IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION

SEAMARK, INC., a Florida not for profit corporation, PROTECT ST. PETE BEACH ADVOCACY GROUP, a Florida not for profit corporation, and KEN BARNES, individually,

Petitioners,

Case No.: 24-000008-AP

v.

CITY OF ST. PETE BEACH, FLORIDA, a Political Subdivision of the State of Florida, CP ST. PETE, LLC, a Foreign limited liability company,

Respondents.
_____/

RESPONSE TO PETITION FOR WRIT OF CERTIORARI PURSUANT TO FLA. R. APP. P. 9.100(j)

This Court should dismiss the instant Petition because the Petitioners failed to establish special injury or damages resulting from the local government approval at issue and, thus, lack standing. Alternatively, the Petition should be denied because – based upon the Court's narrow scope of review – it is clear that: (i) Petitioners were accorded due process; (ii) the City of St. Pete Beach followed the essential requirements of law when applying the correct criteria

established in its Land Development Code; and (iii) the City's decision is supported by competent substantial evidence in the record, including from multiple experts and the City's own professional staff, who recommended approval of the subject development application.

In the end, the Petition misstates facts in the record, misapprehends the City's Code and Florida law governing quasi-judicial review of development applications, and fails to set forth a valid basis to quash approval of the CUP Application. Accordingly, pursuant to Fla. R. App. P. 9.100(j), Respondent CP ST. PETE, LLC ("CP St. Pete"), files this Response to the Petition for Writ of Certiorari filed by Petitioners SEAMARK, INC. ("Seamark"), PROTECT ST. PETE BEACH ADVOCACY GROUP ("PSPB"), and KEN BARNES (collectively, the "Petitioners"), and requests that this Court dismiss this Petition for lack of standing or, alternatively, deny the Petition and uphold the City of St. Pete Beach's ("City") approval of CP St. Pete's CUP Application.

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Rules

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STATEMENT OF JURISDICTION

The Petition seeks the Court's review of the City's quasi-judicial decision approving the CUP Application. This Court has jurisdiction pursuant to Article V, Section 5 of the Florida Constitution, and Rules 9.030(c)(3) and 9.100(f), Florida Rules of Appellate Procedure.

STATEMENT OF FACTS[1]

Background and Zoning

Petitioners challenge the City's approval of CP St. Pete's conditional use application ("CUP Application") to redevelop and renovate the Sirata Beach Resort located at 5300, 5350, 5380, and 5390 Gulf Blvd, St. Pete Beach, Florida 33706 ("Property"). P. App. 1–13. CP St. Pete owns the Property, which consists of approximately 15.45 acres with 8.62 acres located landward of the Coastal

[1] Petitioners' Appendix fails to strictly comply with the requirements of Fla. R. App. P. 9.220(c)(2). For consistency purposes in this Response, references to the Petition will be (Pet. #). References to Petitioners' Appendix will be (P. App. #) with the appropriate references to the bates page, not the PDF page, except where necessary to provide additional clarification. Because the hearing transcripts did not include a bates page, Respondent C.P. St. Pete prepared a Supplemental Appendix with the transcripts from the December 5, 2023, February 21, 2024, and February 27, 2024 City Council Hearings (*i.e.*, the quasi-judicial hearings). These transcripts are cited as (R. App. #, T. p. ___, line ____) with appropriate references to the bates page, transcript page and line number(s).

Construction Control Line ("CCCL"). P. App. 307, 1523–1528. The Property is designated Large Resort District on the City's Future Land Use Map and zoned Large Resort for the portion landward of the CCCL and Preservation for the portion seaward of the CCCL. P. App. 307.

The Large Resort District is one of four "character districts" identified on the Future Land Use Map within an area called the Gulf Boulevard Redevelopment District. P. App. 2103. Accordingly, any development on the Property must comply with goals, objectives, and policies applicable to the Gulf Boulevard Redevelopment District ("GBRD") as a whole and the Large Resort District specifically. P. App. 2103. The City has specifically targeted the GBRD for "revitalization . . . through commercial and temporary lodging redevelopment that will attract residents and visitors." P. App. 352; GBRD of the Future Land Use Element of the St. Pete Beach Comprehensive Plan ("GBRD FLU"), Goal 1. The City has further targeted the Large Resort District for hotel redevelopment by increasing the permitted density and height for temporary lodging uses only. GBRD FLU, Large Resort District, Sec. (b). To utilize the Large Resort District's increased

permitted density and height, a property owner must obtain a conditional use permit ("CUP"). Code § 35.3(b)(1); P. App. 275.

The Property contains 9 buildings, 382 rooms, and 222,303 gross square feet. P. App. 2126. Building heights vary, with the tallest structure just below 116 feet. App. 307. The Bellweather Beach Resort located immediately south of the Property has a height of 142 feet, while the Seamark Condominiums to the immediate north are 119 feet tall. P. App. 2127.

CP St. Pete's CUP Application

On June 16, 2023, CP St. Pete submitted the CUP Application[2] for the development of 646 hotel rooms (inclusive of the existing 382 rooms for a net increase of 264 rooms) on the Property with a maximum height of 115.8 feet above base flood elevation.[3] P. App. 1496–1529. The CUP Application proposed to remove a building on

[2] Before submitting a CUP application, CP St. Pete held two publicly noticed informational community meetings. P. App. 308, 991–1015; R. App. 1003, T. p. 21, lines 4–7. The community meeting held on April 13, 2023 was voluntary, while the meeting held on April 20, 2023 fulfilled the City's requirements for a mandatory community meeting. See Code Sec. 39.17; R. App. 1003, T. p. 21, lines 7–8.

[3] The proposed height is less than the height of the existing structures to the immediate north and south of the Property.

the northern portion of the site and several ancillary buildings throughout the site, as well as a portion of the existing Sirata Resort. P. App. 1532–1534. The CUP Application also proposed to add two new hotel buildings: one to the north and one to the south of the existing Sirata. P. App. 1535. The northern hotel, a JW Marriott, would include 290 hotel rooms. P. App. 1535. The renovated Sirata would include 226 hotel rooms. P. App. 1535. The southern hotel, a Hampton Inn, would include 130 hotel rooms. P. App. 1535. Finally, the CUP Application proposed two parking garages to be shared between the three hotels. P. App. 2254.

The City held a publicly noticed Technical Review Committee ("TRC") review of the CUP Application on July 5, 2023. R. App. 1003, T. p. 21, lines 10–11. Following the TRC meeting, the CUP Application narrative was updated to clarify the inclusion of a rooftop pool amenity with dining, drinking, and music. P. App. 310, 1530–1545; R. App. 1003, T. p. 21, lines 11–15. A second TRC meeting was noticed and held on November 1, 2023 to address the added rooftop amenity. P. App. 310; R. App. 1003, T. p. 21, lines 15–16.

Planning Board and City Commission Hearings

The City's Planning Board held a publicly noticed quasi-judicial hearing on the CUP Application on November 13, 2023 and voted 4-1 to recommend approval with conditions. P. App. 2; R. App. 1003, T. p. 21, lines 17–18. The City Commission ("Commission") held a publicly noticed quasi-judicial hearing on the CUP Application on December 5, 2023. P. App. 2. After seven hours of presentations, testimony, public comment, and initial deliberations, the Commission voted to continue the hearing. P. App. 2. However, due to turnover of a majority of the Commissioners after the December 5, 2023 hearing,[4] the City decided to conduct a new public hearing on the CUP Application at a special meeting set for February 21, 2024. P. App. 385.

At the February 21, 2024 hearing, the City's professional planning staff again presented its findings on the CUP Application and recommended approval with conditions. The Commissioners

[4] The Legislature enacted into law a bill known as "SB 774" titled "Ethics Requirements for Public Officials," effective January 1, 2024, imposing heightened financial disclosure requirements on local government officials. As a result, four of the five City Commissioners announced their resignations at various times in late 2023.

questioned professional staff extensively during staff's presentation. R. App. 1001, T. p. 19, line 25–R. App. 1053, T. p. 71, line 8. CP St. Pete presented its evidence in support of the CUP Application, including the testimony of five experts in the areas of planning, architecture, landscape architecture, transportation, and civil engineering. R. App. 1076, T. p. 94, line 6–R. App. 1270, T. p. 288, line 11. The Commission asked numerous questions of CP St. Pete. R. App. 1076, T. p. 94, line 6–R. App. 1270, T. p. 288, line 11. The Commission then heard public comment and allowed PSPB to speak first and to present for 30 minutes—well over the allotted time for other public commenters. R. App. 1303, T. p. 321, line 21–R. App. 1304, T. p. 322, line 21.

After ten hours, the Commission closed the public hearing. Due to the late hour, the Commission voted to continue the meeting to February 27, 2024 to deliberate on the CUP Application. P. App. 2. The Mayor stated that no additional public comment would be received at the February 27, 2024 meeting. R. App. 1462, T. p. 480, lines 20–21; R. App. 1472, T. p. 7, lines 17–22.

On February 27, 2024, the Commission thoroughly discussed each of the conditions proposed by professional staff. R. App. 1505,

T. p. 40, line 3–R. App. 1510, T. p. 45, line 21. In working through each condition, the Commission further questioned staff and CP St. Pete to better understand certain aspects of the CUP Application and craft conditions that the Commissioners deemed appropriate. See R. App. 1511, T. p. 46, lines 8–9; R. App. 1514, T. p. 49, lines 11–13; R. App. 1516, T. p. 51, lines 8–10. The Commission voted to approve the CUP Application with 50 conditions, including specific conditions pertaining to rooftop dining and music, operational and design requirements, public benefits and the timing associated with the delivery and construction of the public benefits, landscaping requirements, and transportation improvements. R. App. 1700, T. p. 235, line 24–R. App. 1701, T. p. 236, line 16; P. App. 1–13. On March 5, 2024, the City issued Resolution 2023-21 approving the CUP Application with the 50 conditions imposed. P. App. 1–16.

NATURE OF RELIEF SOUGHT

CP St. Pete requests the Court dismiss the Petition for lack of standing. Alternatively, if the Court determines that the Petitioners have demonstrated the requisite standing to maintain this action, CP St. Pete requests the Court deny the Petition because the City

accorded Petitioners due process, followed the essential requirements of law, and relied upon competent substantial evidence in the record.

SUMMARY OF THE ARGUMENT

After months of engagement and collaboration between CP St. Pete, the City, and the community, the City Commission voted to approve the CUP Application, thereby permitting the transformative revitalization of an iconic beachfront development. Now, Petitioners challenge the City's approval of the CUP Application, but have failed to demonstrate standing to do so, i.e. a special injury that is different in kind and degree from the general community at large. The Petition should be dismissed on this basis.

Even if Petitioners do have standing, the Petition fails on the merits because the City accorded Petitioners procedural due process, complied with the essential requirements of law based on the City's Code and Florida law, and relied upon competent substantial evidence in the record in making its decision.

With respect to procedural due process, the City provided Petitioners, as participants in the quasi-judicial proceedings on the CUP Application, with not only an opportunity to be heard at the public hearings, but also an opportunity to present expert witnesses

and to present for a longer period of time than the general public. The Commissioners properly disclosed ex parte communications in accordance with all applicable Code requirements.

The City followed the essential requirements of law in making its decision. The City reviewed and applied the published conditional use criteria to the CUP Application, and refused to extend these criteria beyond their plain language, despite numerous requests from Petitioners.

Finally, the City's decision is supported by competent substantial evidence in the record. Not only did City staff prepare a 78-page staff report, which includes an analysis of every applicable Code criteria and Comprehensive Plan provision, but CP St. Pete also provided multiple expert reports and live testimony from five experts at the public hearings in the areas of planning, architecture, landscape architecture, transportation, and civil engineering. The CUP Application was critically reviewed by City staff and CP St. Pete's experts for nearly a year before the City approved the CUP Application. Accordingly, CP St. Pete requests that the Court deny the Petition.

STANDARD OF REVIEW

This Court's scope of review in certiorari proceedings challenging quasi-judicial local agency action is limited to determining whether (i) procedural due process was accorded; (ii) the essential requirements of the law were observed; and (iii) the administrative findings and judgment were supported by competent substantial evidence. *Broward County v. G.B.V. Int'l, Ltd.*, 787 So. 2d 838, 843 (Fla. 2001) (quoting *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982)).

First-tier certiorari review such as this is **not** a de novo review. Instead, the court is limited to the administrative record and items attached to the petition. *Evergreen v. Charlotte Cty.*, 810 So. 2d 526, 530 (Fla. 2d DCA 2002); *Town of Manalapan v. Gyongyosi*, 828 So. 2d 1029 (Fla. 4th DCA 2002). Deference is afforded to the City's interpretation of the laws it is charged with enforcing. *See G.B.V. Int'l Ltd.*, 787 So. 2d at 838; *City of Jacksonville Beach v. Marisol Land Dev., Inc.*, 706 So. 2d 354, 355 (Fla. 1st DCA 1998).

ARGUMENT

As a threshold matter, the Court should dismiss the Petition because Petitioners cannot demonstrate any special damages

resulting from the CUP Application approval and, thus, lack standing. Even on the merits, the approval must be upheld. The City provided Petitioners with procedural due process, complied with the essential requirements of law in rendering its approval, and the decision approving the CUP Application is supported by competent substantial evidence in the record.

I. Petitioners Lack Standing to Challenge the City's Approval of the CUP Application.

The Petition should be dismissed for lack of standing. Standing "is a threshold issue that must be resolved before reaching the merits of the case." *Solares v. City of Miami*, 166 So. 3d 887, 888 (Fla. 3d DCA 2015) (affirming dismissal of certiorari due to lack of standing), *rev. denied*, 177 So. 3d 1271 (Fla. 2015). If a petitioner lacks standing, circuit courts acting in an appellate capacity cannot exercise jurisdiction over a certiorari petition. *F & R Builders, Inc. v. Durant*, 390 So. 2d 784, 785–86 (Fla. 3d DCA 1980).

While Code Section 3.14 provides that "[a]ny person aggrieved by a final order of the city commission . . . may appeal the order to the circuit court," "aggrieved" is defined by reference to the standards set forth by the Florida Supreme Court in *Renard v. Dade County*.

See Skaggs-Albertson's v. ABC Liquors, Inc., 363 So. 2d 1082 (Fla. 1978) (applying the appropriate *Renard* standing test to evaluate whether a party was "aggrieved" for purposes of filing an appeal).

In *Renard v. Dade County*, the Court created three distinct types of standing, depending upon the reason for the challenge. 261 So. 2d 832 (Fla. 1972). If a litigant is trying to enforce a valid zoning ordinance, the litigant must demonstrate "special damages." *Id.* at 837. If a litigant is attacking a "validly enacted zoning ordinance as not being fairly debatable and therefore an arbitrary and unreasonable exercise of legislative power," the litigant must have a "legally recognizable interest, which is adversely affected by the proposed zoning action." *Id.* at 838. Finally, if a litigant is attacking a zoning ordinance as "void because it was not properly enacted, as where notice was not given" then "any affected resident, citizen or property owner" in the jurisdiction has standing. *Id.*

A. Petitioners must, but cannot, prove special damages.

Petitioners seek to enforce the City's zoning ordinance and plainly allege noncompliance with that local code. Accordingly, Petitioners must demonstrate a special injury or special damages in order to have standing. *Renard*, 261 So. 2d at 837. For example, in

Citizens for Responsible Development, Inc. v. City of Dania Beach, a public interest nonprofit and city resident filed a complaint challenging the procedures the city used to approve several development agreements permitting the expansion of an entertainment facility. 358 So. 3d 1, 3 (Fla. 4th DCA 2023). The nonprofit and resident alleged that the city ignored state law, approved uses that were not permitted within the property's zoning district, and failed to properly apply the code to the project. *Id.* at 6. The Court found that the arguments all alleged the city failed to comply with its own code and that the plaintiffs were trying to enforce the code through litigation, which "sounds suspiciously like *Renard* Part 1." *Id.* The Court held that the plaintiffs could not demonstrate special injury. *Id.*

Similarly here, Petitioners challenge the City's alleged failure to follow its Code with respect to issues such as processing intervenor requests, disclosing ex parte communications, and interpreting the conditional use criteria. *See* Pet. 23–24, 24–28, 30, 42–46. Petitioners admit that the Petition focuses on the City's alleged disregard for its own Code: "Simply put, the Commission is not allowed to disregard the City's Code and approve the Conditional Use, 2023-21, as in the

instant case, which violates the plain and unambiguous requirements therein." Pet. 62. Petitioners seek to enforce the Code, like in *Citizens for Responsible Development*, and therefore Petitioners are required to allege special injury.

Tacitly conceding that they *cannot* prove special damages, Petitioners instead argue that the lesser standards from *Renard* control. Petitioners state that they must satisfy *Renard* Part 2 standing (i.e., legally recognizable interest), but nowhere does the Petition allege that the City's approval of the CUP Application is unreasonable or arbitrary. Petitioners also state that they must satisfy *Renard* Part 3 standing (*i.e.*, any affected resident, citizen or property owner), but the Petition does not allege that the City failed to provide proper notice and an opportunity to be heard at the hearing.[5] Accordingly, *Renard* Part 2 and Part 3 do not apply.

[5] Petitioners' attendance and participation at the hearing disqualifies them from Part 3 Standing under *Renard*. *See Exchange Investments, Inc. v. Alachua County*, 481 So. 2d 1223, 1225 (Fla. 1st DCA 1985) (finding that petitioners had standing under third test where rezoning decision was adopted without notice and their attorney did not attend the hearing, but noting that same petitioners did *not* have standing under similar circumstances in previous challenge because attorney *did* attend the hearing, thereby presumably curing the defect).

B. There is no record evidence of special damages.

Under *Renard* Part 1, to enforce a valid zoning ordinance, the party "must allege and prove special damages peculiar to himself differing in kind as distinguished from damages differing in degree suffered by the community as a whole." *Renard*, 261 So. 2d. at 835, 837–38; *City of Ft. Myers v. Splitt*, 988 So. 2d 28, 31 (Fla. 2d DCA 2008). The special injury must bear a "nexus," "causal connection," or "causal relationship" to the quasi-judicial action. *Herbits v. City of Miami*, 207 So. 3d 274, 282 (Fla. 3d DCA 2016). Participation in the quasi-judicial proceeding is not enough to confer standing unless the participants plead and prove special injury. *O'Connell v. Fla. Dep't of Cmty. Affairs*, 874 So. 2d 673, 675 (Fla. 4th DCA 2004). Conclusory allegations are similarly insufficient and proximity to the project alone does not demonstrate that an alleged special injury different in kind. *Herbits v. City of Miami*, 207 So. 3d 274, 282 (Fla. 3d DCA 2016) ("The Appellants may be closer in proximity to the alleged adverse traffic conditions . . . but the City's alleged failure to obtain a fair market rental for the property has not been show to affect the seven Appellants in a manner 'different in kind, not merely greater in degree").

Further, an association must show the same "differing in kind" special injury as individuals. *City of Ft. Myers*, 988 So. 2d at 32 (citing *Renard,* 261 So. 2d at 835); *Izaak Walton League of Am. v. Monroe County*, 448 So. 2d 1170, 1174 (Fla. 3d DCA 1984). The association must cite to evidence in the record that: (i) a substantial number of its members, although not necessarily a majority, are substantially affected by the action; (ii) that the subject matter is within the general scope of the interests and activity for which the organization was created; and (iii) that the relief requested is of the type appropriate for the organization to receive on behalf of its members. *See Florida Home Builders Ass'n v. Dep't of Labor and Employment Security*, 412 So. 2d 351, 353-54 (Fla. 1982); *see also Florida League of Cities Inc. v. Department of Environmental Regulation*, 603 So. 2d 1363, 1366-67 (Fla. 1992).[6] "As to [*Renard* Part 1] suits, a non-profit corporation will rarely meet the 'special injury' requirements in order to enjoin zoning violations." *Upper Keys Citizen Ass'n, Inc. v. Monroe County*,

[6] *See also Fla. Chapter of the Sierra Club v. Suwannee Am. Cement Co., Inc.*, 802 So. 2d 520, 521-22 (Fla. 1st DCA 2001) (holding that an organization's interest in protecting rivers used by its members only amounted to a general interest in the environment and was insufficient to confer standing).

467 So. 2d 1018, 1021 n. 1 (Fla. 3d DCA 1985) (Ferguson, J., concurring).

The record here is devoid of any evidence that the Petitioners will suffer a special injury. As to PSPB, the only evidence in the record demonstrates that its alleged injury is shared in common with the community as a whole. PSPB recognized that tourists to the area share in its same interest. Pet. 130 (describing PSPB as an "organization dedicated to ensuring that development projects in St. Pete Beach beautify the community for the **mutual benefit** of **residents and visitors alike**") (emphasis added).While PSPB claims that its membership is limited to persons living near "Gulf Boulevard between 60th and 52nd Avenues," this assertion is unsubstantiated. *Compare Chapman v. Town of Redington Beach*, 282 So. 3d 979, 983 (Fla. 2d DCA 2019); *Carroll v. City of W. Palm Beach*, 276 So. 2d 491, 492 (Fla. 4th DCA 1973); *Kagan v. West*, 677 So. 2d 905, 908 (Fla. 4th DCA 1996).[7] In fact, PSPB seemingly concedes that its members are not adjacent owners to the Property and were not entitled to

[7] In every one of these cases finding standing, it was critical to the court's determination that it could verify the relationship between the plaintiff's property and the property in question *with record evidence*.

receive notice of the CUP Application. *See* Pet. 16–17 (limiting these characteristics to Seamark and Ken Barnes). Accordingly, PSPB has failed to prove by record evidence that its members will be adversely affected by the City's approval of the CUP Application.

Seamark and Ken Barnes similarly failed to provide record evidence[8] demonstrating a special injury different in kind from the community. While Florida law allows condominium associations to pursue lawsuits "on behalf of all unit owners concerning matters of common interest to most or all unit owners," there is no record evidence that Seamark suffered a special injury common to "most or all unit owners" that is **different in kind** from the general interest of the community at large. Section 718.111(3)(b)(1), Florida Statutes. The Petition proffers the boilerplate claim that Seamark and Ken Barnes are affected by the CUP Application "based on their stated concerns of compatibility, significant changes to the character of the locale, visual impacts, traffic, noise and light impacts, and enjoyment

[8] It appears that Petitioners added evidence to the record in support of Seamark's standing to file the Petition. Pet. App. 18–129. This information was not part of the record in the hearings below. CP St. Pete objects to this information and requests that this Court strike it from the record.

of quiet and peaceful evenings." Pet. 17. These are not unique to Seamark and Ken Barnes. For example, perceived traffic concerns are insufficient to establish special damages. *Citizens for Responsible Development, Inc. v. City of Dania Beach*, 358 So. 3d 1, 3 (Fla. 4th DCA 2023) (holding increased traffic is not a special injury under *Renard* Part 1).

"A party must have standing to file at its inception and may not remedy this defect by subsequently obtaining standing." *Venture Holdings & Acquisitions Grp., LLC v. A.I.M. Funding Grp., LLC*, 75 So. 3d 773, 776 (Fla. 4th DCA 2011). Petitioners must prove their standing through evidence they presented at the applicable quasi-judicial hearing before the local government. *Battaglia Fruit Co. v. City of Maitland*, 530 So. 2d 940, 943 (Fla. 5th DCA 1988); *City of Ft. Myers v. Splitt*, 988 So. 2d 28, 33 (Fla. 2nd DCA 2008). Thus, this Court is confined to the "factual basis" established by Petitioners in the record. Petitioners did not allege or provide sufficient "factual basis" to demonstrate a special injury. Having failed to do so, the Petition should be dismissed for lack of standing.

Should the Court determine Petitioners have standing, the Petition should be denied because, as detailed below, (i) the City

accorded Petitioners procedural due process during the CUP Application hearings; (ii) the City followed the essential requirements of law by applying the correct conditional use criteria set forth in the City's Code; and (iii) the City's approval of the CUP Application is supported by competent substantial evidence in the record.

II. Petitioners Failed to Establish a Violation of Procedural Due Process.

Petitioners challenge must fail because they have not established a violation of procedural due process. To the contrary, they were accorded sufficient procedural due process as demonstrated in the record. "[T]he concepts of due process in an administrative proceeding are less stringent than in a judicial proceeding." *Ross v. City of Tarpon Springs*, 802 So. 2d 473, 474 (Fla. 2d DCA 2001). While "[a] participant in a quasi-judicial proceeding is clearly entitled to some measure of due process[,] . . . [t]he issue of what process is due depends on the function of the proceeding as well as the nature of the interests affected." *Water Servs. Corp. v. Robinson*, 856 So. 2d 1035, 1039 (Fla. 5th DCA 2003).

"A quasi-judicial hearing generally meets basic due process requirements if the parties are provided notice of the hearing and an

opportunity to be heard. In quasi-judicial zoning proceedings, the parties must be able to present evidence, cross-examine witnesses, and be informed of all the facts upon which the commission acts." *Jennings v. Dade County*, 589 So. 2d 1337, 1340 (Fla. 3d DCA 1991). The parties "are the applicant and the government agency." *Carillon Cmty. Residential v. Seminole County*, 45 So. 3d 7, 11 (Fla. 5th DCA 2010).

A *participant's* rights are not the same as those of a party. *Jennings*, 589 So. 2d at 1340; *Carillon*, 45 So. 3d at 9 (holding for due process purposes, "it is important to distinguish between parties and participants"); *Schopke v. City of Melbourne*, Case No. 92-12637-AP (Fla. 18th Cir. Ct. 1993) ("The *Jennings* decision does not, in any way, recognize a right on behalf of all neighboring property owners to cross-examine any and all individuals who may speak for or against the zoning application."). Florida law is clear that members of the public only have a general right to speak about the matter, and presentations should be limited to a few minutes for each participant. *See, e.g.*, section 286.0115(2)(b), Florida Statutes; *Jones v. Heyman*, 888 F.2d 1328 (11th Cir. 1989) (limiting participant presentations to only two or three minutes for each participant).

The only parties to the CUP Application are the City and CP St. Pete (*i.e.*, the Respondents). CP St. Pete's interest involves constitutionally-protected property rights and the decision reached by the Commission will have a direct, immediate, and significant impact on such property rights. Conversely, while Petitioners *may* have an *indirect* interest in the decision, any such interest is not the same as CP St. Pete's interest. The City appropriately accorded Petitioners due process as participants, not parties, to the quasi-judicial proceeding.

A. The City properly denied Petitioners' request to intervene.

Petitioners argue, without citation to any authority, that the City violated procedural due process by denying Petitioners' request to intervene as parties in the CUP Application proceeding. But the Code does not provide any procedure for intervention and does not confer the right for Petitioners to intervene in this quasi-judicial proceeding.

In reviewing Petitioners' intervention request at the February 21, 2024 hearing, the City Attorney correctly advised the Commission: "the city code itself **does not have any criteria** for

which to designate somebody as an intervenor party or an affected party or an interested party. So therefore I recommend that you not try to make up any kind of procedure or criteria for doing that." *See* R. App. 991, T. p. 9, lines 10–14 (emphasis added). The City is required to follow the plain language of the Code and cannot extend or add requirements. *See Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984) (holding the judiciary is "without power to construe an unambiguous statute in a way that would extend, modify, or limit its express terms or its reasonable and obvious implications.").

Further, "when a statute or code provision lists the areas to which it applies, it will be construed as excluding from its reach any areas not expressly listed." *Siegle v. Lee County,* 198 So. 3d 773, 775 (Fla. 2d DCA 2016). By way of comparison, the City expressly permits intervention in parking violation hearings. *See*, *e.g.*, St. Pete Beach Code of Ordinances, Sec. 82.170(b) (providing, in relation to parking violation hearings, "Any interested party or person may make application and upon good cause shown may be allowed by the hearing officer, in the reasonable exercise of such officer's discretion, to intervene in a pending proceeding."). Had the City desired to permit intervention here, it could have implemented similar language. The

absence of such language indicates that intervention is not permitted.

Bayshore in Grove, Inc. v. City of Miami, 2020 WL 7681024 (Fla. 11th Jud. Cir. 2020), is instructive. There, the Historic and Environmental Preservation Board denied a property owner's request to develop and operate a campus for an all-boys school. *Id.* The owner appealed to the city commission and the adjacent neighbors moved to intervene. *Id.* After the commission denied intervention, the neighbors filed a petition for writ of certiorari to quash the denial of intervention. *Id.*

In upholding the denial, the Court recognized that while the city code permitted intervention in zoning proceedings, it did not similarly provide for intervention in historic preservation proceedings. *Id.* at *3. The Court concluded: "As is evident from our review of Chapter 17, Chapter 23 and Miami 21, the City intended to allow intervention in zoning proceedings while not allowing intervention in historic and environmental preservation proceedings." *Id.* By following its own code, the Court held "there was no violation of due process by the Commission in denying the Petitioners the opportunity to intervene." *Id.* at *2. Similarly here, where the Code does not expressly permit

intervention, there is no right to intervene and Petitioners' due process rights were not violated by a denial of intervention.

Petitioners argue that Code Section 2-66(b) creates a right to party-intervenor status because it references that party-intervenors must be sworn and subject to cross-examination. This reference does not create the *process* to request intervention, nor does it confer any *right* to intervene. Code § 2-66(b). Rather, Section 2-66(b) is a verbatim recitation of section 286.0115(2)(b), Florida Statutes. The fact that the City copied this statutory provision in its Code does not indicate an intent to provide Petitioners the ability to intervene as parties at the hearing or otherwise suggest that denial of intervention was improper.[9]

Even if Code Section 2-66(b) did create a right to party-intervenor status, which it does not, the City exercised its discretion in refusing to grant intervention. *See Fasig v. Fla. Soc'y of Pathologists*, 769 So. 2d 1151, 1153 (Fla. 5th DCA 2000) ("The power

[9] All that can be said of Section 2-66(b) is that *if* the City expressly provides for intervention in its Code *and* establishes the process and standard for same, *then* party-intervenors must be sworn and subject to cross-examination.

to grant or deny intervention in a pending litigation rests within the sound discretion of the trial court and will not be disturbed without a showing of abuse of discretion."); *Union Cent. Life Ins. Co. v. Carlisle*, 593 So. 2d 505, 508 (Fla. 1992) (recognizing that courts may deny the intervention or allow it upon conditions). Accordingly, the refusal to grant intervention did not violate Petitioners' due process rights.

Moreover, extending party status to Petitioners would violate Florida law and CP St. Pete's due process rights. *Carillon*, 45 So. 3d at 7. Neighboring landowners are participants at the hearing. To allow all neighboring property owners to exercise the same rights as parties would "create a cumbersome, unwieldy procedural nightmare for local government bodies" to the detriment of the parties. *Id.* at 11; *Jennings*, 589 So. 2d at 1340. Intervention should not be granted where it "will in any way delay or disrupt the proceedings or cause disadvantage to any party." *Bay Park Towers Condo. Ass 'n, Inc. v. HJ Ross & Assocs.*, 503 So. 2d 1333, 1335 (Fla. 3d DCA 1987).

The Court in *Carillon* examined whether neighboring landowners were denied due process where they were not permitted to participate as parties in the quasi-judicial hearing, finding:

> [w]hile arguably the Petitioners' enjoyment of their property will be impacted by the action of the BCC, they are not being deprived of the use of their property, whereas, the developers have a compelling interest in developing the property in question. The risk of an erroneous deprivation is low. **The Petitioners were able to present their witnesses. Furthermore, while the BCC did not permit the cross examination, it did permit questions to be directed to the board, which in turn would address the questions to the appropriate individuals. Thus, while the questioning might not have been the form the Petitioners preferred, they were provided with an opportunity to present questions to the developer's witnesses**. Finally, **land use hearings are not in the same form as traditional adversarial hearings** during which opposing parties are clearly delineated and those entitled to cross examine witnesses can be clearly identified. Rather, land use hearings are public hearings during which any member of the public has a right to participate. At the hearing in question, in addition to the witnesses for the developers and the petitioners, twenty-five community members spoke at the hearing. **It would be impractical to grant each interested party the right to cross-examine the witnesses at such a hearing, especially in light of the fact that the BCC provides a procedure by which the witnesses can be questioned**.

Carillon, 45 So. 3d at 11–12 (emphasis added). Similarly here, no record evidence suggests that Petitioners will be deprived of use of their property and the risk of an erroneous deprivation is low.

Petitioners were permitted to present witnesses and direct questions to the Commission. R. App. 1306, T. p. 324, line 22–R. App. 1330, p. 348, line 11. Lastly, permitting all of the numerous public participants at the hearing to similarly have intervenor-status would "create a cumbersome, unwieldy procedural nightmare" for the City related to a hearing that already exceeded ten (10) hours. For the same reasons set forth in *Carillon*, Petitioners were not denied due process when their roles were limited to public participation at the hearing.

B. The Commissioners properly disclosed ex parte communications.

Petitioners argue that the City violated their due process rights by engaging in ex parte communications. Courts discourage ex parte communications in quasi-judicial proceedings because they create a "presumption of prejudice." *Jennings*, 589 So. 2d at 1341. However, local governments may rebut the presumption by adopting a process to disclose ex parte communications pursuant to section 286.0115, Florida Statutes. § 286.0115(1)(a), Fla. Stat. Additionally, in quasi-judicial land use cases, individuals cannot be precluded from communicating directly with a member of the decisionmaking body.

Id. at § 286.0115(2)(c). This is because "all decisions . . . in a quasi-judicial proceeding on local government land use matters must be supported by substantial, competent evidence in the record pertinent to the proceeding, irrespective of such communications." *Id.* Here, the City's adoption and compliance with the statutorily endorsed disclosure process removes the presumption of prejudice. As such, no procedural due process violation occurred.

The City adopted the identical process set forth in section 286.0115(1)(c)(1)–(4), Florida Statutes, for disclosing ex parte communications. *See* Code § 2-66(a)(1)–(4). In conformity with section 286.0115(2)(c), Florida Statutes, the Code explicitly states that "a person may not be precluded from communicating directly with a member of the decisionmaking body." Code § 2-66(c). Critically, "disclosure of such communications by a member of the decision-making body is not required, and such nondisclosure shall not be presumed prejudicial to the decision of the decision-making body." *Id.* (emphasis added). Again, this is because the Commission must rely upon competent substantial evidence in the record to support its decision. *Id.*

Despite not being required to make the disclosures, each of the Commissioners disclosed ex parte communications before each public hearing.[10] R. App. 474, T. p. 58, line 13–R. App. 477, T. p. 61, line 18; R. App. 997, T. p. 15, line 19–R. App. 1001, T. p. 19, line 9;R. App. 1502, T. p. 37, line 1–R. App. 1503, T. p. 38, line 19. The disclosures were sufficient to indicate that the subject matter of the communications pertained to the CUP Application. Further, the Commissioners identified the persons with whom they communicated with sufficient clarity to determine whether the opinions of such persons would be contrary to their own.[11] For example, Commissioner Rzewnicki disclosed "I've met with Applicant's lawyer and their team, and spoke to other people with the

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[10] Petitioners incorrectly assert that the Commissioners failed to make disclosures at the February 27, 2024 hearing, but this misstatement is controverted by the hearing transcript. Specifically, the City Attorney stated on the record: "In a minute, I'm going to request that each of the commissioners just do another disclosure of any ex parte communications you may have had, or any independent research you may have done since the time of the last hearing." *See* R. App. 1499, T. p. 34, lines 15–23. Thereafter, each Commissioner proceeded to make additional disclosures.

[11] Regarding the written communications that were disclosed, Code Section 2-66(a)(1) requires only that they be "made a part of the record before final action on the matter."

Applicant. I can't remember all their names, but we met about three times I think it was, between the phone and in-person."[12] *See* R. App. 999, T. p. 17, lines 8–12.

Petitioners allege that the ex parte disclosures did not include enough detail. However, at the hearing, where Petitioners were present, it was stated on the record that the disclosures were made so that "anybody" could "ask questions, should they want to." *See See* R. App. 994, T. p. 12, lines 18–25. Petitioners failed to ask additional questions or otherwise object to the disclosures on the record, and cannot now raise this objection. *Lollie v. General Motors Corp.*, 407 So. 2d 613, 617 (Fla. 1st DCA 1981). Furthermore, Petitioners' objection cannot be general in nature – it must be a distinct and specific objection. *Coleman v. Allen*, 320 So. 2d 864 (Fla. 1st DCA 1975); *Maggard v. State*, 399 So. 2d 973 (Fla. 1981)

[12] Petitioners claim "Commissioner Rzewnicki disclosed that she researched Senate Bill 102, the Live Local Act, which was not a criteria of approval." *See* Pet. 25. But Petitioners failed to demonstrate that Commissioner Rzewnicki used the Live Local Act as a criteria of approval. Rather, Petitioners only cite to her statement that "I did some research on Senate Bill 102 as well." *See* R. App. 1502, T. p. 37, line 25–R. App. 1503, T. p. 38, line 1. This singular statement does not establish a procedural due process violation.

(prohibiting the defendant from remaining silent and then raising an objection for the first time on appeal); *Hargrove v. CSX Transp., Inc.*, 631 So. 2d 345, 346 (Fla. 2d DCA 1994) ("Contemporaneous objections are required because they promote judicial economy") (citing *Nissan Motor Corp. in U.S.A. v. Padilla*, 545 So. 2d 274 (Fla. 3d DCA 1989) (reversing new trial order that had been based on an untimely objection to ex parte communication between judge and jury). If Petitioners felt the disclosures were insufficient, they were required to request more information or object to the disclosures at the hearing. They failed to do so, thereby waiving the right to raise the issue on certiorari.[13]

C. Public participation at the February 27, 2024 Hearing was not required.

Petitioners allege their procedural due process rights were violated because they were not afforded the opportunity to participate in the February 27, 2024 meeting where the Commission

[13] Petitioners also incorrectly allege that Commissioner Marriot failed to disclose a communication with CP St. Pete's attorney. *See* Pet. 30. But the record is clear that the communication was disclosed: "Since the meeting last week, I've spoken to [individuals and entities] and Applicant's counsel." *See* R. App. 1501, T. p. 38, lines 16–19.

deliberated and discussed conditions "prior to agreeing on approving the conditional use application." Pet. 29. The record is clear that the Commission closed the public hearing prior to the February 27 meeting and that the only matter remaining for the Commission was deliberate and vote on the CUP Application. Indisputably, Petitioners were provided notice and the opportunity to be heard at the public hearing on February 21, 2024. Petitioners do not cite any authority for the proposition that due process required them to be heard again, after the public hearing was closed and the meeting was continued to February 27 for Commission deliberation and voting, as no such authority exists and no due process violation occurred.

III. The City Followed the Essential Requirements of Law.

Petitioners' arguments that the City failed to follow the essential requirements of law similarly must fail, as the City correctly applied its Code and all applicable legal requirements in approving the CUP Application. The Florida Supreme Court has set forth the test to determine whether a local government followed the essential requirements of law in a quasi-judicial hearing:

> The required "departure from the essential requirements of law" means something **far beyond legal error**. It means 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**. The writ of certiorari properly issues to correct essential illegality but not legal error.

Haines City Cmty. Dev. v. Heggs, 658 So. 2d 523, 527–28 (Fla. 1995) (quoting *Jones v. State*, 477 So. 2d 566, 569 (Fla. 1985) (Boyd, C.J. concurring specially)). "Observing the essential requirements of law" is synonymous with "applied the correct law," which the City indisputably did here. *Id.* at 530. Petitioners identify no error of law, let alone a gross miscarriage of justice required to supplant the City's decision here.

A. The City complied with its CUP review procedures.

Petitioners argue that the City failed to comply with its own Code requirements because the CUP Application process should have begun anew each time CP St. Pete provided additional application materials, including in response to opposition comments or staff, Planning Board, or Commission requests. Petitioners' interpretation is inconsistent with the Code's plain language and violates CP St. Pete's due process rights.

Code Section 4.2 sets forth the CUP application and administrative review procedures. Section 4.2(b) requires a completed application, proof of ownership of the subject property, a notarized statement allowing a representative to act on behalf of the property owner (if applicable), a survey, and a site plan (the "Required Application Documents"). Code § 4.2(b)(1)–(5). Code Section 4.2(b)(6) provides that applicants "may be required to submit additional information . . . when appropriate." Upon submittal, the City will evaluate if the application is "complete", i.e., whether the above materials were submitted. Code § 4.2(c). If the application is complete, it is forwarded to the City's departments for a sufficiency review. Code § 4.2(c)–(d). If the application is not complete, then the City will notify the applicant that required information is missing. Code § 4.2(c).

Pursuant to Code Section 4.2(e), if the "applicant submits new data or information at any time after the determination of completeness has been made, the revised application will be subject to the same stages of review as the initial application." After the application is submitted to City departments, it must be reviewed by the TRC, the Planning Board, and the Commission.

The City's Staff Report reflects the CUP Application review timeline. Pet. App. 310. The CUP Application was submitted on June 16, 2023 and was "deemed complete for minimum review standards" on June 20, 2023. Pet. App. 310. On July 19, 2023, the TRC reviewed the CUP Application. Pet. App. 310. On August 28, 2023, CP St. Pete resubmitted the CUP Application with amendments, including a request for rooftop dining, drinking and music. Pet. App. 310. On November 1, 2023, the TRC reviewed the amended CUP Application, including the rooftop amenity. Pet. App. 310. The CUP Application, including the rooftop amenity, was then reviewed by the Planning Board and Commission. Thus, the rooftop amenity was subjected to the full scope of review, as with the initial CUP Application.

After the August 28, 2023 resubmittal, CP St. Pete did not make any substantive changes to the Required Application Documents; instead, CP St. Pete provided supplemental materials *if requested* by staff, the Planning Board, or the Commission, or in response to public comments in opposition to the CUP Application. None of the supplemental materials changed the Required Application Documents. By way of example, on December 2, 2023, Petitioners' traffic engineer submitted a report in response to CP St. Pete's Traffic

Impact Analysis. Pet. App. 194–200. This report – submitted three days before the first public hearing – disagreed with several of CP St. Pete's findings and stated that the Traffic Impact Analysis would need to be revised. CP St. Pete's traffic engineer submitted a written response to Petitioners' report on February 21, 2024. Pet. App. 2536–2542.

Petitioners incorrectly argue that CP St. Pete's response to Petitioners' traffic report violated the Code because the response should have been subject to TRC, Planning Board, and public review. Pet. 34–35. In essence, Petitioners argue that they can submit information objecting to the CUP Application, but CP St. Pete—the applicant—cannot respond without starting the entire application process over. Under Petitioners' theory, an application would be stuck in an endless loop and never make it through the review process. The potential for gamesmanship in thwarting development efforts is patent under Petitioners' view.

This Court must reject Petitioners' absurd interpretation of Code Section 4.2(e) because CP St. Pete would not have the ability to present evidence in support of its CUP Application or in response to City Staff, the Planning Board, the Commission, or opposition

comments at the quasi-judicial hearing, thereby violating its constitutionally protected due process rights. *Jennings*, 589 So. 2d at 1340 (in a quasi-judicial proceeding, the ability to present evidence is a fundamental right of due process); *Waste Management, Inc. v. Mora*, 940 So. 2d 1105 (Fla. 2006) (statutes must be construed so as to avoid an unconstitutional result).

To require a full review for these supplemental submissions—as Petitioners urge—would result in a circular and grossly inefficient, if not unnavigable CUP application process. If every piece of information *requested by the City* required full TRC, Planning Board, and Commission review, then the City would be empowered to indefinitely delay the CUP Application by simply requesting clarification or supplemental information at the final hearing, thus sending CP St. Pete back to the starting point from the finish line.

Moreover, Commission hearings—particularly those that result in an approval with conditions—by their very nature require a give-and-take between the applicant and local government in order to properly craft "reasonable conditions necessary for [the] preservation" of public health, safety, and welfare. *See* Code § 4.4(a)(5). Under Petitioners' interpretation, no public hearing could

ever reach a decision on the merits because technical changes, visual aids, updates, and minor modifications are inherently part of this process. Besides lacking any basis in rationality, Petitioners' argument lacks any basis in the City's Code or any other legal authority. The City did not deviate from the essential requirements of the law in requesting supplemental information after the determination of completeness or in not requiring application review to start over from the beginning each time supplemental information was provided.

B. The City has not cited CP St. Pete a Code violation.

Petitioners argue that the City departed from the essential requirements of law by approving the CUP Application despite CP St. Beach's alleged noncompliance with sea turtle lighting requirements. Petitioners' argument fails, as the City has not cited CP St. Pete with a violation.

When a Code violation *has been determined to exist*, Code Section 3.16(c)(1) provides that the City Manager must: "(1) refrain from issuing any subsequent development approvals for the developer until the violation has been corrected; and (2) inform the violator that no further work under an existing approval may proceed

until the violation has been corrected." In 2007, the City adopted sea turtle lighting standards as part of its marine turtle protection ordinance. *See* Code Div. 44. Specifically, the City adopted standards for all new coastal construction and for existing developments. *See* Code §§ 44.4 (new development), 44.5 (existing development). The lighting standards for new development are far more stringent than the lighting standards for existing development. *Id.*

In July 2023, the City's Code Enforcement Manager, Peyt Dewar, met with CP St. Pete to discuss compliance with the turtle lighting ordinance. Pet. App. 944–945. Since that meeting, CP St. Pete has "gone through two iterations of making changes, and the last one I think was kind of a line-by-line item that the City gave us." R. App. 1131, T. p. 149, lines 4–7. CP St. Pete has "worked with Peyt Dewar and replaced all of the lights." R. App. 1143, T. p. 161, lines 8–9. Further, as part of the CUP Application, CP St. Pete agreed to retrofit the *existing* building to meet the lighting standards for *new* development, as reflected in Condition 22(h) of the CUP Approval:

> All existing and new lighting across the subject property shall be made compliant with the standards for new beachfront lighting in the Land Development Code, Pinellas County Coastal Construction Code and Florida

> Department of Environmental Protection Coastal Construction Control Line regulations, whichever is more stringent.

Pet. App. 344. There were no violations "determined to exist" at the time the CUP Application was approved and the City did not depart from the essential requirements of law in granting the approval.

C. Petitioners' arguments related to an "unelected" Commission are outside the scope of these proceedings.

Petitioners allege that the current Commission was improperly appointed and therefore any action taken violates the essential requirements of law. Petitioners cannot challenge the Commission's composition in this proceeding. Certiorari proceedings allow a party "as a matter of right to seek review in the circuit court from administrative action." *Broward County v. G.B.C. Intern., Ltd.*, 787 So. 2d 838, 843 (Fla. 2001). Commissioner appointments are not "administrative action" subject to certiorari review.

Moreover, the Commission appointments are being challenged in a separate lawsuit brought by PSPB and others. *See* Amended Complaint for Declaratory and Injunctive Relief and for Writ of Quo Warranto, *Protect St. Pete Beach Advocacy Group, et al v. City of St.*

Pete Beach, et al, No. 24-000041-CI (Fla. 6th Cir. Ct. Feb. 3, 2024). That case is scheduled for a non-jury trial on May 13, 2024.

D. The City properly considered its published Code criteria for CUP applications.

Petitioners next argue that the City departed from the essential requirements of the law by ignoring the Code criteria applicable to CUP approvals and instead relying "on information irrelevant to the published criteria." Pet. 42–45. However, the sole test for this Court with respect to evidentiary issues is "whether there was ***any*** substantial competent evidence upon which to base the City's conclusion." *City of Ft. Lauderdale v. Multidyne*, 567 So. 2d 955, 957 (Fla. 4th DCA 1990) (emphasis added). The "sole starting (and ending) point is a search of the record for competent substantial evidence *supporting* the decision." *State, Dept. of Highway Safety and Motor Vehicles v. Wiggins*, 151 So. 3d 457, 464 (Fla. 1st DCA 2014) (emphasis in original). On first tier certiorari review such as this, "[e]vidence 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." *Dusseau*, 794 So. 2d at 1276. Therefore, the role of this Court is to look to the standards

and criteria enumerated in Code Sections 4.4 and 4.12 and determine whether "the lower tribunal had competent substantial evidence to support its findings and judgment." *DeGroot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957). If the answer is yes, the essential requirements of law were followed.

It is of no consequence that matters outside the Code were raised at the Commission hearings, because the record below is replete with competent substantial evidence supporting approval of the CUP Application *based on the relevant Code standards and criteria*. This is akin to traditional appellate review: as long as there is one proper basis or justification for upholding a ruling, the reviewing court must affirm. *See Dade Cnty. Sch. Bd. v. Radio Station WQBA*, 731 So. 2d 638, 644 (Fla. 1999) ("Stated another way, if a trial court reaches the right result, but for the wrong reasons, it will be upheld if there is any basis which would support the judgment in the record."). To the extent the City relied upon extraneous matters (which CP St. Pete denies), the Court is obliged to affirm because there is competent substantial evidence to support the decision based on the enumerated Code standards and criteria.

Petitioners rely upon *Alvey v. City of North Miami Beach,* to support the position that the Court must quash the CUP Application approval because Petitioners disagree with the City's analysis of the CUP criteria. 206 So. 3d 67, 69 (Fla. 3d DCA 2016). However, in *Alvey*, the developer failed to provide any evidence with respect to one of the applicable Code criteria, and the city declined to apply or evaluate that criteria. *Id.* Here, City staff, in painstaking detail, evaluated each and every Code criteria in its 78-page Staff Report. Florida law is clear that a Staff Report is competent substantial evidence that may be relied upon in making a quasi-judicial decision. Accordingly, the City did not depart from the essential requirements of law in making its decision.

E. The City properly considered the CUP criteria regarding impacts to surrounding views.

Petitioners contend that CP St. Pete inaccurately modified and restricted the standards for assessing impacts to views under Code Sections 4.4 and 4.12. Pet. 45–46. Section 4.4 generally requires consideration of whether the proposed use is compatible with the surrounding area, and whether "generally, the public health, safety and welfare will be preserved" and requires conditional uses to be

consistent with the goals, objectives, and policies of the Comprehensive Plan. Section 4.12 on the other hand provides the specific criteria relating to views within community redevelopment districts such as the GBRD. Based on traditional statutory interpretation principles, Section 4.12—as the more specific provision—controls over the general criteria set forth in Section 4.4.

City ordinances are subject to the same rules of construction as state statutes. *Surf Works, L.L.C. v. City of Jacksonville Beach*, 230 So. 3d 925, 930 (Fla. 1st DCA 2017). One longstanding rule of construction "is the maxim instructing that a specific statute controls over a general statute covering the same subject matter." *Id.* at 932; *South Orlando Business Group v. City of Edgewood*, 585 So. 2d 985, 987 (Fla. 5th DCA 1991) (holding that state statute specifically applicable to expressway authorities in Orange County controlled over a generally applicable statute that applies to all municipalities).

Per its own terms, Section 4.4 contains broader, general considerations such as whether the proposed use is consistent with the Comprehensive Plan, whether the proposed use is compatible with the surrounding area, and whether "generally, the public health, safety and welfare will be preserved." Code §§ 4.4(a)(1)–(2), (5). With

respect to views, Section 4.4(a)(1) requires conditional uses to be consistent with the goals, objectives, and policies of the Comprehensive Plan,[14] and Sections 4.4(a)(2)(a) and 4.4.(a)(2)(b) require compatibility with the character of the area and preservation of scenic resources.

Section 4.11 provides that conditional uses in designated community redevelopment districts will be subject to "a higher than usual level of public scrutiny and technical review prior to permitting" and directs applicants to Section 4.12, which provides additional specific review criteria for conditional use applications in these community redevelopment districts. Section 4.11 states that the provisions contained within Section 4.12 are intended to "supplement the stated requirements of this division and other

[14] Petitioners then direct the Court to FLU Policy 2.11.3, which states: "The City shall continue to administer the land development regulations in a manner aimed at preserving the access to and view of the beach and other recreational facilities for all residents of and visitors to this community." Pet. 46. Petitioners are prohibited from arguing that the CUP Application is inconsistent with FLU Policy 2.11.3 in the Petition. The proper forum for that argument is a comprehensive plan consistency challenge pursuant to section 163.3215(3), and the 30-day time period for filing such action has long expired.

divisions of the Land Development Code and provide for the incorporation of provisions into conditional use approvals which address issues of public concern." Code § 4.11. Specifically with respect to views, Section 4.12(9)(a)–(b) provides the following:

> For temporary lodging uses taller than 50 feet in height or a density greater than 30 units per acre, the following issues shall be considered:
>
> a. The amount of separation provided between the proposed temporary lodging use and any existing buildings on adjoining properties and resulting impact on sunlight and views; and
>
> b. The proximity of any adjacent residential building to the Florida Coastal Construction Control Line and the degree to which the proposed temporary lodging use and/or any accessory use or structure maintains an open view of the waterfront from neighboring properties.

As explained at the hearing, Section 4.12(9)(a)–(b) provides more specific criteria for evaluating impacts to views in community redevelopment districts. R. App. 1264, T. p. 282, line 2–R. App. 1265, T. p. 283, line 9. The CUP Application satisfied both the general criteria and these additional more specific view criteria because CP St. Pete is providing "double the setback" required between the proposed and existing structures, and the proposed structures are further from the CCCL than the adjacent residential building, the

Seamark. R. App. 1264, T. p. 282, lines 4–24. Accordingly, the City properly evaluated the CUP criteria for projects in a community redevelopment district and did not depart from the essential requirements of law.

IV. The City's Decision is Supported by Competent Substantial Evidence.

Petitioners argue that the City did not rely upon competent substantial evidence in approving the CUP Application. Not only is this argument unsupported by the record, but it rests upon a misapplication of Florida law. The argument must fail.

Certiorari review prohibits this Court from reweighing evidence or parsing the record for contrary evidence. Instead, this Court must evaluate whether the administrative tribunal's decision was *supported* by competent substantial evidence. *Dusseau v. Metro. Dade Cty. Bd. of Cty. Comm'rs*, 794 So. 2d 1270, 1273–74 (Fla. 2001). The Florida Supreme Court has provided a thorough analysis of this standard:

> [T]he "competent substantial evidence" standard cannot be used by a reviewing court as a mechanism for exerting covert control over the policy determinations and factual findings of the local agency. Rather, this standard requires the reviewing court to **defer to the**

> **agency's superior technical expertise** and special vantage point in such matters. The issue before the 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.
>
> The **sole issue before the court on first-tier certiorari review is whether the agency's decision is lawful**. The court's task vis-a-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**.

Id. at 1275–76 (emphasis added). *See also Broward Cty. v. G.B.V. Int'l*, 787 So. 2d 838, 846 (Fla. 2001); *Clay Cty. v. Kendale Land Dev., Inc.*, 969 So. 2d 1177, 1181 (Fla. 1st DCA 2007) ("Whether the record also contains competent substantial evidence that would support some other result is irrelevant").

Competent substantial evidence is "tantamount to legally sufficient evidence," *Dusseau*, 794 So. 2d at 1274, and is defined as "such relevant evidence as a reasonable mind would accept as adequate to support a conclusion." *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957). The evidence must be "sufficiently relevant and material" to the ultimate issue before the administrative tribunal. *Id.* Here, if competent substantial evidence exists to *support approval* of the CUP Application, then the Court's analysis ends.

A. Competent substantial evidence in the record supports each of the CUP standards and criteria for approval.

Petitioners argue, ignoring the February 21, 2024, hearing and, instead, citing exclusively to the transcript of the February 27, 2024 hearing, that the City "failed to support its decision with evidentiary support for each criteria required by the City's published code for the approval of a conditional use." Pet. 48. Petitioners ignore the extensive 78-page Staff Report the City relied upon in coming to its decision, which clearly constitutes competent substantial evidence. *See Village of Palmetto Bay v. Palmer Trinity Private Sch., Inc.*, 128 So. 3d 19, 27 (Fla. 3d DCA 2012) (a staff report is competent substantial evidence where the staff made a complete review of all applicable

review criteria). The final version of the Staff Report, which itself went through multiple iterations, individually identifies and assesses CP St. Pete's compliance with every subsection of Code Sections 4.4 and 4.12, as well as applicable Objectives and Policies from the Comprehensive Plan.

Contrary to Petitioners' assertion, the February 27, 2024 hearing transcript demonstrates that the Commission based its ultimate decision on the competent substantial evidence provided by its professional staff. Commissioner Marriott explicitly relied on the thorough and extensive work done by City staff:

> . . . . The four of us were reasonable people sitting out there just a few months ago. And so to me, my reading of the Comprehensive Plan and the Land Development Code says that they have done – they have followed the rules, and the staff, who is our professional hired help, has said that they have followed the rules. . . . And so I, in this case, am very comfortable feeling like they have -- the applicant has followed the rules according to the Comprehensive Plan and the Land Development Code based on our professional staff, that we employ to do this job, thinking that they have done those things. And so that's where I land.

R. App. 1634, p. 219, lines 2–8, 18–25. Similarly, Commissioner Lorenzen gave significant consideration to the issues presented and recognized the weight of City Staff's work:

> I've watched the Planning Board video. I bet I've done 100 hours of research on this thing. And I kind of came in here still with a 50/50 mindset. Which to me, is a good thing. I'm trying to listen to everybody and really think it through. So at the end of the day, the Comp Plan is there. The City Staff has said, we recommend approval. The Planning Board has recommended approval.

R. App. 1680, T. p. 215, lines 5–12.

Petitioners only direct this Court to isolated transcript snippets of the Commission deliberations on February 27, 2024, yet they disregard the extensive factual foundations and evidentiary support underpinning the City's ultimate decision. To side-step and dismiss the significance of the efforts made by professional City Staff to ensure CP St. Pete's compliance with all applicable CUP standards and criteria is contrary to Florida law and evinces a fundamental misunderstanding of this Court's standard of review.[15]

[15] It is of no consequence that extraneous matters were presented in the proceedings below. Petitioners argue that any discussion surrounding the Live Local Act cannot constitute competent substantial evidence because the Live Local Act discussion is not

Petitioners also argue that the City's decision is not based on competent substantial evidence because the Commission ignored citizen comments in opposition. This is immaterial. Local governments are prohibited from giving multiple objections from neighbors a "cumulative effect" because the "quasi-judicial function of a board . . . must be exercised on the basis of the facts adduced." *City of Apopka v. Orange County*, 299 So. 2d 657, 659 (Fla. 4th DCA 1974). Quasi-judicial hearings should not "be controlled or even unduly influenced by the opinions and desires expressed by interested persons at public hearings." *Id.* (citing Am. Law of Zoning, § 15.27, pp. 155–56). Whether the neighbors' comments are deemed competent substantial evidence is of no moment because the issue here is whether the City's decision is supported by competent substantial evidence. The City's decision is sufficiently supported and this Court is precluded from inquiring further.

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related to one of the Code CUP criteria. Pet. 49–51. Excising all record material related to the Live Local Act, it is clear that the City Commission made its decision based upon competent substantial evidence consisting of the 78-page Staff Report, testimony from several consultants and engineers, and hours of public comment.

B. Competent substantial evidence supports the northern buffer reduction.

Petitioners contend that "the record is completely devoid of any evidence to support the reduction of the 30-foot minimum buffer as required in Section 35.13 of the City's Land Development Code." Pet. 51. However, as a matter of law, the City has the authority—which it clearly exercised—to reduce this "minimum buffer" by up to 50 percent. Moreover, as an evidentiary matter, the basis for the City's exercise of this authority was among the *most-deliberated* items at the February 27, 2024 hearing.

The Staff Report and CUP Application approval address the conditions imposed to mitigate any adverse impacts of the buffer reduction, consistent with the language of Code Section 35.13, which empowers the City to reduce the mandatory 30-foot buffer, in its discretion, based on certain considerations. Specifically, Section 35.13 provides:

> The city commission may reduce the width of the required buffer **by up to 50 percent based upon its design and compatibility review of the project and any superior alternatives presented** . . . .

(emphasis added). This provision clearly gives the City broad discretion to reduce the buffer based on both design/compatibility and the presentation of superior alternatives.[16] CP St. Pete made design concessions and provided superior alternatives (in the form of conditions) that enabled the City to approve the buffer reduction in conformity with the language of Section 35.13.

Not only was the design of the 15-foot buffer specifically evaluated in the City's Staff Report, but it was heavily discussed at the Commission hearing and resulted in a condition (a public access easement) in order for the Commission to exercise its discretion in approving the buffer reduction:

> 32) In support of a superior northern landscaping buffer alternative, the applicant shall provide to the City when requested an easement necessary to expand the existing beach access easement adjacent the northern property line to at least seven feet in width along the entire depth of the site to the mean high water line, high water mark, or existing watermark, whichever serves to meet the intent

[16] Contrary to Petitioners' assertions, the Staff Report also extensively addresses buffering and recognizes the authority the Code vests in the Commission to approve a 50% reduction. The Staff Report states that CP St. Pete requested a 15-foot buffer on the north side, which meets the buffering standards of Section 35.13 "[i]f approved by the City Commission." Pet. App. 321.

> of this condition. In the case that the City chooses to not expand the access point prior to building permit issuance for Hotel 1, the applicant may proceed with the buffer as proposed and amended with conditions herein. If the City chooses to expand the beach access prior to building permit issuance for Hotel 1, the applicant shall be required to permit and construct the additional beach access area on applicant's property, without reducing the landscaping plant material count under the current landscaping plan, but may permit the access to encroach into the proposed 15-foot buffer.

P. App. 1373–1374.

Thus, there is competent substantial evidence supporting the City's decision to reduce the buffer zone based on superior alternatives and the design of the buffer itself.

C. CP St. Pete's Traffic Impact Analysis constitutes competent substantial evidence.

CP St. Pete's Traffic Impact Analysis constitutes competent substantial evidence in support of the City's approval of the CUP Application, and the mere fact that Petitioners presented their own traffic study does not justify reversal. Petitioners argue that CP St. Pete's traffic study is legally flawed, and therefore cannot constitute competent substantial evidence. Pet. 52–54. As discussed below, the Commission is empowered to evaluate the reliability and credibility

of expert opinions in rendering its decision, and this Court cannot re-weigh the competing traffic studies.

In a quasi-judicial hearing, the finder of fact is free to determine the reliability and credibility of expert opinions, and, if conflicting, can "weigh them as the finder sees fit." *Dep't of Agric. & Consumer Servs. v. Bogorff*, 35 So. 3d 84, 88 (Fla. 4th DCA 2010). It is a fundamental principle of our legal process that "[t]he resolution of conflicting expert testimony is a task for the [finder of fact]." *AGC Risk Mgmt. Grp., Inc. v. Orozco*, 635 So. 2d 1034, 1035 (Fla. 3d DCA 1994) (finding that the trial judge's determination, sitting as factfinder, was supported by competent substantial evidence despite conflicting expert testimony); *Padron v. State, Dept. of Environmental Protection*, 143 So. 3d 1037, 1041 (Fla. 3d DCA 2014) ("It was within the ALJ's province to reject [appellant's] expert's opinion and to accept [appellee's] experts' opinions.").

The City rejected the purported "flaws" raised by Petitioners' traffic engineer and based its decision on the competent substantial evidence provided by CP St. Pete's traffic study. Because the City Commission "had competent substantial evidence to support its findings[,]" it did not err by giving more weight to CP St. Pete's expert

evidence. *DeGroot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957). Moreover, it is outside the scope of this Court's review to even consider such conflicting or contrary evidence. *See, e.g.*, *Dusseau*, 794 So. 2d at 1276 (on first tier certiorari review, "[e]vidence 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."). Accordingly, the City properly relied on CP St. Pete's traffic report as competent substantial evidence to support the approval of the CUP Application.

D. Competent substantial evidence supports compliance with Code Section 35.1.

Petitioners allege that the only evidence in the record supporting compliance with Code Section 35.1 is a conclusory statement proffered in the City's Staff Report without an analysis of "the three separate buildings, entities, quality, and service." Pet. 54. Tellingly, Petitioners failed to cite the language of Code Section 35.1, likely because it not a regulatory provision but rather states the purpose and intent of the Large Resort District.

Code Section 35.1 provides:

> The Large Resort District is ***intended to primarily support and encourage full-***

> ***service integrated resort redevelopment projects*** to promote economic balance and compatibility of land uses. Large Resort District regulations provide higher density and intensity of temporary lodging use than provided in any other district in the city to support and encourage redevelopment of resort hotels and in consideration of the larger size and depth of the parcels that are adjacent to the Gulf beaches.

(emphasis added). The provisions related to the Large Resort District certainly "support and encourage full-service integrated resort redevelopment projects." For example, Code Section 35.7(a) allows for temporary lodging units to be developed in a single building or in separate buildings "provided that a minimum of 200 temporary lodging units shall be constructed on the development site." Additionally, Code Section 35.10(b)(1) sets forth the minimum required guest amenities. Notably, Petitioners are not challenging compliance with these provisions. In fact, other than Code Section 35.13 (related to buffers and addressed in Section IV.C. above), Petitioners do not challenge the CUP Application's compliance with any Large Resort Code provision.

Even if Code Section 35.1 was a regulatory provision, the CUP Application proposes a full-service integrated resort and complies with Code Section 35.1. CP St. Pete's planning expert testified that

the CUP Application provides all required services. R. App. 1097, T. p. 115, lines 12–15. Additionally, Condition #7 in the Resolution requires a Declaration of Unified Site Plan Covenants to be regarded as "unified under one indivisible building site" and constitute a "single zoning lot for the purpose[] of development." P. App. 18. This condition was imposed to "ensure that any service, amenity, operational or occupancy-based restriction, Transportation Management Plan strategy, or other element which is essential to this CUP approval, but not individually provided within each developed building on this property is permanently maintained across the development." *Id.*

Despite this competent substantial evidence in the record, Petitioners allege "the three separate buildings, entities, quality, and service" were not analyzed. Pet. 54. Petitioners point to factors or characteristics that are absent from the Code. At bottom, there is competent substantial evidence demonstrating compliance with Code Section 35.1 and with all applicable criteria for approval.

CONCLUSION

Petitioners lack standing to maintain this challenge and the Petition should be dismissed. Should the Court reach the merits, the

Petition should be denied. The City followed the essential requirements of the law, relied upon competent substantial evidence, and provided procedural due process in making its decision to grant the CUP Application. The City applied the correct law and properly considered fact-based testimony from professional City staff and numerous experts, as well as evidence submitted in opposition to the CUP Application. Florida courts have consistently deferred to the findings of an agency fact-finder in the context of zoning and policy determinations, as the agency fact-finder in theory has the requisite experience, skill, and perspective to adequately adjudicate specialized proceedings. *Balm Rd. Inv. v. Hillsborough Cty. Bd. of Cty. Comm'rs*, 336 So. 3d 776, 779 (Fla. 2d DCA 2022). The City's decision in this matter is lawful and in no way approached a "gross miscarriage of justice" that would allow this Court to step in and disturb its ruling. CP St. Pete requests that this Honorable Court dismiss or alternatively deny the Petition.

Respectfully submitted this 20th day of May, 2024.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed via the Florida Court's E-filing portal on May 20, 2024, which will serve the following counsel of record: Counsel for Petitioners Seamark, Inc. and Ken Barnes, Richard J. Dewitt, III, Esq., Government Law Group PLLC, 200 South Andrews Avenue, Suite 601, Ft. Lauderdale, Florida 33301, rdewitt@govlawgroup.com, and Counsel for Petitioner Protect St. Pete Beach Advocacy Group, Jane Graham, Esq., Sunshine City Law, 737 Main Street, Suite 100, Safety Harbor, FL 34695, jane@sunshinecitylaw.com.

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CERTIFICATE OF COMPLIANCE

I CERTIFY that this brief complies with the font requirements of Fla. R. App. P. 9.045(b) and Fla. R. App. P. 9.210(a)(2)(B). This brief contains 12,482 words as counted by Word, excluding the parts of the brief exempted by Fla. R. App. P. 9.210(a)(2)(E).

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