IN THE CIRCUIT COURT OF THE 17th
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

Filed pursuant to Fla.R.App.P. 9.100(f)(2)

CASE NO:

RIC JORGE, APRIL BOLOWICH, STEFAN BOLOWICH, CONSTANCE MONTAGUE, CLARA BOUTELLE, PAUL BOUTELLE, LETTIE CRONIN, SEAN PAUL CRONIN, MARCIA C. SASSO, WILLIAM RITZLER, CYNTHIA RITZLER, DAVID VELARDI, TERRY VELARDI, and BEACHDAYPROPERTIES INC.,

Petitioners,

vs.

CITY OF DEERFIELD BEACH,

Respondent.

_____/

PETITION FOR WRIT OF CERTIORARI

Petitioners, (collectively referred to as "Petitioners"), file this Petition for Writ of Certiorari pursuant to Fla. R. App. P. 9.100(c) and 9.190(b)(3) to quash a quasi-judicial decision by the City of Deerfield Beach adopting Ordinance 2024/021, rezoning approximately 4.28

acres from Highway Business District (B-2) and RM-10 Residence, Multifamily to Planned Development District (PDD). In support of this Petition, Petitioner states:

COURT'S JURISDICTION

The Circuit Court has jurisdiction to review quasi-judicial actions, including action on a rezoning petition, pursuant to Article V, Sec. 5(b), Florida Constitution, Rule 9.030(c)(3) and Rule 9.100(c)(2), Fla. Rules of Appellate Procedure. Quasi-judicial decisions by municipalities are subject to certiorari review by the Courts. *Fla. Power & Light Co. v. City of Dania,* 761 So.2d 1089, 1092 (Fla. 2000); *Park of Commerce Assocs. v. City of Delray Beach,* 636 So.2d 12, 15 (Fla. 1994) (local government decisions on development orders are "quasi-judicial in nature and thus subject to certiorari review by the courts")

STANDARD OF REVIEW

In its review on a petition for writ of certiorari, the Circuit Court is to determine (1) whether the Petitioner was afforded procedural

due process; (2) whether the agency below observed the essential requirements of law (i.e. applied the correct law), and (3) whether the decision was supported by substantial competent evidence. *Haines City Community Dev. V. Heggs,* 658 So.2d 523, 530 (Fla. 1995). This scope of review protects against arbitrary fact-finding and decision making by government acting in a quasi-judiciary capacity. *Seminole County Board of Commissioners v. Long*, 422 So.2d 938, 942 (Fla. 5th DCA 1982).

Given that the present case is a "first tier" level of review from a quasi-judicial proceeding, it is an appeal as of right and akin to a plenary appeal. *Fla. Power & Light Co.* at 1092; *Miami-Dade County v. Omni point Holdings, Inc.*, 863 So.2d 195, 198-99 (Fla. 2003) (a "first tier" review is a matter of right).

BACKGROUND

The Petitioners challenge the Ordinance adopted by the City Commission of the City of Deerfield Beach (the "City") on December

3, 2024 (Tab 1)[1] for a rezoning that does not comply with the City's own Code of Ordinances ("Code").

CRD Federal, LLC (the "Developer") purchased the three parcels of land located at 221, 231 and 299 N. Federal Highway zoned B-2 on September 29, 2017. (Tab 6) On May 11, 2020, the Developer purchased the additional parcel of land located at 226-228 NE 9th Avenue zoned RM-10. (Tab 7) On July 20, 2022, the Developer acquired the parcel of land at 201 N. Federal Highway (Tab 8) zoned B-2 and RM-10. (See site plan and map of current zoning attached as Tab 2 and Tab 3)

Developer subsequently applied to rezone all of the property in the five (5) parcels located at 201, 221, 231 and 299 Federal Highway, and 226-228 NE 9th Avenue in Deerfield Beach, Florida, approximately 4.28 acres, from Highway Business District (B-2) and

[1] This Petition is accompanied by an Appendix, references to which are by Tab # and where appropriate, page, paragraph and/or line number (e.g. Tab 1:1:1).

Residence, Multifamily (RM-10) to Planned Development District (PDD) with the intention to unify the parcels into one property.

Developer, through its counsel Greenspoon Marder, submitted a zoning application to construct an apartment building made up of 277 units. That application was denied by the City Commission at a quasi-judicial hearing on June 6, 2024 in a vote of 3-2 against the application. A new rezoning application was submitted to the City on July of 2024, which reduced the number of units sought to 237 and submitted a revised site plan and plat. (See new application attached as Tab 4) That new application resulted in the City Commission's voting 3-2 to approve the new application and the adoption of the subject Ordinance.

The Ordinance rezoned the subject properties to allow Developer to construct one midrise apartment building consisting of 237 multi-family residential units with an attached parking garage and associated on-site and off-site improvements, and provided for additional "extras" to be provided to the City.

In a decision led by the City's interest in the "extras" to be provided by the Developer, the City adopted the Ordinance despite the Developer's failure to satisfy all requirements set out in Section 98-68 of the Code, and failed to follow the law for quasi-judicial matters.

THE PARTIES

Petitioners are adversely affected citizens and residents of the City of Deerfield Beach, Florida and owners of property located within the five hundred (500) feet of the contemplated rezoning.

Ric Jorge resides at 203 NE 8th Terrace, Deerfield Beach, Florida, which is within the 500-foot notice area, and has objected under oath to the approval of the Ordinance.

April Bolowich and Stefan Bolowich reside at 899 NE 4th Street, Deerfield Beach, Florida, which is within the 500-foot notice area, and have objected under oath to the approval of the Ordinance.

Constance Montague resides at 235, NE 9th Avenue, Deerfield Beach, Florida, which is within the 500-foot notice area, and objected

to the approval of the Ordinance.

Clara and Paul Boutelle reside at 203 N.E. 9TH Avenue, Deerfield Beach, Florida which is within the 500-foot notice area, and have objected to the approval of the Ordinance.

Lettie Cronin and Sean Paul Cronin reside at 869 NE 4th Street, Deerfield Beach, Florida which is within the 500-foot notice area, and have objected under oath to the approval of the Ordinance.

Marcia C. Sasso resides at 517 NE 6th Avenue, Deerfield Beach, Florida which is within the 500-foot notice area, and has objected to the approval of the Ordinance.

William and Cynthia Ritzler reside at 208 NE 8th Terrace, Deerfield Beach, Florida which is within the 500-foot notice area, and have objected under oath to the approval of the Ordinance.

David and Terry Velardi reside at 500 NE 9th Avenue, Deerfield Beach, Florida which is within the 500-foot notice area, and have objected to the approval of the Ordinance.

BeachdayProperties Inc., has an office located at 900 NE 4th Court, Deerfield Beach, Florida which is within the 500-foot notice area, and have objected under oath to the approval of the Ordinance.

The test for standing in quasi-judicial matters is found in *Renard v. Dade County*, 261 So.2d 832 (Fla. 1972), and proximity to a particular use of land has been found to satisfy this test exceeding the general interest in community good shared in common with all citizens; however, when determining standing, the courts "should not only consider the proximity of the property, but the type and scale of the challenged project in relation to Petitioner's property. *Rinker Materials Corp. v Metropolitan Dade County*, 528 so.2d 904, 906-907 (Fla. 3rd DCA 1987). *See also, City of St. Petersburg Bd. of Adjustment v. Marelli,* 728 so.2d 1197, 1998 (Fla. 2nd DCA 1999).

As nearby and proximate property owners, Petitioners have standing under *Renard* to seek judicial review of the rezoning.

I. ARGUMENT

The City Commission Failed to Observe the Essential Requirements of the Law and the Developer's New Application for Rezoning was not Supported by Competent, Substantial Evidence

1. **The City Commission failed to follow the City Code when adopting the Ordinance, as the Developer failed to demonstrate compliance with all required rezoning criteria.**

    a. **Developer failed to satisfy all requirements of Section 98-68 of the City Code as is not entitled to a PDD rezoning**

Section 98-68 of the City Code governs PDD, Planned Development District (Tab 5). In subsection (a), titled Purpose and intent, the Code states,

> "The purpose of the planned development district ("PDD") is to enable quality development for properties that **due to size of characteristics of the property,** other implements of zoning regulation provided in the Land Development Code would result in under-utilized or under-developed property. **The sites must demonstrate that they have unique property considerations,** and that rezoning of property to the PDD district would provide a **public benefit** that would **not otherwise be permitted if all regulations governing the land use and development** of the site had to be met.

Emphasis added.

Subsection (b), titled Rezoning Qualifications requires that "applicants for rezoning to the PDD district must demonstrate the following through a statement of need:

(1) The development and redevelopment of properties is apparent;

(2) The development and redevelopment of properties shall enhance the economic development strategies of the City of Deerfield Beach; and

(3) **The development of the properties with unique property characteristics, natural or man-made, that impede the development of these properties under the strict application of the regulations of the Land Development Code.**"

The area in question is composed of five separate parcels of land purchased by the Developer. On September 29, 2017, the Developer purchased the three parcels of land located at 221, 231 and 299 N.

Federal Highway zoned B-2. (Tab 6) On May 11, 2020, the Developer purchased the additional parcel of land located at 226-228 NE 9th Avenue zoned RM-10. (Tab 7) On July 20, 2022, the Developer acquired the parcel of land at 201 N. Federal Highway zoned B-2 and RM-10. (Tab 8) The Developer was aware, or should have been aware, of the different zoning classifications of the properties at the time of purchase. Under Florida law, a self-imposed hardship cannot justify a zoning change. There is no doubt based on the record that the properties can be developed pursuant to their zoning category and even developed pursuant to the Live Local Act. This was confirmed by the City's own land planner, Mr. Eric Powers.

> MR. SWEETAPPLE: And this site can be developed residentially under the workforce housing ordinance, correct?
>
> MR. POWER: The Live Local plan?
>
> MR. SWEETAPPLE: Yes.
>
> MR. POWER: Yes, commercial, industrial.
>
> MR. SWEETAPPLE: And they -- in fact, this owner has already-

> MR. GANZ: Sir, Mr. Sweetapple is correct. We know who you're talking about.
>
> MR. SWEETAPPLE: Okay. Thank you. The owner behind me has previously applied with the city to develop a residential project on this site, right?
>
> MR. POWER: That's correct.
>
> MR. SWEETAPPLE: And is that still pending?
>
> MR. POWER: No, he submitted his application.
>
> MR. SWEETAPPLE: Okay. So you are aware that the owner can develop this property residentially without changing the zoning, right?
>
> MR. POWER: Under the Live Local Act they can.

(See transcript of the December 3, 2024 City Commission quasi-judicial hearing[2] - Tab 9, P. 50, L. 11-25; P. 51; L. 1-6)

The Code is clear that the reclassification of a property to PDD is to be based upon the size and characteristics **of the property itself** and that an applicant must prove that the property contains unique natural or man-made property characteristics. Here, the

[2] The Cover Page of the transcript incorrectly lists the date of the City Commission meeting as November 6, 2024. The Court Reporter's Stipulation on page 5 indicates the correct date of the hearing – December 3, 2024.

Developer failed to allege or show that any such hardship exists on the subject properties. It is important to remember, that while the Developer treats all five (5) parcels as one unified piece of property, that is not the case. No unity of title has existed between the subject properties at any time. Despite that fact, the Developer's application seeks to have all five (5) parcels re-classified as PDD to allow for construction of a single 237-unit apartment complex and parking garage. Despite being fully aware of the zoning restrictions in place at the time of each purchase, the Developer chose to ignore the provisions of the Code in effect when preparing development plans that were knowingly contrary to the current Code. The purchase of property with zoning restrictions on the property does not constitute a hardship. *Friedland v. Hollywood,* 130 So.2d 306 (Fla 4th DCA 1961); *Elwyn v. Miami*, 113 So.2d 1127 (Fla. 3rd DCA 1980).

The size and characteristics of the parcels do not prevent the Developer from developing the lots under the current zoning regulations. They do not make it impossible to build upon the land.

In fact, the parcels have either already been built upon or are vacant land located on Federal Highway. The vacant lots are not oddly shaped, and do not contain any abnormal characteristics. Instead, the B-2 and RM-10 zoning classifications simply prevent the Developer from being able to construct its desired apartment complex and garage without rezoning all of the properties together to PDD.

The Developer says as much in its June 2024 application when it references the Axis Deerfield Beach Planned Development District Design Guidelines. The Guidelines, dated August 2024, contain a Statement of Need. When discussing the "unique" property characteristics, its states,

> The property currently has two (2) different zoning designations: B-2 and RM- 10. These two zoning districts have different setback, open space, height and lot coverage requirements that would need to be applied on the respective zoning parcels and would not allow for a cohesive development. These different standards would reduce the developable area on the property and result in a disjointed development and under-utilized property.

(Tab 10, P. 6)

Developer's statements are misleading and disingenuous. There is not one (1) single property that contains two (2) different zoning designations. Instead, it is five (5) parcels purchased through three (3) separate transactions. The Developer's desire to unify the parcels does not create a unique-man made characteristic upon the property and fails to meet the requirement necessary to provide for PDD rezoning.

Unique property characteristics, such as irregular shape or other peculiar physical characteristics, can justify a zoning change if they make it impractical to develop the property in accordance with existing zoning regulations. *Bailey v. St. Augustine Beach*, 538 So. 2d 50; *Maturo v. Coral Gables,* 619 So. 2d 455. That is not the case here. In fact, there is currently a duplex located on one of the RM-10 lots and an office building located within the B-2 zoned property. RM-10 zoning allows single family, duplex or multi-family dwellings. Other permitted uses for B-2 zoning include a package store, gas station, hotel and motel, restaurant with outdoor seating, convenience store,

theatre, funeral home, laundromat, brewpub, dry cleaning plant, tattoo/body piercing studio, thrift shop, office or medical clinic. The parcels do not possess physical characteristics which render the lots unbuildable, clearly, there are many other projects that could be developed upon the subject parcels; they simply do not permit the Developer's preference of what they would like to build on the property and are more valuable to the Developer if zoned PDD. The Developer's economic desire to develop the parcels does not legally justify the granting the desired rezoning.

Therefore, Developer failed to satisfy the third prong required under City Code section 98-68(b)(3), (Tab 5) and is not entitled to a PDD zoning reclassification. 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. *Parker Family Trust I v. City of Jacksonville*, 804 So. 2d 493, 497. (emphasis added.)

b. Developer failed to show that the proposed change will not adversely influence residential living conditions in the adjacent and neighboring (500 feet) communities.

The City's application at Section B(4) requires the Developer to prove that the neighboring communities would not be adversely affected. (Tab 4, P. 4) In response to this, Developer again states that the PDD Design Guidelines address this issue, however, review of the Guidelines shows that this topic was not specifically addressed therein. Instead, it outlined the "perks" to be provided to the City. (Tab 10, P. 3)

In support of its application, the Developer provided a traffic study that was dated revised as of 2022, but included data collected in October of 2021 and October 2022. (Tab 11, P. 47) At the hearing on December 3, 2024, Mr. Power, a certified land planner for the City, confirmed that the study was completed in 2022, and that the July 2, 2024 was a new application. However, because prior applications had been pending and the density of the proposed project was reduced by 40 units, it was deemed current and the Developer was

allowed to use the prior data for its new application. He also confirmed that no new review or study was completed by City staff regarding traffic in the neighborhood since the study. (Tab 9; P. 56, L. 12-23; P. 57, L. 19-23; P. 61, L. 7-12)

As the Court is aware, in October of 2021, the COVID-19 pandemic resulted in restrictions that limited the number of individuals who were traveling to work and for leisure. Since that time, all restrictions have been lifted and the traffic patterns have resumed to a more "normal" pattern as opposed that that experienced during the pandemic. While Mr. Mele, the Developer's attorney and representative, argued that in 2022 additional traffic counts were taken which reduced the proposed numbers (Tab 9; P. 73; L. 5-18), the traffic study being relied upon is still two years old for a newly submitted rezoning application. During that time many changes have occurred, included more people in the immediate area and additional development that will draw additional visitors to the area. For instance, since the completion of the study, a new Chik-fil-a

restaurant has been approved on the neighboring corner which will add a significant amount of traffic to the area from its patrons. Despite both being aware of these new issues to be addressed, the City and the Developer both relied on the outdated traffic study (Tab 11) when considering the Developer's application. These matters were addressed at the hearing at several times by intervenor's counsel and numerous residents who expressed their concern over the project. Numerous residents expressed concern due to the increase in traffic and major accidents, including some fatal, that have already occurred in the contemplated area even prior to the new construction, but did not receive a response to their concerns (Tab 9; P. 105, L.15-25; P. 106, L. 1-5; P. 107, L. 1-9, 15-22; P. 109, L. 21-22; P. 110, L. 19-25; P. 111, L. 1-14; P. 112, L. 11-15; P. 113, L. 10-15; P. 115, L. 2-18; P. 118, L. 18-25; P. 119, L. 1-5; P. 135, L. 8-11; P. 137, L. 2-6; P. 140, L. 12-25; P. 141, L. 1-3; P. 142, L. 9-12; P. 151, L. 12-23; P. 152, L. 6-9; P. 153 L. 18-25; P. 154, L. 1-10; P. 164; L. 14-25; P. 166, L. 9-25; P. 178, L. 2-17)

The Developer also intends to install a dog waste area behind the apartment complex for use of the residents of the 237 units. This dog waste area is located on a 7,416 square foot duplex lot that was designated as RM-10, which only allows single family, duplex or multi-family dwellings. It is a small lot in comparison to the number of dogs that would be permitted in the proposed apartment and would be using that amenity. It is located next to and across from residential properties and will result in unprecedented noise pollution and animal waste in that area. Residents have voiced their opposition to having a dog waste area next to their homes and the associated sanitary concerns for the area. (Tab 9; P. 106, L. 6-8; P. 108, L. 8-12; P. 109, L. 23-24; P. 112, L. 5-11; P. 117, L. 21-25; P. 118, L. 1-5; P. 152, L. 12-15)

Dog parks or dog waste stations are not even permitted in the Deerfield Beach City Code. As noted by Mayor Ganz, this use is not consistent with the City's requirements for a dog park. At the December 3, 2024 quasi-judicial hearing he stated:

> …everyone has made a huge mistake harping on this and calling it a dog park because dog parks, and Eric, be on guard because I might ask you again, I believe there are a lot of requirements you have to have for what is a true dog park because I looked at putting a dog park in Deerfield Beach and there was a lot of rules and regulations and -- there's a lot of places that don't do -- follow those, but there are lots of rules and regulations. You separate sizes of dogs, different things, they have that. There's a lot of rules and regulations on that.
>
> (Tab 9; P. 203, L. 7-18)

The following residents spoke in opposition to the Developer's new application at the December 3, 2024 quasi-judicial hearing:

- Katherine Freitag, 418 SE 2nd Street (sworn in)
- Rod Coddington, 501 ne 6TH Avenue (sworn in)
- Sara Ritzler, 208 NE 8th Terrace
- Paula Citel, NE 6th Avenue
- Jerry West, 514 NE 8th Avenue
- Jeff West, 514 NE 8th Avenue
- Marsha Avient, 825 ne 4TH Court (sworn in)
- Bob Butell, 203 NE 9th Avenue

- Sean Cronin, 869 4th Street
- Janet Netherlandon, 1320 SE 4th Street (sworn in)
- Spencer Flory, 221 NE 8th Terrace (sworn in)
- Daniel Herz, 330 SE 19TH Avenue (sworn in)
- Robert Dichristopher, 517 NE 6th Street (sworn in)
- Elise Miller Parkman, 1998 NE 7TH Street, R-107 (sworn in)
- Roger Freitag, 418 SE 2nd Street (sworn in)
- Lettie Cronin, 869 NE 4th Street (sworn in)
- April Bolowich, 899 NE 4th Street (sworn in)
- Cindy Ritzler, 208 NE 8th Terrace
- Cristina Dichristopher, 517 NE 6th Ave (sworn in)
- Stefan Bolowich, 899 NE 4th Street (sworn in)
- Kristy Heiny, 322 N. Federal Hwy, Unit 132 (sworn in)
- Ric George, 203 NE 8th Terrace (sworn in)
- Nicole Wagner, 231 NE 8th Terrace (sworn in)
- Dina Landers, 4 Little Harbor (sworn in)

- Karen Shelly, 190 Durham Drive
- Marlene Sealy, 418 NE 6th Avenue (sworn in)
- Rich Kirby, 4087 NW 4th Court

c. Developer failed to show that the proposed change is compatible with the development(s) in the adjacent and neighboring (500 feet) uses and zoning.

The City's application at Section B(5) requires the Developer to prove that the proposed change is compatible with the development(s) in the adjacent and neighboring (500 feet) uses and zoning. (Tab 4; P. 5)

Per Section 98-3 of the City Code:

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. The compatibility of land uses is dependent on numerous development characteristics which may impact adjacent or surrounding uses. These include: type of use, density, intensity, height, general

appearance and aesthetics, odors, noise, smoke, vibration, traffic generation, nuisances, and conditions which could pose a significant risk to the security or safety of others, especially those using public or private schools, day care centers, parks, playgrounds or places where those under 18 years of age are likely to gather. Compatibility shall be measured based on the following compatibility characteristics of the proposed development in relationship to surrounding development on lots located within 500 feet of the lot upon which the proposed use is to occur:

a. Permitted uses, structures and activities allowed within the zoning category;

b. Building location, dimensions, height, and floor area ratio;

c. Location and extent of parking, access drives and service areas;

d. Traffic generation, hours of operation, noise levels and outdoor lighting;

e. Alteration of light and air;

f. Setbacks and buffers—Fences, walls landscaping and open space treatment. To be compatible, design treatments must reflect consideration of adjoining and surrounding development and land use;

g. Conditions, uses, or activities, which pose a significant risk to the safety or security to those under 18 years of age using schools, churches, parks, playgrounds or other facilities which cater to those under 18 years of age on lots within 500 feet of the lot upon which the proposed use will occur;

h. Outside activities associated with the proposed use which could interfere with the peace and/or tranquility of residences or pose a significant risk to the safety or security of children in public or private schools, day care facilities, churches, parks, playgrounds and other places that cater to children under the age of 18 or places which regularly provide facilities for such children to gather located on lots within 500 feet of the lot upon which the proposed use will occur; and

i. Conditions, uses, or activities, which could pose a significant risk to the safety or security of single-family residences located on lots within 500 feet of the lot upon which the use will occur.

(Tab 12; P. 5)

The City's Development Review Committee Summary Report Development Plan Application Review Department Comments & Requirements section, outlines Developer's requests:

> The applicant has made requests to deviate from the existing requirements of the current zoning for the Property under the Land Development Code through rezoning to PDD zoning, which is permitted with the approval of the rezoning application. Changes to this are:
>
> - Increase density to 40.37 (237 du/5.87 gross acres) units per acre
> - Decrease front setback (East) to 10 feet
> - Decrease rear setback (West) to 13 feet
> - Decrease corner side setback (North) to 22. 8 feet
> - Increase maximum lot coverage to 55%
> - Decrease minimum landscape area to 26%
> - Reduce required parking spaces to 9 x 18
> - Increase in the number of allowable building signs and monument signs

(Tab 13, P.3)

The issue of compatibility was addressed by City resident Robert DiChristopher, who lives at 517 NE 6th Street and is affected by the rezoning. He has spoke with the Developer, City Commissioners, provided a letter outlining his concerns (Tab 14) and testified under oath at the December 3, 2024 quasi-judicial hearing. Mr. DiChristopher worked for the City of Boca Raton since 1983. He served as the City Civil Engineer, the City Deputy Director of Municipal Services, and also the Director of Engineering. He is a Florida Professional Engineer since 1983 and a Certified General Contractor since 1988.

At the hearing he spoke to the issue of compatibility and stated,

> I can't believe city staff said it's compatible because it's residential to residential. I have never seen that in the code. And I've been looking at this code a lot recently. We have RS-5, RM-10, R-15, on the B-2 lot, RM-25 across the street. I've never seen anything said if it's residential next to residential, it's compatible. The actual definition of compatibility talks about the mass of the building, the setbacks of the building, the air and space of the building. So site distance, you know, site line, you know, there's a lot of things in there that don't meet intensity and density of the design.

> This building is 455,000 square feet for the FAR calculation. What can be built on the B-2 is 90,000 square feet. That is not compatible with the existing zoning, nor is it compatible with the residents. So you're thinking about -- you know, oh, it's five point whatever acres. It's only 40 units to the acre. You're not building any units in the middle of a federal highway. And they get credit for over an acre and a half of federal highway for this project to attenuate what they believe is their density. And that's the city code. I get that.
>
> But the fact is, they're building nearly 60 units per acre on this property. Think about that -- 60 units on an acre. I just think that is not compatible. There's no way that I would ever agree that that's compatible. And I think the explanation that staff gave at the P and Z meeting is, well compatibility means you just don't build a nuclear power plant next to residential. That's not what the codes are. And I've never -- if you can point out where it says residential to residential no matter what the density is, okay. I haven't seen it....
> It's five times the density, five times the intensity, 60 percent greater lot coverage, and you want me to believe that that's compatible. But we got right now R-5, R-10, R-15. I don't want to say the people that did the zoning back then must have been a little smarter than we are today, because no one would say R-5, R-10 -- let's do R-40, because it's not compatible. And then you got R-25 across the street, which really is the highest density in the zoning district other than PDD.

(Tab 9; P. 127, L. 5-25; P. 128, L. 1-16; P. 129, L. 13-22).

The City's Attachment E Application for Rezoning at Section B titled Demonstration of Compliance with Rezoning Criteria clearly states, "The burden of proving that all of the requirements are met shall be on the applicant who shall be required to affirmatively demonstrate on the record, satisfaction of the necessary requirements set forth below." Just based upon the dog waste lot alone compatibility is not demonstrated. It is clear that the Developer has failed to meet that burden. (Tab 4, P. 3)

d. The City Commissioners ignored the essential requirements of law

The requirements of the Code to allow PDD rezoning are clearly spelled out in Section 98-68. (Tab 5) In order to obtain that zoning designation, the Developer's application had to satisfy all of the requirements set out within that section of the Code.

In determining whether the essential requirements of the law have been met, "[a] decision granting or denying a [quasi-judicial] application is governed by local regulations, which must be uniformly

administered." *Broward Cty. v. G.B.V. Int'l, Ltd.*, 787 So. 2d 838, 842 (Fla. 2001). As such, "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." *Miami-Dade Cty.*, 863 So. 2d at 377. "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." *Id.*

In connection with granting the PDD rezoning, the Developer has agreed to provide the City with the following "perks":

- Payment of $138,500 to the City towards its affordable housing programs.
- Underground the existing utility lines along Federal Highway and along the west side of the proposed building.
- Construct an eight (8) foot sidewalk along the north side of NE 2nd Street from NE 9th Avenue to NE 6th Avenue, with the total width subject to the existence of sufficient right-of-way.
- Complete a survey of existing right of way on NE 2nd Street from NE 9th Avenue to NE 6th Avenue.
- 4. At no cost to the City, construct that portion of NE 2nd Street adjacent to the Property in accordance with the design approved by the City and such improvements shall include

two on-street parallel parking spaces available to the public at no charge.

- Install three public open space nodes at three corners of the Property.
- Contribute $100,000 to the City 's Fire Rescue fund prior to the issuance of the first residential building permit.
- Provide for public art at three locations on the Property in accordance with Sections 14-131 through 14-138 of the City Code.
- Provide City with engineered construction plans for reconstruction or NE 2nd Street from NE 9th Avenue to NE 6th Avenue that are consistent with the cross-section provided and approved by the City.
- Install three (3) pet waste elimination stations on the Property, with one waste station on each of the following streets: (i) NE 2nd Street: (ii) Federal Highway; and (iii) NE 4th Street.
- If residents on: (i) NE 8th Ave, (ii) NE 8th Terrace, or (iii) NE 9th Ave, and the City Commission agree to traffic calming improvements in accordance with the applicable City Code provisions, Developer shall pay for the cost of material and installation related to the City approved traffic calming improvements.
- Install and pay for a new northbound left turn lane on Federal Highway into the Property, as approved by FDOT.
- Apply for, install, and pay for an extension of the existing Southbound left turn lane at the intersection of Federal Highway and NE 2nd Street, subject to approval by FDOT and Broward County.
- Apply for, install, and pay for a left turn arrow signal on the southbound traffic signal at the intersection of Federal Highway and NE 2nd Street, subject to approval by FDOT and Broward County.

Developer's representative estimated that amounted to a little bit more than $1.6 million (Tab 9; P. 79; L. 7-8).

However, the Commissioners have shown a clear bias towards approving the Developer's application due to the "perks" to be provided to the City. At the June 6, 2023 hearing, Commissioner Drosky said:

I will chime in. I'm not going to hold back any punches, either. I'm going to put my position out there first. I'm very sympathetic and empathetic with the residents, but I'm going to vote for the rezoning tonight and I will tell you why….

What hasn't been discussed tonight is Senate Bill 102 which was passed and signed by the governor which is the Live Local Act. What that does is if the developer were to commit to 40 percent affordable housing, he can build whatever he wants there within a one-mile radius of that project today…

You can also have a treatment center there. Commissioner Hudak probably gets a ton of calls from treatment facilities. We get the residents that come to our commission meeting about all the bad things that happen at the treatment facilities. You want that as your neighbor as well? I suspect you don't because we get all those complaints as well…

And, oh, by the way, if this were to get denied, all those little "extras" they go away. The undergrounding of the power lines, that doesn't go -- those don't get put underground with the

new projects. The roadway improvements and the sidewalks, we don't get those either. We don't get the traffic calming. We don't get the public art. We don't get the contributions to the fire station.

(See June 6, 2024 City Commission hearing transcript excerpt - Tab 15, P. 3, L. 7-12, 19-24; P. 5, L. 11-25)

Then Vice Mayor Parness added:

If we didn't have businesses and projects like this that are going to pay us a lot of money every year, your taxes would have to go up to make up the difference and keep going up and keep going up. The police are not taking a pay in cut. Fire department is not taking a pay cut. Everything goes up….

It's grow so we can pay our bills or die. Because when businesses move out or don't come here because they can't make a profit, you get stuck with the bill….

This is a high-end apartment complex. Not, how could I put it, low-income housing or rentals or Section 8 housing. And it will be an enhancement rather than a hindrance to the whole city. We are not a little town. We have 90,000 residents. Think about that, 90,000 residents. And the expense of running this city is not cheap….So I will support this project.

(Tab 15, P. 7, L. 17-22; P. 8, L. 19-22; P. 9, L. 12-18, 23)

These statements demonstrate a fixed determination to make a decision on grounds that are clearly improper and not those set forth in the City Code and Florida law.

Both Commissioners also voted to approve the Ordinance at the quasi-judicial hearing on December 3, 2024.

On the other hand, at the June 6, 2024, Commissioner Hudak voted to deny the application "based on the fact it did not pose an enhancement to the community" and that he did not believe it complied with 98-68(b) and its qualifications. (Tab 15; P. 16, L. 23-25; P. 17, L. 1-3)

Then, at the December 3, 2024 quasi-judicial hearing, Commissioner Hudak changed his stance on the zoning change and stated, "If it were not for [the residents] due diligence on the proposed PDD development, numerous improvements would not have been included in the developer's proposal." (Tab 9, P. 227, L. 17-20) He then went on to highlight each "perk" being provided to the City. Interestingly, at no time did he discuss what, if anything, the

Developer had done to suddenly comply with Section 98-68(b) and its qualifications, yet he changed his vote to approve the zoning change to PDD.

While there may be a desire to obtain valuable perks by the City, the decision cannot and must not be based upon that, the tax revenue generated, or on the convenience or profitability to the Developer.

In *Alvey v. City of North Miami Beach*, 206 So.3d 67,73-74 (Fla. 3rd DCA 2016), the City's failure to apply its land development code is a departure from the essential requirements of law; the circuit court's failure to apply the correct law resulted in a miscarriage of justice. The *Alvey* opinion provides an explanation of why this is so, and an appropriate conclusion:

> [T]hose who own property and live in a residential area have a legitimate and protectable interest in the preservation of the character of their neighborhood which may not be infringed by an unreasonable or arbitrary act of their government." *Allapattah Cmty. Ass'n*, 379 So. 2d at 392. Zoning ordinances are enacted to protect citizens from losing their economic investment or the comfort and

> enjoyment of their homes by the encroachment of commercial development by an unreasonable or arbitrary act of their government. *Id.* Thus, the burden is upon the landowner who is seeking a rezoning, special exception, conditional use permit, variance, site plan approval, etc. to demonstrate that his petition or application complies with the reasonable procedural requirements of the applicable ordinance and that the use sought is consistent with the applicable comprehensive zoning plan. *Bd. of Cnty. Comm'rs of Brevard Co. v. Snyder*, 627 So. 2d 469, 472 (Fla. 1993).... Because there was no evidence presented regarding this requirement and the City made no such finding, nor could it without the submission of such evidence, the circuit court's review of the City's rezoning decision departed from the essential requirements of law because, like the City, the circuit court failed entirely to consider, much less apply, the essential provision of the City's zoning code. We, therefore, grant the petition and quash the circuit court's decision affirming City Resolution R 2012-9.

WHEREFORE, based upon the foregoing arguments and authorities, Petitioners respectfully request that this Honorable Court accept jurisdiction over this matter, grant this Petition for Writ of Certiorari, address the questions presented herein, and quash the approval of Ordinance 2024/021.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certify this brief complies with the requirements set forth in Fla. R. App. P. 9.100(l).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished on this 2nd day of January, 2025 via e-mail to: Anthony Soroka, Esq., Weiss Serota Helfman Cole & Bierman, 2255 Glades Road, Suite 200E, Boca Raton, FL 33431 (ASoroka@wsh-law.com) and Dennis D. Mele, Esquire, 200 East Broward Boulevard, Suite 1800, Fort Lauderdale, FL 33301 (dennis.mele@gmlaw.com)

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