NOT FINAL UNTIL TIME EXPIRES
TO FILE RE-HEARING MOTION,
AND, IF FILED, DISPOSED OF

IN THE CIRCUIT COURT
OF THE ELEVENTH
JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE
COUNTY, FLORIDA

APPELLATE DIVISION
CASE NO.: 2021-67-AP-01

SAVE CALUSA INC.,
a Florida non-profit, and
AMANDA PRIETO,

Petitioners,

v.

MIAMI-DADE COUNTY, a political
subdivision of the State of Florida, and
KENDALL ASSOCIATES I, LLLP, et al,

Respondents.

_____/

OPINION

Opinion filed: June 27, 2022

On Petition for Writ of Certiorari from the Miami-Dade Board of County Commissioners approval of Resolution No. Z-34-21.

David J. Winker, David J. Winker, PA for Petitioners.

Geraldine Bonzon-Keenan, Miami-Dade County Attorney, Dennis A. Kerbel, Lauren E. Morse, and Cristina Rabionet, Assistant County Attorneys, for Respondent Miami-Dade County.

Eileen Ball Mehta, Brian S. Adler, and Liana M. Kozlowski, Bilzin Sumberg Baena Price & Axelrod LLP, for Respondent Kendall Associates I, LLLP.

Before: DARYL E. TRAWICK, MARIA DE JESUS SANTOVENIA, and MARLENE FERNANDEZ-KARAVETSOS, JJ.

PER CURIAM

This matter comes before the Court on a Petition for Writ of Certiorari filed by Petitioners Save Calusa, Inc. ("Save Calusa") and Amanda Prieto ("Prieto") (collectively "Petitioners"). Petitioners request that this Court quash Resolution No. Z-34-21, approved by the Miami-Dade Board of County Commissioners ("Commission"). The Resolution allowed Respondent Kendall Associates I, LLLP ("Kendall Associates") the right to rezone 169.27 acres of land located at the former Calusa Country Club Golf Course, at 9400 SW 130 Ave. and 9800 & 9810 East Calusa Club Drive ("Property") in Miami-Dade County. The rezoning would allow 550 single family residential units to be built, along with several ancillary variances and unusual uses.[1]

This Property has a long history. In August 1967, the Zoning Appeals Board approved a golf course and related zoning. In March 1968, the then-owner executed a restrictive covenant for a golf course. In October 2020, the Commission removed

[1] The rezoning would result in a change from GU (Interim Zoning) and EU-M (Estate Modified District-minimum 15,000 square foot lots) to PAD (Planned Area Development). This would allow more residential units than currently allowed under the Miami-Dade County Zoning Code, but fewer than allowed under the Comprehensive Development Master Plan.

the restrictive covenant with the consent of 84 percent of the owners of the single-family lots encircling the Property.

The Miami-Dade County Zoning Board public hearing to consider the zoning change was scheduled and noticed for October 21, 2021, but was deferred by the Commission at their October 19, 2021, meeting. The Commission heard the Respondents' application at its Nov. 17, 2021, Zoning Board meeting.[2]

Standing

As a threshold issue, we find that neither Prieto nor Save Calusa have standing to bring this action. To establish standing under Florida law, a party must show a specific injury, such as a direct impact on the party's property or legal rights, and not just a "general interest" that is no greater than that of other residents. *Renard v. Dade Cty.*, 261 So. 2d 832, 837 (Fla. 1972). During oral argument, Petitioners candidly conceded that Save Calusa was formed after the Commission hearing approving the Resolution. Save Calusa's Articles of Incorporation, which show an effective date of December 23, 2021, were not filed with the Florida Department of State until December 27, 2021, which was more than one month after the hearing. Since Save Calusa did not exist at the time of the Zoning Board meeting, it lacks standing to pursue the relief sought in this petition.

[2] The Miami-Dade Board of County Commissioners met in the capacity as the Miami-Dade County Zoning Board.

Prieto testified before the Commission that she lived a "few hundred feet from the golf course." [A0026]. She asserts that she has standing due to her close proximity (within 500 feet) to the proposed development. Citing *Renard,* she maintains that she has a special injury due to the increased traffic in her neighborhood, which negatively impacts her property value. However, this Court finds that Prieto's concerns regarding increased traffic are a "general interest" which is no greater than the concerns of any other resident. *See Exchange Investments, Inc., v. Alachua Cty,* 481 So.2d 1223, 1225 (Fla. 1st DCA 1985) ("[A]uthorities generally agree that traffic is a matter of general concern and does not grant standing."); *Skaggs-Albertson's Props, Inc., v. Michels Belleair Bluffs Pharmacy, Inc.,* 332 So.2d 113, 117 (Fla. 2d DCA 1976). As a result, we find that Prieto lacks standing to raise this claim.

Standard of Review

In reviewing a quasi-judicial zoning decision, we must determine whether procedural due process was afforded; whether the essential requirements of the law were observed; and whether the administrative findings and judgment are supported by competent substantial evidence. *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995) (*citing City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982)). Petitioners assert that none of these prongs of the standard of review were met. We do not agree.

Due Process

We first address the issue of whether Petitioners were denied procedural due process. Generally, "due process requires fair notice and a real opportunity to be heard and defend in an orderly procedure *before* judgment is rendered." *Richard v. Bank of America, N.A.*, 258 So. 3d 485, 489 (Fla. 4th DCA 2018) (*citing Viets v. Am. Recruiters Enterprises., Inc.*, 922 So. 2d 1090, 1095 (Fla. 4th DCA 2006)).

Petitioners contend that the County failed to provide the notice required by law. They assert that because the Zoning Board hearing scheduled for October 20, 2021, was deferred to the Board's November 17, 2021, meeting date, there should have been an additional notice by publication for the new date. In response, the Respondents assert that when a Board meeting is rescheduled in this fashion, the zoning code does not require an additional published notice.

We defer to Miami-Dade County's interpretation of its own zoning code. "The administrative construction of a statute by the agency charged with its administration should not be disregarded or overturned by a reviewing court except for the most cogent reasons and unless clearly erroneous." *Metro. Dade Cty. v. State Dep't of Evntl. Prot.*, 714 So. 2d 512, 515 (Fla. 3d DCA 1998) (citation omitted).

Here we find that Miami-Dade County fulfilled all notice requirements of Miami-Dade County Code §33-310 for the October 20, 2021, hearing, including notice by mail and by publication. When that hearing was cancelled for lack of a

quorum, all items were deferred to the next available hearing on November 17, 2021. Interested parties within the required half-mile radius, including Prieto, were provided notice by mail of the new hearing date. County staff posted notices on the entrance to the County Commission meeting room on October 20th. Further, the online County calendar was updated to include the new hearing date. We find that these efforts satisfied the requirements of the County Code. There is nothing in the Code which specifically requires an additional notice by publication when a properly noticed hearing is rescheduled at the initially noticed hearing. We further find that procedural due process does not require any additional notice by publication under these circumstances.

Even if there was a credible argument that the lack of an additional notice by publication created a procedural defect,[3] that issue has been waived by Prieto here. Parties in administrative proceedings are required to make objections on the record to preserve any error for appellate review. "It is well settled that, in order to obtain appellate review, alleged errors relied upon for reversal must be raised clearly, concisely and separately as points on appeal." *Singer v. Borbua,* 497 So. 2d 279, 281 (Fla. 3d DCA 1986). *See City of Miami v. Cortes,* 995 So. 2d 604, 606 (Fla. 3d DCA 2008) (finding that property owners waived error by failing to object to evidence and

[3] As Save Calusa did not exist on that date, notice could not have been provided to them by publication or otherwise.

asking to cross-examine witnesses); *Clear Channel Comms, Inc. v. City of North Bay Village*, 911 So. 2d 188, 190 (Fla. 3d DCA 2005) (affirming appellate division of Circuit Court's decision which held that petitioners failed to preserve their legal challenges for appellate review because they did not make contemporaneous objections before the city commission).

Prieto had sufficient notice of the November 17th hearing, and in fact she participated in that hearing, speaking in opposition to the zoning application. During the hearing, she could have objected to the hearing going forward due to defective notice. She did not. She is thus precluded from raising this issue before this Court.

Essential Requirements of Law

In *Haines,* 658 So. 2d at 527, the Supreme Court determined that "applied the correct law" is synonymous with "observing the essential requirements of law." Further, to warrant relief, there must be "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.* (citation omitted).

Petitioners contend that the Commission departed from the essential requirements of law in approving the Planned Area Development (PAD), and that it is inconsistent with the policy objectives and goals of Miami-Dade County's Zoning Code, Comprehensive Development Master Plan ("CDMP") and Land Use Element

Policies. This argument is meritless. The Miami-Dade County Department of Regulatory and Economic Resources Staff Report to the Board of County Commissioners ("Staff Report") stated that "[s]taff opines that the rezoning of the Property to PAD together with the ancillary variances and unusual uses would be **consistent** with the CDMP Land Use Element Interpretative text and the maximum density threshold permitted for the **Parks and Recreation and Low-Density Residential** designations on the CDMP Land Use Plan (LUP) map." (emphasis in original) (Resp. Supp. App. 023). The staff report cited to and interpreted the applicable law. Further, no "inherent illegality or irregularity" has been plausibly posited by Respondents. While Petitioners contend that the Commission failed to properly consider environmental evidence at the site, the Staff Report refutes this. We find no departure from the essential requirements of law.

Competent Substantial Evidence

"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." *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957). "Competent, substantial evidence must be reasonable and logical." *Wiggins v. Florida Dep't of Highway Safety and Motor Vehicles*, 209 So. 3d 1165, 1173 (Fla. 2017). As an appellate court, we may not reweigh the evidence or substitute our judgment for that of the zoning authority. *Haines,* 658 So. 2d at 530.

Petitioners argue that the Commission's approval was not based on substantial competent evidence. Specifically, Petitioners contend that there is no evidence that the surrounding area will be protected from impacts such as "excessive density, noise, light, glare, odor, vibration, dust or traffic" They further assert that the Commission "failed to properly consider environmental evidence."

The Commission received ample evidence that approval of the development of the Property would not be detrimental to the community or environment. County professional staff issued a 200-plus page Staff Report recommendation in favor of the application. Florida law recognizes such staff reports as substantial competent evidence. *Palm Beach Cty v. Allen Morris Co.*, 547 So. 2d 690, 694 (Fla 4th DCA 1989).

The testimony of the Respondents' experts, including a traffic engineer, a bird behavioral and habitat expert, and an environmental consultant likewise constitute competent substantial evidence. Petitioners did not present any expert witnesses to rebut this testimony. Moreover, the plans and site maps, along with the report from Respondents' economic expert, constitute fact-based reasons for the recommendations that were made. The extensive Staff Report contained material and relevant observations. We find that there is ample competent substantial evidence in the record to support the Commission's decision.

We conclude that the Commission afforded procedural due process, that there was no departure from the essential requirements of law, and that there was substantial competent evidence to support the Commission's vote. The petition for writ of certiorari is therefore **DENIED.**

TRAWICK, SANTOVENIA and FERNANDEZ-KARAVETSOS JJ., concur.

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