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

DANIL K. RIDDLE AND JANE N. RIDDLE, MICHAEL P. DAGNESE, CONSTANCE M. SPATARO, EVERT J. JELSMA AND SUSSANE H. JELSMA, as Trustee of the Evert J. Jelsma and Sussane H. Jelsma Living Trust dated July 18, 2005, MARY E. TUTTLE, as Trustee of the Mary E. Tuttle Trust dated March 12, 1991, PAUL JASIONOWSKI AND GAIL M. JASIONOWSKI, as Co-Trustees of the Jasionowski Family Trust dated May 4, 2017, NATHANIEL P. GORHAM, and C & T MANAGEMENT, LLC,

Petitioners,

v.

TOWN OF FORT MYERS BEACH, a Florida Municipal Corporation, SEAGATE FORT MYERS BEACH, LLC,

Respondents.
_____/

Case No.: 2025-CA-001263

ORDER & OPINION DENYING CERTIORARI RELIEF

This matter comes before the Court on a Petition for Writ of Certiorari Relief filed by Petitioners Danil K. and Jane N. Riddle; Michael P. Dagnese; Constance M. Spataro; Evert J. Jelsma and Sussane H. Jelsma, as trustee of the Evert J. Jelsma and Sussane

H. Jelsma Living Trust dated July 18, 2005; Mary E. Tuttle, as Trustee of the Mary E. Tuttle Trust dated March 12, 1991; Paul and Gail M. Jasionowski, as co-trustees of the Jasionowski Family Trust dated May 4, 2017; Nathaniel P. Gorham; and C&T Management, LLC (Petitioners) (Dkt. #3). Having reviewed the petition, responses, reply, all accompanying appendices, and relevant legal authorities, the Court, although recognizing standing and preservation issues, comments on the merits of the petition only because it finds this dispositive:

I. Merits.

Certiorari relief is warranted only if Petitioners can show that the Town's approval of the development agreement in Ordinance 24-34: (1) departed from the essential requirements of the law; (2) is not supported by competent, substantial evidence; or (3) was issued without affording procedural due process. *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982). For the reasons below, Petitioners have failed to meet these standards.

A. The Town did not depart from the essential requirements of the law in approving the development agreement.

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Petitioners contend that Town Council's adoption of the home-rule development agreement in Ordinance 24-34 departed from the essential requirements of the law in three ways:

> 1. The approval allowed a deviation from LDC § 34-693(h)'s height restriction without complying with the condition precedent in Comprehensive Plan Policy 4-C-4, LDC § 34-631(b)(5), and related provisions;
>
> 2. The term "public benefit" in Comprehensive Plan Policy 4-C-4 and LDC § 34-631(b)(5) for allowing height deviations is unconstitutionally void for vagueness; and
>
> 3. Town Council failed to consider the redevelopment criteria for the Red Coconut Property as required by LDC §§ 34-692(3) and related LDC and Comprehensive Plan provisions.

Both parties observe, "[a] departure from the essential requirements of law is more than 'simple legal error' but rather it is when the lower tribunal has violated a clearly established principle of law resulting in a miscarriage of justice." *Miami-Dade Cnty. v. Publix Supermarkets, Inc.*, 305 So. 3d 668, 671 (Fla. 3d DCA 2020) (cites & quotes omitted). Mere disagreement with the Town's interpretation of the correct law or how it applied the correct law does not warrant certiorari relief. *See, e.g., Ivey v. Allstate Ins. Co.*, 774 So. 2d 679, 682–83 (Fla. 2000). Rather, departure from the law's

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essential requirements means completely applying the wrong law. *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995).

Town Council did not apply the wrong law in approving the development agreement with deviations, including for height. Since Ordinance 24-34 concerns a development agreement, the correct law was LDC §§ 2-91 to 2-102 and Administrative Code Resolution 24-73 as amended by Resolution 24-247. Ordinance 24-34 explicitly identified these code provisions as the source of the Town's authority and found the development agreement satisfied their guidelines and criteria.

Although LDC § 34-631(b)(5) may provide another avenue for deviating from height restrictions, the development-agreement regulations in LDC §§ 2-91 to 2-102 and Administrative Code Resolution 24-73 as amended by Resolution 24-247 provides a different avenue. Indeed, Resolution 24-247's expressly authorizes the Town to negotiate and enter development agreements that "allow for approval of amendments, modifications, *deviations*, variances or exceptions from the Town's Land Development Code....", including "relief from the building height limitations in the Comprehensive Plan." (emphasis supplied)

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These regulations do not mention LDC § 34-631(b)(5) or otherwise require compliance with that LDC provision or any other LDC provision (beyond LDC Chapter 34 notice procedures) before allowing deviations. All these regulations require is for the development agreement to explicitly identify the deviation and comply with the Comprehensive Plan. The first condition is undisputably met in Ordinance 24-34 and this Court lacks certiorari jurisdiction over whether Ordinance 24-34 complied with the Comprehensive Plan. *Seminole*, 106 So. 3d at 22–23. So, Petitioners' reliance on § 34-631(b)(5) is misplaced because it does not concern development agreements.

Similarly, Petitioners' reliance on LDC § 34-692(3) is similarly misplaced. This provision created criteria for a pre-approved option to redevelop the Red Coconut Property that a developer could, if it desired, develop by right under the Town's laws. But this provision is not controlling for two reasons. First, its "traditional neighborhood design" criteria was one of the deviations explicitly negotiated for and authorized by the development agreement in Ordinance 24-34, which is not prohibited by the development-agreement regulations. Second, these pre-approved design criteria are not mandated by § 34-692(3),

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which expressly calls them "a pre-approved redevelopment *option*...." (emphasis supplied). By definition, if something is optional, then it is not mandatory. *Option*, BLACK'S LAW DICTIONARY (12th ed. 2024).

Accordingly, this Court finds that the Town did not depart from the essential requirements of the law when it enacted Ordinance 24-34 pursuant to the development-agreement regulations in LDC §§ 2-91 to 2-102 and Administrative Code Resolution 24-73 as amended by Resolution 24-247.

B. Petitioners were not deprived of due process.

This Court rejects Petitioners' due-process arguments. The development-agreement process requires three duly noticed, public hearings: one before the LPA and two before Town Council. (Town Admin. Code Res. 24-73 at Ex. A at §§ 3.2–3.3). Here, the record reflects the Town noticed and held these requisite hearings, continued several hearings to ensure the public had sufficient notice, and held a third public hearing before Town Council, which some, but not all, Petitioners attended. The Court finds Petitioners were afforded more than sufficient due process. *See, e.g., Carillon Cmty. Residential v. Seminole Cnty.*, 45 So. 3d 7, 9 (Fla. 5th DCA 2010) ("The

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'core' of due process is the right to notice and an opportunity to be heard."))

Petitioners raise primarily two due-process concerns, but neither has merit. First, they contend that LDC § 34-84(c)(1) does not allow Town Council to simply reject the LPA's recommendation. Rather, under that provision, Town Council was required to remand the recommendation back to the LPA to afford the public due process on what constitutes a public benefit for deviating from height restrictions.

The Court disagrees. A fair reading of § 34-84(c)(1) unambiguously gives Town Council the option to remand for further due process *or* "reverse, affirm, or modify the [LPA's] recommendation...." *See Ham v. Portfolio Recovery Assocs., LLC*, 308 So. 3d 942, 947 (Fla. 2020) (requiring Courts to give "a fair reading of the text...."). The dictionary definition of "reverse" and "modify" encompass rejecting the LPA's recommendation. *Reverse*, BLACK'S LAW DICTIONARY (12th ed. 2024); *Modify*, BLACK'S LAW DICTIONARY (12th ed. 2024). What's more, LDC § 34-84(c)(1) is not relevant since this case concerns development agreements. So it is governed by LDC §§ 2-91 to 2-102 and Resolution 24-247, which allows the LDC to

give recommendations, but grants Town Council final decisionmaking authority over whether to approve the development agreement and on what terms.

Alternatively, they claim two Council Members were bias and had "predetermined" their case. The Court disagrees for many reasons, but elaborates on only two. First, the record belies the assertion because council members began all three hearings by disclosing potential conflicts, ex parte communications, and bias; confirming they lacked preconceived opinions; and stating they could fairly and impartially decide matters based on the testimony and the evidence. No one objected or presented any contrary assertion or evidence.

Second, this Court does not find the Council Members' comments reflect bias or predetermination. The law does not prohibit even judges from forming and conveying their mental impressions or opinions during the course of evidentiary presentations. *See, e.g.*, *Mobil v. Trask*, 563 So. 2d 389, 391 (Fla. 1st DCA 1985). This is especially true in the quasi-judicial context when, as here, there is no showing that the decisionmaker "is not capable of judging a particular controversy fairly on the basis of its own circumstances."

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Seiden v. Adams, 150 So. 3d 1215, 1219 (Fla. 4th DCA 2014) (cites & quotes omitted).

Accordingly, this Court rejects Petitioners' due-process arguments because the Town afforded them more than sufficient due process.

C. Competent, substantial evidence supports the Town's approval of the development agreement.

In considering the last issue, this Court is strictly limited to determining whether competent, substantial evidence exists in the record to support Ordinance 24-34. *Dusseau v. Metro. Dade Cnty. Bd. of Cnty. Com'rs*, 794 So. 2d 1270, 1276 (Fla. 2001). Whether evidence exists to support the Petitioners' position is irrelevant because this Court cannot reweigh conflicting evidence. *Id.* "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.*

This Court has reviewed the extensive record and finds competent, substantial evidence exists to support the Town's approval of Ordinance 24-34. To illustrate a few examples, the record supports the Town's conclusion that it was receiving numerous

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benefits to the public in exchange for the development agreement's deviations, including 360-feet of total view corridors to the Gulf and Bay; shifting density off the beach and limiting it to 15-dwelling units per acre; multiple public parks with beach-access points and public amenities maintained without tax payer funds; significantly reduced density and intensity; and a more durable, hurricane-resistant structure. The Court does not take over the decision making process and weigh these benefits, simply determines whether they exist and support the Town Council's decision.

The record also supports the conclusion that while Seagate attempted to implement many of the optional redevelopment criteria in LDC § 34-693(3), current state and federal laws prevented implementing certain criteria, such as the traditional neighborhood concept with wrap-around front porches and enclosed, livable spaces on the first-two stories.

Accordingly, this Court finds that Ordinance 24-34 is supported by competent, substantial evidence, and the decision falls within the discretion the Town had in making this decison.

CONCLUSION & ORDER

Based on the foregoing, it is hereby ORDERED AND ADJUDGED that:

1. Petitioners' request for in-person oral argument is DENIED.

2. Petitioners' petition for certiorari relief is DENIED.

DONE & ORDERED in Chambers at Ft. Myers, Lee County, Florida.

05/21/2026 09:50:05
25-CA-001263
Michael T. McHugh, Circuit Court Judge fR2zNegx
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