

Supreme Court of Florida

TUESDAY, NOVEMBER 17, 2009

CASE NO.: SC09-1255

Lower Tribunal No(s): 3D08-1064,
07-304-AP

MIAMI-DADE COUNTY

vs. RENE MIGUEL VALDES

Petitioner(s)

Respondent(s)

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the petition for review is denied.

No motion for rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d)(2).

LEWIS, CANADY, POLSTON, LABARGA, and PERRY, JJ., concur.

A True Copy

Test:



Thomas D. Hall
Clerk, Supreme Court



jn

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HON. ELLEN SUE VENZER, JUDGE

ROBERT A. CUEVAS, JR.
HON. MARK KING LEBAN, JUDGE
HON. BERTILA SOTO, JUDGE
HON. HARVEY RUVIN, CLERK

Third District Court of Appeal

State of Florida, January Term, A.D. 2009

Opinion filed January 21, 2009.
Not final until disposition of timely filed motion for rehearing.

No. 3D08-1064
Lower Tribunal No. 07-304 AP

Miami-Dade County,
Petitioner,

vs.

Rene Miguel Valdes,
Respondent.

On Petition for Writ of Certiorari to the Circuit Court for Miami-Dade County, Appellate Division, Bertila Soto, Mark King Leban and Ellen Sue Venzer, Judges.

R.A. Cuevas, Jr., Miami-Dade County Attorney, and John McInnis, Assistant County Attorney, for petitioner.

Gonzalez & Rodriguez and Javier L. Gonzalez, for respondent.

Before CORTIÑAS and ROTHENBERG, JJ., and SCHWARTZ, Senior Judge.

SCHWARTZ, Senior Judge.

In an excellent opinion by Judge Venzer, the appellate division determined that the County's refusal to relax the single-family residential zoning on the

respondent's property notwithstanding that it was effectively surrounded¹ by a busy thoroughfare, commercial property, and a group home,² resulted in the continuance of an impermissible instance of "reverse spot zoning." See *Tollius v. City of Miami*, 96 So. 2d 122 (Fla. 1957); *City of Miami Beach v. Robbins*, 702 So. 2d 1329 (Fla. 3d DCA 1997); *Debes v. City of Key West*, 690 So. 2d 700 (Fla. 3d DCA 1997); *City of Coral Gables v. Wepman*, 418 So. 2d 339 (Fla. 3d DCA 1982), review denied, 424 So. 2d 760 (Fla. 1982); *Olive v. City of Jacksonville*, 328 So. 2d 854 (Fla. 1st DCA 1976); *City of S. Miami v. Hillbauer*, 312 So. 2d 241 (Fla. 3d DCA 1975); *Manilow v. City of Miami Beach*, 213 So. 2d 589 (Fla. 3d DCA 1968); *Kugel v. City of Miami Beach*, 206 So. 2d 282 (Fla. 3d DCA 1968).

There is no departure from the essential requirements of the law in this decision, much less, as is required to grant relief on second-tier certiorari review,

¹ Except to the rear.

² That a group home, with its accompanying elevated human and vehicular traffic, is permitted by the Code in a single-family residential zone does not make it a single-family residence, see generally 2 Kenneth H. Young, *Anderson's Am. Law of Zoning* § 9.31 et seq. (4th ed. 1996), so as to avoid contributing to the legal isolation of Valdes's property. See *Tollius v. City of Miami*, 96 So. 2d 122 (Fla. 1957). Legal consequences are "determined not by what [something] is called, but by what it does" and is. *Boyd v. Boyd*, 478 So. 2d 356, 357 (Fla. 3d DCA 1985), review denied, 488 So. 2d 67 (Fla. 1986). See also *Walls v. Endel*, 20 Fla. 86 (1883). Otherwise stated, "you can put nail polish on an elephant, but . . ."

one which resulted in a miscarriage of justice.³ See *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624 (Fla. 1982); *Kirpalani v. State Dep't of Highway Safety & Motor Vehicles*, ___ So. 2d ____ (Fla. 4th DCA Case no. 4D08-3164, opinion filed, Dec. 24, 2008) (on motion for rehearing granted). We think that the direct contrary is true.

Certiorari denied.

CORTIÑAS, J., concurs.

³ In deciding whether a particular zoning scheme results, as here, in an instance of spot or reverse spot zoning, the familiar “fairly-debatable-competent-substantial-evidence” standards of review do not strictly apply. Instead, the issue is more appropriately considered as a matter of law, applying undisputed facts concerning the characteristics of the location in question and its surroundings to established legal principles. See *City Comm'n of the City of Miami v. Woodlawn Park Cemetery Co.*, 553 So. 2d 1227, 1230-33 (Fla. 3d DCA 1989), and cases collected. In any event, as was said in *Debes*, 690 So. 2d at 701 n.4:

[T]he application of any possible formulation of the showing necessary either to support or to overturn a local government's decision of the present kind, including the “fairly debatable” standard deemed appropriate in *Martin County v. Yusem*, 690 So.2d 1288 (Fla. Case No. 87,078, opinion filed, March 27, 1997)[22 FLW S156]; e.g., *Allapattah Community Ass'n v. City of Miami*, 379 So. 2d 387 (Fla. 3d DCA 1980), cert. denied, 386 So. 2d 635 (Fla. 1980), would yield the same result. See *Metropolitan Dade County v. Fuller*, 515 So. 2d 1312, 1314 n. 4 (Fla. 3d DCA 1987).

ROTHENBERG, J. (dissenting).

Miami-Dade County seeks second-tier certiorari review of an opinion issued by the circuit court, sitting in its appellate capacity, quashing a decision of the Miami-Dade County Board of County Commissioners (“the Board”). The decision the circuit court quashed was the Board’s affirmance of the denial of Rene Miguel Valdes’ (“Valdes”)⁴ application for a district boundary change from RU-1 (single family use) to RU-5A (semi-professional office district), or in the alternative, a use variance to permit RU-5A uses within his property’s RU-1 zoning district. Because the circuit court panel failed to observe the essential requirements of the law during its review, the petition should be granted, and the circuit court’s opinion should be quashed.

The subject property is a single family residence that faces S.W. 82nd Avenue and is one lot south of Coral Way. Because of the increase in traffic and noise along Coral Way, most of the residences that front Coral Way have been converted to non-residential uses and offices. After public hearings, the lots facing Coral Way were granted use variances converting the residential uses, RU-1, to non-residential office uses, zoned either RU-2 or RU-5A. Although Valdes’

⁴ Although the circuit court refers to the respondent as Rene Miguel Valdez, the application reflects that the correct spelling of the respondent’s name is Rene Miguel Valdes.

residential property does not face Coral Way, and the properties to the north, east, and west of Valdes are all zoned RU-1, single family residences, he sought approval of a zoning change or a use variance to permit him to use his property as an office. Valdes' application was rejected. The Board affirmed the denial of Valdes' application. The circuit court, sitting in its appellate capacity, reviewed the Board's decision on certiorari review, and quashed the Board's decision after concluding that the denial of Valdes' request "appears to us as arbitrary and not fairly debatable" and "[a]s such, the Board's actions amount to reverse spot zoning which is impermissible."

THIS COURT'S STANDARD OF REVIEW

Because the circuit court's opinion is before this Court on second-tier certiorari review, our review is limited to determining whether the circuit court appellate panel afforded the parties procedural due process and followed the essential requirements of the law. Dusseau v. Metro. Dade County Bd. of County Commr's, 794 So. 2d 1270, 1274 (Fla. 2001).⁵ The parties do not dispute, and I agree with the majority that the circuit court appellate panel afforded the parties procedural due process. The following analysis, therefore, only addresses the second prong and will demonstrate that the circuit court failed to follow the essential requirements of the law and why its opinion must be quashed.

⁵ In Dusseau, the Florida Supreme Court noted that the questions of whether the circuit court applied the correct law, and whether the circuit court observed the essential requirements of the law, are equivalent. Id.

LEGAL ANALYSIS

The circuit court's opinion must be quashed as the court departed from the essential requirements of the law by: (1) failing to address whether there was competent substantial evidence to support the Board's decision, opting instead to conduct its own independent review; and (2) ignoring clear and unambiguous statutory authority when it concluded that the group home to the south of the subject property was "commercial in nature."

(1) Failure to address whether the Board's decision was supported by competent substantial evidence

Similar to this Court's review, the circuit court's certiorari review when it sits in its appellate capacity is prescribed by law. In City of Deerfield Beach v. Vaillant, 419 So. 2d 624, 626 (Fla. 1982), the Florida Supreme Court outlined the correct law applicable to the circuit court's certiorari review as follows:

Where a party is entitled as a matter of right to seek review in the circuit court from administrative action, the circuit court must determine whether procedural due process is accorded, whether the essential requirements of the law have been observed, and whether the administrative findings and judgment are supported by competent substantial evidence.

Thus, after disposing of the due process issue, the circuit court panel's review was limited to determining whether the Board followed the law and whether its decision was supported by competent substantial evidence. The circuit court, however, reweighed the evidence and reconsidered the merits of Valdes'

application, which it was not permitted to do, thereby usurping the fact-finding authority of the Board. Id. at 1275.

The circuit court panel stated that it was “not persuaded by the Board’s argument,” and held that the Board’s denial of Valdes’ request for re-zoning appeared arbitrary, and not fairly debatable,⁶ resulting in impermissible reverse spot zoning. These findings and the opinion issued by the circuit court reflect that the circuit court: (A) failed to consider whether there was competent evidence that supported the Board’s decision; and (B) reweighed the evidence, which it was not permitted to do.

The circuit court’s findings that the Board’s decision was arbitrary and not fairly debatable are conclusory, as the panel failed to address whether the record facts supported the Board’s decision to deny Valdes’ application. Instead of reviewing the record to determine whether the Board’s decision was supported by competent substantial evidence, the circuit court proceeded to explain, at length, the evidence contrary to the Board’s decision. The evidence contrary to the Board’s decision was, however, outside the scope of the circuit court panel’s review. Dusseau, 794 So. 2d at 1276. On first-tier certiorari review, the circuit

⁶ The “fairly debatable” test sometimes provides for review of legislative municipal zoning actions; however, it “effectively provides” the same standard as the competent substantial evidence standard outlined above. Town of Indialantic v. Nance, 400 So. 2d 37, 40 (Fla. 5th DCA 1981), approved, 419 So. 2d 1041 (Fla. 1982). “By whatever name it is called, the task of the court reviewing a zoning variance decision is to insure that the authority’s decision is based on evidence a reasonable mind would accept to support a conclusion.” Id.

court's task was not to reweigh the evidence or to determine if a contrary conclusion could be reached. See Town of Manalapan v. Gyongyosi, 828 So. 2d 1029, 1034 (Fla. 4th DCA 2002). In Dusseau, 794 So. 2d at 1275-76, the Florida Supreme Court held as follows:

The sole issue before the court on first-tier certiorari review is whether the agency's decision is lawful. The court's task vis-à-vis the third prong of *Vaillant* is simple: The court must review the record to assess the evidentiary support for the agency's decision. Evidence contrary to the agency's decision is outside the scope of the inquiry at this point, for the reviewing court above all cannot reweigh the "pros and cons" of conflicting evidence. While contrary evidence may be relevant to the wisdom of the decision, it is irrelevant to the lawfulness of the decision. 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.

(emphasis added). Accord Gyongyosi, 828 So. 2d at 1034; see also Fla. Power & Light Co. v. City of Dania, 761 So. 2d 1089, 1093 (Fla. 2000) (holding that where the circuit court "substituted its judgment for that of the City . . . the circuit court departed from the essential requirements of the law"); City of Hialeah Gardens v. Miami-Dade Charter Found., Inc., 857 So. 2d 202, 206 (Fla. 3d DCA 2003) (holding that reweighing the evidence is synonymous with failing to observe the essential requirements of the law).

The circuit court's disagreement with the Board's decision without deferring to the Board's fact-finding authority, was clearly error requiring quashal. As the Florida Supreme Court stated in Dusseau:

The issue before the [circuit] court is not whether the agency's decision is the "best" decision or the "right" decision or even a "wise" decision, for these are technical and policy-based determinations properly within the purview of the agency. The circuit court has no training or experience—and is inherently unsuited—to sit as a roving "super agency" with plenary oversight in such matters.

794 So. 2d at 1276.

(2) The panel ignored binding statutory authority

Central to the circuit court panel's decision was its finding that the denial of Valdes' request for a zoning change was an impermissible act of reverse spot zoning. Such a finding required the circuit court panel to ignore or reweigh the record evidence and findings of the Board and to ignore binding statutory authority.

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 1997)
(emphasis added).

The circuit court panel found that Valdes' lot was alone in the "surrounding sea of contrary zoning classification." In making this finding, the circuit court ignored the record evidence that supported the Board's findings—that all of the properties surrounding the Valdes property, other than those facing Coral Way, are zoned RU-1 single family residences and based its conclusion, in part, upon its

finding that the group home to the south of Valdes' property was "commercial in nature." The circuit court reasoned that: "Typically, group homes have caretakers assisting the occupants or providing services to assist the elderly with daily activities. This Court is mindful of these activities and agrees with Mr. Valdez [sic] that **operating a group home for the elderly is commercial in nature.**" (emphasis added). Thus, the circuit court deemed that the lot was being used for a commercial purpose.

In making this finding, the circuit court panel ignored clear statutory authority. Section 419.001(2), Florida Statutes (2006), specifically defines the type of group home in question as a single family home with a residential use. "Homes of six or fewer residents which otherwise meet the definition of a community residential home **shall be deemed a single-family unit and a non-commercial, residential use** for the purpose of local laws and ordinances." (emphasis added). Where the legislature establishes the public policy of the state in crystal-clear terms, the circuit court cannot ignore or re-write the law, nor form its own conclusions.

The circuit court departed from the essential requirements of the law when, without constitutional challenge or a finding holding the statute to be unconstitutional, it failed to apply the statutory definition regulating the treatment of the property on which the group home sits. Thus, the evaluation performed by

the circuit court was based upon a false premise that the property to the south of Valdes' property was "commercial in nature."

CONCLUSION

The circuit court's job was simple—to determine whether the Board's decision was supported by the evidence. Rather than performing this review, the circuit court panel failed to address whether there was competent substantial evidence in the record to support the Board's findings, reweighed the evidence, ignored binding statutory authority which requires that the group home in question be treated as a single family residence with a non-commercial residential use, and reached its own conclusions. This was a clear departure from the law requiring that the instant petition be granted and the opinion under review be quashed. For the above stated reasons, I respectfully dissent from the contrary opinion reached by my learned colleagues.

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

RENE MIGUEL VALDEZ,

Petitioner,

v.

MIAMI DADE COUNTY BOARD OF
COUNTY COMMISSIONERS,

Respondent.

APPELLATE DIVISION

CASE NUMBER: 07-304 AP

LOWER CASE NO: Z-607

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Opinion filed: March 31, _____, 2008.

On Petition for Writ of Certiorari from the Miami-Dade County Board of County Commissioners.

Javier L. Gonzalez, Esq., of Gonzalez & Rodriguez, P.L., for Petitioner.

John McInnis, Esq., Assistant Miami-Dade County Attorney, for Respondent.

Before SOTO, LEBAN, and VENZER, JJ.

VENZER, J.

Petitioner Rene Miguel Valdez ("Mr. Valdez") seeks review of a decision by the Miami-Dade County Board of County Commissioners ("the Board"). The Board sustained the Community Zoning Appeals Board 10's decision to deny Mr. Valdez's application for a boundary change from RU-1 (single family use) to RU-5A (semi-professional office district), or

in the alternative a use variance to permit a RU-5A use in the RU-1 zoning district¹ to allow an architectural office on the property's premises.

Upon receipt of a petition for writ of certiorari, this Court's review is limited to a three part standard: (1) whether procedural due process was accorded; (2) whether essential requirements of the law were observed; and (3) whether the findings and judgment were supported by competent substantial evidence. *Dep't of Highway Safety & Motor Vehicles v. Wejebe*, 954 So. 2d 1245, 1248 (Fla. 3d DCA 2007).

Procedural due process rights are afforded to an individual when the person receives notice and an opportunity to be heard. *Joshua v. City of Gainesville*, 768 So. 2d 432, 438 (Fla. 2000). The Board argues that the Mr. Valdez was afforded procedural due process because he received notice and a hearing before the Board of County Commissioners. Mr. Valdez contends that he was denied his right to due process of law because of a commissioner's comments at the hearing.² The record reflects that Mr. Valdez did not object to the commissioner's comments

¹ Resolution No. Z-6-07 states in part that ". . . it was the opinion of the Board of County Commissioners, Miami-Dade County, Florida, that the grounds and reasons alleged by the appellants specified in the appeal were insufficient to merit a reversal of the ruling made by the Zoning Appeals Board in Resolution No. CZAB10-62-06 and that the appeal should be denied and decision of the Community Zoning Appeals Board 10 should be sustained. . . ." (R. at 2.)

² Mr. Valdez argues that Rule 7.01(g) of the Rules of Procedure governing the Board of County Commissioners was violated because Commissioner Souto made comments that implied that Mr. Valdez and his counsel were friends. The Commissioner even referred to Mr. Valdez as family. On April 26, 2007, Commissioner Souto made the following comments at the hearing:

[Commissioner Souto]: And I'm in the same situation here basically. These fellows in front of me are some of my best friends. Simon over there, Simon Ferro, is one of my best friends. Mr. Valdes [sic] too, my best friends. His brother was one of my best friends. And to the extent the word for this, we're friends, like family. But this has nothing to do with family or friends. This has to do with what's right or what's not right, and I hope they understand that and that everyone understands that.

Hr'g Tr. 32:8-20, Apr. 26, 2007 (R. at 37.)

even after the votes were recorded.³ We find that Mr. Valdez was afforded due process because he had notice and ample opportunity to participate at the Board hearing. Moreover, Mr. Valdez's failure to object at the hearing precludes him from raising the issue for the first time on appeal. *First City Sav. Corp. of Tex. v. S & B Partners*, 548 So. 2d 1156, 1158 (Fla. 5th DCA 1989) (circuit court on certiorari review of zoning decision will not consider issues not presented to the county commission), *review dismissed*, 554 So. 2d 1168 (Fla. 1989).

A departure from the essential requirements of law occurs when there has been a violation of a clearly established principle of law resulting in a miscarriage of justice. *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 528 (Fla. 1995).

The Florida Supreme Court has utilized the fairly debatable test to uphold zoning ordinances. *City of Miami Beach v. Lachman*, 71 So. 2d 148, 152 (Fla. 1953). So long as a zoning restriction is fairly debatable, that is, when it is "open to dispute or controversy on grounds that make sense, whether the zoning restriction advances the public health, welfare, safety, or morals of the community, the subject restriction is considered to be constitutional." *City Comm'n of City of Miami v. Woodlawn Park Cemetery Co.*, 553 So. 2d 1227, 1230 (Fla. 3d DCA 1989) (footnote and citations omitted).

However, if the zoning ordinance results in reverse spot zoning, then the restriction is not fairly debatable because it is confiscatory and invalid. *City of Miami Beach v. Robbins*, 702 So. 2d 1329, 1330 (Fla. 3d DCA 1997). In *Robbins*, the Third District Court of Appeal noted:

Reverse spot zoning occurs when the 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

³ Out of thirteen Commissioners voting, three commissioners were absent. The remaining ten Commissioners voted to deny Mr. Valdez's appeal with prejudice and sustain the Community Zoning Appeal Board 10's decision. (R. at 3.)

zoning island or zoning peninsula in a surrounding sea of contrary zoning classification.

Id.

In the case at bar, Mr. Valdez's property is located at 2425 S.W. 82nd Avenue in unincorporated Miami-Dade County, Florida. Mr. Valdez requested a zoning change from RU-1, single residential district, to RU-5A, semi-professional office district *or in the alternative* a use variance to permit an RU-5A classification to allow an architect's office on the premises. However, the Board decided that Mr. Valdez's request for a zoning change was incompatible with the area concerned and inconsistent with the intent of the land development plan for Miami-Dade County.

Upon this Court's review of the aerial, hearing, radius, and hand sketched maps of Mr. Valdez's property and the surrounding area (R. at 113-17), we are not persuaded by the Board's argument. Immediately north of Mr. Valdez's property is a travel agency and insurance company. Both of these properties have been granted use variances allowing RU-5A uses in an RU-2 zoning district. (Resp't Resp. to Pet. for Writ. of Cert., 4.) To the south of Mr. Valdez's property is a group home for the elderly which is still classified as RU-1. The Board avers that the group home is permitted to have RU-1 classification pursuant to section 419.001, Florida Statutes (2007). (Resp't Resp. to Pet. for Writ. of Cert., 4.) Typically, group homes have caretakers assisting the occupants or providing services to assist the elderly with daily activities. This Court is mindful of these activities and agrees with Mr. Valdez that operating a group home for the elderly is commercial in nature. To the east of Mr. Valdez's property, the land is classified as a single-family residence. (R. at 42.) However, the property to the west of Mr. Valdez's property is zoned single-family residence with a permitted office use.

Despite the large concentration of nonresidential activity surrounding Mr. Valdez's property, the Board denied Mr. Valdez similar zoning privileges as the surrounding property

owners. In *Woodlawn*, 553 So. 2d at 1233, the Third District held it confiscatory when a property owner is prevented from utilizing his property in a certain manner, even though adjoining property owners are not subject to the same restrictions.

The Board's denial of Mr. Valdez's request for a zoning change or use variance to permit an architectural office appears to us as arbitrary and not fairly debatable. As such, the Board's actions amount to reverse spot zoning which is impermissible. See *Debes v. City of Key West*, 690 So. 2d 700, 701 (Fla. 3d DCA 1997) (court noting that singling out the owner's property for disparate treatment represented an instance of "discriminatory spot zoning-or, in this context, spot planning-in reverse."); see also *Tollius v. City of Miami*, 96 So. 2d 122, 125 (Fla. 1957) (Supreme Court of Florida reversing a rezoning restriction because the property no longer retained the features at the time the zoning ordinance was passed and the block where the property was located was a veritable island); *Olive v. City of Jacksonville*, 328 So. 2d 854, 856 (Fla. 1st DCA 1976) (court holding that to deny the appellants' commercial zoning classification would constitute reverse spot zoning and the subject property was a literal peninsula); *Manilow v. City of Miami Beach*, 213 So. 2d 589, 592-93 (Fla. 3d DCA 1968) (court holding that to deny relief to the property owner would constitute reverse spot zoning and the property, except for the northern most part, was similar to a "veritable island"); *Kugel v. City of Miami Beach*, 206 So. 2d 282, 285 (Fla. 3d DCA 1968) (court holding that since the character of the property had been changed by other actions of the municipality, the zoning regulation was arbitrary and could not be characterized as fairly debatable). Similar to the reverse spot zoning examples we have cited, Mr. Valdez's property is a veritable island or, at the very least, a peninsula in a sea of commercially zoned property that substantially diminishes or renders its value to be virtually

worthless as a residential property. *See City of Miami Beach v. Robbins*, 702 So. 2d 1329, 1330 (Fla. 3d DCA 1997).

Therefore, we grant certiorari because the Board's decision does not comport with the essential requirements of the law and results in a miscarriage of justice. *Haines City Cmty. Dev. V. Heggs*, 658 So. 2d 523, 528 (Fla. 1995). The County Commission's decision to sustain the Community Zoning Appeals Board 10's decision to deny Mr. Valdez's application for a boundary change from RU-1 (single-family use) to RU-5A (semi-professional office district), or in the alternative a use variance to permit a RU-5A use in the RU-1 zoning district, is quashed. The matter is remanded to the Board with instructions to act in accordance with this opinion. Certiorari granted.

SOTO and LEBAN, JJ., concur.

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IN THE DISTRICT COURT OF APPEAL
OF FLORIDA, THIRD DISTRICT

CASE NO. 3D08-1064

LOWER COURT CASE NO. 07-304 AP

MIAMI-DADE COUNTY,

Petitioner,

v.

RENE MIGUEL VALDES,

Respondent.

**MIAMI-DADE COUNTY'S REPLY TO RESPONSE
TO PETITION FOR WRIT OF COMMON LAW CERTIORARI**

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INTRODUCTION AND SUMMARY

The issues presented in this case are whether the circuit court failed to apply the correct law, whether the decision of the Board of County Commissioners was supported by competent substantial evidence, whether the circuit court reweighed the evidence and substituted its judgment for that of the County Commission, whether the Respondent's rezoning application is inconsistent with the Comprehensive Development Master Plan (CDMP), and whether the Board's denial of the Respondent's rezoning request constitutes illegal reverse spot zoning.

The court below failed to apply the correct law and departed from the essential requirements of the law when it ignored competent substantial evidence supporting the decision of the Board of County Commissioners. The Court, instead, chose to reweigh the evidence and substitute its judgment for that of the County Commission.

The Opinion below presents a further departure from the essential requirements of the law in that the circuit court failed to apply "strict scrutiny" in evaluating Respondent Valdes' request for rezoning. Strict scrutiny requires strict compliance with the Comprehensive Development Master Plan (CDMP). The circuit court, however, disregards the undisputed fact that Respondent Valdes' application is, on its face, inconsistent with the CDMP. *Petition Appendix 1*

(Opinion), pg. 4.¹ Rather than applying strict scrutiny, the circuit court applied the “fairly debatable” test, a test that is applicable to legislative actions. *Id. at 3*. The fairly debatable test is no longer appropriately applied to quasi-judicial zoning actions; nonetheless, the Response endorses the same erroneous legal standard in urging this Court to affirm the Opinion below.

The circuit court’s conclusion that the denial of the Respondent’s rezoning request constitutes illegal reverse spot zoning is similarly erroneous. *P. App. 1, at 5-6*. There is ample record evidence of the residential character of much of the surrounding area. The record shows there are residential communities to the south and southwest of Respondent’s property along S.W. 82nd Avenue. *P. App. 3 (Recommendation)*, pg. 25. The circuit court’s conclusion that denial of Respondent’s application is reverse spot zoning is not only incorrect, it has the inevitable result of condemning the occupants of the residential community to further degradation of their community by encroachment of commercial uses along S.W. 82nd Avenue. The circuit court’s failure to apply the correct law, coupled with its departure from the essential requirements of the law, represents a miscarriage of justice that would result in approval of a rezoning application that in all respects is *inconsistent* with Miami-Dade County’s Comprehensive Development Master Plan.

¹ Record references shall be to the Appendix to the Petition for Writ of Common Law Certiorari.

I.

THE CIRCUIT COURT IGNORED COMPETENT SUBSTANTIAL EVIDENCE IN SUPPORT OF THE DECISION OF THE BOARD OF COUNTY COMMISSIONERS.

The circuit court's sole obligation on first-tier certiorari review is to determine whether the decision of the Board of County Commissioners was lawful. *Dusseau v. Metropolitan Dade County Board of County Commissioners*, 794 So.2d 1270, 1276 (Fla. 2001). In order to be lawful, the decision of the Board of County Commissioners must be supported by competent substantial evidence.

The record below is replete with competent substantial evidence supporting the decision of the Board of County Commissioners. The record includes a detailed analysis by the Director of the Department of Planning and Zoning.² In that analysis, the Director finds that approval of Valdes' zoning request would result in development that is "incompatible with the surrounding residential area,"

² The Director's analysis determined that "the introduction of RU-5A uses south of Coral Way along SW 82 Avenue would detrimentally impact the existing residential uses that are predominantly found in the area and would set a negative precedent for semi-professional office uses along non-major roadways. Further, the introduction of an office use will promote incompatible zoning and set a negative precedent for land use and building intensification in an established residential area. Moreover, the proposed rezoning to RU-5A would not be in keeping with [Land Use] Policy LU-4C of the CDMP that states that residential neighborhoods shall be protected from intrusion by uses that would disrupt or degrade the health, safety, tranquility and overall welfare of the neighborhood. As such, staff is of the opinion that the proposed RU-5A rezoning would be *incompatible with the surrounding area and inconsistent with the CDMP.*" *P. App. 3 at 8-9.* (Emphasis supplied.)

and “inconsistent with the CDMP.” *P. App. 3 at 10*. It is well-established that the recommendations of professional staff, based on specific fact-based considerations, constitute competent substantial evidence. *City of Hialeah Gardens v. Miami-Dade Charter Foundations, Inc.*, 857 So. 2d 202, 204 (Fla. 3d DCA 2003).

The foregoing notwithstanding, the circuit court improperly disregarded the competent substantial evidence in the record before it. In doing so, the circuit court departed from the essential requirements of the law and failed to apply the correct law.

II.

THE CIRCUIT COURT IMPROPERLY REWEIGHED THE EVIDENCE PRESENTED AT THE ZONING HEARING AND SUBSTITUTED ITS JUDGMENT FOR THAT OF THE BOARD OF COUNTY COMMISSIONERS.

From the face of the Opinion it is apparent that, the circuit court reweighed the evidence from the zoning hearing before the Board of County Commissioners, considered evidence contrary to the Board’s zoning decision, and substituted its judgment for that of the Board. In the Opinion the court states: “[T]he Board decided that Mr. Valdez's request for a zoning change was incompatible with the area concerned and inconsistent with the intent of the land development plan for Miami-Dade County. Upon this Court's review of the aerial, hearing, radius, and hand-sketched maps of Mr. Valdez's property and the surrounding area (R. at 113-17), **we are not persuaded by the Board's argument.**” (Emphasis supplied.)

P. App. 1 at 4. It is well-established, however, that evidence contrary to the Board's decision is outside the scope of the court's inquiry on certiorari review. *Dusseau*, 794 So.2d at 1276. *See also, Broward County v. G.B.V. Int'l, Ltd.*, 787 So.2d 838, 845 (Fla. 2001).

The Respondent suggests an illusory distinction between "reweighing" and "reviewing" the evidence. *Response, pg. 10.* Nowhere in the Opinion below, however, is there a finding or a statement by the circuit court that the record is devoid of competent substantial evidence to support the Board's decision. The court simply says it is "**not persuaded**" by the Board's argument. The sufficiency of the evidence or other record evidence was never raised. *P. App. 1 at 4. See, City of West Palm Beach Board of Zoning Appeals, v. Education Dev. Center, Inc.*, 504 So.2d 1385, 1386 (Fla. 4th DCA 1987) ("It is well settled that a circuit court is not empowered to disapprove findings of a board or administrative agency unless the record is devoid of substantial competent evidence to support the agency's decision" *citing Skaggs-Albertson's v. ABC Liquors, Inc.*, 363 So.2d 1082 (Fla. 1978); *City of Tampa v. Islands Four, Inc.*, 364 So.2d 738 (Fla. 2d DCA 1978)). Because the record below contains ample competent substantial evidence to support the Board's decision, it is apparent that the circuit court did not merely review the record, but reweighed the evidence to reach a contrary conclusion.

The circuit court further erred in finding that the group home to the south of the Respondent's property is a commercial use. A group home (a community residential home with 6 or fewer residents) is a non-commercial residential use. **Section 419.001 (2), Fla. Stat.** The circuit court's observation that "[t]ypically group homes have caretakers assisting the occupants or providing services to assist the elderly with daily activities" is speculative. There is no evidence in the record as to whether there are caretakers or other non-resident personnel involved in day-to-day operations of the group home, the numbers of such personnel, or the impact that any such personnel may have had on the surrounding community.

From the foregoing, it is apparent that the circuit court reweighed the evidence of record considered irrelevant contrary evidence, and reached a different conclusion. This action by the circuit court constitutes a clear failure to apply the correct law and a departure from the essential requirements of the law.

III.

THE RESPONDENT'S PROPOSED DEVELOPMENT IS INCONSISTENT WITH MIAMI-DADE COUNTY'S COMPREHENSIVE DEVELOPMENT MASTER PLAN.

Supreme Court precedent clearly states that "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.” *Board of County Commissioners of Brevard County v. Snyder*, 627 So.2d 469, 476 (Fla. 1993). The Respondent fails to sustain this burden. The Director of the Department of Planning and Zoning determined that the Respondent’s rezoning proposal is inconsistent with Miami-Dade County’s CDMP. *P. App. 3 at 10.* As previously stated, professional staff recommendations, based on specific fact-based considerations, constitute competent substantial evidence. *Miami-Dade Charter Foundation, Inc.*, 857 So. 2d at 204. The circuit court and the Respondent, however, disregard the fact that the Respondent’s requested rezoning is inconsistent with the CDMP. Nothing in the record or in the Opinion below rebuts or refutes the Planning and Zoning Director’s determination that the requested rezoning to RU-5A or the alternative request for a use variance to permit RU-5A uses in the RU-1 zoning district is inconsistent with the CDMP.

Because the zoning decision of the Board of County Commissioners is quasi-judicial in nature, it is subject to strict scrutiny review. *Snyder at 475.* The fairly debatable test utilized by the circuit court and urged by the Respondent is not applicable. In urging this Court to endorse the fairly debatable test, the Respondent misapprehends its proper application. The fairly debatable test is applicable to a *legislative* act, such as establishing policy or adopting a zoning ordinance. *Id.* However, where, as here, the adopted zoning ordinance is applied

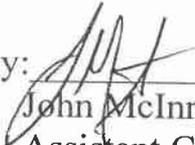
to a specific parcel of property or zoning application, strict scrutiny review is required. *Id. at 474.* (“[R]ezoning actions which have an impact on a limited number of persons or property owners, on identifiable parties and interests, where the decision is contingent on a fact or facts arrived at from distinct alternatives presented at a hearing, and where the decision can be functionally viewed as policy application, rather than policy setting, are in the nature of ... quasi-judicial action....) In the instant case, the circuit court’s failure to employ strict scrutiny in evaluating the Respondent’s rezoning request results in its endorsement of an application that is inconsistent with the CDMP. For this reason, the Opinion below represents a failure to apply the correct law resulting in a departure from the essential requirements of the law. The Opinion below must be quashed.

CONCLUSION

Based on the arguments and authorities set forth in this Reply and the Petition for Writ of Common Law Certiorari, Petitioner submits that the circuit court below failed to apply the correct law. Accordingly, Petitioner, Miami-Dade County, respectfully requests that this Court grant its Petition for Writ of Common Law Certiorari and quash the Opinion below.

RESPECTFULLY SUBMITTED

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CERTIFICATE OF SERVICE

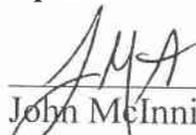
I HEREBY CERTIFY that a true and correct copy of the foregoing PETITIONER'S REPLY TO RESPONSE TO PETITION FOR WRIT OF CERTIORARI was served by mail this 18th day of July 2008 upon Javier L. Gonzalez, Esq., GONZALEZ & RODRIGUEZ, P.L., 999 Ponce de Leon Blvd., Ste. 1135, Coral Gables, FL 33134.



John McInnis
Assistant County Attorney

CERTIFICATE OF COMPLIANCE WITH RULE 9.100

I HEREBY CERTIFY that the foregoing Reply to Response to Petition for Writ of Certiorari is in compliance with the font requirement of Rule 9.100, Fla. R. App. P., utilizing Times New Roman 14-point font.



John McInnis
Assistant County Attorney