

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL ACTION

PINCHERS CRAB SHACK OF
DOWNTOWN FT MYERS, INC.,
Petitioner,

Case No.: 23-CA-005239

v.

CITY OF FORT MYERS, BOARD
OF ADJUSTMENTS and WHITE
ROSE HOLDINGS, LLC,
Respondents.

_____/

RESPONSE TO THE PETITION FOR WRIT OF CERTIORARI

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RESPONSE TO PETITION FOR WRIT OF CERTIORARI

The Respondent, CITY OF FORT MYERS (“City”) responds to the Petition for Writ of Certiorari submitted by Petitioner, PINCHERS CRAB SHACK OF DOWNTOWN FT MYERS, INC., (hereinafter “Petitioner”), as follows:

I. INTRODUCTION

The Petitioner challenges the decision of the City’s Board of Adjustments which granted the conditional use approval request of Co-Respondent, WHITE ROSE HOLDING, LLC, to construct a Food Truck Park at 2300, 2310, & 2320 McGregor Boulevard, Fort Myers, FL.

Petitioner submitted an Appendix with their Petition. References to the Petitioner’s Appendix will be designated with “P.App.” with the pertinent exhibit designation. References to the Petition will be designated by “Pet.”.

Along with its Response to the Petition for Writ of Certiorari, the City submits an Appendix comprised of relevant documents not included within Petitioner’s Appendix. References to the City’s Appendix will be designated with “R.App.” with the pertinent exhibit designation.

II. JURISDICTION

The City recognizes that this Court is granted certiorari jurisdiction to review quasi-judicial decisions of local governments by Article V, Section 5(b) of the Florida Constitution.

III. STATEMENT OF THE CASE

Co-Respondent, White Rose Holdings, LLC, (hereinafter the “Applicant”), owners of 2300, 2310 and 2320 McGregor Blvd., Fort Myers, FL, submitted a request for the City to approve a conditional use of said properties to build a food truck park. (P.App. 18-20, 32-124). The subject properties are located within the City’s downtown zoning district, which is designated specifically as urban center. (P.App. 180). There is an existing structure located on 2300 McGregor Blvd., which is being used as an office building and will continue to be so used upon the development of the food truck park at 2310 and 2320 McGregor Blvd. (P.App. 29-34). The proposed food truck park anticipates seven (7) food truck sites, an open outdoor bar and restroom building, and a 10’ by 10’ entertainment area. (P.App. 30). City staff from planning, zoning, and engineering, as well as the Fire Marshall, reviewed the request, found no objections, and recommended approval by the City’s Board of Adjustments. (P.App. 18).

The conditional use request was the subject of a public hearing on January 25, 2023, before the City’s Board of Adjustments. (P.App. 142-262). Prior to, and at the time of said hearing, the Applicant

submitted documents and testimony in support of the conditional use request. (P.App. 18-129, 142-261). The submitted documents and testimony provided evidence as to the project's compliance with the City's Code, and evidence as to each of the five (5) adverse impact elements the Board must review and consider prior to approving a conditional use application. (P.App. 18-129, 142-261). *See* § 98.2.3. and § 98.3.8.(D), Fort Myers Municipal Code. Said evidence included documents (Conditional Use Application and attachments, including Aerial Photograph and Existing Conditions, Survey with Legal Description, Site Plan, Landscape Plan, Food Trucks: Entrance & Exit, Renderings: Proposed Buildings, Sign Package, Traffic Impact Statement, Letter of Understanding: City of Fort Myers Noise Ordinance and the Shared Parking Agreement), as well as testimony from City staff, the Applicant, Applicant's legal counsel, the project engineer (Jason White), the project registered landscape architect (Josh Kelley), the project architect (Tad Sattong), and the project transportation consultant (Ted Treesh). (P.App. 18-129, 142-261). Specific evidence as to the requisite adverse impact elements included, but was not limited to, the following:

1. Impacts on the local economy, employment, and property values.

- **City staff informed the Board that the proposed project will have no adverse impacts and that food truck parks can serve as business incubators. (P.App. 19, 180-181).**
- **The Applicant informed the Board that the proposed project will provide eight full-time and six part-time employee positions, and the investment into the property is substantial. (P.App. 37, 152).**

2. Impacts on the natural environment, including air, water, and noise pollution, vegetation and wildlife, open space, noxious and desirable vegetation, and flood hazards.

- **City staff informed the Board that the proposed project will have no adverse impacts and that the proposed landscape plan will enhance the project site. (P.App. 20, 181).**
- **The Applicant provided documentary evidence including a landscape plan and a Letter of Understanding: City of Fort Myers Noise Ordinance, as well as testimony from the project engineer, Jason White, and Josh Kelley, the project registered landscape architect (P.App. 56-58, 115-116, 157-166, 229-234).**

3. Impacts on historic, scenic, and cultural resources, including views and vistas, and loss or degradation of cultural and historic resources.

- **City staff informed the Board that the proposed project will have no adverse impacts., that McGregor Boulevard is designated as both a state and local historic scenic highway, and that the proposed project will have no greater impact on the historic character of the road than any of the existing commercial businesses. (P.App. 20, 181-182).**

- **The Applicant provided documents including the Site Plan, Landscape Plan, Food Trucks: Entrance and Exit, Renderings: Proposed Buildings, Sign Package, Photometric Plan and testimony including from the project engineer, Jason White, architect, Tad Sattong, and Josh Kelley, landscape architect. (P.App. 52-72, 100-114, 155-159, 162-166, 229-234).**

4. Impacts on public services, including water, sewer, surface water management, police, fire, parks and recreation, streets, public transportation, marinas and waterways, and bicycle and pedestrian facilities.

- **City staff informed the Board that the proposed project would have no adverse impacts. The City currently serves the parcel with City water, sewer and solid waste collection. (P.App. 20, 182).**
- **Applicant provided documentary evidence including the Traffic Impact Statement, Utilities, and the Shared Parking Agreement, as well as testimony from project engineer, Jason White, and transportation consultant, Ted Treesh (P.App. 73-99, 117-124, 157-162, 166-168).**

5. Impacts on housing and social conditions, including the variety of housing unit types and prices, and neighborhood quality.

- **City staff informed the Board that there will be no adverse impacts to housing types or neighborhood quality. (P.App. 20, 182).**
- **The Applicant provided documentary evidence including a Letter of Understanding: City of Fort Myers Noise Ordinance. (P.App. 115-116)**

See § 98.3.8(D), Fort Myers Municipal Code. (P.App. 285).

In addition, discussed at length during the public hearing was the subject of the City's parking requirements relative to the proposed

conditional use. (P.App. 157-162, 171-179, 224-228). Concerning the parking requirements for the existing building on 2300 McGregor Blvd., City staff informed the Board that same is subject to City Code § 118.8.6.D., which requires one (1) parking space per 500 sq. ft of gross floor area for any office/retail property. (P.App. 172-179, 224-228). See § 118.8.6.D., Fort Myers Municipal Code. (P.App. 295). The office building located on 2300 McGregor Blvd., is 3,642 sq. ft. (P.App. 36-37).

Regarding the parking requirements for the food truck park to be located on 2310 and 2320 McGregor Blvd., City staff informed the Board of the following, which is found at City Code § 118.3.5.F.7.:

A minimum of three (3) parking spaces per food truck is required unless located in Downtown or Midtown where it can be demonstrated that enough public parking and on-street parking is available within a quarter mile walking distance to the food truck park. A shared parking agreement may also be entered with nearby uses subject to approval by the Community Development Director. The Director is authorized to approve an alternative number of parking spaces based upon a parking demand study submitted by the Applicant.

See § 118.3.5.F.7.(B)(8), Fort Myers Municipal Code. (P.App. 10-17, 172-173, 224-228). Here, as the proposed food truck park includes seven (7) food truck sites, the City's Code requires that it provide

twenty-one (21) parking places. (P.App. 224-228). Importantly, per the City's Code, this parking requirement can be met by entering into a shared parking agreement with nearby uses. (P.App. 10-17, 172-176, 224-228). *See* § 118.3.5.F.7.(B)(8), Fort Myers Municipal Code. City staff pointed out to the Board that a reduced parking requirement exists throughout all of the downtown area. (P.App. 172-173). Consistent with the City's Code, City staff indicated that the Applicant submitted a Declaration of Shared Parking and Dumpster Easement Agreement ("Shared Parking Agreement") to meet the City's parking requirements. (P.App. 117-124, 172-176, 224-228). The Shared Parking Agreement provides that the office building located at 2300 McGregor Blvd., and the proposed food truck park located at 2310 and 2320 McGregor Blvd., will share twenty-two (22) parking spaces. (P.App. 117-124, 157-162, 172-176). Additionally, the two uses sharing the twenty-two (22) parking spaces have different peak times, or peak hours. (P.App. 171). Further, during the public hearing, the civil engineer for the food truck project informed the Board that in addition to the twenty-two (22) on-site parking places, there are over 40 public or on-street parking places within a quarter mile radius (even though same was not relied upon to meet the City's

parking requirement). (P.App. 176-177, 224-228). The Board confirmed during the hearing that the Applicant met the City's requirement for parking by providing twenty-one (21) parking spaces, which the Applicant achieved through the Shared Parking Agreement (which provides twenty-two (22) parking spaces). (P.App.228).

Following the presentation of evidence at the public hearing, the City's Board contemplated the evidence as it relates to each adverse impact element. (P.App. 220-262). After an in-depth discussion, the City's Board voted to approve the conditional use request with the following conditions:

1. Provide increased landscaping to the maximum enhanced allowable without being inconsistent with traffic and engineering limitations.
2. The master concept plan prepared by Exceptional Engineering, Inc. dated September 28, 2021, are approved in concept only. Compliance with the Land Development Code will be determined during the review of site work and building permits.
3. The site shall be landscaped as shown on the landscape plans prepared by Joseph H. Kelley, dated March 26, 2022, subject to the first condition.
4. The new building shall be as shown on the elevations prepared by Liberating Vision Design, LLC dated March 14, 2022.
5. Construction for the food truck park shall commence within two (2) years of the date of approval.

(P.App. 4, 237-262). A letter of decision, which reduced to writing the Board's decision to approve the conditional use with the above-listed conditions, was prepared by the City and the City's Planning Manager (with the City's Community Development Department), Nicole DeV Vaughn, and said letter of decision was then sent to the chairman of the Board for signature. (R.App. at A). On February 13, 2023, the chairman of the Board returned the signed, written letter of decision to the City's Planning Manager. (R.App. at B). The Planning Manager then sent the signed, written letter of decision to the Applicant on February 14, 2023. (R.App. at C). The Petitioner requested, and was provided, a copy of the letter of decision on February 22, 2023. (R.App. at D). Also on February 22, 2023, the Petitioner was informed that the letter of decision was signed by the chairman of the Board and returned to the City on February 13, 2023. (R.App. at D).

IV. STANDARD OF REVIEW

The Court's review in this Petition for Writ of Certiorari is limited to reviewing three specific narrow inquiries: 1) Was procedural due process afforded; 2) Does the decision depart from the essential requirements of the law; and 3) Is the decision supported by competent, substantial evidence. *Powell v. City of Sarasota*, 953 So.2d 5, 6 (Fla. 2d DCA 2006). Circuit Court review is not a hearing de novo and the Court is not to reweigh the evidence presented to the City's Board but is instead limited to the three (3) areas of review described above. See *Florida Power & Light Co. v. City of Dania*, 761 So.2d 1089 (Fla.2000).

V. ARGUMENT

A. The Petition for Writ of Certiorari is Untimely Pursuant to R.A.P. 9.100(c)

The Petition for Writ of Certiorari herein is untimely as it was filed over thirty (30) days past the date of rendition of the letter of decision. Florida Rule of Appellate Procedure 9.100(c) provides that a petition for certiorari must be filed within 30 days of rendition of the order to be reviewed. Per Rule of Appellate Procedure 9.020(h) an “order is rendered when a signed, written order is filed with the clerk of the lower tribunal”. In legal terms, “rendition” of an order “is the triggering final event that starts the jurisdictional stopwatch for seeking appellate relief.” See *Pettway v. City of Jacksonville*, 264 So.3d 210 (Fla. 1st DCA 2018). To determine what constitutes “rendition” of an order in cases involving review from a municipal quasi-judicial proceeding, Florida courts appropriately consider and give effect to any applicable municipal codes. *Id.* Courts take a practical approach to decide such issues and “seek a reasonable resolution, one grounded in the realities of the record presented in each case.” *Id.* In *Pettway*, the court determined that the city’s “Final Order” rule was consistent with R.A.P. 9.100(c) as it required that an

ordinance arising from a quasi-judicial hearing: 1) be reduced to writing; 2) that the writing be signed by the city council president and secretary; and 3) that the writing be sent via certified mail to interested parties, constituting the requisite “filing”. *Id.* at 213. The *Pettway* Court determined that the date of the certified mailing served the purpose of the “filing” date and set finality and rendition on the date of said mailing. *Id.* at 213. See also *Presidents' Council of SD, Inc. v. Walton Cty.*, 36 So.3d 764 (Fla. 1st DCA 2010) ([i]n the case of a development order issued by the city’s Department of Planning and Zoning, the filing of the order at issue with the clerk for the Department of Planning and Zoning constituted the date of ‘rendition’, consistent with R.A.P. 9.020 describing the clerk as “the person specifically designated as such...or who most closely resembles a clerk in the functions performed.”).

To determine the date of “rendition” of the Board’s letter of decision in this case, the City’s Code at § 98.3.1.J., provides that:

J. Notification of decision. The city shall provide notification of a decision on an application for those development approvals described by this chapter, by mail after the decision is rendered. A copy of the decision shall also be made available to the public in the office of the community development department during normal business hours within a reasonable period of time after the

decision. A PUD approval shall be effective only after the city clerk has signed the ordinance approving the PUD.

§ 98.3.1.J., Fort Myers Municipal Code. (R.App. at E). In this case, the public hearing of the Board of Adjustments was held on January 25, 2023, at which time the Board voted to approve the conditional use request with conditions. (P.App. 220-262). The decision was reduced to writing in the letter of decision, and the City's Planning Manager sent the letter to the chairman of the Board for signature on February 1, 2023. (R.App. at A). On February 13, 2023, the Board chairman returned the signed, written letter of decision to the City. (R.App. at B). The next day, February 14, 2023, the City's Planning Manager provided the signed, written letter to the Applicant. (R.App. at C). As such, consistent with applicable law, and considering the City's Code, the letter of decision was rendered on February 14, 2023, when the City's Planning Manager sent the signed, written letter of decision to the Applicant. Accordingly, any petition for writ of certiorari seeking review of the letter of decision had to be filed within thirty (30) days of February 14, 2023, making March 16, 2023, the deadline for such filing.

Importantly, on February 22, 2023, after receiving a copy of the signed letter of decision, Petitioner's counsel's office asked the City when said letter of decision was signed "[t]o know how many days we have", citing to the language at the bottom of the letter of decision which states, "Should any person(s) be aggrieved by a decision of the Board of Adjustments they may, within thirty (30) days from the rendition of this order, seek review by certiorari of such decision by a Court." (R.App. at D). The City informed the Petitioner earlier that same day that the letter of decision was initially provided to the Board chair on February 1, 2023, and that the signed letter was returned to the City on February 13, 2023. (R.App. at D). The Petitioner's newly formed argument that the letter of decision was not "rendered" until same was sent to the City Clerk lacks merit. (Pet.). Petitioner received a copy of the signed letter of decision prior to the deadline to file a petition for writ of certiorari and was informed of the date said letter of decision was signed, that being February 13, 2023, yet Petitioner failed to file the underlying Petition until March 24, 2023. (Pet.). Based on the facts herein, the Petition for Writ of Certiorari is untimely and should be dismissed.

B. The City Board of Adjustment's decision does not depart from the essential requirements of the law.

A writ of certiorari issues to “correct essential illegality but not legal error”. See *Haines City Community Development v. Heggs*, 658 So.2d 523 (Fla. 1995); quoting *Jones v. State*, 477 So.2d 566, 569 (Fla.1985). Regarding the requisite “departure from the essential requirements of law” standard, this means:

[s]omething far beyond legal error. It means an inherent illegality or irregularity, an abuse of judicial power, an act of judicial tyranny perpetrated with disregard of procedural requirements, resulting in a gross miscarriage of justice.

Id. Certiorari should only be granted when “there has been a violation of a clearly established principal of law resulting in a miscarriage of justice.” *Id.* A mere disagreement with the Board’s interpretation of the applicable law is an improper basis for certiorari. *Ivey v. Allstate Ins. Co.*, 774 So.2d 679, 683 (Fla. 2000).

Regarding the consideration of conditional use requests, the City’s Board of Adjustments is granted the following power and duties:

To hear and decide only such conditional uses as the board of adjustments is specifically authorized to pass on by the terms of this land development code; to decide such questions as are involved in determining whether

conditional uses should be granted; and to grant conditional uses with such conditions and safeguards as are appropriate under this land development code, or to deny conditional uses when not in harmony with the purpose and intent of this land development code. A conditional use shall not be granted by the board of adjustments unless and until an application is filed and the requirements of the land development code have been met.

§ 98.2.3.(E)., Fort Myers Municipal Code. (R.App. at F). When considering an application for conditional use, the City's Code requires the Board to review and consider five (5) adverse impacts, and the Board may require mitigation of adverse impacts as a condition of approval. See § 98.3.8 (D), Fort Myers Municipal Code. (P.App. 285). Further, the City's Code states that:

In granting any conditional use, the board of adjustments shall prescribe appropriate conditions and safeguards in conformity with this land development code. Violation of such conditions and safeguards, when made a part of the terms under which the conditional use is granted, shall be deemed a violation of this land development code, and punishable under this land development code. The board of adjustments shall prescribe a time limit within which the action for which the conditional use is required shall be begun or completed. Failure to begin or complete such action within the time limit set shall void the conditional use.

§ 98.3.8.(E), Fort Myers Municipal Code. (P.App. 285).

As stated above, the Board received evidence on and contemplated the proposed project's compliance with the City's Code, including the requisite five (5) adverse impact considerations. (P.App. 8-129, 142-261). The Board then voted to accept the findings of fact and to approve the conditional use request with certain conditions imposed, as is authorized by the City's Code. *See* § 98.3.8 (D), Fort Myers Municipal Code. (P.App. 285). As the matter before the Board concerned an application, or request for permission, to use property according to a proposed conditional use, said matter consequently concerns only a "concept". As such, the Board's approval of the conditional use request, along with the condition that, "The master concept plan prepared by Exceptional Engineering, Inc. dated September 28, 2021, are approved in concept only. Compliance with the Land Development Code will be determined during the review of site work and building permits", was necessary and appropriate. (P.App. 4, 220-262).

Contrary to the Petitioner's claims, the record reflects that the Board was properly informed and aware of the City's parking requirements relevant to the proposed conditional use. (P.App. 172-179, 224-228). The Board was informed that the parking requirement

for the existing building on 2300 McGregor Blvd., is subject to Fort Myers Municipal Code § 118.8.6.D., requiring one (1) parking space per 500 sq. ft of gross floor area for any office/retail property. (P.App. 172-179, 224-228). See § 118.8.6.D., Fort Myers Municipal Code. (P.App. 295). The Board was also informed that the parking requirement for the food truck park to be located on 2310 and 2320 McGregor Blvd., is subject to Fort Myers Municipal Code § 118.3.5.F.7., which mandates a “minimum of three (3) parking spaces per food truck....unless located in Downtown or Midtown where it can be demonstrated that enough public parking and on-street parking is available within a quarter mile walking distance to the food truck park.” (P.App. 172-179, 224-228). See § 118.3.5.F.7., Fort Myers Municipal Code. (P.App. 10-17). Said Ordinance further provides that “A shared parking agreement may also be entered with nearby uses subject to approval by the Community Development Director. The Director is authorized to approve an alternative number of parking spaces based upon a parking demand study submitted by the Applicant.” (P.App. 172-179, 224-228). See § 118.3.5.F.7., Fort Myers Municipal Code. (P.App. 10-17).

Herein, as the proposed food truck park will include a total of seven (7) food trucks, the City's Code requires that it provide twenty-one (21) parking places. See § 118.3.5.F.7, Fort Myers Municipal Code. (P.App. 10-17). Further, the office building located on 2300 McGregor Blvd., is 3,642 sq. ft., meaning it must include seven (7) parking places. See § 118.8.6.D., Fort Myers Municipal Code. (P.App. 295). As indicated, the City's Code allows the proposed food truck park to enter a "shared parking agreement" to meet the parking requirement. See § 118.3.5.F.7, Fort Myers Municipal Code. (P.App. 10-17). The City's Code provides that:

Shared parking agreements may be used to meet the required off-street parking standards if the developer/applicant demonstrates that the shared parking facility can accommodate the parking needs of all proposed uses and that peak parking demands for each of the uses sharing the parking facility clearly occur at different times. Shared parking agreements must be recorded by a recordable covenant, lease, or other agreement and approved by the community development director.

§ 118.8.6.(D)(5), Fort Myers Municipal Code. (P.App. 295).

Consistent with the City's Code, the Applicant submitted its Shared Parking Agreement to meet the City's parking requirements. (P.App. 117-124, 172-176, 224-228). The Shared Parking Agreement

provides that the office building located at 2300 McGregor Blvd., and the proposed food truck park located at 2310 and 2320 McGregor Blvd., will share twenty-two (22) parking spaces. (P.App. 118-125, 157-162, 172-176). As required, the Applicant demonstrated that the two uses sharing the twenty-two (22) parking spaces have different peak times, or peak hours. (P.App. 171). The fact that the Applicant is the owner of both properties subject to the Shared Parking Agreement is irrelevant to the legality of said Agreement. The City's Code imposes no diversity of ownership requirement upon the participating uses subject to a shared parking agreement. See § 118.8.6., Fort Myers Municipal Code See also § 118.3.5.F.7, Fort Myers Municipal Code. (P.App. 10-17, 295). Consistent with the obligation to determine required parking during the conditional use process, the Board confirmed that the Applicant met the City's requirement for parking by providing twenty-one (21) parking spaces, which the Applicant accomplished through the Shared Parking Agreement (which provides twenty-two (22) parking spaces). (P.App. 228). See § 118.8.6., Fort Myers Municipal Code. (P.App. 295).

A review of the record demonstrates that the City did not depart from the essential requirements of law. No inherent illegality or

irregularity, abuse of judicial power, or denial of procedural due process resulting in a gross miscarriage of justice occurred herein. See *Haines City Community Development*, 658 So.2d 523; quoting *Jones*, 477 So.2d at 569. The City's Board applied the correct law in reaching its decision. That the Petitioner may disagree with the Board's interpretation of the law is an improper basis for granting certiorari.

C. The City Board of Adjustment's decision is supported by competent, substantial evidence.

Per the requisite standard of review, this Court's inquiry is limited to determining whether the Board's decision is supported by competent, substantial evidence. *Dusseau v. Metro Dade Cnty Bd. of Cnty Comm'rs*, 794 So. 2d 1270, 1275–76 (Fla. 2001). Competent, substantial evidence means legally sufficient evidence. *Id.* The Court is not to substitute its judgment or factual findings for that of the Board but is to defer to the Board's "superior technical expertise and special vantage point" in such matters as they are properly before the Board. *Id.* The Court's task is straightforward:

[It] 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.

Id. at 1276.

Herein, the Applicant submitted documents and testimony demonstrating the project’s compliance with the City’s Code, and evidence as to each of the five (5) adverse impact elements the Board must review and consider prior to approving a conditional use application. (P.App. 8-129, 142-261). *See* § 98.2.3. and § 98.3.8.(D), Fort Myers Municipal Code. (R.App. at F) (P.App. 285). Said evidence included documents (Conditional Use Application and attachments, including Aerial Photograph and Existing Conditions, Survey with Legal Description, Site Plan, Landscape Plan, Food Trucks: Entrance & Exit, Renderings: Proposed Buildings, Sign Package, Traffic Impact Statement, Letter of Understanding: City of Fort Myers Noise Ordinance and the Shared Parking Agreement), as well as testimony from City staff, the Applicant, Applicant’s legal counsel, the project engineer (Jason White), the project registered landscape architect

(Josh Kelley), the project architect (Tad Sattong), and the project transportation consultant (Ted Treesh). (P.App. 18-129, 142-261).

The Board contemplated all the evidence presented and voted to approve the conditional use request, with the conditions as previously stated herein. The decision reached by the Board to approve the conditional use request was based upon ample competent, substantial evidence. “Competent substantial evidence is evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred [S]uch relevant evidence as a reasonable mind would accept as adequate to support a conclusion.” *Maroone Chevrolet, LLC v. Alvarado*, 344 So.3d 459 (Fla. 4th DCA 2022); see also *Sch. Dist. of Indian River Cnty. v. Fla. Pub. Employees Relations Com'n*, 64 So. 3d 723, 727 (Fla. 4th DCA 2011).

D. Procedural due process was provided.

Importantly, the proceeding before the City’s Board which is at issue in this case was a quasi-judicial hearing. The amount 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, and such hearings are not controlled by strict rules of evidence and procedure.” *Seminole Entm’t, Inc. v. City of Casselberry*, 811 So. 2d 693, 696 (Fla.

5th DCA 2001) (citing *Lee County v. Sunbelt Equities, II, Ltd. Partnership*, 619 So. 2d 996, 1002 (Fla. 2d DCA 1993)). In general, a quasi-judicial hearing meets “basic due process requirements if parties are provided notice of hearing and opportunity to be heard.” *Jennings v. Dade County*, 589 So. 2d 1337, 1340 (Fla. 3d DCA 1991). See also *Massey v. Charlotte County*, 842 So.2d 142 (Fla. 2nd DCA 2003).

As the case herein involved a public hearing before the Board of Adjustments, notice was required as per City Code § 98.3.1.(H). (R.App. at E). The City provided the appropriate notice by sending public notice letters to property owners within 300 feet of the subject property, by posting notice via signage on the subject property, and by placing notice of the public hearing in a local newspaper. (P.App.180). See § 98.3.1.(H), Fort Myers Municipal Code. (R. App. at E). Further, the Petitioner and Petitioner’s counsel appeared at the public hearing and were provided the opportunity to be heard as they both testified before the Board. (P.App. 188-192).

Therefore, the Petitioner was provided with the requisite procedural due process. Petitioner made no objections prior to or during the hearing concerning notice, ability to present evidence, or

otherwise meaningfully participate in the hearing. As the Petitioner was provided with adequate and appropriate procedural due process in this matter, Petitioner's argument otherwise is without merit.

VI. CONCLUSION

In view of the record in this case and the applicable legal authority, the Petitioner has failed to establish that the quasi-judicial proceeding departed from the essential requirements of law. It is also clear that the Board's decision was supported by competent, substantial evidence, and that adequate and appropriate due process was provided. The Petitioner has not offered any compelling authority for this Court to disturb the ruling of the City's Board. As such, the Petition for Writ of Certiorari should be denied.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, pursuant to Fla. R. Jud. Admin. 2.516(b)(1), I electronically filed this document with the Clerk of the Court using the Florida Courts E-Filing Portal which sent a Notice of Electronic Filing and an electronic copy of this document, along with its Appendix, to Leonard Feuer, Esquire, at lfeuer@feuerlawfirm.com and Chene Thompson at CheneThompson@PaveseLaw.com and KellyGermanis@PaveseLaw.com

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this document complies with the applicable font and word count limit requirements of R.A.P. 9.100(j).

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