NOT FINAL UNTIL DISPOSITION
OF TIMELY-FILED MOTION FOR
REHEARING OR CLARIFICATION

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

APPELLATE DIVISION
CASE NO.: 2023-33-AP-01

FAIRCHILD BAY SUBDIVISION LLC,

Petitioner,

v.

VILLAGE OF PALMETTO BAY,

Respondent.
_______________________________/

OPINION

Opinion filed: September 10, 2024

On Petition for Writ of Certiorari from the Village of Palmetto Bay's denial of a request for rezoning.

Thomas H. Robertson and Nicholas J. Rodriguez-Caballero, Bercow Radell Fernandez Larkin & Tapanes, PLLC, for Fairchild Bay Subdivision LLC, Petitioner.

John Quick, Laura K. Wendell, Edward G. Guedes and Richard

Rosengarten, Weiss Serota Helfman Cole & Bierman, P.L., for Village of Palmetto Bay, Respondent.

Before: TRAWICK, ARECES, R., and SANTOVENIA, JJ.

TRAWICK, J.

This matter comes before this Court on a Petition for Writ of Certiorari filed by Petitioner Fairchild Bay Subdivision LLC to quash the Village of Palmetto Bay's denial of Fairchild's application to rezone its property.

Background

Petitioner Fairchild Bay Subdivision LLC ("Petitioner") is the owner of a 1.70-acre property located at 9000 SW 174 Street ("Property") within the Village of Palmetto Bay ("Respondent" or Village"). The Property is designated as "low density residential" on the Respondent's Comprehensive Plan and is zoned agricultural.

On January 17, 2023,[1] Petitioner submitted an application to amend the zoning map and rezone the Property from Agricultural ("AG") to Estate Modified ("EM"). EM allows one dwelling unit per 15,000 net square feet of land. Petitioner's lot size is 73,920 square

[1] Petitioner dated the application January 17, 2023. However, the Zoning Department date-stamped the application as received on February 23, 2023.

feet and has 1,790 square feet of actual living area. Petitioner maintains that the rezoning is consistent with Respondent's comprehensive plan and the established development pattern in the neighborhood.

Petitioner asserts that this Property is part of a group of remnant AG-zoned properties that do not meet the minimum requirements of the AG zoning district - which requires a minimum lot area of 5 gross acres and limits density to 0.2 units per acre i.e., 1 unit per 5 acres. Conversely, the low-density residential designation in the comprehensive plan allows detached single-family homes at a minimum density of 2.5 dwelling units per gross acre and a maximum of 6.0 dwelling units per acre. Currently, there is a single-family residence on the Property, built in 1954; there is no active agricultural use on the Property.

On April 17, 2023, a public hearing was held on Petitioner's rezoning application. At the hearing, Village staff testified and submitted a detailed staff report that recommended approval of the rezoning, and further recommended that Petitioner modify the sketch of their site plan at a later date to conform to the requirements of the EM zoning district. Village staff also recognized that the subsequent

development plan would have to be resubmitted for consideration at a later platting hearing. Staff testified that the Property is currently non-conforming on two out of three requirements for the agricultural classification.

Mrs. Sainz, Petitioner's representative, testified that Petitioner was seeking to rezone to conform to the development pattern of the neighborhood. She explained that Petitioner intended to subdivide the Property; build two homes for the owners and have two single-family homes available for sale; to comply with the EM zoning district standards; and to preserve the mango trees located on the property if possible. Mrs. Sainz also stated that Petitioner was not looking for a variance.

The synopsis of the rest of the hearing was as follows:

- Vice Mayor Tellam questioned the existing mango trees on the Property and potential loss of shade, and opposed the rezoning due to the number of lots proposed and the perceived need for future variances.
- Councilmember Cody observed that the frontage lengths within Petitioner's sketch of its site plan did not comply with the minimum requirements of the EM district.
- Councilmember Watson stated that the Village Council should not support any development proposed to be connected to a septic system, and expressed concern about the mango trees.
- Councilmember Matson opposed the rezoning because there were abutting remnant AG zoned properties.

- Mayor Cunningham opposed the rezoning because there is "nothing really that requires us to change the zoning."
- Public comment. Six members of the public expressed concern and opposition due to the mango trees, and the potential development of a segment of SW 91st Avenue.

The Council then voted 5-0 to deny the rezoning without prejudice.[2]

Standard of Review

A three-part standard governs this Court's review: (1) whether procedural due process is accorded; (2) whether the essential requirements of the law have been observed; and (3) whether the administrative decision is supported by competent substantial evidence. *Vill. of Palmetto Bay v. Palmer Trinity Priv. Sch., Inc.*, 128 So. 3d 19, 24 (Fla. 3d DCA 2012).

Petitioner does not argue the procedural due process prong of the standard.

Essential Requirements of Law

In *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995), the Supreme Court held that "applied the correct law" is

[2] This was the Petitioner's fourth attempt to rezone the property. Similar requests were denied in June 2021, October 2021 and January 2022.

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.* at *527* (citation omitted).

Reverse spot zoning

We first address the issue of whether the denial of rezoning for Petitioner's Property constitutes "reverse spot zoning" and would thus be a failure to comply with the essential requirements of law.

> Reverse spot zoning occurs when a zoning ordinance prevents a property owner from utilizing his or her property in a certain way, when virtually all of the adjoining neighbors are not subject to such a restriction, creating, in effect, a veritable zoning island or zoning peninsula in a surrounding sea of contrary zoning classification.

City of Miami Beach v. Robbins, 702 So. 2d 1329, 1330 (Fla. 3d DCA 2010).

Petitioner contends that the Property does not conform to the requirements of the AG district with respect to lot area and lot depth, and the existing AG zoning is inconsistent with the underlying comprehensive plan designation. Moreover, Petitioner argues that it

is entitled to have its Property appropriately zoned EM based on proper zoning concepts and the established development pattern of the surrounding area.

Petitioner cites the case of *Richard Rd. Estates, LLC v. Miami-Dade Cnty. Bd. of Cnty. Comm'rs*, 2 So. 3d 1117, 1118 (Fla. 3d DCA 2009) for the proposition that reverse spot zoning is occurring. We disagree. In *Richard Rd.*, the Third District Court of Appeal held that the county's refusal to grant a change in zoning resulted in impermissible spot zoning and was sufficient to warrant second tier certiorari review. However, we find that *Richard Rd.* is distinguishable from the case at bar in that in *Richard Rd.* the petitioner's property was unjustly being used to drain all the water that accumulated on the surrounding land. Indeed, the District Court held that "Richard Road's property is thus forced to act, as it were, as an uncompensated storm sewer for the neighborhood." *Id.* at 1119.

Petitioner also cites the case of *Palmer Trinity Private Sch., Inc. v. Vill. of Palmetto Bay,* 31 So. 3d 260, 262 (Fla. 3d DCA 2010), in support of its argument that a rezoning ordinance resulted in

impermissible spot zoning.[3] In *Palmer Trinity*, the District Court held that the circuit court departed from the essential requirements of the law as the school was not afforded the same beneficial use and restrictions for one of its parcels (Parcel B) that were enjoyed by the owners of the surrounding properties. *Id.* The District Court agreed that the zoning classification of the surrounding properties rendered Parcel B an "island" or "peninsula" resulting in impermissible "reverse spot zoning." *Id.* at 262.

The Respondent contends that the Council's decision does not result in impermissible reverse spot zoning. In support of their position, the Respondent cites this Court's decision in *Yacht Club by Luxcom, LLC v. Vill. of Palmetto Bay Council*, 2019-265-AP-01, Supp. App. 1-12, *aff'd* 316 So. 3d 748, 750 (Fla. 3d DCA 2021), in which we held that the change in zoning classification in that case did not constitute spot zoning.[4] This Court, as did the Third District in

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[3] In *Palmer*, the school sought to rezone Parcel B from AU (one home per five acres) and EU-M to EU-2 (estate modified single family zoning allowing one home per 15,000 square feet).

[4] For example, we noted that "the record shows that Luxcom's own undeveloped 10 acres located immediately west of the Property had the same E-1 zoning designation as the Property at issue." *Id.* at 750-751.

affirming our decision, rejected the reverse spot zoning argument where the owner's adjacent property was zoned the same as the property at issue, and where the record did not conclusively establish disparate treatment from surrounding properties.

Similarly, in *Town of Juno Beach v. McLeod,* 832 So. 2d 864, 867 (Fla. 4th DCA 2002), the Fourth District rejected a spot zoning argument. The Town rezoned the subject property from RS-1 (residential single family) to CO (commercial office). The District Court reasoned that this decision did not constitute "spot zoning" because the land use designation for the property was changed to commercial, and an adjacent property across the highway contained a 60,000 square foot commercial shopping center. *Id.* at 866.

Respondent argues that the facts here are even stronger than the *Yacht Club* case. The Village contends that Petitioner's Property was and will continue to be surrounded on three sides by properties that are zoned AG, regardless of the decision on the proposed rezoning.[5]

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[5] The parties differ on whether the Property is surrounded on two or three sides by property zoned AG. However, the record reflects that the Property is surrounded on two sides by property zoned AG. *See*

Petitioner counters these arguments in asserting that it is being denied the right to develop the Property consistent with the surrounding zoning and the Comprehensive Plan, and maintaining that the Village's reliance on *Yacht Club* is misplaced. Petitioner argues that this case, unlike *Yacht Club*, involves the denial of a rezoning proposed by a private applicant, where the proposed rezoning is consistent with the Property's comprehensive plan designation and consistent with the professional staff recommendation for approval. Petitioner further attempts to distinguish *Yacht Club* by arguing that the Property is part of an island or peninsula of remnant AG-zoned properties within a surrounding sea of EM zoning. Finally, unlike *Yacht Club*, Petitioner argues that the Village's action perpetuates an inconsistency between the Property's zoning designation and the Village's Comprehensive Plan. Petitioner rightly contends that the Property clearly cannot meet the current requirements of the Zoning Code.

We agree with Respondent and find that *Yacht Club* is the applicable precedent. Here, while the area around Petitioner's

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Village of Palmetto Bay's website https://www.palmettobay-fl.gov/462/Village-Maps

Property is predominately zoned EM,[6] the properties immediately to the north and west of Fairchild are zoned AG. Petitioner's attempt to otherwise distinguish *Yacht Club* by raising an inconsistency between the zoning designation and the Comprehensive Plan is unpersuasive. Thus, we reject Petitioner's contention that the denial of the requested rezoning constitutes reverse spot zoning.

Reliance on Unenumerated Rezoning Criteria to Deny Petitioner's Application

Petitioner next contends that the Respondent departed from the essential requirements of law when the Council disregarded their Comprehensive Plan and applied their own unenumerated criteria in denying Petitioner's rezoning application.

The Code of Ordinances, Palmetto Bay, Section 30-30.7 (Amendment to the official zoning map or the text of the Land Development Code) (b) states:

> *Process and criteria for review.* All proposed amendments, regardless of the source, shall be evaluated by the department of planning and zoning, the local planning agency and the village council. In evaluating proposed amendments, the village council shall consider the following criteria:

[6] See Supp. App., p. 2 (Official Zoning Map).

(1) Whether the proposal is consistent with the comprehensive plan, including the adopted infrastructure minimum levels of service standards and the village's concurrency management program.

(2) Whether the proposal is in conformance with all applicable requirements of Chapter 30.

(3) Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations, and whether the changes support or work against the proposed change in land use policy.

(4) Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved, the impact on adjacent or neighboring properties, consistency with existing development, as well as compatibility with existing and proposed land uses.

(5) Whether, and the extent to which, the proposal would result in demands on transportation systems, public facilities and services would exceed the capacity of the facilities and services, existing or programmed, including: transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services.

(6) Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including

consideration of wetland protection, preservation of groundwater aquifer, wildlife habitats, and vegetative communities.

(7) Whether, and the extent to which, the proposal would adversely affect the property values in the affected area, or adversely affect the general welfare.

(8) Whether the proposal would result in an orderly and compatible land use pattern. Any positive and negative effects on land use pattern shall be identified.

(9) Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and intent of Chapter 30.

(10) Other matters which the local planning agency or the village council in its legislative discretion may deem appropriate.

Rather than question Petitioner's counsel regarding any of the above enumerated criteria, Council members asked questions related to the cost to acquire the Property; the Property's ownership history; the Property's topography; the potential loss of mango trees; and Petitioner's site plan for the future development of the Property. Further, there was public comment considered by the Council, as discussed in more detail below. None of the questions, public comment or discussion by Council members were relevant to the

established criteria for rezoning.[7] Further, although the Village Council extensively discussed the details and dimensions of Petitioner's site plan, both the Village staff and the Council acknowledged the site plan was not before the Council for approval.

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[7] It can be argued that Code criteria 7, which states that the Council could consider whether the proposal would "adversely affect the general welfare", criteria 9, which allows consideration of "[w]hether the proposal would be in conflict with the public interest" and criteria 10 which mentions "[o]ther matters . . . the village council in its legislative discretion may deem appropriate" would support the decision of the Council here. However, the language from these provisions is so broad and general in scope that it would permit the Council, in the exercise of this practically limitless discretion, to consider virtually any matter in reviewing a rezoning application. Such a reading of these provisions would seemingly render the remaining specific criteria superfluous. "[A] specific statute controls over a general statute covering the same subject matter." *Surf Works, LLC. v. City of Jacksonville Beach,* 230 So. 3d 925, 932 (Fla. 1st DCA 2017). "A statutory provision will not be construed in such a way that it renders meaningless or absurd any other statutory provision." *Dep't of Child. and Fam. Servs. v. P.S.,* 932 So. 2d 1195, 1201 (Fla. 1st DCA 2006), quoting *Palm Beach Cnty. Canvassing Bd. v. Harris,* 772 So. 2d 1273, 1287 (Fla. 2000). While we are bound to consider and give effect to all of the language of a statutory provision, consideration of general language must be done in a manner that is harmonious with the provision's more specific language. "It is well settled that a statute should be construed in its entirety and as a harmonious whole.... Further, where two laws are in conflict, courts should adopt an interpretation that harmonizes the laws, for the Legislature is presumed to have intended that both laws are to operate coextensively and have the fullest possible effect." *Harris,* 772 So. 2d at 1287. We also find it appropriate to consider this general language consistently with the Village's Comprehensive Plan.

The Staff report stated: "Florida state law does not require a site plan at the time of a rezoning hearing and does not allow a zoning district to be conditioned for approval."

In contrast to the Council, the Staff responded to each of the aforementioned criteria in their report, which was presented at the meeting in a digital format.[8] Some of the highlights of the report are as follows:

(1) The exiting parcel of land is less than the minimum lot area of five acres, and it exceeds the comprehensive plan requirements.
(2) The proposed rezoning will be required to meet all requirements of Chapter 30 at the time of platting and development.
(3) Most of the adjacent surrounding homes within 1 block in each direction are zoned Estates Modified. The parcel immediately to the north and west are also remnant Agricultural zoned properties that also do not meet the minimum required lot sizes. The subject property is not operated in a manner that meets the uses of the existing Agricultural Zoning District Designation. The introduction of new residential homes would be consistent with the existing land use and development conditions of the surrounding area.
(4) The surrounding character of homes are all single-family homes. EM zoning district would be consistent with the surrounding neighborhood.

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[8] Among the rezoning recommendations in the Staff report were that "[t]he Comprehensive Plan allows the density, true agricultural uses would be disruptive to the surrounding community, the trips generated and impacts on infrastructure are minimal."

(5) The surrounding streets are below capacity for Level of Service...

(6) Miami-Dade County DERM will determine if existing specimen trees would need to be preserved or a mitigation permit will need to be obtained at the time of permitting any new development. DERM will also determine if any endangered or threatened species are present.

(7) The proposal is consistent with the surrounding community and Future Land Use for single family homes.

As is argued by Petitioner and which was recognized by the Staff in its report, the Property cannot currently meet the requirements of the zoning code under its current designation, AG. The regulations of the AG District require a minimum lot size of 5 acres - while the Property is only 1.7 acres in size. Petitioner maintains that while it cannot build a new single-family house on the Property (there is already an existing house on the Property) – similarly-situated property owners in the surrounding neighborhood are permitted to build new homes on 15,000 sq. ft. lots - i.e. approximately 1/3 acre.

The testimony of the Village staff and Staff report reflected that the Property is currently a legally non-conforming parcel, surrounded by AG-zoned properties and is in an area characterized by other residential properties that are zoned EM. The trend of development is to support a change from AG zoned parcels to EM parcels. It is

notable that the Petitioner's application is consistent with the future land use map (FLUM) as well as the Comprehensive Plan. The request is also consistent with the applicable land development regulations of the surrounding area. Thus, as in *Palmer Trinity,* Petitioner is not being afforded the same beneficial use of the Property as is being permitted by neighboring property owners.

Upon consideration of the enumerated Code criteria, the Staff report, as well as the hearing record, we are constrained to find that the Council unjustifiably applied their own unenumerated criteria in denying Petitioner's rezoning application. In so doing, the Council also disregarded the Village's Comprehensive Plan and FLUM. Accordingly, the Village failed to follow the essential requirements of law.

Substantial competent evidence

We must next determine whether there is substantial competent evidence to support the Village's decision. "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). The test is whether there exists any competent substantial evidence to support the decision maker's conclusions, and any evidence which would support a contrary conclusion is irrelevant. *Dusseau v. Metro. Dade Cty. Bd. of Cty. Comm'rs,* 794 So. 2d 1270, 1276 (Fla. 2001).

Petitioner maintains that there is no competent substantial evidence to support the Council's decision to deny the rezoning. Petitioner argues that its application materials; the Office of the Property Appraiser Summary Report; the Village staff's report and recommendation; Village staff's presentation; and the testimony offered by both Petitioner's planning expert, Mr. Lopez, and its representatives, Mr. and Mrs. Sainz, all constitute competent substantial evidence in support of the rezoning. On the other hand, Petitioner argues that the testimony offered by members of the public in objection to the rezoning did not relate to the Village's rezoning evaluation criteria and is therefore irrelevant.

The testimony of the public at the hearing consisted of six speakers:

(1) Speaker 1 testified that she lived on the cul-de-sac of the Property, and it "may be opened up to traffic at one point." She was also concerned that putting "four houses on that lot would be not in keeping with the houses surrounding – surrounding the property."
(2) Speaker 2 testified that "developer after developer say that they're going to live there and everything's going to be wonderful, and it doesn't turn out to be like that at all." She also stated that "I've eaten mangoes from that property for 23 years," and "we have very little agricultural land left in Palmetto Bay."
(3) Speaker 3 testified she lives blocks away from the Property, and she was concerned about the trees and the wildlife. She was also "very, very concerned that it's going to change the environment."
(4) Speaker 4 testified that she lived just south of the Property, and she was concerned "with the plans that the developer is proposing is opening up (sic) at 91st Avenue," which will create more traffic and danger to her kids.
(5) Speaker 5 testified that she agreed with the other speakers, and wanted to "deny the request for any variances in rezoning."
(6) Speaker 6 lived next to the Property, and she testified that Southwest 91st Street would be opened up and ruin their "quiet cul-de-sac." She also testified that "transient people would be coming in and out of that."

These comments expressed the neighbors' negative view of the Property, and centered on the future possible traffic impact, impact on mango trees and wildlife, possible variances, and upcoming changes in the environment. While this Court cannot reweigh the

evidence, the aforementioned public comments expressed only generalized concerns and were not factually based. In *City of Apopka v. Orange Cnty.*, the Orange County Commission turned down a zoning request for an airport, based on public input which was "in the main laymen's opinions unsubstantiated by any competent facts." 299 So. 2d 657, 660 (Fla. 4th DCA 1974). The "testimony" in that case was mainly from "[s]everal other property owners [who] speculated about what would happen to the area's zoning, complained about the anticipated noise, and generally wanted to keep the status quo in the area." *Id.* at 659. *See also Metro. Dade Cnty. v. Blumenthal,* 675 So. 2d 598, 607 (Fla. 3d DCA 1995) (Cope, J. dissenting) ("Mere generalized statements of opposition are to be disregarded, but fact-based testimony is not.").

A thorough review of the record fails to establish substantial competent evidence to support the Village's decision. The Respondent fails to identify any specific material and relevant statements from the public hearing that constitute competent substantial evidence. The evidence primarily addressed the Property's ownership history, the potential loss of mango trees and Petitioner's site plan for the future development of the Property. In

addressing these issues, the Staff report indicated that DERM would need to make a report on whether the trees needed to be preserved and whether any endangered or threatened species were present. As to future development of the area, the Staff report specifically stated that the "proposal is consistent with the surrounding community and Future Land Use for single family homes." This evidence is insufficient to support the Respondent's position. We thus find that the decision denying Petitioner's rezoning application is not supported by competent substantial evidence.

Accordingly, the Petition for Writ of Certiorari is **GRANTED**. The decision of the Village to deny Petitioner's application is hereby **QUASHED**.

SANTOVENIA, J., concurs.

ARECES, J., CONCURS

I agree with the majority's opinion, except that I would also find that Petitioner has been subjected to reverse spot zoning. *See Kugel v. City of Miami*, 206 So. 2d 282, 284 (Fla. 3d DCA 1968) ("Where changed conditions create a situation where the zoning of appellants' property is so unreasonable as to constitute a taking of his property, then the courts are justified in striking down the arbitrary zoning

classification."); *City Com'n of City of Miami v. Woodlawn Park Cemetery Co.*, 553 So. 2d 1227, 1235 (Fla. 3d DCA 1989) ("Central to the analysis of a reverse spot zoning case, as previously noted, is that the land of the complaining landowner must be treated unjustifiably different for zoning purposes than that of the land which surrounds it."); *Palmer Trinity Private School, Inc. v. Village of Palmetto Bay*, 31 So. 3d 260, 263 (Fla. 3d DCA 2010) ("A zoning authority's insistence on considering the owner's specific use of a parcel of land constitutes not zoning but direct governmental control of the actual use of each parcel of land which is inconsistent with constitutionally guaranteed private property rights."); *Yacht Club by Luxcom, LLC v. Village of Palmetto Bay Council*, 316 So. 3d 748, 751 (Fla. 3d DCA 2021) (distinguishing *Palmer Trinity* because unlike *Palmer Trinity*, nothing showed the lower tribunal "sought to treat Petitioner differently because of the proposed use of the property.").[9]

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[9] I agree with Petitioner that *Yacht Club* can be easily distinguished. Unlike *Yacht Club*, in this case Respondent denied the rezoning *precisely* because of what it believed Petitioner intended to do with the property. In this case, moreover, the proper zoning designation is not "fairly debatable," as everyone agrees that Petitioner's property does not currently conform to its agricultural zoning designation.

For the reasons stated in the majority opinion, the decision to deny Appellant's zoning reclassification was arbitrary, unreasonable and confiscatory. *Kugel*, 206 So. 2d at 285 (finding denial of a rezoning request unreasonable and arbitrary where "[t]he character of the property has already been changed by other actions of the municipality."). Accordingly, I would grant the Writ of Certiorari because Respondent failed to follow the essential requirements of the law, rendered a decision wholly unsupported by competent substantial evidence *and* subjected Petitioner to reverse spot zoning that resulted in a confiscatory taking of its real property.

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