
**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR WALTON COUNTY, FLORIDA**

CASE NO.: 2017-CA-000388
Division: D

ROBERT P. COLETTA, As Trustee of The Robert P. Coletta
Revocable Trust, and **STEPHEN W. BOUDREAUX**, Individually,
PAUL M. THOMPSON, Individually, and
MARY E. NIELSON, Individually,
Plaintiffs/Petitioners,
v.
WALTON COUNTY, FLORIDA,
Defendant/Respondent,
and
Trustmark National Bank,
Intervenor/Respondent.

AMENDED PETITION FOR WRIT OF CERTIORARI

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DOCUMENT

I. BASIS FOR INVOKING JURISDICTION

Pursuant to Article 5, Section 5(b) of the Florida Constitution, and Rule 9.100(f), Florida Rules of Appellate Procedure, Petitioners have sought review of the Final Order of the Respondent Walton County Board of County Commissioners, issued July 20, 2017.¹ (App.1 at 5.) That Final Order approved the application for Fox Lake Residential, with several conditions, after hearing on July 11, 2017.

The quasi-judicial decision of a local administrative body, such as the Final Order of the Respondent, may be reviewed by certiorari. Certiorari review in this posture is a matter of right, and akin to a plenary appeal. See Fla. Power & Light Co. v. City of Dania, 761 So. 2d 1089, 1092 (Fla. 2000). The applicable standard for certiorari review in the instant case is: (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

¹ Petitioners timely filed their Petition for Writ of Certiorari as one count of a two-count Complaint on August 10, 2017, as pro se parties. That Complaint was amended without objection and as a matter of right on October 9, 2017, but the undersigned sought leave of Court to amend the certiorari petition portion of the Complaint in an abundance of caution. See, e.g., N. Beach Ass'n of St. Lucie Cnty., Inc. v. St. Lucie Cnty., 706 So. 2d 62, 63 (Fla. 4th DCA 1998). This Amended Petition is being filed pursuant to the Court's Order issued on October 16, 2017, granting such leave in the instant case, and in conformance with the expectations of the Florida Rules of Appellate Procedure. A conforming Appendix is being filed contemporaneously herewith. Citations to that Appendix will be referred to herein as "App.[Tab Number] at [PDF page number]." Accordingly, "App.1 at 5" refers to Appendix, Tab 1, at PDF page 5.

substantial evidence. See Haines City Cmty. Dev. v. Heggs, 658 So. 2d 523, 530 (Fla. 1995) (citing City of Deerfield Beach v. Valliant, 419 So. 2d 624, 626 (Fla. 1982)). The Florida Supreme Court defined the phrase “competent substantial evidence” as follows:

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. 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 enforced. 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.”

DeGroot v. Sheffield, 95 So. 2d 912, 916 (Fla. 1957) (internal citations omitted).

Applicable here, Petitioners assert that the Respondent failed to observe the essential requirements of law in rendering the Final Order, and that the Final Order is not supported by the necessary competent, substantial evidence. Accordingly, Petitioners respectfully request that this Court quash the Final Order.

II. FACTS ON WHICH THE PETITIONER RELIES

Petitioners are residents of Walton County, Florida, who reside in a subdivision adjacent to the Project. (See Initial Cmplt., Exs. A, B, C, & D.) Petitioners are directly impacted by the approved Development Order in that the

impacts of the development will directly affect them. Renard v. Dade Cnty., 261 So. 2d 832 (Fla 1972).

Based on the addition of seventy-nine (79) homes that have been approved for construction of the Fox Lake Project (the “Project”), it is reasonable to expect additional traffic. Indeed, the owners of the Project (the “Applicant”) advocated below that they commissioned at least five (5) traffic studies. (App.11 at 10.) In addition, Petitioners expect there will be will be significant construction traffic in the near vicinity of Petitioners homes. As a result, there will be noise and other impacts associated with such traffic and construction traffic, including on adjoining property owners such as Petitioners. Petitioners will be negatively affected by increased traffic, noise, and substantial construction activity, which interferes with Petitioners enjoyment of the County and the subdivision in which they reside. (See id., Initial Compl., Exs. A, B, D, & D.) The proposed development activities are likely to increase the number of persons who will live in Walton County as well, and, as a result, will likely increase demands related to public services, traffic, and infrastructure. (Id.) The County has labeled the Project as a “Major Development” Project. (App.3 at 1.)

Because Petitioners are closely proximate to the Project, Petitioners will suffer harm greater in degree than that of the public in general. (Initial Cmpl., Exs. A, B, C, & D; App.11 at 10; App.3 at 1.) Petitioners have an interest that exceeds in degree

the general interest in the community good shared by others. Id. Petitioners will be more affected by traffic, noise, and construction activities. Id. Petitioners have been active opponents of this project consistently throughout the time frame of the approvals, and Petitioner Mary Neilson participated in the hearing before the Walton County Board of County Commissioners (“Board”) on July 11, 2017 (the “Hearing”), and submitted documents on behalf of her and the other Petitioners at that Hearing. (App.9 at 170-241.)

On July 11, 2017, the Board conducted and concluded its Hearing with respect to the review of the Project. (App.10 at 242 & App.11 at 244.)² There were seven exhibits (inclusive of subparts) filed with the Board during the Hearing. (App.2 at 8-9; see App.3-9.)

On July, 20, 2017, the Board executed a “Final Order” (the “Order”). (App.1 at 5.) The Order approved the Project subject to six conditions. (Id.) The Order does not contain any findings and conclusions of law with respect to the Project (Id.)

² While an audio recording was made below (App.10 at 242), no transcript of that audio recording was made by Respondent or Intervenor. After hiring counsel, Petitioners ordered a transcript to be made of the audio recording, and the undersigned have included the partial transcript (that which has been received to date) in Petitioners’ Appendix to this Amended Petition. Petitioners have not yet received a final transcript of the hearing, however, and the full transcript is certainly preferable for the benefit of the Court and the parties. Petitioners therefore reserve the right to file the complete transcript for inclusions in their Appendix at Tab 11, once the final, full transcript comes available.

County Code section 10.02.03 F requires the County to prepare a written order which includes a statement identifying the applicable criteria and standards about which proposal was tested, and containing findings of fact based on evidence of record that establish compliance or non-compliance. These provisions are not in the Order, and were not provided at the Hearing. (App.1 at 5; App.2 at 8-9; App.3-11.)

The Order also does not contain a listing of federal state and regional permits that must be obtained in order for a development permit to be issued. (App.1 at 5.) Nor does the Order include the concurrency management requirements of Chapter III of the County Code, which requires a determination of concurrency and the time period for which the Order is final. (Id.) Specifically, County Code section 3.01.01, requires that a certificate of concurrency shall be required prior to the issuance of any development order[.]” A certificate of concurrency certifies that concurrency is satisfied for a proposed development project, and that a specific amount of facility capacity has been temporarily reserved for that project for a specified period of time, as provided herein. No certificate of concurrency was placed into evidence by any party below. (App.1 at 5; App.2 at 8-9; App.3-11.)

At the Hearing, the Applicant’s representative stated that they had conducted “five different studies over the past year and a half on this project.” (App.11 at 10.) But the record fails to reflect that any of these traffic reports were placed into evidence to support the claim made to the Board that traffic would not be a

substantial issue for this Project. (App.1 at 5; App.2 at 8-9; App.3-11.) All that was supplied was a one-page letter, which included no analysis, just conclusions, and no underlying reports. (App.8 at 168.) Nor was the author of that letter present at the Hearing to be cross-examined on the bases for the conclusions in the letter. (App.10 & 11.)

The “Project” is premised upon two access points that will be created to allow residents of the Project to exit their community (App.11 at 248-250.) To obtain access to the south of the Project, the owners of the Project Applicant entered into an easement agreement dated May 17, 2017, and recorded at OR Book 3041, page 271 (the “Easement”). (App.7.) The Applicant alleges that the Easement gives the Applicant and its successors “both access and use of Bunker Place.” (App.11 at 250-251.)

The first access point is through a platted access road, which connects the project to Fairway Drive to the north. (App.11 at 260, 274-275.) The second access point is to the south and purports to connect the project from the southwestern corner of Government Lot 9 to Bunker Place Road, a private road owned by Santa Rosa County Club, which then connects to Allen Lane Road a public road. (App.11 at 251-252; see also App.7.)

At the Hearing, a Commissioner voiced concern regarding traffic safety and that only one entrance into the Project was being provided, stating:

COMMISSIONER COMANDER: I am concerned about the traffic because every one of these houses are going to have two-point-and-a-half cars because they're go[ing] to have momma, daddy, and the teenager, okay. So I am concerned that we have one entrance. And what happens when we do have a storm that, there again, we're going to have a problem getting all of those people out. So that it – one of my concerns is that you only have one entrance. To me that half one isn't worth doodly squat. I mean, I'm sorry, but, you know, you can't get that many people on and off on that little –

MR. DUNAWAY: the southern access.

COMMISSIONER COMANDER: The southern. But I am concerned [for] people that are going to be going through this neighborhood, which these people have already established their way of like. I want you to develop your property, but I am desperately concerned about another entrance into this property[.]

(App.11 at 270-271.) Applicant's attorney responded that to address these concerns was precisely why they had worked with the Santa Rosa Golf and Beach Club "to gain" access through the southern secondary access, noting that the Applicant heard the Commissioner on that concern. (App.11 at 271-272.) Likewise, at other times during the Hearing, representatives for the Applicant assured the County that they have obtained access across private lands to Bunker Place Road. (App.11 at 249-252 (see, e.g., 249: "But as far as limiting use of that south for the residents, there's no limitation there. It can be used.").)

III. NATURE OF RELIEF SOUGHT

In determining whether to grant or deny a development order, the governing body must apply existing law to the facts surrounding the application. Accordingly, consideration of a development order is a quasi-judicial proceeding. Thus, in the

instant case, the Walton County Board of County Commissioners was charged with holding a public hearing to adduce facts, apply the existing law to those facts and to reach a reasoned and factually-based conclusion.

For a local governing board to conclude that something is a fact, as opposed to unsupported opinion or popular sentiment, the law requires that each factual determination be supported by competent, substantial evidence presented to the board. Competent evidence is defined as “evidence sufficiently relevant and material to the ultimate determination ‘that a reasonable mind would accept it as adequate to support the conclusion reached.’” City of Hialeah Gardens v. Miami Dade Charter Found., Inc., 857 So. 2d 202, 204 (Fla. 3d DCA 2003) (quoting DeGroot v. Sheffield, 95 So. 2d 912, 916 (Fla. 1957)). Likewise, substantial evidence has been defined as “evidence that provides a factual basis from which a fact at issue may reasonably be inferred.” Id.

The purpose of a quasi-judicial public hearing is not to provide the County Commissioners an opportunity to poll the neighborhood (e.g., Santa Rosa Golf and Beach Club, developer, Gary Towne, and others) to see which way the political winds blow. The purpose of a public hearing is to provide interested parties an opportunity to present competent witnesses and other evidence from which the County Commissioners may make a reasoned decision, consistent with the Walton County Comprehensive Plan and Land Development Code. To withstand judicial

scrutiny, the County Commission's decision must be grounded upon facts which have been established, not upon the wishes of persons—developer—who appear for the granting of the application, but rather facts adduced at the hearing in oral or written form. Such a decision must also include the requisite components to allow meaningful judicial review.

A review of the record in the instant case reveals that the Board failed to adhere to the essential requirements of the law and, rather than being based on evidence or including the necessary components to withstand scrutiny, made what ultimately amounted to an unsupported and noncompliant decision. An arbitrary decision includes one “not supported by the facts,” and is capricious when it is “taken irrationally, without thought or reason.” Bd. of Clinical Lab. Personnel v. Fla. Ass'n of Blood Banks, 721 So. 2d 317 (Fla. 1st DCA 1998). Here, because the Board's decision to approve the development order for the proposed Fox Lake Residential Major Development was not supported by the facts, and did not include the necessary components to withstand scrutiny, the Court should quash it.

Petitioner therefore respectfully requests that this Court quash the Final Order because the Board failed to observe the essential requirements of law, and because it is not supported by competent, substantial evidence.

IV. ARGUMENT AND CITATION OF AUTHORITY

The quasi-judicial decision of a local administrative body, such as the Final Order, may be reviewed by certiorari. Certiorari review in this posture is a matter of right, and akin to a plenary appeal. See Fla. Power & Light Co. v. City of Dania, 761 So. 2d 1089, 1092 (Fla. 2000). The applicable standard for certiorari review in the instant case is: (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. See Haines City Cmty. Dev. v. Heggs, 658 So. 2d 523, 530 (Fla. 1995) (citing City of Deerfield Beach v. Valliant, 419 So. 2d 624, 626 (Fla. 1982)). Here, the Final Order should be quashed because the Board failed to observe and comply with the essential requirements of law, including that the Board did not and could not include the requisite administrative findings, and because the Final Order is not supported by competent, substantial evidence.

A. The Board failed to follow the essential requirements of law in its issuance of the Final Order.

The Board's Final Order approving the Project is not consistent with the Walton County Code and should be quashed. The Order approved the Project subject to six conditions. (App.1 at 5.) The Order, however, does not contain any findings of fact or conclusions of law with respect to the Project to support that decision. (Id.) County Code section 10.02.03 F requires the County to prepare a written order which

includes a statement identifying the applicable criteria and standards about which proposal was tested, and containing findings of fact—based on evidence of record—that establish compliance or non-compliance. No such provisions are contained in the Order, nor were any even orally provided at the Hearing. (App.1 at 5; App.2 at 8-9; App.3-11.) This type of self-insulating non-compliance is impermissible as it thwarts meaningful due process and judicial review, including to ensure purely political decisions are not permitted.

The Order also does not contain a listing of federal state and regional permits that must be obtained in order for a development permit to be issued. (App.1 at 5.) Nor does the Order include the concurrency management requirements of Chapter III of the County Code, which requires a determination of concurrency and the time period for which the Order is final. (Id.) Specifically, County Code section 3.01.01, requires that a certificate of concurrency shall be required prior to the issuance of any development order[.]” A certificate of concurrency certifies that concurrency is satisfied for a proposed development project, and that a specific amount of facility capacity has been temporarily reserved for that project for a specified period of time, as provided herein. No certificate of concurrency was placed into evidence by any party below. (App.1 at 5; App.2 at 8-9; App.3-11.)

Here, in a complete compliance failure, the Order does not even contain any findings of fact or conclusions of law at all, in addition to failing to contain a listing

of federal state and regional permits that must be obtained in order for a development permit to be issued, and the requisite concurrency management requirements. Nor did the Board prepare a written order that includes a statement identifying the applicable criteria and standards about which the Project was tested, or which contains findings of fact based on evidence in the record that establishes either the compliance or non-compliance. From the Final Order, the Court cannot know on what the Board relied, or that it relied upon anything at all.

Indeed, regarding many of the requisite findings of fact that would ordinarily be needed to approve a Major Development Project like this one through a compliant and proper Order, the Board could not have done so because the requisite evidence was not placed in the record at the Hearing. Here, the only evidence supplied (all of which is included in the Petitioners' Appendix, see App.2 at 8-9) includes a ten-page staff report (without underlying studies) (App.3 at 11); letters and public comments (App.4-6 at 22-148); the Declaration, Covenants, Easements and Restrictions between Applicant and Santa Rosa Gold and Beach Club (App.7 at 149); a one-page letter from Dantin Consulting regarding an "updated traffic operational analysis" that was not presented at the hearing nor was Ms. Dantin present to testify regarding that analysis (App.8 at 168, see also App.11 at 244); and presentation materials submitted by Petitioner Mary Nielson (App.9 at 170). As the Florida Supreme Court has made clear, competent, substantial "evidence" is just that:

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. 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 enforced. 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.”

Groot v. Sheffield, 95 So. 2d 912, 916 (Fla. 1957) (emphasis added and internal citations omitted). To the extent some other documents do exist, it was improperly relied upon to make the Board’s decision. (See, e.g., App.11 at 253 (discussing studies not presented at the Hearing).) See Groot, 95 So. 2d at 916 (noting that evidence “sufficiently relevant and material” is required for such evidence to be competent and substantial, notwithstanding “the familiar rule that in administrative proceedings the formalities “in the introduction” of testimony . . . are not strictly enforced). There is no Florida case law that excuses the introduction of testimony and evidence altogether, no matter how relaxed a legal proceeding it might be.

Nor is this a case in which the failure to supply the necessary evidence to support the Board’s decision, and the inability to know whether it made a substantive difference, can be called harmless. See generally Witham v. Sheehan Pipeline Constr. Co., 45 So. 3d 105, 109 (Fla. 1st DCA 2010) (noting that the test for harmless

error in a civil case is simply whether, but for such error, a different result may have been reached). To the contrary, as detailed below, it appears specifically regarding issues expressed as important to the Board's decision that the evidence did not exist at all and amounted to nothing more than persuasive and unsupported legal argument of counsel. On this Florida courts are clear and consistent: Argument of counsel is not "evidence." See, e.g., Geralds v. State, 111 So. 3d 778, 795 n.16 (Fla. 2010), as revised on denial of reh'g (Feb. 2, 2012) (quoting Collins Fruit Co. v. Giglio, 184 So. 2d 447, 449 (Fla. 2d DCA 1966)) ("[I]t is axiomatic that the arguments of counsel are not evidence[.]"). This rule is exactly the same for cases in the administrative context. See, e.g., Hale v. Shear Express, Inc., 946 So. 2d 94, 96 (Fla. 1st DCA 2006) (concluding none of the findings made by administrative tribunal were supported by competent substantial evidence, and reiterating that "arguments of counsel are not evidence").

Because the Final Order lacks the required components, including any requisite findings, the Final Order should be quashed for that reason alone. As detailed below, the Final Order should also be quashed for failure to supply the necessary evidence to make those requisite findings.

B. No evidence was supplied to support the assertions to the Board that there will be an actual useable access to the south of the Project, and none may exist.

The Project purportedly relies on two points of access. The Commissioners were rightfully concerned that, with only one point of access, there would be too much traffic for the project and would especially burden Ridge Road and Fairway Drive, in the community where the Petitioners reside (the “Northern Access”) (App.11 at 255, 270-271).

One particular exchange is noted by Commissioner Comander:

But I am concerned people that are going to be going through this neighborhood, which these people have already established their way of life. I want you to develop your property, but I am desperately concerned about another entrance into this property. . . .

MR. DUNAWAY [Applicant’s attorney]: Yes, Ma’am. And That is why the applicant spent the time working with the golf club to gain the private access through the southern access and is going to commit to the improvement of Bunker Hill Place, Bunker Place, which currently services neighborhoods that, of course, the County has approved and houses exists there too. So, yes, ma’am, we hear you on that. Thank you.

Similarly, at other times during the Hearing, representatives for the Applicant assured the County that they have obtained usable access across private lands to Bunker Place Road. (App.11 at 249-252 (see, e.g., 249: “But as far as limiting use of that south for the residents, there’s no limitation there. It can be used.”).) So, to alleviate those concerns, the Applicant represented to the Board that it has procured access to the south.

This is particularly important given that this was not just discussed as a preference, but as a matter of public safety:

COMMISSIONER COMANDER: I am concerned about the traffic because every one of these houses are going to have two-point-and-a-half cars because they're go[ing] to have momma, daddy, and the teenager, okay. So I am concerned that we have one entrance. And what happens when we do have a storm that, there again, we're going to have a problem getting all of those people out. So that it – one of my concerns is that you only have one entrance. To me that half one isn't worth doodly squat. I mean, I'm sorry, but, you know, you can't get that many people on and off on that little –
MR. DUNAWAY: the southern access.

(App.11 at 270-271 (emphasis added).)

There are two independent and separate issues with respect to the southern access. The first is that between the Project's boundary and Bunker Place Drive are two additional roads that are on private property. (App.13 at 283.) The second is that the Easement obtained from the Club does not provide any guarantee that the residents of the Project will actually be able to drive their cars on Bunker Place Drive. (App.7 at 149-167.) Instead, the secondary access, based on the evidence in the record (and potentially, if vetted, any documentation that could be supplied), is at best illusory.

Before we even reach the actual conditions provided for in the Easement, however, it is important to note that anyone who wants to travel to Bunker Place Drive has to traverse two private properties to get to its destination. The plan by the Applicant is to access Bunker Place Drive by commencing at the southeast corner of

Section 9 (within the Project), going east along the north line of Section 15 (private property), and then south on Lot 14 (private property). (App.9 at 192; App.12 at 281.)

The language in the Government Deeds that transfer the Government Lots to individual owners provides: “This patent is subject to a right of way not exceeding 33 feet in width, for roadway and public utilities purposes, to be located along the south and east boundaries of said land.” (App.13 at 283).

In Florida, for a public entity such as the County to acquire an interest in property, there must be a dedication to the County by a Government Lot owner and County acceptance of the dedication. Cannon v. Putnam Cnty., 75 So. 2d 577 (Fla. 1954). It is not altogether clear that the United States’ transfer of Government Lots to private landowners resulted in a “dedication” of the 33-foot easements to the County. That reservation to the Government Lot owners only references “road” and not public road access. Secondly, to the extent there was a dedication, there is no evidence in the record that Walton County actually accepted the roads. No document indicating the County’s acceptance of these two roads to be used for the easement was placed into evidence at the Hearing. Also, there is no competent, substantial evidence that the roads on private property that are to be used for access are indeed public.

In Cannon, the Florida Supreme Court analyzed whether a Government Lot road was public or private. The local government claimed ownership by dedication and acceptance by virtue of its maintenance of the road for over thirty (30) years. The Florida Supreme Court, quoting Robinson v. Town of Rivera, 25 So. 2d 277, 278 (Fla. 1946), explained:

It is well settled in this jurisdiction that so far as the public is concerned the platting of lands and the setting apart a portion thereof for public use does not in and itself constitute a complete dedication of such lands for public purposes. Such action constitutes at most, a mere offer to dedicate the lands involved, which must be accepted before revocation of the offer in order to complete the dedication.

Cannon, 75 So. 2d at 579-580.

Even if the Federal Government, by reserving easements over the Government Lots, is deemed to be a dedication, there is no evidence that the County actually accepted the rights of way in the Government Lots. No documentary evidence was presented to support the Applicant's claim that the Government Lot easements are public and that, therefore, the easement can connect the Project to Bunker Place way. In fact, the Site Plan presented to the County by the Owner refers to Fox Bunker Way (the purported new road) as "**private r/w.**" (App.12 at 281.)

Even if there is legal access across Lots 14 and 15, the Easement document lists conditions to be met by the Applicant before the Easement comes into effect. (App.7 at 150.) Subsection 2(b) requires the Applicant, or its successors, to "erect a gate at any entrance and/or exit to said properties from or onto the Easement Area."

(Id.) In addition, the Declaration purports to establish a “Neighborhood Association,” specifically the “Bunker Place Neighborhood Association, Inc.” (Id. at 150-152.) The owner of Bunker Place Drive is the Santa Rosa Golf and Beach Club. (Id. at 149.) This entity cannot by law create a neighborhood association for a road. Specifically, section 720.302, Florida Statutes, provides: “The purposes of this chapter are to give statutory recognition to corporations not for profit that operate residential communities in this state[.]” The owner of Bunker Place Drive is not operating a residential community that is to be the Project.

Together, these shortfalls prevent reliance on the Declaration of Covenants, Easements, and Restrictions between the Applicant and Club, or any other evidence presented, as competent, substantial evidence that the secondary access actually exists, or that the conditions to its existence can ever be met.

Despite the representations about access through the south, the Final Order did not condition development on the successful completion of the Easement Conditions, as you would expect to see given its importance to members of the Board if the Board believed (as appears to be the case) that the secondary access might not turn out to be available in the end. There is no evidence that any bonds have been secured to insure completion of the secondary access either to ensure its availability either. Nor is there any record evidence that the secondary access is anything but illusory.

At the same time, there is nothing in the Final Order to possibly suggest, contrary to the statements made at the Hearing of the importance of this issue as a matter of public safety, that secondary access turned out to be something the Board ultimately did not believe was necessary at all to approve this Project. Any suggestion otherwise would be mere conjecture that would attempt to supplant the Board's decision-making authority in this area. It is the Board's obligation and right to be the body to make that determination and, here, it cannot be said that absent the unsupported assertions of counsel or erroneous reliance on the evidence that was in the record, that the Board would not have made a different decision, or at least have conditioned the Final Order on ensuring the secondary access will be realized. See Witham v. Sheehan Pipeline Constr. Co., 45 So. 3d 105, 109 (Fla. 1st DCA 2010) (noting that the test for harmless error in a civil case is simply whether, but for such error, a different result may have been reached). It is the Board that must establish what its decision is and its basis for that decision, through its findings and conclusions, as the law requires, precisely so that the Court and parties who stand to gain or lose one way or the other do not have to guess.

Given the lack of findings, and lack of evidence, it cannot be said that the Board did not rely upon the unsupported representations of the Applicant's counsel. There being no competent, substantial evidence to support the assertions that the secondary access had not only been "gained," but also was "usable," and there being

no conditions to ensure the secondary access otherwise would come to fruition despite its importance to the Board as reflected by Commissioner comments, the Board needed to enter a compliant Final Order so that we may know what its decision was. To convey that information, the Final Order needed to contain the necessary factual findings and conclusions for the Court and the parties to know the bases for its decision, including related to the southern secondary access. That is the only way that this Court may fulfill its role as a reviewing body to ensure those bases are properly supported by the requisite competent, substantial evidence. Because that is not possible with the Final Order at issue here, it should be quashed.

V. CONCLUSION

Petitioners respectfully request that this Court grant the Writ and quash the Final Order. Respondent's Final order approving the development order for the proposed Fox Lake Residential Major Development lacks the requisite findings of fact and conclusions of law required for such an order to be upheld, and is not supported by competent, substantial evidence in the record. As a result, this Court should conclude that Respondent deviated from the essential requirements of the law. Petitioners respectfully request that the Court grant the Petition for Writ of Certiorari and quash Walton County's decision, and award such other and further relief as the Court deems just and appropriate.

Respectfully submitted this 15th day of November, 2017.

MESSER CAPARELLO, P.A.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been furnished electronically by using the Florida Courts E-Filing Portal this 15th day of November, 2017, to the following:

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CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENTS

I HEREBY CERTIFY that this Amended Appendix complies with the font requirements of Rule 9.210, Florida Rules of Appellate Procedure.

/s/ Gigi Rollini
Attorney