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.: 2021-56-AP-01

PRESERVE THE WEST GROVE, INC.,
SHIRLEY GIBSON,
JENA SAUL,
ANTHONY VINCIGUERRA, and
COURTNEY BERRIEN,

Petitioners,

v.

CITY OF MIAMI,

Respondent,

and

STIRRUP PROPERTIES, INC.
3327 GROVE, LLC,
3267 CHARLES, LLC,

Respondents.
_____/

OPINION

Opinion filed: July 6, 2022

On Petition for Writ of Certiorari from the City of Miami Commission approval of

Ordinances 13999 and 14000.

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

Victoria Mendez, City Attorney, John A. Greco, Deputy City Attorney, and Kerri L. McNulty, Senior Appellate Counsel for Respondent City of Miami.

Elliot H. Scherker, Brigid F. Cech Samole, and Bethany J.M. Pandher, Greenberg Traurig, P.A., for Respondents Stirrup Properties, Inc., 3227 Grove, LLC and 3267 Charles, LLC.

Before: DARYL E. TRAWICK, MARIA DE JESUS SANTOVENIA, and LISA S. WALSH, JJ.

PER CURIAM

This matter comes before this Court on a Petition for Writ of Certiorari filed by Preserve the West Grove, Inc., Shirley Gibson, Jena Saul, Anthoney Vinciguerra, and Courtney Berrien, (collectively "Petitioners"). Petitioners request that this Court quash Ordinances 13999 and 14000, approved by the City Commission of the City of Miami ("Commission"). Ordinance 13999 allowed the amendment of the Future Land Use Map ("FLUM") designation of the Miami Comprehensive Neighborhood Plan ("MCNP") for the proposed development to be changed from "Single Family Residential" to "Low Density Restricted Commercial," pursuant to the small-scale amendment procedures of Section 163.3187, Florida Statutes. Ordinance 14000 allowed the change in zoning classification[1] of the proposed development

[1] The rezoning of the Property was from a "T3-R" Sub-Urban Transect Zone-Restricted with a Neighborhood Conservation District ("NCD-2") overlay to a "T4-L" General Urban Transect

("Property") located at 3270 Williams Avenue and 3227, 3247, 3257 and a portion of 3277 Charles Avenue in the City of Miami.

As a threshold issue, Respondents contend that Petitioners' challenge to Ordinance 13999 through which the Commission amended the FLUM is not subject to certiorari review, because Ordinance 13999 was enacted pursuant to the small-scale amendment procedures of Section 163.3187, Florida Statutes.

Section 163.3187, Fla. Stat. (2021) states:

> (1) A small-scale development amendment may be adopted under the following conditions:
>
> (a) The proposed amendment involves a use of 50 acres or fewer and:
>
> (b) The proposed amendment does not involve a text change to the goals, policies, and objectives of the local government's comprehensive plan, but only proposes a land use change to the future land use map for a site-specific small scale development activity ...
>
> (c) The property that is the subject of the proposed amendment is not located within an area of critical state concern, unless the project subject to the proposed amendment involves the construction of affordable housing units meeting the criteria of s. 420.0004(3), and is located within an area of critical state concern designated by s. 380.0552 or by the Administrative Commission pursuant to s. 380.05(1).
>
> ...

Respondents cited the case of *Martin Cty. v. Yusem* for the proposition that Petitioners were required to bring this case as an original action in circuit court, and

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Zone-Limited with an NCD-2 overlay. The change in the zoning classification was made pursuant to the zoning requirements of Article 7, Section 7.1.2.8 of Miami 21.

not as a petition for certiorari. 690 So. 2d 1288, 1295 (Fla. 1997). However, very significantly, *Yusem* did not pertain to a small-scale amendment, but rather to a comprehensive land use amendment pertaining to a fifty-four-acre property that was part of a nine-hundred-acre tract of land. The Supreme Court clarified in a later case, *Coastal Dev. of N. Fla., Inc., v. City of Jacksonville Beach*, that in *Yusem* they "expressly declined to pass upon small-scale development amendments, as that issue was not before us." 788 So. 2d 204, 208 (Fla. 2001) (citation omitted). Accordingly, *Coastal* held that "[a] challenge to a local government's decision on a small-scale development amendment **may be** commenced as an original action in the circuit court." *Id.* at 209. (emphasis added) Therefore, aggrieved persons are not required to file an original action and may challenge a local government's decision on a small-scale development amendment by certiorari.

The City of Miami Planning Department Staff Analysis ("Staff Report") stated that "[t]he application is subject to small-scale amendment procedures as established in Section 163.3187, Florida Statutes, involving less than 10 acres of Subject Properties." (SA:25). The Report also noted that the proposed Property was consistent with the goals, objectives and policies of the MCNP. Here we find that all the requirements of Section 163.3187, Fla. Stat. have been met for small-scale development, and the Petition for Writ of Certiorari is properly before this Court.

Standard of Review

Review of a quasi-judicial zoning decision is governed by a three-part standard of review: (1) whether procedural due process was accorded; (2) whether the essential requirements of the law were observed; and (3) whether the administrative findings and judgments 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 argue that essential requirements of the law were not observed, and there was a lack of competent substantial evidence to support the Commission's decision.[2]

Essential Requirements of Law

In *Haines,* the Supreme Court, in considering whether the essential requirements of the law were observed, held that "appl[ying] the correct law" is synonymous with "observing the essential requirements of law." 658 So. 2d at 527. Overlooking sources of established law or applying an incorrect analysis of the law results in a departure from the essential requirements of law. *See City of Tampa v. City Nat'l Bank of Fla.,* 974 So. 2d 408, 411 (Fla. 2d DCA 2007).

Petitioners contend that the Commission departed from the essential requirements of law because the Respondents' Application for the proposed Property is inconsistent with the legal requirements of Miami 21 and the MCNP. This argument is unavailing. The Staff Report recommended approval of the Application,

[2] While not raised by Petitioners, we find that procedural due process was accorded here.

finding that it was "consistent" with the various MCNP objectives and goals. Moreover, the Planning, Zoning, and Appeals Board recommended approval of the change in both the zoning classification and the FLUM.

Petitioners also contend that the Application fails to meet certain requirements such as "neighborhood traffic calming plans." The covenant signed by the Respondents contains a section for traffic improvements. We find no departure from the essential requirements of the law.

Competent Substantial Evidence

We now turn to the issue of competent substantial evidence. Competent substantial evidence has been defined as "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." *Smith v. Dep't of Health & Rehab. Servs.*, 555 So. 2d 1254, 1255 (Fla. 3d DCA 1989) (citation omitted). "Competent, substantial evidence must be reasonable and logical." *Wiggins v. Fla. Dep't of Highway Safety and Motor Vehicles*, 209 So. 3d 1165, 1173 (Fla. 2017) (citation omitted).

Petitioners argue that the Commission's approval was not based on competent substantial evidence. Specifically, Petitioners contend that the Property will transform the neighborhood in a way that is neither consistent with the comprehensive plan nor compatible with the existing neighborhood. We do not agree. The Staff Report notes that "[t]he proposed rezoning is a response to various

changing conditions within the area and citywide." (SA:280). The Staff Report specifically notes that the proposed rezoning is consistent with the expansion and changed conditions in the vicinity of the proposed development, including the Cocowalk retail complex update, additional transportation options, and new office and lodging projects.

The record reflects that the Commission received evidence in the form of letters of support from numerous homeowners who lived near the Property. The Commission also received letters of support from neighboring groups such as the Village West Homeowners and Tenants Association and the Coconut Grove Village Council.

Staff report recommendations constitute competent substantial evidence. *See Village of Palmetto Bay v. Palmer Trinity Private Sch., Inc.,* 128 So. 3d 19, 26-27 (Fla. 3d DCA 2012). Here, we find that the City staff conducted a complete review of the Respondents' Application, and recommended approval. We find that there is ample competent substantial evidence in the record to support the Commission's decision.

We conclude that the Commission followed the essential requirements of law and that there was competent substantial evidence to support the Commission's decision. The Petition for Writ of Certiorari is therefore **DENIED**.

TRAWICK, SANTOVENIA and WALSH, JJ., concur.

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