

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA**

**SORRENTO RANCHES
HOMEOWNERS ASSOCIATION, INC.,
DR., ROBERT S. BURRUS, JR., PH.D.,
and DR. JOHN J. YUOSJO, D.M.D.,
Petitioners,**

v.

Case No.: 2008 CA 02051 NC

**THE CITY OF VENICE, FLORIDA
a municipality organized under the laws
of the State of Florida and THE CITY COUNCIL
OF THE CITY OF VENICE, FLORIDA,
Respondents.**

ORDER ON PETITION FOR WRIT OF CERTIORARI

This matter came for consideration on the Petition for Writ of Certiorari filed on February 7, 2008, by Sorrento Ranches Homeowners Association, Inc., Dr. Robert S. Burrus, Jr., Ph.D. and Dr. John J. Yurosko, D.M.D. (collectively, the "Petitioners") against the City of Venice, Florida and the City Council of the City of Venice, Florida (collectively, the "City"). The Court has considered the Petition for Writ of Certiorari, the Response filed on April 21, 2008, by the City, the Response filed on April 22, 2008, by the Intervenor, Bella Cita, LLC ("Bella Cita") and the Petitioners' Reply filed on May 12, 2008.

A. Background

On or about March 6, 2007, Bella Cita filed its Application for Rezoning seeking to have a certain 46 acre tract of land be rezoned from "Open Use Estate 1" to "Planned Unit Development", the effect of which would be to put 180 dwelling units where only 9 could go under the then-existing zoning (the "Zoning Map Amendment").

On May 15, 2007, the Venice Planning Commission (the "Planning Commission") held a meeting to consider the Zoning Map Amendment. The following motion passed with a vote of four in favor and three opposed:

...based on the staff report and the presentation, the Planning Commission, sitting as the local planning agency, finds this request consistent with the Comprehensive Plan and the affirmative Findings of Fact in the record and, therefore, recommends to the City Council approval of the Zoning Map Amendment with the condition of approval as recommended by staff.¹

On January 8, 2008, the City Council conducted a meeting to consider the Zoning Map Amendment. In conjunction with this meeting, the Planning Commission submitted to the City Council a document entitled "Excerpt from the May 15, 2007 Planning Commission Meeting" (the "Excerpt"). The Excerpt contained the following City staff analysis along with other summaries of the presentations given to the Planning Commission at the May 15, 2007 meeting.

Mr. Caillouette, being duly sworn, displayed site and aerial photos, future land use and zoning maps, he reviewed county road improvements on Pinebrook Road, surrounding land and zoning uses, and summarized the petition stating that the applicant has addressed all the concerns raised by the planning commission at the pre-hearing conference. He outlined the planned amenities, he stated the petition is compliant with the pre-annexation agreement, is consistent with the comprehensive plan and the Joint Planning Agreement (JPA), and there are no outstanding technical issues. Mr. Caillouette elaborated on the JPA density designations, he stated staff recommends approval with the stipulation that there be variation in building and roof color between adjacent structures,

¹ The condition was the stipulation that there be variation in building and roof color between adjacent structures, and that confirmation of this be established at site and development plan approval.

and that confirmation of this be established at site and development plan approval.

The City Council adopted the Zoning Map Amendment via Ordinance 2007-31 (the "Ordinance"). In the Petition for Writ of Certiorari, the Petitioners request this Court to quash the Ordinance claiming: (1) the City Commission failed to observe the essential requirements of law, because the report and recommendations of the Venice Planning Commission did not include an analysis pursuant to Section 86-47(e) and (f) of the Code of Ordinances of the City of Venice (the "Code"); (2) the City denied Petitioners their due process rights because the Petitioners were denied their right to cross-examine witnesses; (3) the City denied Petitioners their due process by denying the right of rebuttal; (4) the City denied Petitioner, Yurosko, due process by denying his right to be heard at a hearing and limiting the other Petitioners to five minutes; and (5) the City departed from the essential requirements of the law, because the City approved the Rezoning Amendment based upon a perception of public opinion. The Court addresses each argument in turn.

B. Standard of Review

Rezoning ordinances are the result of quasi-judicial proceedings and are subject to certiorari review. Bd. of County Commissioners v. Snyder, 627 So. 2d 469 (Fla. 1993). The court's scope of review is limited to determining: (1) whether the City afforded procedural due process; (2) whether the City observed the essential requirements of law; and (3) whether competent, substantial evidence supported the City's findings and judgment." Powell v. City of Sarasota, 953 So.2d 5, 6 (Fla. 2d DCA 2006).

C. Count I

In Count I, the Petitioners claim that the City departed from the essential requirement of law, because the report and recommendations of the Planning Commission to the City Council did not show that the Planning Commission studied and considered the proposed change in relation to the specific criteria promulgated in sections 86-47(e) and (f) of the Code of Ordinances of the City of Venice (the "Code") which, in turn, constitutes a lack of substantial, competent evidence of compliance with the Code. The Court rejects this argument.

Section 86-47(e) provides:

Within 60 days from the date a proposed zoning amendment is certified to the planning commission, unless a longer time is mutually agreed upon between the city council and the planning commission in the particular matter, the planning commission shall submit its report and recommendation to the city council. If the planning commission does not submit its report and recommendations within the prescribed time, all records of the planning commission on the request shall be certified to the city council, which then may proceed to action on the proposed amendment without further awaiting the report or recommendation of the planning commission.

Section 86-47(f) is set forth below.

When pertaining to the rezoning of land, the report and recommendations of the planning commission to the city council shall **show that the planning commission has studied and considered the proposed change** in relation to the following, where applicable:

- a. Whether the proposed change is in conformity to the comprehensive plan.
- b. The existing land use pattern.
- c. Possible creation of an isolated district unrelated to adjacent and nearby districts.
- d. The population density pattern and possible increase or overtaxing of the load on public facilities such as schools, utilities, streets, etc.
- e. Whether existing district boundaries are illogically drawn in relation to existing conditions on the property proposed for change.

- f. Whether changed or changing conditions make the passage of the proposed amendment necessary.
- g. Whether the proposed change will adversely influence living conditions in the neighborhood.
- h. Whether the proposed change will create or excessively increase traffic congestion or otherwise affect public safety.
- i. Whether the proposed change will create a drainage problem.
- j. Whether the proposed change will seriously reduce light and air to adjacent areas.
- k. Whether the proposed change will adversely affect property values in the adjacent area.
- l. Whether the proposed change will be a deterrent to the improvement or development of adjacent property in accord with existing regulations.
- m. Whether the proposed change will constitute a grant of special privilege to an individual owner as contrasted with the public welfare.
- n. Whether there are substantial reasons why the property cannot be used in accord with existing zoning.
- o. Whether the change suggested is out of scale with the needs of the neighborhood or the city.
- p. Whether it is impossible to find other adequate sites in the city for the proposed use in districts already permitting such use.

(Emphasis added.)

The Court finds that the Excerpt qualifies as a “report and recommendation” under 86-47(e). Further, the Court finds that the Excerpt substantially complies with 86-77(f), because it demonstrates that the Planning Commission reviewed and considered: site and aerial photos, future land use and zoning maps, road improvements, surrounding land and zoning uses, the pre-annexation agreement, the Comprehensive Plan of Venice, and the Joint Planning Agreement. The Court takes judicial notice of the Comprehensive Plan of Venice and notes that subsumed within it are considerations related to water and traffic management among other planning and zoning considerations. At a minimum, the Excerpt addresses 86.47(f)(1)(a, b, c, d, e, h, i and o). The plain language of 86-47(f)(1) does not require consideration of each and every

consideration; rather, it gives the Planning Commission discretion to determine what considerations are “applicable.”² Accordingly, Count I of the Petition for Certiorari is denied.

D. Count II

In Count II, the Petitioners claim that the City denied them due process because they were denied their right to cross-examine witnesses. The Court has carefully reviewed the transcripts from the City Commission meetings held on June 26, 2007 (the “First Meeting”) and January 8, 2008 (the “Second Meeting”). At both the First and Second Meetings, the Commission heard from various interested parties including Mr. Lobeck on behalf of the Sorrento Ranches Homeowner’s Association, Inc. (the “HOA”), one of the Petitioners in this case, and Mr. Graf. Mr. Graf is a resident of Sorrento Ranches and is the past president of the HOA. At the First and Second Meetings, Mr. Graf appeared on behalf of the Sorrento Area Residential Association and spoke in support of the Zoning Map Amendment. At the First Meeting, Mr. Lobeck had the opportunity to cross-examine Mr. Graf. At the Second Meeting, the City’s attorney denied Mr. Lobeck the opportunity to cross-examine Mr. Graf, because Mr. Lobeck was not a party.

The Court finds that depriving Mr. Lobeck his right to cross-examine was a denial of due process. “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.” Lee County v. Sunbelt Equities, II, Ltd. Partner, 619 So. 2d 996, 1002 (Fla. 2d DCA 1993) (citing Jennings v. Dade County, 589 So. 2d 1337 (Fla. 3d DCA 1991)). Affected parties must be given

² The Court also notes that as part of the Planning Commission’s process, there is a specific reference to and review of each and every factor under 86-47(f). See Exhibit B to the City’s Response.

“a fair opportunity to be heard in accord with the basic requirements of due process, including the right to present evidence and to cross-examine adverse witnesses.” Bd. of County Comm’n of Hillsborough County, 332 So. 2d 651 (Fla. 2d DCA 1976). The Court finds that the HOA was an affected party. City of St. Petersburg, Bd. of Adjustment v. Maribelli, 728 So. 2d 1197 (Fla. 2d DCA 1999); Renard v. Dade County, 261 So. 2d 832 (1972). Accordingly, the Petition is granted as to Count II.

E. Count III

In Count III, the Petitioners claim that the City denied Petitioners due process by denying the right of rebuttal. At the Second Meeting, Mr. Lobeck requested to “briefly rebut Mr. Graf’s testimony.” See Second Meeting Tr. 186. The City Attorney denied the request explaining that:

it is not the common standard practice of perhaps not every single jurisdiction but almost every local government in this area to have a presentation, and you have, by an applicant, public comment and then rebuttal from staff is mixed up in there. The public, whether that’s a representative of a group or an individual, the public doesn’t get to have a second chance. And the main reason, Mr. Mayor and Members of Council is, is because it would never end. It would never end. So there’s nothing about – there’s no denial of due process here because somebody didn’t get a chance to have the last word. That’s not how the process works. Thank you.

Id.

Efficiency oftentimes competes with due process, but due process must always prevail. The Court finds that the denial of any rebuttal constitutes of violation of due process. See Sadler v. State, 509 So.2d 1139 (Fla. 5th DCA 1987). Accordingly, the Petition is granted as to Count III.

F. Count IV

In Count IV, the Petitioners claim that the time limitations imposed at the First Meeting violated the due process rights of Petitioner, Yurosko. The Court finds that the limitations imposed were appropriate and do not constitute a violation of due process. See Jennings, 589 So. 2d at 1340. Further, it appears from the transcript that Mr. Yurosko was able to finish his presentation within the allotted time. First Meeting Tr. 80-84. Accordingly, the Petition is denied as to Count IV.

G. Count V

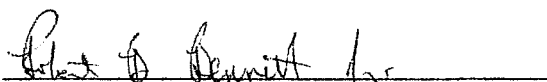
In Count V, the Petitioners claim that the City departed from the essential requirements of law and did not base their decision on competent, substantial evidence, because the City approved the Zoning Map Amendment. Reading the record as a whole, the Court finds that this argument is without merit.

H. Conclusion

It is hereby **ORDERED** and **ADJUDGED** that:

1. Counts II and III of the Petition for Writ of Certiorari are **GRANTED**;
2. Counts I, IV and V of the Petition for Writ of Certiorari are **DENIED**; and
3. The City Council's January 8, 2008 decision to adopt the Ordinance is hereby **QUASHED**.

DONE and **ORDERED** in Chambers in Venice, Sarasota County, this 4 day of June, 2008.


Robert B. Bennett, Jr., Circuit Judge

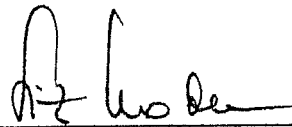
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Order** has been forwarded this 4 day of June, 2008 via U.S. Mail to:

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