

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT,
IN AND FOR VOLUSIA COUNTY, FLORIDA

LENNAR HOMES, LLC,
a Florida limited liability company

Petitioner,

Case No.:

vs.

CITY OF EDGEWATER, a political
subdivision of the State of Florida,

Respondents.

PETITION FOR WRIT OF CERTIORARI
PURSUANT TO RULES 9.030(c)(3) AND 9.100(f), FLORIDA RULES OF
APPELLATE PROCEDURE

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I. JURISDICTION

This Court has jurisdiction pursuant to Article V, section 5(b), Florida Constitution and Rules 9.030(c)(3) and 9.100(c)(2) of the Florida Rules of Appellate Procedure.

II. PRELIMINARY STATEMENT

Petitioner Lennar Homes, LLC will be referred to as “Lennar” or “Petitioner.” Respondent the City of Edgewater will be referred to as “the City” or “Respondent.” The City Council will be referred to as “the City Council.” The Edgewater City Planning and Zoning Board is referred to as “the Planning Board.” The City of Edgewater Technical Review Committee will be referred to as the “Technical Review Committee.” Petitioner’s Phase Two Final Plat Application, which is at issue in this petition, will be referred to as the “Final Plat Application.”

References to the Appendix will be referred to as (App. X, p. X). The City Council transcript can be found at Petitioner’s Appendix 4 (“App. 4”). The City of Edgewater Land Development Code is referred to as the “LDC” or “the City Code.”

III. SUMMARY OF ARGUMENT

The Edgewater City Council discriminately and unjustifiably denied Petitioner’s right to final plat approval, and the City’s decision must be

quashed as a matter of law. The City Code explicitly provides the process by which an applicant can receive final plat approval, and Petitioner fully complied with this process. Plat approval occurs in two stages: the preliminary plat application process, which entails, by far, the most intensive review, and the final plat application process, which is largely administrative. A preliminary plat application is subject to significant scrutiny by City staff, the TRC, the Planning Board, and the City Council. By contrast, the process for final plat approval is substantially less complex and involves little discretion. As set out in the LDC, once a final plat application has been made, most of the detailed review work has been completed. A final plat application is the final administrative step and may only be submitted after the City approves the preliminary plat.

The Council's final plat review is limited to whether the final plat is consistent with the approved preliminary plat, which has already been found to be consistent with the City's Comprehensive Plan and LDC. If these conditions are met, the Council must approve a final plat application.

Here, Lennar worked diligently with City staff for over 27 months during the plat approval process. The Preliminary Plat was approved by the Planning Board and the City Council in 2023. The City Staff and the Planning Board both recommended approval of the Final Plat Application. When the

Final Plat Application finally came before the City Council for review on January 27, 2025 (after 3-months of unilateral and unjustified delays by the City Council), the City Development Services Director and the City Attorney each opined the application was complete and compliant, and its approval was not discretionary. Ignoring the advice of City staff and the City Attorney, the City Council summarily denied the Final Plat Application after hearing four public comments and deliberating for under five minutes. The City Council's decision, rendered in a quasi-judicial forum, was completely unsupported by any competent substantial evidence, and was erroneous as a matter of law.

IV. STATEMENT OF FACTS

1. Petitioner is the developer of the Edgewater Preserve residential development sited in the City of Edgewater, Volusia County Florida.
2. The City Council approved Edgewater Preserve Residential Planned Unit Development ("RPUD") Agreement No.: 2018-O-26 at its second reading on March 4, 2019, and recorded it on March 6, 2019, in the Volusia County Official Records Book 7664 / Page 4695. (App. 5).
3. The RPUD has five phases, which are currently in different stages of review and development. (*Id.*).
4. This Petition concerns RPUD Phase 2. The City Council

approved the Phase 2 Preliminary Plat on December 4, 2023. On July 12, 2024, the City issued Phase 2's Development Order Number 22-01300004. (App. 6).

5. The policies and procedures for the review and approval of Subdivision Plat applications are found in Article XIII of the City's LDC. (LDC Art. XIII).

6. LDC Section 21-163 sets out the preliminary plat review and approval procedures.

7. LDC Section 21-163.02 defines the required preliminary plat exhibits:

- a. An assessment of the ability of the proposed project to comply with the Concurrency Management System requirements described in Article XII.*
- b. An assessment of the natural resource characteristics of the site that identifies the location of any historic or specimen trees.*
- c. An assessment of environmental or natural resources.*
- d. A statement regarding the proposed irrigation system for any common areas.*
- e. A soil report based on a minimum of one percolation test per ten (10) acres and one, or more, six foot (6') deep soil borings at a percolation test site.*

- f. Tabulations of total gross acreage in the project, acreage in classified wetlands and acreage in flood hazard areas.*
- g. Any other items that may be identified and required in the pre-application conference or subsequently by the City.*

8. Per LDC Section 21-163.03, preliminary plats must also include
a separate development plan containing:

- a. A vicinity map at maximum scale of one inch (1") equals four-hundred feet (400') showing the relationship of the proposed subdivision to the surrounding area, zoning classifications on adjoining properties, names of adjoining property owners and existing land uses.*
- b. A subdivision name. Such a name shall not be the same or in any way similar to any name appearing on another recorded Volusia County plat, except when the subdivision is subdivided as an additional unit or section, by the same developer or his successors in title. Every subdivision's name shall have legible lettering of the same size and type, including such words as section, unit, replat, etc.*
- c. The proposed lot lines, dimensions, lot and block numbers and setbacks.*
- d. The proposed street layout (including street names) with right of way widths and pavement widths and estimated trip generation or traffic impact study for any subdivision over 15 units.*
- e. A topographic map with one foot (1') contour intervals.*
- f. A map showing location and acreage of areas in floodplain and areas to remain at natural grade.*

- g. A preliminary grading plan showing existing and proposed contours.*
- h. A preliminary drainage and surface water management plan.*
- i. The proposed sewer collection system, general location, elevation, size sanitary sewer collection, lift station location and connection to existing City system.*
- j. The proposed potable water distribution system: line size, location, fire hydrants and connection to the City system.*
- k. Common areas, including but not limited to, recreation areas, common open space, trails and areas for identification signs.*
- l. A tree survey that depicts and identifies all specimen trees as defined in Article II and identifies which trees are proposed to be removed.*
- m. The location and typical cross sections of sidewalks, bikepaths and trails.*
- n. A preliminary landscape plan for common areas.*
- o. A preliminary street lighting plan.*

9. Once the preliminary plat application, including the development plan, is submitted, the Development Services Department transmits one copy of the preliminary plat to the City Engineer, Building Official, Police Chief, Fire Chief, Florida Power and Light, BellSouth Telephone, City Attorney, local cable television provider, and other appropriate agencies. Each of these agencies reviews the preliminary plat and submits written comments. (LDC §21-163.04).

10. The Preliminary Plat and review comments are then reviewed by the Planning and Zoning Board to determine conformity with the Comprehensive Plan and LDC, and the application is forwarded to the City Council with a recommendation to approve, deny, or approve with conditions. (LDC §21-163.05).

11. Once a preliminary plat is approved by the City Council, an applicant must then submit construction plans to the Development Services Department for review by the City Engineer and the Environmental Services Director. If the construction plans are consistent with all standards and specifications, the City Engineer and Environmental Services Director shall notify the Development Services Department, in writing, of construction plan approval. (LDC §21-164.01).

12. Approval of the construction plans and preliminary plat is authorization for issuance of a Notice of Commencement/Development Order to proceed with installation of any improvements required and authorization to proceed with the preparation of the final plat or unit division thereof, subject to the posting of a bond or surety device. (LDC §21-165.01).

13. Once all of the substantial review and effort above is completed, an applicant may then apply for administrative final plat approval.

14. Section 21-167 of the LDC sets forth the procedure for Final Plat

Approval after a preliminary plat has been approved:

21-167.01 - Final Plat Procedure

- a. *Lots shall not be sold or streets accepted for maintenance by the City, nor shall any permit be issued by the Building Official for construction of any building within any subdivision unless and until the final plat has been approved by the Planning and Zoning Board, the City Council and duly recorded by the Clerk of the Circuit Court of Volusia County. The final plat shall conform substantially to the preliminary plat and shall incorporate all modifications and revisions specified in the approval of the preliminary plat.*
- b. *Application for final plat approval. After preliminary plat approval, installation of all required improvements, posting of a maintenance bond and payment of the appropriate application and advertising fees the applicant shall submit to the Development Services Department the following:*
 1. *A letter requesting review and approval of the final plat.*
 2. *The original mylar tracing of the final plat and two (2) reproducible mylar copies.*
 3. *Five (5) printed copies of the final plat with signed certification and other documents as specified herein, and as required for recording by the Clerk of the Circuit Court of Volusia County.*

21-167.02 - Planning and Zoning Board

- a. *Before acting on the final plat, the Planning and Zoning Board shall receive a written staff report*

certifying compliance with the approved preliminary plat and the land development regulations. If substantial errors are found in the accuracy of the final plat, the applicant shall be responsible for corrections in the survey or the final plat. Any deviations from the preliminary plat shall be noted in the written staff report.

- b. The Planning and Zoning Board shall review and make a recommendation (approve, deny or approve with conditions) concerning the final plat at a public hearing.*

21-167.03 - City Council

- a. If the final plat meets all the requirements of the land development regulations and complies with the approved preliminary plat, the City Council shall review and approve the final plat and indicate its approval by signature of the Mayor on the mylar copy of the plat to be recorded.*
- b. If the final plat is denied by the City Council, the reasons for denial shall be stated in writing. A copy of such reasons shall be sent to the Development Services Department and to the applicant. The applicant may make the necessary changes and resubmit the final plat to the City Council for review and reconsideration.*

(LDC Sec. 21-167 et seq.).

15. After receiving their preliminary plat approval from the City Council, Lennar submitted its final plat for review on April 18, 2024. (App. 4, p. 31).

16. The City Technical Review Committee, including the contracted

city surveyor and contracted city engineers, all recommended final plat approval after reviewing the plans in accordance with the preliminary plat approval, the LDC, the Comprehensive Plan, and the residential planned unit development agreement. (App. 4, p. 31; App. 7, p. 114-116).

17. The City Planning & Zoning Board unanimously voted (7-0) to recommend the City Council approve the Final Plat Application. (App. 4, p.31).

18. The City Council was originally supposed to review the Final Plat Application on October 21, 2024, but the Council rescheduled the hearing until December 2, 2024.

19. On December 2, 2024, the City Council inexplicably voted to table the Final Plat Application.

20. On December 11, 2024, Petitioner notified the City Development Director Petitioner had received its Environmental Resource Permit from the St. Johns River Water Management District (“SJRWMD”) for the full buildout of Phase 2. (App. 8. p. 157).

21. The City Council held its next public meeting on December 20, 2024. Less than two-hours before that meeting, the City Development Services Director (the “City Development Director”) informed Petitioner via email the final Plat Application would be moved to the January 13, 2025,

Council meeting, because the Council wanted to consider two building permit moratoria ordinances before considering the Final Plat Application. (App. 8, p. 158).

22. However, during the January 13 meeting, City Mayor Diezel DePew unilaterally tabled the Application without any definite time for a rescheduled date.

23. At 8:53 AM, on January 27, 2025, the City Development Director informed Petitioner, via email, the Application would be heard at the City Council meeting that same day. (App. 8, p. 160).

24. This was the first and only notice Petitioner received that its Application would be reviewed on January 27.

25. At the January 27, 2025, public hearing, the Council finally considered the Phase 2 Final Plat Application. (App. 9, p. 162; App. 4, p. 31-42).

26. At the outset of discussion, the City Development Services Director provided the Council with the staff report, which summarized the numerous City staff reviews since Petitioner first submitted its Final Plat Application on April 18, 2024. (App. 4, p. 31).

27. In addition to noting the substantial prior technical review of the Application, the Development Director reminded the Council its review at this

stage was non-discretionary:

5 MR. SOLSTICE: Thank you, Mr. Mayor. Lennar
6 first submitted for final plat review on April 18th
7 of 2024. Subsequent reviews have taken place.
8 The technical review committee, including the
9 contracted city surveyor and contracted city
10 engineers have all reviewed the plans in accordance
11 with the preliminary plat approval, the land
12 development code, and the residential plan unit
13 development agreement.
14 City staff is recommending approval of the
15 final plat. Should be noted final plat is an
16 administrative decision by the city council. The
17 final plat is the last step in the process to
18 subdivide the land into the individual lots.
19 On August 28th, 2024, public notice was posted
20 on the property for the planning and zoning board.
21 The planning and zoning board sent a favorable
22 recommendation to city council with seven members in
23 support, zero in opposition, and none were absent at
24 that planning and zoning meeting.

28. The Edgewater City Attorney, Aaron Wolfe, then informed the Council of the quasi-judicial nature of the Final Plat Application hearing and the evidentiary burden required of the City:

1 MR. WOLFE: And if I could just speak on the
2 law relating to final plat approval. First of all,
3 this is a quasi-judicial hearing.

4 That means the decision of the council must be
5 based on competent substantial evidence in the
6 record at this hearing.

7 And the city council does not have legislative
8 discretion in this matter. So as to final plat
9 applications, once an applicant meets the initial
10 burden of showing that his application meets the
11 city criteria for granting the application, the
12 burden then shifts to the city to demonstrate by
13 competent substantial evidence presented at the
14 hearing and made part of the record that the
15 application does not meet the city standards and is
16 actually adverse to the public interest.

29. The City Attorney read the exact language of *LDC §21-167.03* reiterating the Development Director's statement that the Council's final plat review "it is really an [] administrative decision." (App. 4, p. 31).

30. The Council then received four public comments on the Final Plat Application. (App. 4, p. 33-38).

31. The first comment was provided by Petitioner's engineer who stated a willingness to answer any questions. (App. 4, p. 33).

32. The second comment was from a citizen who asked whether the

applicant had received its water management approval and development approval. During this exchange, one citizen directly asked *"Have they [Petitioner] met all of the demands of the state, St. Johns Water Management District? Have they gone through all of those and got approval from [] the development Plans?"* (App. 4, p. 33).

33. Both Mayor DePew and the Development Services Director acknowledged Petitioner had met these requirements, responding:

3 MR. DEPEW: I'm no legal, but I believe so.

4 But Ryan, correct me if I'm incorrect, but I believe
5 so.

6 MR. SOLSTICE: Yes. So the applicant has their
7 St. John's permit has been issued, they have two for
8 the side and they have undergone review from our
9 former city engineer, our third-party consultant
10 that the developers pay for, staff picks.

11 Obviously, the consultant that we used who
12 reviews their project, which was Mead & Hunt, they
13 have provided all reviews on the project.

14 The contracted city surveyor, who is CPH, has
15 reviewed the plat and has found that it's consistent
16 with Florida statutes and the requirements of the
17 land development code.

34. The third commenter was Eric Rainbird, a member of the

Edgewater City Planning and Zoning Board when that board recommended City Council Approval of the Final Plat Application on September 11, 2024.

35. Mr. Rainbird expressed general comments about accountability for flooding for new developments within the City, but he did not assert disagreement with the Phase 2 Final Plat Application approval. He did not suggest the Application was incomplete or subject to denial. (App. 4, p. 34-36).

36. The final commenter discussed flooding concerns, but provided no information suggesting the Final Plat Application was incomplete or noncompliant with the LDC, prior approvals, or the Comprehensive Plan. (App. 4, p. 36-37).

37. In total, four individuals provided public comment on the Application for a combined total of under eight minutes.

38. Public comments are generally not considered substantial, competent evidence, but even so, the comments were benign. One commenter was the applicant; the second commenter's concerns were directly addressed by the Mayor; the third commenter had already voted in support of the Final Plat Application in his official capacity; and the final commenter merely expressed general concerns about flooding. None provided any information or evidence to suggest the application was

incomplete or noncompliant with the preliminary plat, the LDC, or the Comprehensive Plan.

39. Following public comment, Mayor DePew stated he was uncomfortable moving forward with the Final Plat Application “*unless we have in writing the precautionary measures they took after we had a large amount of rainfall, not a hurricane, a large amount of rainfall that broke some sort of dam behind the subdivision.*” (App. 4, p. 39).

40. Mayor DePew’s comments were echoed by Councilman Thomas who suggested if Petitioner “*built a canal between the subdivision and Florida Shores, then I’ll support it. Otherwise, I cannot support it.*” (App. 4, p. 40).

41. In response to the discussion of flooding Councilwoman Gillis presented a question to the other Councilmembers:

10	MS. GILLIS: What point does all the times the
11	water has come off of that property show that it's
12	not checking all the boxes?
13	MR. DEPEW: So is there a motion to approve?

42. After Mayor DePew summarily moved past this particularly important question, Councilwoman Dolbow moved to approve the Final Plat Application, but her motion failed for lack of a second. (App. 4, p. 41).

43. The Council then promptly voted to deny the Application. (App.

4, p. 42).

44. The Council ultimately deliberated on the Application for a total of roughly four and a half minutes.

45. On March 3, 2025, Petitioner's counsel filed a public records request with the City, seeking a complete copy of the record the City Council considered during the January 27, 2025, meeting in relation to the Council's consideration of "FP-2400: Request for Final Plat approval for Edgewater Preserve Phase Two generally located West of Volco Road." (App. 7).

46. The City's response to the records request included two items: a copy of the January 27, 2025, Council Meeting Agenda, and a copy of the Final Plat with the City Staff Technical Report supporting its approval. (*Id.*)

47. No photos, data, testimony (other than public comments), expert reports, or any other information was admitted or considered during the quasi-judicial proceeding to support the Council's decision.

48. Despite the Council's verbal denial and even though the City Attorney advised the Council at the hearing a written denial had to be issued, the Council did not immediately provide this written denial.

49. On February 19, 2025, Petitioner requested a written response from the City explaining the reasons for denial, as required by the LDC.

50. Only thereafter on February 20, 2025, did the City issue its

written denial of the Plat application, which was not emailed or otherwise provided to Petitioner until February 25, 2025. (App. 10).

V. NATURE OF THE RELIEF SOUGHT

Petitioner requests this Court: (1) Grant the Writ of Certiorari; (2) Quash the City Council's January 27, 2025, Final Plat Application (FP-2400) denial; and (3) Remand the Final Plat Application (FP-2400) to the City Council for immediate reconsideration consistent with Florida law and the City's LDC.

VI. ARGUMENT

A. STANDARD OF REVIEW

In considering a Petition for Writ of Certiorari, this Court must determine: (1) whether procedural due process was accorded; (2) whether the essential requirements of the law have been observed; and (3) whether the administrative findings and judgment are supported by competent, substantial evidence. *Educ Dev Ctr., Inc., v. City of West Palm Beach, Zoning Bd of Appeals*, 541 So. 2d 105, 108 (Fla. 1989); *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624 (Fla. 1982).

As the Edgewater City Attorney informed the Council at the outset of the January 27, 2025, meeting, the discussion of the Final Plat Application was a quasi-judicial decision. (App. 4, p. 32). Quasi-judicial municipal

decisions are reviewable by first-tier certiorari. *De Groot v. Sheffield*, 95 So. 2d 912, 914–16 (Fla. 1957); *Broward Cnty. v. G.B.V. Int’p., Ltd.*, 787 So. 2d 838, 842 (Fla. 2001). Certiorari is the exclusive method to review municipal quasi-judicial decisions. *Park of Com. Assoc. v. City of Delray Beach*, 636 So. 2d 12, 15 (Fla. 1994). Most, if not all, land-use decisions are quasi-judicial and will generally be reviewed by certiorari. *Lee Cnty. v. Sunbelt Equities, II, Ltd. P’ship*, 619 So. 2d 996, 998 (Fla. 2d DCA 1993).

B. THE CITY’S DENIAL DEPARTED FROM THE ESSENTIAL REQUIREMENTS OF LAW.

A decision granting or denying a site plan or plat application is governed by local regulations, which must be uniformly administered.¹ *G.B.V. Int’l, Ltd.*, 787 So. 2d 838, 842 (Fla. 2001) (“A local government agency may deny a plat application only if the agency demonstrates that the applicant failed to meet the objective legal requirements for approval.”). The *G.B.V.* case is directly analogous to the facts at hand. There, a developer sought to amend the county land-use plan to allow for construction of a 300-unit apartment complex. The county planning council reviewed and approved the plan, and the plat application was supported by county staff. The county commission ultimately rejected the plat at the density requested. On second-

¹ The relevant “local regulations” in this matter are the City’s LDC and Comprehensive Plan.

tier certiorari review, the District Court of Appeal quashed the decisions below, holding once a developer meets the initial burden of showing a plat meets statutory criteria, the burden shifts to the municipality to show by competent substantial evidence the plat does not meet the criteria and is adverse to the public interest. *Id.*

As noted above, regarding final plat approval, the City's LDC sets out two summary paragraphs which are entirely ministerial in nature. "*If the final plat meets all the requirements of the land development regulations and complies with the approved preliminary plat, the City Council shall review and approve the final plat...*" See LDC §21-167.03 (emphasis added). Here, the record is uncontroverted that the application complied with the preliminary plat approval, the City's LDC, and the City's Comprehensive Plan. All the record evidence supported final plat approval, and there was absolutely no record evidence supporting its denial. The record included the final plat along with an aerial map from the public notice and the City Staff's Legislation Details Report supporting its approval. (App. 7, p. 114-153; App. 4, p. 31-34).

The City's Director of Development Services twice noted on the record the Final Plat Application had previously been reviewed by numerous City officials, an outside engineering consultant, and the Planning and Zoning

Board, all of whom unanimously agreed the Application was complete and compliant with the LDC and Florida law. (App. 4, p. 31-34). The City Attorney echoed the Development Services Director stating: “So, I wanted to point this out that as Mr. Solstice just stated, it is really an administrative decision. What the City Council is deciding is whether the application meets the published criteria of the city for the final plat. And if so, then the application should be granted.” (App. 4, p. 31-34 *emphasis added*). The evidence in the record is clear. The Council’s Final Plat Application review was not discretionary, and the City’s own LDC mandated approval. The City’s denial was accordingly a departure from the essential elements of law and must be quashed.

C. THE CITY’S DENIAL LACKED COMPETENT SUBSTANTIAL EVIDENCE.

The meaning of “competent substantial evidence” has been succinctly summarized as “evidence sufficiently relevant and material to the ultimate determination ‘that a reasonable mind would accept it as adequate to support the conclusion reached.’ Substantial evidence is evidence that provides a factual basis from which a fact at issue may reasonably be inferred.” *City of Miami Gardens v. Miami Dade Charter Foundation, Inc.*, 857 So. 2d 202, 204 (Fla. 3d DCA 2003) citing *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957). *See also Pollard v. Palm Beach Cnty.*, 560 So. 2d 1358, 1359-60 (Fla.

4th DCA 1990) (“evidence relied upon to sustain the ultimate finding should be sufficiently **relevant and material** that a reasonable mind would accept it as adequate to support the conclusion reached. To this extent the ‘substantial’ evidence should also be ‘competent.’”). The mere presence in the record of documents or testimony relating to the issue is not sufficient; they must be or contain relevant valid evidence which supports the decision. *Jesus Fellowship Inc. v. Miami-Dade Cnty.*, 752 So. 2d 708, 710 (Fla. 3d DCA 2000). Once a petitioner meets the initial burden of showing its application meets the statutory criteria for granting a plat application, the burden shifts to the local government to demonstrate, by competent substantial evidence presented at the quasi-judicial hearing and made a part of the record, the application does not meet such standards and is, in fact, adverse to the public interest. *G.B.V. Int’l, Ltd.*, 787 So. 2d at 842, citing *Irvine v. Duval County Planning Commission*, 495 So. 2d 167 (Fla. 1986).

Petitioner has met the statutory criteria for granting the Final Plat Application. The record from the January 27, 2025, Council meeting includes: a copy of the Final Plat, a City Staff report certifying compliance with the previously approved Preliminary Plat, and certification the Planning Board recommended Final Plat approval. (LDC §21-167; App. 7). See *also ABG Real Estate Dev. Co. v. St. Johns Cnty.*, 608 So. 2d 59, 62 (Fla. 5th

DCA 1992) (staff report can constitute strong evidence in land use cases). Testimony was also presented at the quasi-judicial hearing by the City's own Development Director stating the Final Plat Application is "consistent with Florida Statutes and the requirements of the Land Development Code." (App. 7, p. 114-116). This is not to mention the substantial amount of documentation that was previously presented to the City throughout the Preliminary Plat approval process.

In contrast, the City Council provided absolutely **zero** competent substantial evidence to justify their denial. (See e.g. App. 7). The City was asked simply and directly for the full record serving as the basis for its denial, and the City only produced documents submitted by Petitioner and a City Staff report recommending Final Plat approval. (*Id.*) The City's responsive records did not contain a single piece of information that would support denial. (See e.g. App. 7.).

Similarly, as detailed above, the public comments offer no support for the Council's actions, and, if anything lend weight to Petitioner's position. In land use decisions, fact-based citizen testimony can constitute competent substantial evidence, but the opinion testimony of citizens is not a sound basis for denying a zoning change application. See *Miami-Dade Cty. v. Walberg*, 739 So. 2d 115, 117 (Fla. 3rd DCA 1999); *City of Apopka v. Orange*

Cnty., 299 So. 2d 657 (Fla. 4th DCA 1974). Here, no “fact-based” public comment was offered. The internal deliberations of Council members are likewise unavailing of any evidence to show the Application did not “*meet[] all the requirements of the land development regulations and compl[y] with the approved preliminary plat*” as required by the LDC. Indeed, no response could be given to Councilwoman Gillis when she asked her colleagues what showed the Application “was not checking all the boxes?” (App. 4, p. 41).

Notwithstanding Councilmembers’ speculative and unsubstantiated opinions on flooding during 100-year storms and hurricanes and how those Acts of God may impact stormwater ponds, which are in the middle of being constructed when the storms hit, the LDC makes no mention of these unpredictable events when determining whether a neighborhood plat is compliant. *G.B.V. Int’l, Ltd.*, 787 So. 2d 838, 842 (Fla. 2001) (holding if the record on first-tier certiorari review does not contain competent substantial evidence to support the conclusion petitioner failed to meet the municipality’s published criteria for plat approval, the decision must be quashed.).

D. THE CITY’S DENIAL LETTER WAS ERRONEOUS AS A MATTER OF LAW.

Petitioner has clearly met its burden of proving entitlement to Final Plat approval and has shown there was no evidentiary basis presented at the quasi-judicial hearing for the plat’s denial. The City’s denial letter attempts to

conjure an *ex post facto* justification for the Council's unlawful decision. (App. 10). None of the purported issues outlined in the denial letter were raised in any capacity during the quasi-judicial hearing, and no evidence was presented to show non-compliance of any kind. This alone moots the attempted justification. More importantly, the points raised by the City in its denial letter were already addressed by Petitioner during the preliminary plat process.

First, the City points to its Comprehensive Plan at Chapter 4, Policy 1.2.2. (App. 10, p. 163). This policy requires new developments have stormwater management facilities to protect nearby property owners. Second, the City references LDC at Article IV Section 21-42.04(c)(1)(a). (App. 10, p. 164). This provision provides subdivision proposals must be consistent with the need to minimize flood damage. Third, the City references LDC at Article IV Section 21-42.04(d)(5). (*Id.*). This provision provides fill shall be designed to be stable under flooding conditions. Fourth, the City references LDC at Article IV Section 21-42.04(h)(1)(a). (*Id.*) This provision provides development shall be located and constructed to minimize flood damage.

As established by the uncontroverted record evidence, Phase 2's development has already complied with all referenced policies in the City's

denial letter. Phase 2's stormwater system was fully vetted and approved by City staff and the SJRWMD. (App. 7, p. 114; App. 4, p. 31, 34; App. 8, p. 157). Petitioner submitted a 309-page stormwater report with both the preliminary plat application and the SJRWMD permit applications. The report was sufficient for both purposes. The Final Plat Application includes eight dry retention ponds and four wet detention ponds. (App. 7, p. 118-133). In total, the Phase 2 development plan includes nearly 46 acres of preserved wetlands and stormwater ponds. As explained in the extremely detailed stormwater reports provided to the City during the Preliminary Plat Application process, the stormwater plans will increase floodplain storage by over 279,000 cubic feet. This will result in a substantial decrease in runoff discharge to the offsite floodplain during a 100-year storm event. In short, the post-development drainage condition will be far superior to the pre-development condition.

The City's denial letter cannot stand as a matter of law, because it references regulations that were not raised at the public hearing and for which there was no record evidence whatsoever – much less any “substantial, competent evidence” – showing any violations or noncompliance's with the same.

E. THE CITY VIOLATED PETITIONER'S PROCEDURAL DUE PROCESS BY PROVIDING IMPROPER NOTICE AND INTRODUCING EX-POST-FACTO JUSTIFICATIONS FOR DENYING THE FINAL PLAT APPLICATION.

The City Council tabled discussion of the Final Plat Application at least three times. (App. 8, p. 158-160). One action to table the Application was done with the express purpose of allowing the Council to first consider and approve an outright moratorium on any new building permits, further highlighting the Council's attempt to deprive Petitioner's rights. (App. 8, p. 158). Although the Application was ultimately considered, Petitioner was given only a few hours' notice of the agenda item on the day of the Council meeting. (App. 8, p. 160).

Further, the City's denial letter attempts to belatedly raise issues, which were not discussed during the quasi-judicial hearing. (See e.g. App. 4; App. 10). Because all points raised in the letter were conjured after the hearing and denial, Petitioner had no opportunity to address them at the proper time. Moreover, there was no record evidence to support the City's bald assertions in the letter that the application ran afoul of these provisions. The introduction of this flimsy, new-found "justification" as grounds for denial of the Final Plat Application deprived Petitioner of its procedural due process and further renders the City's January 27, 2025, denial improper.

VII. CONCLUSION

Ultimately, the City Council's January 27, 2025, decision departed from the essential requirements of law. The Council exceeded its procedural authority by denying Petitioner's Final Plat application without **any evidence** – much less any “competent substantial evidence.” The City also violated Petitioner's procedural due process rights by tabling the Application multiple times – unilaterally, and with no stated justification – and then springing the rescheduled hearing on Petitioner the same day it was to be heard. Accordingly, Petitioner requests this Court: (1) Grant the Writ of Certiorari; (2) Quash the City Council's January 27, 2025, denial of the Final Plat Application (FP-2400); and (3) Remand the Final Plat Application (FP-2400) to the City Council for immediate reconsideration consistent with Florida law and the City's LDC.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY the foregoing has been submitted in compliance with the requirements of *Fla. R. App. P.* 9.100(g). This petition contains fewer than 13,000 words and has been prepared in size-14 Arial font.

/s/ Rachael M. Crews

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing Petition for a Writ of Certiorari has been E-Filed with the Clerk of the Court and has been served, this 24th day of March, 2025, upon:

Via e-mail:

and via Federal Express upon:

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