determined a particular use is *someday* acceptable, the local government must now prove that the present zoning *is not* confiscatory rather than requiring the landowner to prove it *is* confiscatory.

So far this shifting of burdens, which emphasizes that governments must bear some responsibility to act carefully when restricting property rights, can be accommodated without abandoning traditional notions about the "police power" that underlies all zoning ordinances. It is at this point that *Snyder* most clearly departs from precedent. According to *Snyder,* once a rezoning proposal is shown to be "consistent," the local government must prove *by clear and convincing evidence,* that "public necessity requires a ... more restrictive use." Instead, we believe that the local government is required only to show *by substantial competent evidence* that the existing (obviously more restrictive) zoning classification was enacted in furtherance of some legitimate public purpose and that the public interest is legitimately served by continuing that classification. If the zoning ordinance was constitutional *ab initio,* and it remains constitutional in the face of whatever changes have prompted the landowner to request rezoning, the rezoning may be refused provided the local government can justify this conclusion with evidence on the record. Assuming

it can do that, *Snyder* thereafter correctly shifts the burden back to the landowner "to assert and prove ... a taking"—that is, that the ordinance is confiscatory.

V. RESOLVING THE SUNBELT REZONING APPLICATION

[14] Implicit in the circuit court's holding is an acceptance of Sunbelt's argument that its design is consistent with the Lee County comprehensive plan. There is evidence to support this argument, albeit contradicted by the county commission ordinance. Although Sunbelt's property is currently zoned "agricultural," a Future Land Use Map depicts the surrounding area as "suburban." Such a designation limits commercial development to "neighborhood centers," which in turn are limited to a maximum of 100,000 square feet. Sunbelt ***1008** has projected only 65,000 square feet of commercial space.[15] A hearing officer did find that a final development order cannot be issued until after certain amendments are made to the Sunbelt application; Sunbelt "is fully aware of this impediment," and the mere acts of rezoning and approval of the "master concept plan" do not *ipso facto* "bestow or vest any development rights."

However, if (as we believe) *Snyder* is incorrect, it is not enough that Sunbelt's proposal is consistent with what Lee County planners envision as the eventual buildout of this area. One must also look to the *present* character of the area, which is reflected in the existing zoning classification. This aspect of the comprehensive plan represents, in effect, a future ceiling above which development should not proceed. It does not give developers *carte blanche* to approach that ceiling immediately, or on their private timetable, any more than a city or county is entitled to view its planning and zoning responsibilities as mere make-work.

Nothing in this opinion is intended to imply that Sunbelt, after remand, cannot establish a present right to the rezoning it desires. However, the mere fact of consistency with the comprehensive plan, even if undisputed by the county, would not mandate such a result. To sustain the county's decision to deny, it is sufficient that the record reflect substantial competent evidence favoring continuation of the *status quo*.[16] This decision likely will require analysis of the reasons underlying the present zoning classification—whether it represents a considered belief that agriculture is the most appropriate use, or was idly chosen as the court suggested had occurred in *Snyder*.

The petition for writ of certiorari is hereby granted, the order of the circuit court is quashed, and this case is remanded for further proceedings consistent with this opinion.

HALL, A.C.J., and THREADGILL and BLUE, JJ., concur.

All Citations

619 So.2d 996, 18 Fla. L. Weekly D1260

Footnotes

1 A collateral issue in the proceedings below was Sunbelt's contention that "the real reason the application was denied" was the vocal opposition of residents of a neighboring development. Clearly, such opposition, to the extent it reflects a subjective "polling" rather than a discrete legal argument, is not a valid basis for denying a permit or rezoning application. *Pollard v. Palm Beach County,* 560 So.2d 1358 (Fla.4th DCA 1990). However, accepting the notion that rezonings are quasi-judicial does not operate to exclude the public from those proceedings where such applications are considered on their merits. The need to allow such public access, which includes the right to voice objections (at least on the part of those claiming to be substantially affected by the pending action), points out the difficulty in completely depoliticizing such proceedings. The requirement of providing specific reasons for a ruling, in accord with the characterization of such proceedings as quasi-judicial, should diminish (if not altogether eliminate) the likelihood those mandatory findings will only mask the "real reason [an] application was denied."

2 Sunbelt attempts to depict all three of these findings as "erroneous." It may be that the circuit court agreed with Sunbelt's evaluation. If this were the only issue before us, we would be compelled to uphold the circuit

court so long as it otherwise applied the correct principle of law. That is, we would not reweigh the circuit court's determination whether or not adequate evidence was presented.

3 In addition to a petition for certiorari, Sunbelt filed an original action pursuant to § 163.3215, Fla.Stat. (1991). The county claims that certain statutory prerequisites were overlooked which require dismissal of the civil action. Because the circuit court addressed the certiorari petition on its merits, the second case is not before us at this time.

4 *But see Grady v. Lee County,* 458 So.2d 1211 (Fla.2d DCA 1984) (discussing the effect of a Lee County zoning ordinance which prescribes review by certiorari).

5 If, indeed, such distinction can be clearly drawn. As one commentator concluded, after a lengthy analysis of the functional approach of *Fasano v. Washington County, infra,* "some zoning decisions are difficult to characterize as distinctly legislative or quasi-judicial." Peckingpaugh, "Burden of Proof in Land Use Regulation: A Unified Approach and Application to Florida," 8 Fla.St.U.L.R. 499 (1980).

6 *Fasano* is not universally accepted as a correct statement of law or desirable judicial policy. One commentator, comparing decisions from "major comprehensive planning states," notes that California continues to adhere to the "legislative" option, and describes *Fasano* as "significantly discredited." Gougelman, *The Death of Zoning As We Know It,* Fla.B.J., March 1993, at 31 n. 35.

7 In fact the terms were employed virtually interchangeably in *Shaughnessy v. Metropolitan Dade County,* 238 So.2d 466, 469 (Fla.3d DCA 1970), wherein the court found "competent, substantial evidence that the granting of the unusual or special use was at least fairly debatable."

8 *But see* § 163.3161(8), Fla.Stat. (1991): "It is the intent of the legislature that [this Act] shall not be interpreted to limit or restrict the powers of municipal or county officials, but shall be interpreted as a recognition of their broad statutory and constitutional powers to plan for and regulate the use of land."

9 In *Southwest Ranches,* neighbors of a proposed solid waste facility objected that the rezoning which permitted the facility was more intensive than, and therefore inconsistent with, the comprehensive plan. The district court held that "[w]here the zoning authority approves a use *more intensive than that proposed by the plan* — the decision must be subject to stricter scrutiny than the fairly debatable standard contemplates." 502 So.2d at 936 (*emphasis ours*). *See also Jacksonville Beach v. Grubbs,* 461 So.2d 160, 163 n. 2 (Fla.1st DCA). By contrast, *Machado* holds that strict scrutiny applies "to [all] cases addressing the consistency of a development order with a comprehensive plan, regardless of the direction of the change." Mitchell, at 89.

10 For example, § 163.3164(22), Fla.Stat. (1991), defining "land development regulations," implies the persistence of legislative recognition of the separate concept of zoning.

11 Contrast such timid politics as described in *Snyder* with the reaction of the *Fasano* court to suggestions that "planning authorities be vested with the ability to adjust more freely to changed conditions": "[H]aving weighed the dangers of making desirable change more difficult against the dangers of the almost irresistible pressures that can be asserted by private economic interests on local government, we believe that the latter dangers are more to be feared." 507 P.2d at 29–30. And see *Machado* at 519 So.2d 634: "[T]he opponents, neighboring landowners, contend that conditions change in rapid and uncontrolled fashion in Dade County, increasing the need for costly public services and facilities, due to loose enforcement of the land use planning scheme." As we have elsewhere implied, most "strict scrutiny" cases prior to *Snyder* have invoked "consistency" to place brakes on development some thought too intensive, rather than to enforce a right to more intensive development than has been allowed. Reassessing site-specific rezonings as quasi-judicial should help place limits both on questionable runaway development *and* on intransigent, unrealistic under-zoning of developable property.

12 *See, e.g.,* §§ 163.3167(1), 163.3177(1), and 163.3177(6)(a), Fla.Stat. (1991), all of which are distinctly future-oriented.

13 Definitions of "clear and convincing evidence" abound. For example, the supreme court, in *The Florida Bar v. Rayman,* 238 So.2d 594 (Fla.1970), appears to have contemplated something stronger than the "preponderance of evidence" standard ordinarily seen in civil cases, but less than the criminal "reasonable doubt" standard. Perhaps the best-known attempt to define the term occurs in *Slomowitz v. Walker,* 429 So.2d 797, 800 (Fla.4th DCA 1983), wherein the court spoke of evidence or testimony that is "credible," "distinctly remembered," "precise," and "explicit"—evidence which "must be of such weight that it produces in the mind of the trier of fact a firm belief and conviction, without hesitancy, as to the truth of the allegation sought to be established." This would appear to us to be considerably more rigorous a standard of proof

than the relatively deferential "competent substantial evidence" test applied to the quasi-judicial decisions of administrative bodies. This test requires "such relevant evidence as a reasonable mind would accept as adequate to support a conclusion." *DeGroot v. Sheffield,* 95 So.2d 912, 916 (Fla.1957).

14 This portion of our opinion analyzes the tension between regulation and property rights in light of decisions interpreting relevant portions of the United States Constitution. The test for "takings" under the Florida Constitution is substantially the same. *See Graham v. Estuary Properties,* 399 So.2d 1374 (Fla.), *cert. denied sub nom. Taylor v. Graham,* 454 U.S. 1083, 102 S.Ct. 640, 70 L.Ed.2d 618 (1981).

15 Sunbelt also wants to construct an additional 85,000 square feet for offices. Opponents of the project argued that the office space should be counted when calculating the total square footage, but a hearing officer found that the county's planning policy clearly dictates otherwise.

16 Though the circuit court's order states that no such evidence was presented to support denial of the rezoning, the record suggests that the court did hold the county to the more rigorous burden of proof required by *Snyder.* There appears to have been no examination or consideration of the reasonableness of the existing zoning classification.

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400 So.2d 1051
District Court of Appeal of
Florida, Second District.

Doris CONETTA, Appellant,

v.

CITY OF SARASOTA, Appellee.

No. 80-2176.

July 15, 1981.

Synopsis
Petitioner appealed from an order of the Circuit Court, Sarasota County, Robert E. Hensley, J., which denied her petition for certiorari to review a decision of a city commission denying her application for a special exception to build a guest house on her property. The District Court of Appeal, Boardman, J., held that denial of special exception allowing petitioner to build guest house on her property, which was based on objections of several residents which did not bear on any of the relevant criteria set forth in applicable section of city zoning code, was improper.

Reversed and remanded.

West Headnotes (2)

[1] **Zoning and Planning** ⇨ Decisions of boards or officers in general

Courts will not interfere with administrative decisions of zoning authorities unless such decisions are arbitrary, discriminatory, or unreasonable.

4 Cases that cite this headnote

[2] **Zoning and Planning** ⇨ Family or multiple dwellings

Denial of special exception allowing applicant to build guest house on her property, which was based on objections of several residents which did not bear on any of the relevant criteria set forth in applicable section of city zoning code, was improper.

8 Cases that cite this headnote

Attorneys and Law Firms

*1051 Stanley Hendricks of Dent, Pflugner, Rosin & Haben, Sarasota, for appellant.

Robert M. Fournier of Hereford, Taylor & Steves, Sarasota, for appellee.

Opinion

BOARDMAN, Judge.

Doris Conetta, petitioner in the circuit court, appeals the denial of her petition for certiorari to review a decision of the Sarasota City Commission denying her application for a special exception to build a guest house on her property. We reverse.

Appellant petitioned appellee City of Sarasota for a special exception allowing her to build a guest house on her property. Appellant also furnished the city with a letter stating that the guest house would not be rented, would be used by members of her family only, would not have any cooking *1052 facilities, would not have a separate utility meter, and would be built in accordance with all applicable city ordinances. This letter constituted a promise of compliance with each requirement of the ordinance for the issuance of a special exception.

On January 9, 1980, the city Planning Board met, heard attorney John Dent speak on behalf of appellant's request, and heard several persons speak against the granting of the requested special exception.

A decision was deferred until the January 23, 1980, meeting, at which time counsel for appellant and two of the people who had previously spoken against the special exception appeared. In addition, letters in opposition from several residents of the area were brought to the board's attention.

Many of those opposed to a special exception for appellant gave no reason for their objections. One of

the major reasons for objection that was stated was that appellant's guest house would not conform to the rest of the area. This was because the structure was to be raised on stilts to twelve feet above ground level. This aspect of the design was not of appellant's own choosing, however; it was mandated by the flood plan zoning currently in effect. Moreover, there was at least one other parcel of property in the neighborhood that contained a raised structure. The other major objection involved the concern that despite appellant's assurances that she would not rent her guest house, she might later sell her property, and the new owner might rent the guest house. Both a member of the Planning Board and City Manager Thompson noted that the proscription against renting guest houses was difficult to enforce. However, at no time was there any question of appellant's good faith in regard to her promise not to rent her guest house.

The board ultimately recommended denial of the special exception, and the matter came before the City Commission on April 21, 1980. The City Commission denied the special exception on the basis of the Planning Board's recommendation. Appellant then filed a petition for certiorari with the circuit court, seeking review of the City Commission's decision. The circuit court denied the petition, and this appeal followed timely.

[1] [2] It is well settled that the courts will not interfere with administrative decisions of zoning authorities unless such decisions are arbitrary, discriminatory, or unreasonable. City of Naples v. Central Plaza of Naples, Inc., 303 So.2d 423 (Fla.2d DCA 1974). However, the only criteria upon which the Planning Board or the City Commission could rely in passing upon appellant's special exception request were those spelled out in the pertinent ordinance. North Bay Village v. Blackwell, 88 So.2d 524 (Fla.1956); City of Naples v. Central Plaza of Naples, Inc., supra. They nevertheless decided the matter on the basis of the objections of several residents, none of which objections bears on any of the relevant criteria set forth in section 43-12(8)(f), the applicable section of the city zoning code.

Appellant complied with the terms of the ordinance. This being so, the Planning Board and the City Commission then had the burden of establishing that the use she proposed would adversely affect the public interest. Rural New Town, Inc. v. Palm Beach County, 315 So.2d 478 (Fla.4th DCA 1975). The court there noted:

> There is a distinction between seeking rezoning and seeking a special exception; each involves somewhat different considerations. In rezoning, the burden is upon the applicant to clearly establish such right (as hereinabove indicated). In the case of a special exception, where the applicant has otherwise complied with those conditions set forth in the zoning code, the burden is upon the zoning authority to demonstrate by competent substantial evidence that the special exception is adverse to the public interest. Yokley on Zoning, vol. 2, p. 124. A special exception is a permitted use to which the applicant is entitled unless the zoning authority determines according to the standards in the zoning ordinance that ***1053** such use would adversely affect the public interest.

Id. at 480.

In the instant case, neither the Planning Board nor the City Commission met their burden. Their decision appears to be based primarily on the sentiments of other residents of Siesta Key as to whether the special exception should be granted. It amounted to no more than a popularity poll of the neighborhood.

In City of Apopka v. Orange County, 299 So.2d 657, 659-660 (Fla.4th DCA 1974), the court quoted with approval from 3 Anderson, American Law of Zoning, s 15.27 as follows:

> "The objections of a large number of residents of the affected neighborhood are not a sound basis for the denial of a permit. The quasi-judicial function of a board of adjustment must be exercised on the basis of the facts adduced; numerous objections by adjoining landowners may not properly be given even a cumulative effect. While the facts disclosed by objecting neighbors should be considered, the courts have said that:
>
> > 'A mere poll of the neighboring landowners does not serve to assist the board in determining whether the exception applied for is consistent with the public convenience or welfare or whether

it will tend to devaluate the neighboring property.' "

The denial of the special exception was based solely on (a) its unpopularity with some Siesta Key residents and (b) the conjecture that a grantee of appellant might thereafter violate the ordinance coupled with the recognition that the proscription against renting guest houses is difficult to enforce. As to the enforcement problem, the remedy would simply be to amend the ordinance to exclude special exceptions for guest houses, as City Manager Thompson recommended to the commission at the hearing.

Lastly, the city urges that the special exception should be denied because the structure would not be compatible and in harmony with the neighborhood. This contention is without merit because under the present zoning ordinance any new buildings constructed in the area would be required to be erected twelve feet above ground level.

There being no proper basis for the City Commission's denial of the special exception requested by appellant, we REVERSE the circuit court's denial of appellant's petition for writ of certiorari and REMAND with directions to grant the writ.

HOBSON, Acting C. J., and GRIMES, J., concur.

All Citations

400 So.2d 1051

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299 So.2d 657
District Court of Appeal of
Florida, Fourth District.

The CITY OF APOPKA, Florida, et al., Appellants,

v.

ORANGE COUNTY, a political subdivision of the State of Florida, and Clarcona Improvement Association, Appellees.

No. 73-273.
|
Feb. 22, 1974.
|
On Rehearing April 11, 1974.

Synopsis
Application submitted by three communities for special exception to allow construction of airport on extraterritorial land owned by them was denied by the zoning board of adjustment and the board of county commissioners affirmed. Municipalities' petition for certiorari was denied by the Circuit Court, Orange County, Parker Lee McDonald, J., and municipalities appealed. The District Court of Appeal, Downey, J., held that it was not the function of the board of county commissioners to hold a plebiscite on the application for special exception and that board's duty was to make finding as to how construction and operation of proposed airport would affect public interest and base its granting or denial of the special exception on those findings; and that evidence which consisted mainly of laymen's opinions which were unsubstantiated by competent facts and which were submitted at hearing where witnesses were not sworn and where cross-examination was specifically prohibited did not support conclusion that public interest would be adversely affected by the granting of the special exception.

Reversed and remanded with directions.

West Headnotes (3)

[1] **Zoning and Planning** ⇨ Notice
Zoning and Planning ⇨ Hearings in general

Although notice to, and hearing of, the proponents and opponents of application for special exception for construction of airport was essential and all interested parties should have been given full and fair opportunity to express their views, it was not the function of the board of county commissioners to hold a plebiscite on the application for the special exception.

4 Cases that cite this headnote

[2] **Zoning and Planning** ⇨ Findings, reasons, conclusions, minutes or records

Purpose of board of county commissioners, in ruling on application for special exception to zoning ordinance, was to make findings as to how construction and operation of the proposed airport would affect the public and it was board's duty to base its granting or denial of the special exception upon those findings.

7 Cases that cite this headnote

[3] **Zoning and Planning** ⇨ Aviation and airports

Where evidence in opposition to request for special exception for construction of airport consisted mainly of laymen's opinions, unsubstantiated by any competent facts, where witnesses were not sworn and cross-examination was specifically prohibited and where board of county commissioners made no findings of fact bearing on the question of the effect of the proposed airport on the public interest, there was no substantial competent evidence to support conclusion that public interest would be adversely

affected by granting the special permit. West's F.S.A. § 332.01 et seq.; Sp.Acts 1963, c. 63-1716 as amended.

16 Cases that cite this headnote

Attorneys and Law Firms

*657 William G. Mitchell, of Giles, Hedrick & Robinson, Orlando, for appellants.

*658 Steven R. Bechtel, of Mateer & Harbert, Orlando, for appellee Orange county.

Carter A. Bradford, of Bradford, Oswald, Tharp & Fletcher, Orlando, for appellee Clarcona Improvement Assn.

Opinion

DOWNEY, Judge.

This is an appeal by the cities of Apopka, Ocoee, and Winter Garden and the Tri-City Airport Authority from a final judgment of the circuit court denying their petition for certiorari which sought review of an order denying appellants' application for a special exception. This is a companion appeal to those consolidated appeals numbered 72-1204 and 72-1209, 299 So.2d 652.

The appellant cities formed the appellant Tri-City Airport Authority pursuant to Chapter 332, F.S.1971, F.S.A., commonly known as The Airport Law of 1945, for the purpose of building an airport to serve the three cities and the surrounding area. Appropriate engineering studies were made and various sites for the proposed airport were considered. Finally, the Authority determined that a parcel of property located in Orange County outside any municipality and zoned A-1 was the most suitable site for the proposed airport. The Authority thereafter obtained options to buy that property. Orange County's zoning legislation permits construction and operation of 'airplane landing fields and helicopter ports with accessory facilities for private or public use' in an A-1 district as a special exception. Thus, the three cities and the Authority filed an application for a special exception with the Orange County Zoning Board of Adjustment to build their proposed airport. Without entering any finding of fact, the Zoning Board of Adjustment denied the application on the ground that granting it 'would be adverse to the general public interest.' On appeal to the Board of County Commissioners a de novo hearing was held with the following result:

'A motion was made by Commissioner Pickett, seconded by Commissioner Poe, and carried, that the decision of the Board of Zoning Adjustment on December 2, 1971 denying application No. 2 for a Special Exception in an A-1 District for the construction of a proposed Tri-City Airport be affirmed and upheld on the grounds that the granting of the proposed Special Exception would adversely affect the general public and would be detrimental to the public health, safety, comfort, order, convenience, prosperity and general welfare and, therefore, not in accordance with the Comprehensive Zoning Plan of Orange County.'

Appellants then filed a petition for a writ of certiorari in the circuit court in accordance with the provisions of the Orange County Zoning Act, Chapter 63-1716, Laws of Florida, as amended, to obtain review of the foregoing decision of the Board of County Commissioners. While the petition for certiorari was pending appellants filed another action in the Circuit Court of Orange County. The new action sought a declaration that implementation of Chapter 332, F.S.1971, F.S.A., by the appellants constituted a governmental function thereby exempting appellants from the operation of Orange County zoning regulations.

In order to determine whether there was substantial competent evidence to support the decision below we must of necessity resort to the evidence introduced at the hearing before the Board of County Commissioners. The appellants adduced evidence from (a) the Tri-City Airport Authority consulting engineer, (b) a representative of the Federal Aviation Agency, (c) and a representative of the Florida Department of Transportation, Mass Transit Division. Their testimony showed that there was a definite public need for the airport; that serious in depth studies had been made to determine the most appropropriate location for the airport; that the location in question was the best available considering such factors as (1) convenience to users, (2) land and area requirements,

(3) general *659 topography, (4) 'compatability with existing land use, plans and land users', (5) land costs, (6) air space and objections, (7) availability of utilities, (8) noise problems, (9) bird habitats and other ecological problems. The mayors of the three municipalities and the members of the Airport Authority also demonstrated that the selection of the site in question resulted from long study and competent advice on the subject. Approval had been received from every interested government agency including the Federal Aviation Administration, the Florida Department of Transportation, and the Florida Department of Air and Water Pollution Control.

The evidence upon which the Board of County Commissioners relied to deny appellants' application came from one abutting owner, Richard Byrd; several other owners within a two to five mile radius of the proposed airport site; a petition signed by some two hundred members of the Clarcona Improvement Association; and approximately thirty-five people in attendance at the hearing who objected but did not testify. Byrd's testimony was mainly directed to his opinion of what the airport would do to construction costs in the area and his opinion of what would happen to zoning in the area as a result of the proposed use. It also developed that Byrd is interested in buying the property proposed to be used as the airport. Several other property owners speculated about what would happen to the area's zoning, complained about the anticipated noise, and generally wanted to keep the status quo in the area. One witness who admitted he was a layman with no special training or experience advised the Board about his opinion of the damage to the Florida aquifer which would result from the proposed airport.

[1] [2] Although notice to and hearing of the proponents and opponents of an application for a special exception or other zoning change are essential and all interested parties should be given a full and fair opportunity to express their views, it was not the function of the Board of County Commissioners to hold a plebiscite on the application for the special exception. Rockville Fuel and Feed Co. v. Board of Appeals, 257 Md. 183, 262 A.2d 499, 504 (1970). As pointed out by Professor Anderson in Volume 3 of his work, American Law of Zoning, s 15.27, pp. 155-156: 'It does not follow, . . . that either the legislative or the quasi-judicial functions of zoning should be controlled or even unduly influenced by opinions and desires expressed by interested persons at public hearings. Commenting upon the role of the public hearing in the processing of permit applications, the Supreme Court of Rhode Island said:

'Public notice of the hearing of an application for exception . . . is not given for the purpose of polling the neighborhood on the question involved, but to give interested persons an opportunity to present facts from which the board may determine whether the particular provision of the ordinance, as applied to the applicant's property, is reasonably necessary for the protection of . . . public health . . .. The board should base their determination upon facts which they find to have been established, instead of upon the wishes of persons who appear for or against the granting of the application.'

The objections of a large number of residents of the affected neighborhood are not a sound basis for the denial of a permit. The quasi-judicial function of a board of adjustment must be exercised on the basis of the facts adduced; numerous objections by adjoining landowners may not properly be given even a cumulative effect. While the facts disclosed by objecting neighbors should be considered, the courts have said that:

'A mere poll of the neighboring landowners does not serve to assist the board in determining whether the exception *660 applied for is consistent with the public convenience or welfare or whether it will tend to devaluate the neighboring property."

(Footnotes omitted.)

Instead the Board's purpose was to make findings as to how construction and operation of the proposed airport would affect the public and base its granting or denial of the special exception on those findings. Cf. Laney v. Holbrook, 150 Fla. 622, 8 So.2d 465, 146 A.L.R. 202 (1942); Veasey v. Board of Public Instruction, Fla.App.1971, 247 So.2d 80.

[3] The evidence in opposition to the request for exception was in the main laymen's opinions unsubstantiated by any competent facts. Witnesses were not sworn and cross examination was specifically prohibited. Although the Orange County Zoning Act requires the Board of County Commissioners to make

a finding that the granting of the special exception shall not adversely affect the public interest, the Board made no finding of facts bearing on the question of the effect the proposed airport would have on the public interest; it simply stated as a conclusion that the exception would adversely affect the public interest. Accordingly, we find it impossible to conclude that on an issue as important as the one before the board, there was substantial competent evidence to conclude that the public interest would be adversely affected by granting the appellants the special exception they had applied for.

The judgment appealed from is therefore reversed and remanded to the circuit court with directions to grant the writ of certiorari and to remand the cause to the board of county commissioners for another de novo hearing on the application for special exception.

If the decision of the board is deemed to be arbitrary or unreasonable the aggrieved party will then have the option of a judicial review by certiorari pursuant to Florida Appellate Rules or a trial de novo in the circuit court pursuant to the Rules of Civil Procedure. Section 163.250 F.S.1971, F.S.A.

Reversed and remanded with directions.

WALDEN and MAGER, JJ., concur.

ON PETITIONS FOR REHEARING.

PER CURIAM.

On petitions for rehearing the parties have advised this court that Orange County has not taken formal suitable action declaring its election to proceed under the provisions of Part II of the act entitled County and Municipal Planning For Future Development (163.160-163.315, F.S.1971, F.S.A.). Accordingly, the petitions for rehearing filed by the parties are granted and we recede from all references in our opinion of February 22, 1974, to the availability of Section 163.250, F.S.1971, F.S.A., in this case.

We maintain the view however, that the judgment appealed from should be reversed with directions to grant the writ of certiorari and to remand the cause to the board of county commissioners for another de novo hearing on the application for a special exception, at which time said board will have the opportunity to apply the balance-of-interests test to the evidence adduced before it. Thereafter, any aggrieved party may have that decision reviewed by the circuit court on petition for certiorari pursuant to the provisions of Chapter 63-1716, Special Acts of Florida, as amended.

WALDEN, MAGER and DOWNEY, JJ., concur.

All Citations

299 So.2d 657

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52 So.3d 19
District Court of Appeal of Florida,
First District.

KATHERINE'S BAY, LLC,
Intervenor, Appellant,
v.
Ronald J. FAGAN and
Citrus County, Appellees.

No. 1D10–939.
|
Dec. 14, 2010.

Synopsis

Background: Developer sought review of Department of Administration decision approving ALJ's ruling that rezoning of its property from low intensity coastal lakes (CL) to Recreational Vehicle Park/Campground (RVP) was invalid because it rendered the county's comprehensive plan internally inconsistent. Neighboring landowner intervened.

Holdings: The District Court of Appeal, Lewis, J., held that:

[1] assertion that recommendation of the county staff was not given sufficient weight was unreviewable;

[2] ALJ's finding that property had severe environmental limitations was thoroughly supported by the county staff's report;

[3] ALJ's finding of severe environmental limitations was insufficient to justify overriding county's determination that amendment to plan was proper;

[4] ALJ erred by relying on neighboring landowner's testimony concerning impact of rezoning; and

[5] reliance by ALJ on definitions provided in Administrative Code was proper.

Reversed and remanded.

West Headnotes (12)

[1] **Zoning and Planning** ⇨ Preservation before board or officer of grounds of review

Argument that the ALJ applied the wrong standard was not properly before District Court of Appeal, where appellant stood silent when appellee argued that the fairly debatable standard did not apply and when the ALJ invited appellant to provide contrary authority.

[2] **Zoning and Planning** ⇨ Modification or amendment; rezoning

Assertion that recommendation of the county staff was not given sufficient weight by Department of Administration was unreviewable on appeal from decision approving ALJ's ruling that rezoning of developer's property from low intensity coastal lakes (CL) to Recreational Vehicle Park/Campground (RVP) was invalid because it rendered the county's comprehensive plan internally inconsistent; it was not the role of the District Court of Appeal to reweigh evidence anew.

[3] **Zoning and Planning** ⇨ Particular Uses or Restrictions

ALJ's finding that property, which was rezoned from low intensity coastal lakes (CL) to Recreational Vehicle Park/Campground (RVP), had severe environmental limitations was thoroughly supported by the county staff's report, although ALJ did not agree with staff's ultimate conclusion; ALJ recited report heavily and relied on its concrete findings which showed the environmental limitations of the subject property.

[4] **Zoning and Planning** ⇨ Particular Uses or Restrictions

Zoning and Planning ⇨ De novo review in general

Whether ALJ erred in relying on a general policy in county's comprehensive plan when more specific policies existed was an issue of law to be reviewed de novo in review of Department of Administration decision that rezoning of developer's property from low intensity coastal lakes (CL) to Recreational Vehicle Park/Campground (RVP) was invalid because it rendered the county's comprehensive plan internally inconsistent; but, Department of Administration was correct that ALJ was required to presume that county's determination that the amendment to comprehensive plan complied with Local Government Comprehensive Planning and Land Development Regulation Act and, thus, was consistent with the plan. West's F.S.A. § 163.3187(3)(a).

[5] **Zoning and Planning** ⇨ Comprehensive or general plan

Rules of statutory construction are applicable to the interpretation of comprehensive plans.

1 Cases that cite this headnote

[6] **Statutes** ⇨ General and specific terms and provisions; ejusdem generis

Specific provisions of statutes control over general ones.

[7] **Statutes** ⇨ Construing together; harmony

Statutes ⇨ Superfluousness

Statutes ⇨ In pari materia

One provision of statute should not be read in such a way that it renders another provision meaningless; all statutory provisions on related subjects are read in pari materia and harmonized so that each is given effect.

1 Cases that cite this headnote

[8] **Zoning and Planning** ⇨ Particular Uses or Restrictions

When all the pertinent provisions of county's comprehensive plan were considered in pari materia, mere fact that area had environmental limitations was not basis to prohibit development, as long as it was carried out in accordance with limitations provided by plan and county's land development code, and, thus, ALJ's finding of severe environmental limitations was insufficient to justify overriding county's determination that amendment to comprehensive plan changing zoning from low intensity coastal lakes (CL) to Recreational Vehicle Park/Campground (RVP) was proper, where, under plan, entire coastal area was considered environmentally sensitive, with future development expected. West's F.S.A. § 163.3187(3)(a).

[9] **Zoning and Planning** ⇨ Particular Uses or Restrictions

ALJ erred by relying on neighboring landowner's testimony concerning impact of rezoning of developer's land from low intensity coastal lakes (CL) to Recreational Vehicle Park/Campground (RVP) on potential light pollution, increased traffic, and negative impacts on value of homes in the area; there were no facts to support his concerns, county staff's report indicated that traffic issue was studied by an expert who determined that increased traffic would not unduly burden the area, and ALJ gave undue emphasis to landowner's preference not

to have an RV park as a neighbor, but preference in itself was insufficient to override developer's desire to build an RV park on its land.

[10] **Zoning and Planning** ⇨ Particular Uses or Restrictions

Reliance by ALJ, who was considering whether rezoning of developer's property from low intensity coastal lakes (CL) to Recreational Vehicle Park/Campground (RVP) was invalid because it rendered the county's comprehensive plan internally inconsistent, on definitions provided in Administrative Code was proper where county's comprehensive plan did not define term "compatible," and because statute governing process for adoption of comprehensive plan defined in "compliance" as consistent with requirements of state comprehensive plan, appropriate strategic regional policy plan, and with chapter of Administrative Code governing criteria for review of local government comprehensive plans and plan amendments. West's F.S.A. §§ 163.3177, 163.3178, 163.3180, 163.3184(1)(b), 163.3191, 163.3245; Fla.Admin.Code Ann. r. 9J–5.003(23).

[11] **Zoning and Planning** ⇨ Change to plan itself, in general

To show that amendment to county's comprehensive plan provided for an incompatible land use, landowner was required to prove that, because of new future land use category assigned to neighboring developer's property, the land uses or conditions in the area could not coexist in a stable fashion over time such that no use or condition was unduly negatively impacted directly or indirectly by another use or condition.

[12] **Zoning and Planning** ⇨ Evidence

Lay witnesses may offer their views in land use cases about matters not requiring expert testimony; lay witnesses may testify about the natural beauty of an area because this is not an issue requiring expertise, but their speculation about potential traffic problems, light and noise pollution, and general unfavorable impacts of a proposed land use are not considered competent, substantial evidence.

Attorneys and Law Firms

*21 Clark A. Stillwell, Inverness, for Appellant.

Shaw P. Stiller, General Counsel, Department of Community Affairs, Tallahassee, and Denise A. Lyn, Inverness, for Appellees.

Opinion

LEWIS, J.

Katherine's Bay, LLC, Appellant, seeks review of a final order issued by the Administration Commission ("the Commission"), which adopted an administrative law judge's ("ALJ") holding that a small-scale development amendment ("the Amendment") to Citrus County's Comprehensive Plan ("the Plan") was invalid because it rendered the Plan internally inconsistent. The ALJ and the Commission recognized two grounds for finding the Amendment inconsistent with the Plan: first, that it violated a policy in the Plan's Future Land Use Element ("FLUE") requiring compatibility of land uses; and second, that it violated a policy in the Plan's FLUE requiring the County to guide future development to areas with minimal environmental limitations. Appellant challenges both grounds. As to the first ground, Appellant argues that there was a lack of competent, substantial evidence to support the ALJ's finding that the Amendment approved a future land use designation that was incompatible with the surrounding uses. We agree. As to the second ground, Appellant argues both that there was a lack of competent, substantial evidence to support the ALJ's factual findings and that the ALJ's ultimate conclusion resulted from an erroneous construction

of the Plan. While we do find competent, substantial evidence of the findings the ALJ made in relation to the second ground, we hold that the findings did not support the conclusion that the Amendment rendered the Plan internally inconsistent. Because the ALJ's conclusion that the Amendment rendered the Plan internally inconsistent is not supported by either of the FLUE policies at issue, we reverse and remand to the Commission for reinstatement of the ordinance.

***22 I. Facts and Procedural History**

On May 26, 2009, the Citrus County Board of County Commissioners adopted an ordinance that amended the Plan's Generalized Future Land Use Map ("GFLUM"), which is a part of the FLUE. The Amendment changed the future land use designation of a 9.9–acre parcel of land owned by Appellant, based on Appellant's application for such a change.

The subject property is located in a geographic region defined by Citrus County as the "Coastal Area." According to the Plan, "[t]he Coastal Area parallels the Gulf of Mexico, and the boundary may be described as following the west side of US–19 north from the Hernando County line to the Withlacoochee River." The Plan notes that "[t]his boundary is the basis for an environmentally sensitive overlay zone to be used for land use regulatory purposes."

Before the Amendment, the subject property was designated Low Intensity Coastal and Lakes ("CL"), which the Plan defines in pertinent part as follows:

> **Low Intensity Coastal and Lakes (CL)**
>
> This land use category designates those areas having environmental characteristics that are sensitive to development and therefore should be protected. Residential development in this district is limited to a maximum of one dwelling unit per 20 acres....
>
> ...
>
> In addition to single family residential development, the following land uses may be allowed provided the permitted use is compatible with the surrounding area, and standards for development are met as specified in the Citrus County Land Development Code (LDC)[:]
>
> • Multifamily residences (in existing platted areas only or in lieu of clustering single family units at a density of one unit per lot of record and requiring the recombination of said lots. For example, a duplex requires two lots to be recombined into a single parcel, a quadruplex four lots, etc.)
>
> • Recreational uses
>
> • Agricultural and Silviculture uses
>
> • Public/Semi–Public, Institutional facilities
>
> • Home occupations
>
> • New railroad right-of-way, storage facilities, or related structures
>
> • Communication towers
>
> • Utilities
>
> • Commercial fishing and marina related uses
>
> • Commercial uses that are water related, water dependent, or necessary for the support of the immediate population[.]

The Amendment changed the subject property's future land use category from CL to Recreational Vehicle Park/Campground ("RVP"), which the Plan defines in pertinent part as follows:

> **Recreational Vehicle Park/Campground (RVP)**
>
> This category is intended to recognize existing Recreational Vehicle (RV) Parks and Campgrounds, as well as to provide for the location and development of new parks for recreational vehicles. Such parks are intended specifically to allow temporary living accommodation for recreation, camping, or travel use.
>
> ...
>
> New RV parks shall be required to preserve thirty percent (30%) of the gross site area as permanent open space, consistent with Policy 17.15.11 of this Plan.

> ***23** In addition to RV/campsite development, the following land uses as detailed in the Land Development Code, shall be allowed provided the permitted use is compatible with the surrounding area, and standards for development are met as specified in the County Land Development Code:
>
> • Recreational Uses
>
> • Agricultural and Silvicultural Uses
>
> • Public/Semi–Public, Institutional Facilities
>
> • Convenience retail and personal services to serve park visitors and guests up to one percent of the gross site area, not to exceed 5,000 square feet, located within the development and not accessible from any external road[.]

After the Amendment changing the subject property's future land use category from CL to RVP was adopted, Appellee, the owner of neighboring property, challenged the Amendment under the procedure set forth in section 163.3187(3)(a), Florida Statutes (2008). Appellee argued that the Amendment was not "in compliance" with the Local Government Comprehensive Planning and Land Development Regulation Act ("the Act") because it rendered the Plan internally inconsistent. Appellee identified two policies in the FLUE, among others, that he claimed were inconsistent with the Amendment. Those policies are 17.2.7 and 17.2.8, and they provide as follows:

> Policy 17.2.7 The County shall guide future development to the most appropriate areas, as depicted on the GFLUM, specifically those with minimal environmental limitations and the availability of necessary services.
>
> Policy 17.2.8 The County shall utilize land use techniques and development standards to achieve a functional and compatible land use framework which reduces incompatible land uses.

Appellant intervened in the proceedings, and the matter proceeded to a section 120.57 hearing.

The parties stipulated that the subject property is located across the road from Appellee's property, which is on the Homosassa River, and that the subject property is bordered in all directions by property designated as either CL or Coastal and Lakes Residential ("CLR"). They also stipulated that there exists on Appellant's property a parcel designated Coastal/Lakes–Commercial ("CLC")[1] and that this property is being used as an RV park because this use of the property is vested. Further, they stipulated that Appellee's property was in the Coastal High Hazard Area ("CHHA").

At the hearing, Appellee supported his argument that the Amendment rendered the subject property incompatible with the surrounding uses primarily by presenting his own testimony and that of his neighbor. Appellee described the beauty and peacefulness of the area and opined that the introduction of another RV park into the area would lead to increased traffic, litter, noise, and light pollution. He testified that the vested RV park currently existing on Appellant's property is an "eyesore" that "looks like a bunch of junk stored on the front lawn." Appellee also testified that, in 1993, there was a major flood in the area around his home, which was so severe that he had to tie boats to his mailbox to keep them from floating down ***24** the road. He was concerned that the RV park Appellant planned to develop on the subject property would require him to manage even more debris in the event of a natural disaster. Appellee also expressed concern that the RV park would decrease his property value. A neighbor expressed the same concerns about the potential for increased traffic and decreased property values in the area.

The evidence concerning the subject property's environmental limitations came in the form of the County Staff's report and the testimony of Dr. Timothy Pitts and Sue Farnsworth, both of whom were employed by the County as planners. The report was prepared by Dr. Pitts, who was the County's Senior Planner of Community Development at the time. According to the County Staff's report, the subject property was studied by officials in the fire prevention, engineering, utilities, and environmental divisions. The fire prevention and engineering representatives recommended approval of the application with conditions, and the utilities representative recommended approval. The environmental planner did not recommend approval or denial but noted that the subject property was within a "Karst Sensitive Area."[2] Additionally, the

report indicated that a "traffic analysis" had revealed that "adequate capacity exists on Halls River Road for anticipated traffic at the maximum development potential of the site." The report also noted that the subject property was within the CHHA and that it contained "significant wetland areas." According to the report, if the application was granted, Appellant would still need to "design a Master Plan of Development that minimizes wetland alterations."

One of the policies of the Plan that the report indicated may be cause for concern was Policy 3.18.11, which provides as follows:

> The County shall protect springs by prohibiting increases in allowed land use intensity at the Generalized Future Land Use level within a Karst Sensitive Area without a hydrogeological analysis that addresses impacts to groundwater resources. The analysis shall be performed by a professional geologist or professional engineer licensed in Florida. Karst Sensitive Area shall be defined as an area in which limestone lies within five (5) feet of depth from natural grade.

In relation to this policy, the report stated that Appellant had "provided a letter from a professional engineer that adequately meets the intent of this policy" and that Appellant intended "to develop the site using methods that will meet the intent of the Comprehensive Plan." The report also contained the following observations:

> This site has some severe environmental restrictions —extensive wetlands, proximity to an Outstanding Florida Waterbody, Karst sensitive landscape—and it will be difficult to design a site that meets the standards of the Comprehensive Plan and the Land Development Code. The following policy would potentially restrict development if this application were to be approved:
>
> **Policy 3.16.3** Development shall not be allowed at the maximum densities and intensities of the underlying land use district if those densities would be harmful to natural resources.
>
> So, the applicant should be cautioned that given the environmental sensitivity of the property, development may be limited on this site to less than the allowable maximum intensity. If this application is approved, an appropriately designed master plan of development will be required which meets all standards of the Comprehensive Plan and the Land Development Code and is approved by the Board of County Commissioners.

Ultimately, despite the environmental limitations, the County Staff concluded that the site was "appropriate for some type of RV Park development subject to an appropriately designed master plan." In making this recommendation, the County Staff emphasized that, "based on the environmental limitations of the area, the applicant is cautioned that the site may not be able to be designed at the maximum intensity for this land use district."

Dr. Pitts testified consistently with the County Staff's report. He noted that neither the Plan nor the Land Development Code ("LDC") prohibits RV parks in either karst sensitive areas or the CHHA. He explained, however, that the County has regulations limiting the density or intensity of RV parks in such areas and indicated that the professional studies he had received on the subject property represented that the site could be developed to meet those standards. Dr. Pitts testified that, in his opinion, "just about anything west of [U.S. Highway 19] is ... karst sensitive." Dr. Pitts acknowledged that the subject property had 1.64 acres of wetlands and that there were wetlands in the surrounding areas. He explained that the Plan requires "setbacks" to mitigate wetland impacts and that the LDC required one-hundred percent protection of the wetlands. Additionally, he explained that the regulations required fifty percent open space in the Coastal Area. Based on these regulations, Dr. Pitts testified that it was highly unlikely that Appellant would be permitted to develop the space at the maximum build-out potential theoretically allowed under the new designation, which would be five units per acre. He emphasized that, no matter what the number of approved units proved to be, complete protection of the wetlands would be required. Finally, Dr. Pitts testified that there were several vested uses in the surrounding area, including a 300–to 400–unit RV park, that did not conform to the land use designations identified for those properties in the Plan.

Farnsworth, an environmental planner for the County, testified that the wetlands were located around the perimeter of the property and that they extended into

*25

the part of the property beyond the perimeter. She explained, however, that permitting standards for an RV park prohibited the filling of wetlands and that the subject property could be developed as an RV park without the need to fill in the wetlands.

After the hearing, the ALJ issued a Recommended Order concluding that the Amendment was inconsistent with FLUE Policy 17.2.7's requirement that future development be directed to "the most appropriate areas, as depicted on the GFLUM, specifically those with minimal environmental limitations." In support of this conclusion, the ALJ noted the County Staff's finding that the land had "severe environmental limitations." In particular, the ALJ noted that the area in which the subject property was located had extensive wetlands, a karst sensitive landscape, and a CHHA designation. The ALJ acknowledged that the Plan did not expressly prohibit RV parks in CHHA areas and that there were regulations in the Plan and the LDC that would limit the intensity of development on this land even under the RVP designation. The ALJ concluded, however, that "[n]otwithstanding the other provisions within the Plan and LDRs that place limitations on RV park development *26 in an effort to satisfy environmental constraints, ... the subject property is clearly not 'the most appropriate area, as depicted on the GFLUM' for new development, nor is it an area with 'minimal environmental limitations.' "

The ALJ also concluded that the Amendment was inconsistent with FLUE Policy 17.2.8's requirement that development be accomplished in a "functional and compatible land use framework which reduces incompatible land uses." Because "compatible" is not defined in the Plan, the ALJ relied on the definition of "compatibility" in Florida Administrative Code Rule 9J–5.003(23). That definition is as follows:

> "Compatibility" means a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition.

In support of the conclusion that the new designation approved a land use incompatible with the surrounding uses, the ALJ noted Appellee's testimony concerning the characteristics of the area. He also noted Appellee's concerns about noise, lighting, litter, traffic, and property value. The ALJ further noted that there were only six nonconforming land uses and that each was permitted to exist due to vested rights. The ALJ then stated, "It is fair to infer that the insertion of an RV park in the middle of a large tract of vacant CL land would logically lead to further requests for reclassifying CL land to expand the new RV park or to allow other non-residential uses." The ALJ further found the following:

> The commercial RV park, with a yet-to-be determined number of spaces for temporary RVs, tenants, and associated commercial development, will be in close proximity to a predominately [sic] residential neighborhood. A reasonable inference from the evidence is that these commercial uses will have a direct or indirect negative impact on the nearby residential properties and should not coexist in close proximity to one another.

Based on these findings and the determination that the Amendment was inconsistent with FLUE Policy 17.2.7, the ALJ recommended that the Commission conclude that the Amendment was not in compliance with the Act.

The Commission adopted the ALJ's findings and conclusions, except that it modified the finding that the Amendment would "logically lead to further requests for reclassifying CL land to expand the new RV park or to allow other non-residential uses." The Commission concluded that this finding was mere conjecture, unsupported by competent, substantial evidence. It modified the finding to read, "Unlike the presence of ... pre-existing, non-conforming uses, permitting the addition of an RV park in the middle of a large tract of vacant CL land now would set a precedent that an RV park, a Commercial Land Use, is compatible with the Low Intensity Coastal and Lakes Land Use designation in this vicinity." Based on the adoption of the ALJ's findings and conclusions, as modified, the Commission held that the Amendment had no legal effect.

II. Analysis

A. Standard of Review

The amendment at issue in this case was adopted under the authority of section 163.3187(1)(c), Florida

Statutes (2008). Section 163.3187(3)(a) provides for review of amendments adopted under section 163.3187(1)(c) under the following terms:

> The state land planning agency shall not review or issue a notice of intent for small scale development amendments which satisfy the requirements of paragraph ***27** (1)(c). Any affected person may file a petition with the Division of Administrative Hearings pursuant to *ss. 120.569* and *120.57* to request a hearing to challenge the compliance of a small scale development amendment with this act within 30 days following the local government's adoption of the amendment, shall serve a copy of the petition on the local government, and shall furnish a copy to the state land planning agency. An administrative law judge shall hold a hearing in the affected jurisdiction not less than 30 days nor more than 60 days following the filing of a petition and the assignment of an administrative law judge. The parties to a hearing held pursuant to this subsection shall be the petitioner, the local government, and any intervenor. In the proceeding, the local government's determination that the small scale development amendment is in compliance is presumed to be correct. The local government's determination shall be sustained unless it is shown by a preponderance of the evidence that the amendment is not in compliance with the requirements of this act. In any proceeding initiated pursuant to this subsection, the state land planning agency may intervene.

§ 163.3187(3)(a).

Because Appellant is challenging the Administration Commission's final agency action in this appeal, *see id.*, this Court's standard of review is governed by section 120.68(7), Florida Statutes (2010). That section provides in pertinent part as follows:

> The court shall remand a case to the agency for further proceedings consistent with the court's decision or set aside agency action, as appropriate, when it finds that:
>
> ....
>
> (b) The agency's action depends on any finding of fact that is not supported by competent, substantial evidence in the record of a hearing conducted pursuant to *ss. 120.569* and *120.57*; however, the court shall not substitute its judgment for that of the agency as to the weight of the evidence on any disputed finding of fact; [or]
>
> ....
>
> (d) The agency has erroneously interpreted a provision of law and a correct interpretation compels a particular action....

§ 120.68(7).

[1] In this Court, Appellant challenges the sufficiency of the evidence supporting the findings of inconsistency with both policies.[3] In addition, Appellant challenges the ALJ's interpretation of the policy requiring that future development be directed toward areas of the County with minimal environmental limitations. The separate arguments concerning each policy will be addressed in turn.

B. FLUE Policy 17.2.7

With regard to FLUE Policy 17.2.7, Appellant raises two arguments: first, that ***28** the ALJ erred in relying on the County Staff's finding of "severe environmental limitations" because the County Staff recommended approval of the application; and second, that the ALJ erred in failing to apply the FLUE policies that are more specific to RV parks in the Coastal Area in lieu of FLUE Policy 17.2.7, which is a general planning policy applicable to all land use decisions countywide. We agree with the second point.

i. The County Staff's Report

[2] **[3]** Appellant insists that the ALJ was required to give the County Staff's recommendation great weight. Even assuming that the County Staff's report was entitled to great weight in this case, there is no basis in the record for believing that the ALJ did not give it due consideration. To the contrary, the ALJ recited it heavily and relied on the concrete findings within it that showed the environmental limitations of the subject property, even though the ALJ disagreed with the ultimate conclusion. If an ALJ were not entitled to disagree, then the ALJ's review would serve no purpose. To the extent Appellant argues

that the recommendation of the County Staff was not given sufficient weight, this assertion is unreviewable because "[i]t is not the role of the appellate court to reweigh evidence anew." *Young v. Dep't of Educ., Div. of Vocational Rehab.*, 943 So.2d 901, 902 (Fla. 1st DCA 2006). The ALJ's finding that the subject property had severe environmental limitations was thoroughly supported by the County Staff's report. Whether those limitations required a finding that the Amendment was inconsistent with FLUE Policy 17.2.7 is, however, a separate matter.

ii. Interpretation of the Plan

[4] Appellant's argument that the ALJ erred in relying on a general policy in the Plan where more specific policies existed is an issue of law to be reviewed de novo. *See Nassau County v. Willis*, 41 So.3d 270, 278 (Fla. 1st DCA 2010). In reviewing this issue de novo, however, we bear in mind that the ALJ was required under section 163.3187(3)(a) to presume that the County's determination that the Amendment complied with the Act (and, thus, was consistent with the Plan) was correct.

[5] [6] [7] Rules of statutory construction are applicable to the interpretation of comprehensive plans. *See Great Outdoors Trading, Inc. v. City of High Springs*, 550 So.2d 483, 485 (Fla. 1st DCA 1989) (noting that the rules of statutory construction apply to municipal ordinances and city charters); *Willis*, 41 So.3d at 279 (noting that a comprehensive plan is like a "constitution for all future development within the governmental boundary") (citation omitted). Appellant argues that this case implicates the rules of construction that specific provisions control over general ones and that one provision should not be read in such a way that it renders another provision meaningless. Both rules are well-established. *See Murray v. Mariner Health*, 994 So.2d 1051, 1061 (Fla.2008). Another rule of construction relevant to this issue is that all provisions on related subjects be read in pari materia and harmonized so that each is given effect. *Cone v. State, Dep't of Health*, 886 So.2d 1007, 1010 (Fla. 1st DCA 2004).

[8] Here, the ALJ concluded that the Amendment conflicted with FLUE Policy 17.2.7, which provides, "The County shall guide future development to the most appropriate areas, as depicted on the GFLUM, specifically those with minimal environmental limitations and the availability of necessary services." (CP 10–155). Appellant contends that FLUE Policies 17.6.5 and 17.6.12, which are more specific to RV parks in the Coastal Area, indicate ***29** that the Amendment was consistent with the Plan. Those policies provide as follows:

> Policy 17.6.5 Specialized commercial needs, such as water-dependent and water-related uses, temporary accommodations for tourists and campers, as well as neighborhood commercial uses and services serving residential communities within the general Coastal, Lakes, and Rivers Areas shall be provided for within the Future Land Use Plan and standards for development provided within the County LDC.
>
> Policy 17.6.12 Recreational vehicle (RV) parks and campgrounds shall be designed according to a detailed master plan, shall preserve a minimum of 30 percent of the property in open space, shall provide a minimum of an additional 10 percent of the property as recreation areas, and generally shall conform to the commercial development standards in the Land Development Code.... In order to minimize the adverse impact of development on the resources and natural features of the Coastal, Lakes, and Rivers Region, the LDC shall be amended to include additional review criteria for all new RVP projects located in this region. Such criteria may include:
>
> • Restrictions on density
>
> • Enhanced open space requirements
>
> • Wetland protection
>
> • Upland preservation
>
> • Clustering
>
> • Connection to regional central water and sewer service

Appellant is correct in noting that the development of new RV parks in Coastal Areas was specifically anticipated by FLUE Policy 17.6.12. This observation does not, however, mandate approval of an RVP designation for the particular parcel at issue. Thus, it was appropriate for the ALJ to resort to other portions of the Plan to determine whether approval of the RVP designation for the subject property was proper. The policy that most directly relates to this inquiry is FLUE Policy 17.2.7, which articulates the County's general preference for guiding future development to the "most appropriate areas," which are areas "with minimal environmental limitations."

Two additional provisions of the Plan provide more context for the policies at issue. First, the Plan describes the "Coastal Area" as follows:

> The Coastal Area parallels the Gulf of Mexico, and the boundary may be described as following the west side of US–19 north from the Hernando County line to the Withlacoochee River. This boundary is the basis for an environmentally sensitive overlay zone to be used for land use regulatory purposes....

Second, under the heading "Development in Wetland and Coastal Areas," the Plan notes the following:

> Future development in the Coastal, Lake, and River Areas will require careful management in order to reduce potential problems and impacts on the environment. Development within these areas will be limited to low, [sic] intensity uses. In addition, all development will be required to meet standards for development and obtain necessary permits from appropriate regulatory agencies.

These two provisions show that, under the Plan, the entire Coastal Area is considered environmentally sensitive, and yet "[f]uture development" of this environmentally sensitive area is expected. Thus, when all the pertinent provisions of the Plan are considered in pari materia, the mere fact ***30** that an area has environmental limitations is not a basis to prohibit development as long as the development is carried out in accordance with the limitations provided by the Plan and the LDC. Therefore, the ALJ's finding of "severe environmental limitations" was insufficient to justify overriding the County's determination that the Amendment was proper, particularly in light of the presumption required by section 163.3187(3)(a).

The ALJ properly found the existence of wetlands and karst sensitivity in the area, but there was no competent, substantial evidence that these limitations were so severe as to require a prohibition on the development of an RV park under the restrictions that would be imposed by the LDC. In sum, when FLUE Policy 17.2.7 and the evidence related to that policy are viewed in the context of all relevant provisions of the Plan, the conclusion that the Amendment is inconsistent with that policy is unsupported.

C. FLUE Policy 17.2.8

[9] With regard to FLUE Policy 17.2.8, Appellant argues that the ALJ erred in relying on the testimony of Appellee and his neighbor as a basis for finding incompatibility of the subject property's new future land use designation with the surrounding uses. In particular, he argues that this testimony was "unacceptable lay testimony" and that no competent, substantial evidence showed a lack of compatibility, as that term is defined by Florida Administrative Code Rule 9J–5.003(23). We agree.

[10] **[11]** Initially, we note that the reliance on the definitions provided in Florida Administrative Code Rule 9J–5.003 was proper because the Plan does not define the term "compatible," and because section 163.3184(1)(b) defines "in compliance" in pertinent part as "consistent with the requirements of ss. 163.3177, 163.3178, 163.3180, 163.3191, and 163.3245, with the state comprehensive plan, with the appropriate strategic regional policy plan, and with chapter 9J–5, Florida Administrative Code." Therefore, to show that the Amendment provided for an incompatible land use, Appellee was required to prove that, because of the new future land use category assigned to Appellant's property, the land uses or conditions in the area could not "coexist ... in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition." *See* Fla. R. Admin. Code 9J–5.003(23).

[12] Lay witnesses may offer their views in land use cases about matters not requiring expert testimony. *Metro. Dade County v. Blumenthal*, 675 So.2d 598, 601 (Fla. 3d DCA 1995). For example, lay witnesses

may testify about the natural beauty of an area because this is not an issue requiring expertise. *Blumenthal,* 675 So.2d at 601. Lay witnesses' speculation about potential "traffic problems, light and noise pollution," and general unfavorable impacts of a proposed land use are not, however, considered competent, substantial evidence. *Pollard v. Palm Beach County,* 560 So.2d 1358, 1359–60 (Fla. 4th DCA 1990). Similarly, lay witnesses' opinions that a proposed land use will devalue homes in the area are insufficient to support a finding that such devaluation will occur. *See City of Apopka v. Orange County,* 299 So.2d 657, 659–60 (Fla. 4th DCA 1974) (citation omitted). There must be evidence other than the lay witnesses' opinions to support such claims. *See BML Invs. v. City of Casselberry,* 476 So.2d 713, 715 (Fla. 5th DCA 1985); *City of Apopka,* 299 So.2d at 660.

Based on these standards, it was error for the ALJ to rely on Appellee's testimony concerning potential light pollution, increased traffic, and negative impacts on ***31** the value of the homes in the area. There were no facts to support his concerns, and in fact, 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.

Although it was proper for the ALJ to consider Appellee's observations that, with the exception of the vested non-conforming uses, the area is predominantly residential and that it is peaceful, Appellee presented no competent, substantial evidence to support his claim that the new RV park would unduly interfere with those characteristics of the area. The mere fact that Appellee's property has a different future land use designation than Appellant's re-classified property is insufficient. *See Hillsborough County v. Westshore Realty, Inc.,* 444 So.2d 25, 27 (Fla. 2d DCA 1983) (holding that the mere fact that property is in close proximity to another property with a less restrictive classification does not require reclassification). Additionally, while it may have been noteworthy that Appellant presently fails to maintain its vested one-acre RV park in an attractive manner, the concern that the yet-to-be-developed RV park would be maintained in the same way is speculative and does not establish long-term negative impacts stemming from the reclassification of the subject property.

In sum, based on the applicable definition of "compatibility," Appellant's argument that there was insufficient evidence to support a finding that the RV park was incompatible is well-taken. It appears that, in finding the proposed use incompatible with the surrounding uses, the ALJ gave undue emphasis to Appellee's preference not to have an RV park as a neighbor. However, this preference in itself is insufficient to override Appellant's desire to build an RV park on its land. *See Conetta v. City of Sarasota,* 400 So.2d 1051, 1053 (Fla. 2d DCA 1981) (suggesting that a land-use decision should not be "based primarily on the sentiments of other residents"). As a result, we hold that the ALJ erred in concluding that the Amendment was inconsistent with FLUE Policy 17.2.8.

III. Conclusion

For the reasons explained above, both of the ALJ's ultimate conclusions as to inconsistency of the Amendment with the remaining portions of the Plan were erroneous. As a result, we reverse and remand to the Commission for reinstatement of the ordinance approving the Amendment.

REVERSED and REMANDED.

WEBSTER and MARSTILLER, JJ., Concur.

All Citations

52 So.3d 19, 35 Fla. L. Weekly D2759

Footnotes

1 As provided in the Plan, the CLC category allows commercial uses that are "water related, water dependent, or necessary for the support of the immediate population," i.e. "neighborhood commercial uses, personal services, or professional services." This category is intended "for a single business entity on a single parcel of property."

2 According to Dr. Pitts, karst is a "limestone underground sort of rock structure that is very porous" and through which "pollutants can very easily travel."

3 In challenging the sufficiency of the evidence, Appellant argues that the ALJ did not view the evidence with an eye toward the proper standard. He contends the ALJ should have considered whether the County's determination that the Amendment was proper was "fairly debatable," based on the standard recognized in *Coastal Development of North Florida, Inc. v. City of Jacksonville Beach*, 788 So.2d 204 (Fla.2001). The argument that the ALJ applied the wrong standard is not properly before us because Appellant stood silent when Appellee argued to the ALJ that the "fairly debatable" standard did not apply and when the ALJ invited Appellant to provide contrary authority. *See Dep't of Bus. & Prof'l. Regulation, Constr. Indus. Licensing Bd. v. Harden*, 10 So.3d 647, 649 (Fla. 1st DCA 2009) (recognizing the preservation rule in administrative proceedings).

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752 So.2d 708
District Court of Appeal of Florida,
Third District.

JESUS FELLOWSHIP, INC., Petitioner,

v.

MIAMI-DADE COUNTY, Florida, Respondent.

No. 3D99-1073.
|
Feb. 23, 2000.

Synopsis
After the county commission denied a portion of church's zoning application to allow private school, church petitioned for writ of certiorari and the Circuit Court, Appellate Division, Dade County, Fredricka Smith, Arthur Rothenburg, and Thomas Wilson Jr., JJ., affirmed commission's denial. Church petitioned for writ of certiorari. The District Court of Appeal, Fletcher, J., held that church was entitled to approval of zoning application for special exceptions and unusual use to permit private school with grades K-12 and 524 students.

Circuit Court order quashed and case remanded with instructions.

West Headnotes (4)

[1] **Zoning and Planning** ⇨ Scope and Extent of Review

District Court of Appeal's review of the Circuit Court's decision on appeal of decision by Zoning Appeals Board is limited to determining whether the Circuit Court afforded due process and correctly applied the correct law.

5 Cases that cite this headnote

[2] **Zoning and Planning** ⇨ Grounds for grant or denial in general

Zoning and Planning ⇨ Public interest or welfare

Applicant seeking special exceptions and unusual uses need only demonstrate to decision-making body that its proposal is consistent with county's land use plan, that uses are specifically authorized as special exceptions and unusual uses in applicable zoning district, and that requests meet with applicable zoning code standards of review; if this is accomplished, then application must be granted unless opposition carries its burden, which is to demonstrate that applicant's requests do not meet standards and are in fact adverse to the public interest.

2 Cases that cite this headnote

[3] **Zoning and Planning** ⇨ Schools and education

Church was entitled to approval of zoning application for special exceptions and unusual use to permit private school with grades K-12 and 524 students, and should not have been limited to grades K-6 and 150 students, as evidence before county commission, including county zoning maps, professional staff recommendations, aerial photographs, and testimony in objection, were either irrelevant or supported church's position.

3 Cases that cite this headnote

[4] **Zoning and Planning** ⇨ Grounds for grant or denial in general

Past violations are not a basis to deny a present pending application that meets the code standards.

2 Cases that cite this headnote

Attorneys and Law Firms

*708 Mathew D. Staver and Erick W. Stanley, Liberty Counsel (Orlando); DiBartolomeo & DiBartolomeo and Dean D. DiBartolomeo, Miami; Bilzin Sumberg Dunn Price & Axelrod and Michael W. Larkin and Jerry B. Proctor, Miami; for petitioner.

Robert A. Ginsberg, County Attorney, Augusto Maxwell, Assistant County Attorney; Kathryn Knieriem Estevez, Miami; Adorno & Zeder, Fort Lauderdale, and George F. Knox, Miami, for respondent.

Before JORGENSON, COPE, and FLETCHER, JJ.

Opinion

FLETCHER, Judge.

Jesus Fellowship, Inc. [Church] petitions this court for a writ of certiorari asking that we vacate an order entered by the circuit court, acting in its appellate capacity, which order affirmed the decision of the Miami-Dade County Commission [Commission] denying a portion of the Church's zoning application. We grant the petition and quash the circuit court's decision.

The Church owns 12.2 acres in a residential area zoned for one-acre estate *709 homes.[1] In 1997, the Church filed a zoning application for special exceptions and an unusual use to permit the expansion of the Church's religious facilities and to permit a private school and a day care center. After reviewing the application the county's professional staff recommended denial of the requests. At the public hearing before the Zoning Appeals Board[2] [ZAB] the Church agreed to several changes which satisfied the professional staff, bringing about its recommendation of approval. Among the Church's concessions was a limitation to an enrollment of 524 students. The ZAB approved the application with the changes.

The ZAB decision was appealed to the Commission by a number of objectors. The county's professional staff continued to recommend approval with the ZAB-authorized 524 students. The Commission approved the Church's application generally but denied it in part, limiting the school to grades K-6 and 150 students. The Church petitioned the circuit court for a writ of certiorari alleging, *inter alia,* that the Commission's decision reducing the number of students and grades was not supported by substantial competent evidence. The circuit court upheld the Commission's partial denial.

[1] This court's review of the circuit court's decision is limited to determining whether the circuit court afforded due process and correctly applied the correct law. *Maturo v. City of Coral Gables,* 619 So.2d 455 (Fla. 3d DCA 1993); *see also Herrera v. City of Miami,* 600 So.2d 561 (Fla. 3d DCA), *review denied,* 613 So.2d 2 (Fla.1992). Our review of the record indicates that the circuit court missed its mark. It failed to correctly apply the correct law as its decision allows the use of incompetent evidence to support the Commission's decision and fails to apply the principles applicable to special exceptions and unusual uses.

[2] An applicant seeking special exceptions and unusual uses need only demonstrate to the decision-making body that its proposal is consistent with the county's land use plan; that the uses are specifically authorized as special exceptions and unusual uses in the applicable zoning district; and that the requests meet with the applicable zoning code standards of review. If this is accomplished, then the application must be granted unless the opposition carries its burden, which is to demonstrate that the applicant's requests do not meet the standards and are in fact adverse to the public interest.[3] *See Irvine v. Duval County Planning Comm.,* 495 So.2d 167 (Fla.1986); *Metropolitan Dade County v. Fuller,* 497 So.2d 1322 (Fla. 3d DCA 1986).

[3] The basis for the circuit court's errors here was its conclusion that the simple fact that the Commission had before it the county zoning maps, the professional staff recommendations, aerial photographs, and testimony in objection was a sufficient basis for the Commission's denial. The mere presence in the record of these items is not, however, sufficient. They must be or contain relevant valid evidence which supports the Commission's decision.

In reaching its conclusion the circuit court relied on *Metropolitan Dade County v. Blumenthal,* 675

So.2d 598 (Fla. 3d DCA 1995), *review dismissed,* 680 So.2d 421 (Fla.1996). Therein the zoning maps and testimony contained evidence of the surrounding densities in the area, in a case involving a rezoning, i.e., a change of residential density, and not, as here, special exceptions or unusual uses, which do not involve a district boundary change (rezoning). In *Blumenthal* the maps were *710 relevant evidence necessary for the Commission to view in order to compare the existing surrounding districts' densities to assure consistency therewith (either a like density or a consistent step up- or down-in density). In the Church's case the maps of the surrounding zoning districts are not evidence which support the Commission's decision. The only zoning district inquiry here was whether the subject property is in a zoning district which permits the requested uses. This was not an issue as the land use plan and the zoning district permit the Church's request for the special exceptions and unusual use.

Further, the circuit court concluded that the professional staff's report was evidence supporting the Commission's denial. This clearly is not the case as the staff's report to the Commission was for approval, the staff unequivocally stating that all of the applicable standards were met by the requests. This is not evidence supporting the denial.

Additionally, the testimony offered by the objectors does not qualify as supportive evidence (or evidence at all in most cases) as a thorough review of the objectors' case demonstrates:

The first witness, an engineer, complained that there would be more traffic on the neighborhood streets,[4] but quickly announced that he was not testifying as an expert. Where technical expertise is required lay opinion testimony is not valid evidence upon which a special exception determination can be based in whole or in part. *See Pollard v. Palm Beach County,* 560 So.2d 1358 (Fla. 4th DCA 1990); *City of Apopka v. Orange County,* 299 So.2d 657 (Fla. 4th DCA 1974).

The objectors' second witness testified that he wished to preserve the residential character of his neighborhood and was concerned about the loss of what he described as "green space." However, churches and schools are part of the residential neighborhood character per the land use plan and the applicable zoning. As to his concerns regarding green space, the Church did not seek a variance thereof. The amount of green space to be provided meets the county's code standard. The testimony of this witness does not support the denial. *Irvine,* 495 So.2d 167; *Fuller,* 497 So.2d 1322.

[4] The third objecting witness submitted numerous letters of protest and complained of past violations on the property. The letters are not evidence. *City of Apopka,* 299 So.2d 657. Past violations are not a basis to deny a present pending application that meets the code standards.[5]

The next witness called by the objectors was the Church's reverend. The transcript[6] reveals an examination that meandered through the operation of the Church; how the expansion is to be financed; and the make-up of the congregation. This line of questioning prompted Commission members to inquire as to its relevancy to land use issues. The answer to their inquiry, of course, is that it does not bear on the special exception/unusual use standards, thus is not relevant. *Irvine,* 495 So.2d 167; *Fuller,* 497 So.2d 1322.

The objectors' final witness was Guillermo Olmedillo, the director of planning. Olmedillo's testimony reveals only that it fortified his written opinion that the Church's application met all code standards.[7]

Nowhere in the hearing record does there appear any evidence relating to the restriction to grades K-6 and to 150 students. After the evidentiary hearing closed, the restriction appeared, without a *711 warning of its impending arrival, as a "suggestion" by the objectors' attorney. T.150. It was promptly pounced upon by the Commission, put into the form of the denial motion, and passed.

In summary, the Church presented sufficient evidence to carry its burden; the objectors presented only testimony and documents that support the Church's application or which the courts have held not to be evidence. When the circuit court decided there was *evidence* (substantial, competent) to support the Commission's denial of the application, it failed to apply the correct law as to the granting or denial of special exceptions and unusual uses, and failed to

apply the correct law as to what constitutes competent evidence in such cases. As a result we quash the circuit court's order and remand the case with instructions to the circuit court to direct the Commission to remove the limitation to K-6 and 150 students and to grant the application with grades K-12 and 524 students.[8]

All Citations

752 So.2d 708, 25 Fla. L. Weekly D481, 25 Fla. L. Weekly D1179

Footnotes

1 Churches and schools are permitted uses in residential areas under the county's land use plan. *See Machado v. Musgrove,* 519 So.2d 629 (Fla. 3d DCA 1987), *cert. denied,* 529 So.2d 693 (Fla.1988).

2 As it was then constituted.

3 Of course, if the opposition demonstrates that a request is inconsistent with the zoning authority's land use plan, then denial is in order. Such is not the case here as we observed in footnote 1

4 However, the only ingress and egress proposed for the site is 87th Avenue, not a "neighborhood" street; rather it is a state minor arterial road.

5 It does, however, show lax enforcement by the county in the past.

6 Twenty-six (26) pages of transcript.

7 For example:

> "Q. So therefore is it not fair to say that the application pursuant to ascertainable standards is compatible and completely consistent with the standards delineated in the Dade County Zoning Code?
> A. It is consistent with the Dade County Zoning Code, yes."
> T.68.

8 We do not reach the other issues and express no opinion one way or another on them.

863 So.2d 375
District Court of Appeal of Florida,
Third District.

MIAMI–DADE COUNTY, Petitioner,

v.

OMNIPOINT HOLDINGS, INC., Respondent.

No. 3D01–2347.

Dec. 10, 2003.

Synopsis

Background: County sought petition for writ of certiorari to quash decision of the Circuit Court, Dade County, Amy Steele Donner, Gisela Cardonne, Manuel A. Crespo, JJ., directing county's community zoning appeals board to grant applicant permission to erect telecommunications monopole. The District Court of Appeal, 811 So.2d 767, denied petition and sua sponte declared portions of county code governing unusual uses, modifications of prior approvals, and nonuse variances facially unconstitutional. County petitioned for further review. The Supreme Court, Bell, J., quashed and remanded, 863 So.2d 195, 2003 WL 22208012.

Holdings: On remand, the District Court of Appeal, Fletcher, J., held that:

[1] trial court could not consider Federal Telecommunications Act when considering petition for certiorari, and

[2] District Court of Appeal could not review the sufficiency of the evidence to support the zoning board's decision but rather could only review whether trial court applied correct law to information offered to zoning board as evidence.

Petition denied.

West Headnotes (5)

[1] **Zoning and Planning** ⇨ Proceedings to Modify or Amend

Zoning and Planning ⇨ Modification or amendment; rezoning

Neither a quasi-judicial body nor a reviewing circuit court is permitted to add to or detract from the local regulations when making its assigned determination of a zoning change application.

1 Cases that cite this headnote

[2] **Administrative Law and Procedure** ⇨ Statutory basis and limitation

Administrative Law and Procedure ⇨ Power and authority of agency in general

Quasi-judicial boards do not have the power to ignore, invalidate or declare unenforceable the legislated criteria they utilize in making their quasi-judicial determinations.

1 Cases that cite this headnote

[3] **Administrative Law and Procedure** ⇨ Judicial, legislative, or ministerial powers or acts

Quasi-judicial boards cannot make decisions based on anything but the local criteria enacted to govern their actions.

[4] **Zoning and Planning** ⇨ Matters or evidence considered

Trial court could not consider Federal Telecommunications Act when considering corporation's petition for certiorari contending that county zoning board erred in denying application to construct communications tower, as Act was not part of local zoning criteria.

Communications Act of 1934, § 332, as amended, 47 U.S.C.A. § 332.

[5] Zoning and Planning ⇨ Questions of fact; findings

District Court of Appeal considering corporation's petition for writ of certiorari to quash trial court's decision upholding zoning board's denial of corporation's application for permission to construct telecommunications monopole could not review the sufficiency of the evidence to support the zoning board's decision but rather could only review whether trial court applied correct law to information offered to zoning board as evidence.

Attorneys and Law Firms

***376** Robert A. Ginsburg, County Attorney, Jay W. Williams, Assistant County Attorney, for petitioner.

Hayes & Martohue and Deborah L. Martohue (St.Petersburg), for respondent.

Before GERSTEN, GODERICH, and FLETCHER, JJ.

ON REMAND

FLETCHER, Judge.

In *Miami–Dade County v. Omnipoint Holdings, Inc.*, 863 So.2d 195, 2003 WL 22208012 (Fla. Sept. 25, 2003), the Florida Supreme Court quashed this court's decision in *Miami–Dade County v. Omnipoint Holdings, Inc.*, 811 So.2d 767 (Fla. 3d DCA 2002) and remanded the cause with instructions for this court to review again the circuit court's certiorari decision, this time limiting our review to the standards established in *City of Deerfield Beach v. Vaillant*, 419 So.2d 624 (Fla.1982), *Broward County v. G.B.V. Int'l, Ltd.*, 787 So.2d 838 (Fla.2001), and *Florida Power & Light Co. v. City of Dania*, 761 So.2d 1089 (Fla.2000). As a result this court is limited in its review on remand to the only remaining issue: whether the circuit court applied the correct law. *Vaillant* at 626; *G.B.V.* at 843; and *Florida Power* at 1092. (The issue as to whether the circuit court afforded procedural due process was not raised by the parties, thus need not be addressed.)

[1] Our determination here begins with the language of *Vaillant, G.B.V.*, and *Florida Power* as stated in *G.B.V.* at 842:

> "A decision granting or denying a [quasi-judicial] application *is governed by local regulations, which must be uniformly administered.* The allocation of burdens expressed in *Irvine v. Duval County Planning Commission*, 495 So.2d 167 (Fla.1986), is applicable to such proceedings:
>
> > [O]nce the petitioner met the initial burden of showing that his application met the statutory criteria for granting such [applications], 'the burden was upon the Planning Commission to demonstrate, by competent substantial evidence presented at the hearing and made part of the record, that the [application] requested by petitioner did not meet such standards and was, in fact, adverse to the public interest.' " [e.s.]

The *G.B.V.* court went on to say:

> "To deny a [quasi-judicial] application, a local government agency must show by competent substantial evidence that the application does not meet the *published criteria.*" [e.s.]

Neither a quasi-judicial body nor a reviewing circuit court is permitted to add to or detract from these criteria (the local regulations) when making its assigned determination.[1] Thus in *Miami–Dade County v.* ***377** *Omnipoint Holdings, Inc.*, 863 So.2d 195, 2003 WL 22208012 (Fla. Sept. 25, 2003) the Florida Supreme Court held that certiorari review is not the proper vehicle to challenge the constitutionality of a statute or an ordinance.

[2] [3] Put another way, quasi-judicial boards do not have the power to ignore, invalidate or declare unenforceable the legislated criteria they utilize in making their quasi-judicial determinations. *See Baker v. Metropolitan Dade County*, 774 So.2d 14, 19–20 nn. 12–14 (Fla. 3d DCA 2001), *rev. denied*, 791 So.2d 1099 (2001). Thus quasi-judicial boards cannot make decisions based on anything but the local criteria enacted to govern their actions.

[4] In the instant case the circuit court appellate division was petitioned by Omnipoint Holdings, Inc. to quash the Miami–Dade County zoning board's denial of Omnipoint's application (to construct a communications tower) on two grounds. First, Omnipoint argued that the board's denial is violative of the Federal Telecommunications Act, 47 U.S.C. § 332 (1996). This Act allows local governments to regulate the placement of personal wireless facilities, so long as such regulation does not unreasonably discriminate among like service providers, or prohibit the provision of wireless services. Based on Omnipoint's argument the circuit court concluded that the zoning board's denial violates the Act and thus must be quashed. By considering the Act, however, the circuit court did not apply the correct law. This is so as the Federal Telecommunications Act is not a part of the local zoning criteria, thus the circuit court's decision on certiorari review cannot validly be bottomed on the Federal Act.[2]

[5] The circuit court gave a second reason for its quashal of the zoning board's denial: that the zoning board's decision is not supported by substantial competent evidence (which is defined as "such relevant evidence as a reasonable mind would accept as adequate to support a conclusion."[3]) Whether there was substantial competent evidence is an issue outside our review authority. We are not, however, precluded from reviewing the circuit court's decision to assure that the court applied the correct law to the information offered to the zoning board as evidence. For example, in *Machado v. Musgrove,* 519 So.2d 629 (Fla. 3d DCA 1987), *rev. denied,* 529 So.2d 693 and *rev. denied,* 529 So.2d 694 (Fla.1988), this court observed that a zoning staff report that was irrelevant to the issue involved was entitled to no consideration in arriving at a conclusion as to whether the substantial competent evidence test had been met. In *Jesus Fellowship, Inc. v. Miami–Dade County,* 752 So.2d 708 (Fla. 3d DCA 2000), this court concluded, *inter alia,* that the circuit court, by approving the use of lay opinion testimony where technical expertise was required, failed to apply the correct law.[4]

Our review of the circuit court's decision here leads us to the conclusion that the circuit court applied correct law in the process of reaching its conclusion as to the sufficiency of the evidence. As it not our *378 function to pass on the sufficiency of the evidence itself, we stop at this point. Accordingly, the petition for writ of certiorari is denied.

All Citations

863 So.2d 375, 28 Fla. L. Weekly D2839

Footnotes

1 *See City of Miami v. Save Brickell Ave., Inc.,* 426 So.2d 1100 (Fla. 3d DCA 1983), at 1104.

2 The Act may, of course, be the basis for an original action challenging a local zoning decision.

3 *DeGroot v. Sheffield,* 95 So.2d 912 (Fla.1957).

4 Additional examples include *Metropolitan Dade County v. Blumenthal,* 675 So.2d 598 (Fla. 3d DCA 1995), *rev. dismissed,* 680 So.2d 421 (Fla.1996)(fact based lay testimony is perfectly proper); *Pollard v. Palm Beach County,* 560 So.2d 1358 (Fla. 4th DCA 1990)(lay persons' opinions unsubstantiated by any competent facts are not evidence).

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PARTY OF RECORD

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