

**IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT  
IN AND FOR BAY COUNTY, FLORIDA  
APPELLATE DIVISION**

THE PANAMA CITY  
RESCUE MISSION, INC.,  
A Florida not-for-profit corporation,  
Petitioner,

v.

Case No.: 10-1869-CA

CITY OF SPRINGFIELD,  
A Florida municipal corporation,  
Respondents.

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**ORDER ON PETITION FOR WRIT OF CERTIORARI**

**THIS MATTER** is before the Court on Petitioner's Petition for Writ of Certiorari filed on July 23, 2010. Having considered the Petition, the Respondent's Response to the Order to Show Cause filed October 27, 2010, the Petitioner's Reply filed December 1, 2010, the court file and records, and being otherwise fully advised, this Court finds that the Petitioner's Petition is due to be granted.

In the case below, the Petitioner applied for a development order from the City of Springfield to expand the Bethel Village Home for Women and Children located at the intersection of Transmitter Road and Ten Acre Road. The City of Springfield Planning Board recommended approval of the application on April 13, 2010, with a stipulation that certain permits be submitted and the official plans be consolidated prior to the City Commission's review. On June 7, 2010, the City Commission conducted a public hearing at which members of the public were given an opportunity to comment on the requested development order. After considering the presentation from the Rescue Mission and all of the concerns raised by the neighboring residents, the Commission unanimously rejected the application for development. In the City's written Final Order denying Petitioner's application, it stated that "the proposed development would be in conflict with or contrary to the public interest and that the proposed development would create an unreasonable hazard or nuisance, or otherwise constitute a threat to the general health, welfare or safety of the City."

The Petitioner filed a Petition for Writ of Certiorari asking this Court to review the City's Final Order and to quash and reverse the order based on the lack of evidentiary support for the City's denial. The Petitioner alleges that the proposed project met all legal and regulatory criteria for approval and that the City's decision was based solely on unsubstantiated lay testimony. The Respondent argues that the testimony of citizens may be considered in zoning and land use matters when the fact-based testimony relates to the incompatibility of a particular project with the surrounding area, and such testimony coupled with the application, site diagrams and additional testimony, constitutes competent and substantial evidence supporting the Commission's decision.

Circuit court certiorari review of a local administrative action is governed by a three-part standard of review: 1) whether procedural due process was afforded, 2) whether the essential requirements of law have been observed, and 3) whether the agency's decision is supported by competent and substantial evidence. See *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523 (Fla. 1995). A court's review of the Commission's decision is confined to the record of the proceedings below. See *Dade County v. Marca, S.A.*, 326 So.2d 183 (Fla. 1976). Furthermore, the reviewing court is not to reweigh the evidence in the record or substitute its judgment for that of the Commission, but only to determine whether the decision was supported by competent and substantial evidence. See *Dusseau v. Metro. Dade County Bd. of County Comm'rs*, 794 So. 2d 1270 (Fla. 2001); see also *City of Jacksonville Beach v. Car Spa, Inc.*, 772 So. 2d 630 (Fla. 1st DCA 2000). This Court finds that such evidence does not exist in the record before it.

This Court agrees with the Respondent that "[c]itizen testimony in a zoning matter is perfectly permissible and constitutes substantial competent evidence, so long as it is fact-based." *Miami-Dade County v. Walberg*, 739 So. 2d 115, 117 (Fla. 3d DCA 1999) (citing *Metro. Dade County v. Blumenthal*, 675 So. 2d 598, 607 (Fla. 3d DCA 1995)). However, "mere generalized statements of opposition are to be disregarded." *Id.*; see also *City of Apopka v. Orange County*, 299 So. 2d 657 (Fla. 4th DCA 1974) (noting that lay opinion about construction costs, damage to the Florida aquifer, and speculation of possible zoning ramifications without any factual support was not competent and substantial evidence upon which the Board could base its denial of an exception for the construction of an airport). It is also clearly established that the opinions of surrounding landowners, by themselves, are not sufficient to support a decision by the City. See *BML Invs. v. City of Casselberry*, 476 So. 2d 713 (Fla. 5th DCA 1985) (granting writ of certiorari, noting that the City's major consideration in denying a special exception was simply that a majority of the persons affected opposed the change). Furthermore, the fact that lay persons might not submit their own charts, expert reports or other materials does not diminish the sufficiency of their testimony. See *City of Hialeah Gardens v. Miami-Dade Charter Found., Inc.*, 857 So. 2d 202, 205 (Fla. 3d DCA 2003). Nonetheless, citizens' testimony must be substantiated by facts in the record and must be relevant to the considerations facing the City Commission in order to be considered competent, substantial evidence. *Id.*; see also *Metro. Dade County v. Sportacres Dev. Group, Inc.*, 698 So. 2d 281, 282 (Fla. 3d DCA 1997) (neighbors' testimony concerning facts contained in the record, which included maps, reports and other information, constituted competent and substantial evidence); see also *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957) (competent and substantial evidence is such evidence that is "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached.>").

The First DCA recently held that "[l]ay witnesses' speculation about potential 'traffic problems, light and noise pollution,' and general unfavorable impacts of proposed land use are not...considered competent, substantial evidence." *Katherine's Bay, LLC v. Fagan*, 35 Fla. L. Weekly D2759 (Fla. 1st DCA December 14, 2010) (citing *Pollard v. Palm Beach County*, 560 So. 2d 1358, 1360 (Fla. 4th DCA 1990)). In *Katherine's Bay*, the court reversed an administrative law judge's determination that the rezoning of particular property would be incompatible with the surrounding uses. The Court found that the testimony of neighboring landowners speculating on the proposed RV park's impact on the neighborhood was not competent and substantial evidence upon which the ALJ could base his decision. *Id.* at \*11. The First DCA also pointed to a similar case, *Conetta v. City of Sarasota*, 400 So. 2d 1051 (Fla. 2d DCA 1981), in which the Second DCA held that the City Commission's denial of a special exception was improperly based on the apparent unpopularity with other residents and their speculation about future problems.

The Respondent cites to a number of cases in support of its argument that citizen testimony should be considered. However, these cases allowed decision-making body to consider such subjective factors as aesthetics, style and compatibility with surrounding areas. See, e.g., *Bd. of County Comm'rs of Pinellas County v. City of Clearwater*, 440 So. 2d 497 (Fla. 2d DCA 1983) (lay individuals with firsthand knowledge of vicinity were as qualified as "expert witnesses" to offer views on the ethereal, factual matter of whether a dock would materially impair natural beauty and recreational advantages of area); *Metro. Dade County v. Section 11 Prop. Corp.*, 719 So. 2d 1204 (Fla. 3d DCA 1998) (lay testimony was competent and substantial evidence supporting denial of a special exception, given that the commission could consider aesthetics and compatibility with surrounding land uses); *City of St. Petersburg v. Cardinal Indus. Dev. Corp.*, 493 So. 2d 535 (Fla. 2d DA 1986) (citizen testimony about the incompatibility of the size and style of proposed apartments and the devaluation of neighboring properties was competent and substantial evidence, as the code provided for consideration of those factors); *Grestkowitz v. Metro. Dade County*, 389 So. 2d 1041 (Fla. 3d DCA 1980) (finding citizen testimony to be competent and substantial evidence in denying rezoning, where the intended commercial use of property was incompatible with the strictly residential area); *Walberg*, 739 So. 2d 115 (request for rezoning of the property was incompatible with the surrounding area); *Miami-Dade County v. New Life Apostolic Church of Jesus Christ, Inc.*, 750 So. 2d 738 (Fla. 3d DCA 2000) (church's request for six variances was denied, as the proposed development would be incompatible with surrounding land use); *Sportacres*, 698 So. 2d at 282 (requested non-use variance was incompatible with surrounding neighborhoods). In the instant case, the City was not faced with issues of "aesthetics," "recreational advantages," or "compatibility with surrounding use," and instead maintained that the proposed development was "contrary to the public interest" and that it would create "an unreasonable hazard or nuisance." The testimony of surrounding residents must relate to those particular factors in order to be competent and substantial evidence supporting the City's decision.

Under Section 2-5.2 of the City of Springfield Comprehensive Planning and Land Development Regulation Code, the approval or denial of a development order "shall be based upon general standards, including but not limited to:

- 1) The proposed development must not be in conflict with or contrary to the public interest;
- 2) Unless otherwise exempted, the proposed development must be consistent with the Comprehensive Plan and the provisions of this Code;
- 3) The proposed development must not cause significant financial liability or hardship for the City;
- 4) The proposed development must not create an unreasonable hazard or nuisance, or otherwise constitute a threat to the general health, welfare or safety of the City;
- 5) The proposed development must be in conformance with all other applicable laws, statutes, ordinances, regulations or codes.

At the public hearing on June 7, 2010, the Petitioner presented the proposed expansion of Bethel Village and answered questions from the Commission and the citizens of Springfield. (See Transcript of the June 7, 2010 public hearing of the City Commission of the City of Springfield). After this presentation, the citizens were given an opportunity to speak about the project. In general, the Springfield citizens appeared to support the goals of the Petitioner, but objected to the location of the

proposed housing. Potential traffic problems, devaluation of land, and age limits of the participants' children were among the many issues raised at the hearing. Further, several property owners argued that their neighborhood would experience crime and vagrancy problems with the addition of nearly 100 residents. Based on the foregoing, the Commission denied the application, citing subsections 1 and 4 of the above Code. (See attached Order.)

While there was a genuine concern about the safety of the neighborhood, such testimony was based on comparisons with the Petitioner's larger downtown facility. See *Katherine's Bay*, 35 Fla. L. Weekly D2759, \*10 (while the appellant failed to maintain another facility in an attractive manner, this was only speculative evidence that he would operate the proposed facility in the same way). Other concerns, such as men being housed at Bethel Village and unsuccessful participants of the program loitering in the area, were conjecture and had no grounding in facts. Moreover, the opinions about increased traffic, vagrancy, and crime and the potential land value diminution cannot be considered when unsubstantiated by the record. See *Debes v. City of Key West*, 690 So. 2d 700, 702 (Fla. 3d DCA 1997) ("generalized fears of an increase in traffic are wholly inappropriate...to deny any one landowner the rights to which he is entitled"); *Pollard*, 560 So. 2d at 1360 (opinions of residents regarding traffic, light and noise problems were not competent and substantial evidence).

Although the City Commission is allowed to consider the testimony of its citizens, it must provide a legal justification supported by competent, substantial evidence to deny the application for the development order. See *Irvine v. Duval County Planning Comm'n*, 504 So. 2d 1265 (Fla. 1st DCA 1986) (adopting the dissenting opinion of Zehmer, J. at 466 So. 2d 357, 366, stating that the decision making body must set out detailed factual findings, and not general conclusions in the language of the statute or ordinance, supporting its decision to deny an application); see also *Apopka*, 299 So. 2d 657 (finding no competent and substantial evidence, where there are no findings of fact upon which a board's decision is based, and only a simple conclusion that an exception is against the public interest). The written Final Order stated no findings of fact supporting the Commission's denial of the application, and provided only a conclusory statement that the proposed facility was against the public interest and created an unreasonable hazard or nuisance, or otherwise constitutes a threat to the general health, welfare or safety of the City. Given that the Commission failed to provide any factual basis for their decision, this Court must conclude that the decision was based on a popularity poll and a general fear of unsubstantiated problems arising from the expansion of Bethel Village. Because there is not competent and substantial evidence in the record supporting the decision of the City Commission, the Petitioner's petition is due to be granted.

Therefore, it is

**ORDERED AND ADJUDGED** that the Petitioner's Petition for Writ of Certiorari is hereby **GRANTED**. This cause is **REMANDED** to the City Commission of the City of Springfield for a *de novo* hearing on the Petitioner's application or for the issuance of the development order.

**DONE AND ORDERED** in chambers in Bay County, Florida, this 3 day of

February 2011.

**HONORABLE MICHAEL C. OVERSTREET,**  
**CIRCUIT JUDGE**