

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT

JANUARY 23, 2012

VILLAGE OF PALMETTO
BAY, FLORIDA,

Petitioner,

vs.

CASE NO:
L.T. CASE NO. 10-259 AP

PALMER TRINITY PRIVATE
SCHOOL, INC.

Respondent.

_____ /

PETITION FOR WRIT OF CERTIORARI

The Village of Palmetto Bay petitions this Court for a writ of certiorari quashing the Order and Mandate of the Circuit Court of the Eleventh Judicial Circuit, Appellate Division, which granted Palmer Trinity Private School, Inc.'s Motion to Enforce Mandate or in the Alternative, for Extraordinary Relief (the "Order"). The Order arises from Palmer Trinity's zoning application to double the size of its school from 600 to 1150 students. After a hearing at which several witnesses testified, the Village denied the application, but approved a more limited expansion to 900 students. An appellate panel of the Eleventh Judicial Circuit reversed, holding that no competent substantial evidence supported approving 900 students. On remand, removed the 900-student cap, but otherwise left the denial of

the application intact. Rather than filing a new petition for certiorari, Palmer Trinity filed a motion to enforce the circuit court’s previous mandate, arguing that the court had implicitly required the Village to approve the application with no limitation on the number of students. The Village responded that such a requirement would have violated clear precedent holding that a court acting in its appellate capacity cannot direct the respondent to enter any particular order or judgment. Moreover, competent substantial evidence supported the Village’s conclusion that Palmer Trinity’s request to “increase the number of students from 600 to 1,150 is not in compliance with the applicable standards” (A. 171).¹ The Order nevertheless concluded, for the first time, that the circuit court’s original opinion and previous clarification had required the Village to remove the approval of an expansion to 900 students *and* to approve the application for 1150 students. The circuit court’s new interpretation of its prior mandate departs from the essential requirements of law. This Court should grant certiorari.

I.

BASIS FOR JURISDICTION

This Court has certiorari jurisdiction to review final orders of circuit courts acting in their review capacity. *See* Fla. R. App. P. 9.030(b)(2)(B); Art. V, § 4(a)(3), Fla. Const. *See, e.g., Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523

¹ “A. #” refers to the page number of the appendix filed with this petition.

(Fla. 1995); *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624 (Fla. 1982). Certiorari functions as a safety net to enable the appellate court to halt a miscarriage of justice where no other remedy exists. *Broward Cnty. v. G.B.V. Int'l, Ltd.*, 787 So. 2d 838, 842 (Fla. 2001). To obtain certiorari, a petition must demonstrate: (1) a departure from the essential requirements of law; (2) resulting in a material injury; (3) that cannot be corrected on a direct appeal. *South Miami Hosp., Inc. v. Perez*, 38 So. 3d 809, 811 (Fla. 3d DCA 2010). A court departs from the essential requirements of law where it rules in a manner that violates “a clearly established principle of law resulting in a miscarriage of justice.” *Clay Cnty. v. Kendale Land Dev., Inc.*, 969 So. 2d 1177, 1180 (Fla. 1st DCA 2007).

Florida courts regularly grant certiorari relief where a circuit court has exceeded the scope of its authority in reviewing the quasi-judicial decision of an agency or local government body. *See, e.g., G.B.V. Int'l*, 787 So. 2d at 846 (finding that the lower court departed from the essential requirements of law by applying an independent standard of review to the agency decision); *Town of Manalapan v. Gyongyosi*, 828 So. 2d 1029, 1034 (Fla. 4th DCA 2002) (granting certiorari where the lower court had conducted a de novo review of a town’s decision and exceeded its appellate authority by directing the town to take a particular course of action); *Kendale Land Dev., Inc.*, 969 So. 2d at 1181 (granting certiorari where the lower court violated the clearly established principle of law

that when considering a petition for certiorari the court may not direct the lower tribunal to take any particular course of action); *Evergreen Tree Treasurers v. Charlotte Cnty. Bd. of Cnty. Comm'rs*, 810 So. 2d 526, 531 (Fla. 2d DCA 2002) (finding that the lower court applied the wrong law by independently reviewing the record of an agency's quasi-judicial decision); *National Advertising Co. v. Broward Cnty.*, 491 So. 2d 1262, 1263 (Fla. 4th DCA 1986) (granting in part certiorari where the lower court exceeded its authority by directing the county to take a particular course of action, rather than just quashing the variance at issue).

II.

STATEMENT OF RELEVANT FACTS

Palmer Trinity owns and operates a private school on 22.5 acres located at 7900 S.W. 176th Street in the Village of Palmetto Bay (A. 197). In 2003, it purchased another 32.5 acres located at 8001 S.W. 184th Street ("Parcel B") (A. 197-98, 502). In 2006, seeking to expand the school onto Parcel B, and to more than double the student population from 600 to 1,400, Palmer Trinity applied for rezoning, for a special exception, for variances, and for a site plan modification under the Miami-Dade County Code.

The Village denied rezoning (A. 305). Palmer Trinity sought certiorari review in the circuit court, which was denied (A. 306). Shortly thereafter, based on a decision rendered after the circuit court's ruling, this Court granted second-

tier certiorari (A. 342-43). See *Palmer Trinity Private Sch. v. Village of Palmetto Bay*, 31 So. 2d 260 (Fla. 3d DCA 2010). Upon remand, after the Village granted the rezoning request, the Village held further hearings on the remaining applications. Palmer Trinity modified its student enrollment request from 1,400 to 1150 students and withdrew its three variance requests (A. 188-89).

Background of Resolution 2010-48

Under the zoning code, any zoning decision must be consistent with the comprehensive plan and applicable development regulations (A. 371). The Village's Future Land Use Plan ("Land Use Plan") designated Palmer Trinity's parcel as Estate Density Residential. Policy 1.1.5 of the Land Use Plan allows houses of worship and other permitted non-residential uses in all land use categories, but further provides:

However, if located in or near neighborhoods, adverse impacts to the tranquility of the residents around the allowed use and in the surrounding neighborhood *must be minimized to the maximum extent possible*. Therefore, in residential land use areas, houses of worship and other permitted non-residential uses, including private and public schools, are allowed, on a conditional basis.

(A. 199) (emphasis added). To comply with the "conditional basis" requirement, the land use regulations require a special exception process (A. 199).

In May 2010, the Village held a hearing on Palmer Trinity's application to expand the school (A. 363). At the hearing, the Village Council applied the standards of section 33-151.11-.22, Miami-Dade County Code (A. 200), which

operated as the Village’s default Code until the Village adopted its own. That review requires, among other things, compliance with the following:

(c) *Scale*. Scale of proposed nonpublic educational facilities shall be compatible with surrounding proposed or existing uses and shall be made compatible by the use of buffering elements.

(d) *Compatibility*. The design of the nonpublic educational facilities shall be compatible with the design, kind and intensity of uses and scale of the surrounding area.

* * *

(g) *Circulation*. Pedestrian and auto circulation shall be separated insofar as is practicable, and all circulation systems shall adequately serve the needs of the facility and be compatible and functional with circulation systems outside the facility.

(h) *Noise*. Where noise from such sources as automobile traffic is a problem, effective measures shall be provided to reduce such noise to acceptable levels.

§ 33-151.19, Miami-Dade County Code (A. 204). The Planning & Zoning

Director defined the terms “scale,” “compatible,” “maintain,” and “buffer”:

“Scale” is defined as “1a. . . . proper proportion: a new house that seemed out of scale with its surroundings. A progressive classification, as of size, amount, importance or rank. 4. A relative level or degree.” *The American Heritage Dictionary of the English Language* (4th Ed. Houghton Mifflin Co. 2000).

“Compatible” is defined as . . . *capable of existing or performing in harmonious, agreeable, or congenial combination with another or others; 2. capable of orderly efficient integration and operation with other elements in a system with no modification or conversion required.*” *The American Heritage Dictionary of the English Language* (4th Ed. Houghton Mifflin Co. 2000). (emphasis added).

required.” The American Heritage Dictionary of the English Language (4th Ed. Houghton Mifflin Co. 2000). (emphasis added).

A “buffer” is defined as “1. something that lessens or absorbs the shock of an impact. 2. one that protects by intercepting or moderating adverse pressures or influences.” *The American Heritage Dictionary of the English Language* (4th Ed. Houghton Mifflin Co. 2000).

(A. 207-08). Palmer Trinity did not object to these definitions (A. 250-80). Experts, staff, and the community provided testimony and evidence regarding each of these criteria:

Scale: Mark Alvarez, an expert planner, explained the magnitude of the proposed changes: “What you have now are three softball/baseball fields, two soccer fields, two tennis courts. What is proposed in this plan are approximately five baseball and softball fields, five soccer fields, six tennis courts, one football field, and one track and an Olympic size swimming pool” (A. 531). Due to the magnitude of such changes, Alvarez commented that neighborhood complaints over noise from the athletic fields could only increase (A. 537, 544-45). The Council also heard testimony that Palmer Trinity’s 1150-student request would economically burden the community by increasing “infrastructure cost[s] to be borne by Village residents” (A. 517).

Compatibility: the Council heard a consistent community-wide concern— “[T]he expanded school that is being proposed is too big. It doesn’t fit in, and it is *not compatible* with this single-family neighborhood” (A. 496) (emphasis added).

Alvarez explained that Palmer Trinity is a regional school whose size is incompatible with the community as required by the Comprehensive Plan (A. 534, 555-56). According to Alvarez, the land use designation under the Village's Comprehensive Plan, as opposed to the County Plan upon which it was based, was "intended solely for single-family residential" (A. 533). The comprehensive plan data showed that the average home in Palmetto Bay had 3.01 inhabitants (A. 546). Because Parcel B was zoned E-M, it would accommodate 79 single-family homes and about 238 inhabitants (A. 196, 546). A school population of 1150 students would increase the property's density to 21 students per acre. Alvarez testified that "you are increasing the population density of Parcel B, well above what's expected for that zoning category" (A. 546).

Circulation: the Council heard staff, expert, and community testimony that a grant of Palmer Trinity's request would detrimentally affect the community's traffic levels (A. 525). Staff testified that because the community would be "adding 92% of the school's traffic" to its own, the community would undoubtedly feel the effects of such an addition. Staff explained: "Every trip has an incremental impact. There's surely going to be more development in the area, and it's going to impact our ability to move around" (A. 434). Alvarez noted that the Village's Comprehensive Plan required it to guard the neighborhood against impacts from Palmer Trinity's proposed expansion (A. 552, 965-980). He warned that the true

issue at play was a potential “traffic impact” (A. 551), which Palmer Trinity’s proposed “artificial way of distributing the traffic” would not alleviate (A. 552). Alvarez explained that using Parcel B for a school expansion instead of single family homes would generate 74 percent more trips during the morning peak hour and 47 percent more trips during the evening peak hour (A. 548). According to Alvarez, Palmer Trinity’s proposal for alleviating community traffic concerns was simply not “sustainable” (A. 552). Cut-through traffic or illegal driving maneuvers to avoid the traffic would cause a “cut back on safety” and would cause safety concerns (A. 552). The traffic would back into the neighborhood before even getting to the arterial road, Old Cutler Road—an historic road that cannot be expanded, which already is at a concurrency level of service of “F” (A. 552-53). A resident echoed these sentiments, explaining that she had “counted 75 cars going south on Old Cutler Road before [she] was able to leave [her] driveway” one morning (A. 586). Another resident testified: “If you take the traffic off 176 and put it on 184 and then double this school, 700 more students and put them all on 184, you’re just going to congest the whole neighborhood” (A. 528).

Noise: the Council heard testimony that Palmer Trinity’s proposed “buffer” would “never keep the noise from the athletic fields from invading” surrounding homes and “reducing . . . quality of life” (A. 506). Neighbors living several blocks from the school complained of noise “blar[ing]” from a public address system

during football games, noting that “[a]lready the noise that permeates from the schools is enough” (A. 510). One resident testified that although she was “willing to adjust [her] sensibilities to the noise level of 600 students,” she believed the “noise from 1200 students [would] be intolerable” (A. 583). An acoustical engineer’s report confirmed noise-related impacts presented by residents (A. 513). It concluded that “the noise level will be excessive, and will represent a serious problem for the surrounding area if the project is approved as proposed” (A. 983). Alvarez pointed out that the community’s concerns over noise were valid, especially regarding the soon-to-be-expanded athletic fields and parking lots (A. 545). And staff analysis from the Planning and Zoning Department did not guarantee that Palmer Trinity’s proposal would neutralize noise-related issues (A. 439, 575). Staff analyzed the landscaping buffer and confirmed that the plantings met the County landscape code; but no one testified that Palmer Trinity’s landscaping proposals would effectively absorb ambient sound or mitigate the projected noise (A. 235-37). A professional engineer and former highway designer advised that the “massive noise walls on highways provide only a 10 to 15 decibel reduction, [then] what will a five to six-foot concrete wall and vegetation, what kind of decibel reduction will that provide?” (A. 594).

The Village adopted a 21-page resolution, No. 2010-48 (the “Resolution”) (A. 167-87). The Resolution contained several pages of fact findings and

conclusions of law (A. 168-72). It concluded that the “[t]he Applicant’s request for a special exception to expand onto 8001 S.W. 184th Street and to increase the number of students from 600 to 1150 is not in compliance with the applicable standards” (A. 171-72). The Resolution provided that “the request to increase the non-public school number of students to 1150 is denied. A condition to allow expansion to 900 students is granted” (A. 172, 685). The Resolution also imposed a number of conditions on the expansion regarding lighting, construction, landscaping, and other issues (A. 172-85), and prohibited Palmer Trinity from seeking another expansion for 30 years (A. 173).

Recent Procedural Background

Palmer Trinity filed a petition for writ of certiorari asking the circuit court to quash two conditions in the Resolution. The circuit court granted the petition (the “Decision”), quashing the 900-student cap as well as a 30-year prohibition on future applications (not at issue here) (A. 687, 693). The Decision held that the 900-student cap was not supported by competent substantial evidence because the record of the hearing did not contain any mention of a cap of 900 students until after the close of public comment, when the Village Council was deliberating (A. 691). It did *not*, however, quash any other provision in the Resolution, did not find that the Village’s denial of Palmer Trinity’s application to expand to 1150 was unsupported by competent, substantial evidence, and did not direct the Village to

take specific action other than to remove the two conditions. The final paragraph of the Decision states: “For the reasons set forth above, the provisions contained in Resolution 2010-48 relating to the 30 Year Prohibition on any future development or applications for development approvals and the 900 student cap on enrollment are QUASHED and this matter is REMANDED to the Village of Palmetto Bay for proceedings in accordance with this decision” (A. 693).

The circuit court’s mandate stated that “such further proceedings be had in said cause in accordance with the opinion of this Court attached hereto and incorporated as part of this order, and with the rules of procedure and laws of the State of Florida” (A. 694).

Palmer Trinity moved to enforce the mandate, arguing that the Village intended to conduct a new hearing on Palmer Trinity’s entire zoning application (A. 1066). The circuit court granted the motion without comment (A. 736). The Village then filed a motion for clarification, noting that the circuit court did not have authority to direct the Village to enter any particular order (A. 1102). The court granted the motion and directed the Village to “commence the required proceedings to remove the two quashed conditions from the Resolution or otherwise render those conditions ineffectual and take no further action that would be inconsistent with the Court’s prior order of May 5, 2011 and this Order” (A.

739). Nowhere did the circuit court direct the Village to approve Palmer Trinity's application for an expansion to 1150 students.

In July 2011, Palmer Trinity filed its second motion to enforce the mandate, seeking to prohibit the Village Council, on remand, from hearing any evidence or argument regarding the matter (A. 1124). The court denied the motion without comment (A. 1139).

Pursuant to the circuit court's direction, and in accordance with sections 2-105, 2-106, and 2-107 of the Village's Code of Ordinances, in July 2011 the Village held a public hearing and adopted Resolution No. 2011-53 (the "Amended Resolution") (A. 740). The Amended Resolution quashed the two provisions as directed, striking all references to the 900-student cap and the 30-year prohibition on future applications (A. 705). The Village's prior denial of the application to expand the school to 1150 students remained in place (A. 697).

Palmer Trinity filed a 44-page motion to enforce the mandate, or in the alternative for extraordinary relief, arguing that the Amended Resolution violated the "spirit" (but apparently not the letter) of the circuit court's mandate (A. 33). The motion argued that by denying Palmer Trinity's application, the Village "makes a mockery of the judicial process," that the Village is "sending a message to the Court as to who is really in charge," and that it was "disrespectful to the Court," among other inflammatory remarks (A. 20, 28). The Village responded

that it had complied with the circuit court's mandate by removing the 900-student cap and the 30-year prohibition on future development. The Village noted that the circuit court could not have required the Village to take any specific action as any such mandate would have exceeded the court's authority (A. 72). The Village also filed a motion asking the circuit court to consider Palmer Trinity's filing—as the school had requested as alternative relief—as a new petition for certiorari seeking review of the Village's denial of the application (A. 1108). The circuit court denied that motion and instead considered Palmer Trinity's filing as simply a motion to enforce the mandate (A. 1120).

Declining to address any of the Village's other arguments (A. 15), on December 22, 2011 the same panel of the circuit court granted Palmer Trinity's motion to enforce the mandate and directed the Village to “remove or otherwise render ineffectual all of the provisions of the Amended Resolution which have the effect of reducing the maximum number of students allowed from 1150 to 900 or to below 900” (A. 12-13). The court interpreted its Decision to “require[] the Village to remove the 900 student cap, limit or ceiling on enrollment, not further reduce it” (A. 11). The Order's new interpretation of its Decision holds, for the first time, that the Village must grant Palmer Trinity's application at 1150 students.

III.

NATURE OF THE RELIEF SOUGHT

The Village asks this Court to quash the circuit court's order granting Palmer Trinity's Motion to Enforce Mandate.

IV.

ARGUMENT

On second-tier review from an order of a circuit court acting in its appellate capacity, a district court should exercise its discretion to grant review "when the lower tribunal has violated a clearly established principle of law resulting in a miscarriage of justice." *Custer Med. Ctr. v. United Auto. Ins. Co.*, 62 So. 3d 1086, 1092 (Fla. 2010). In considering a petition for second-tier certiorari review, a district court does not consider whether the circuit court came to the correct legal conclusion or whether the decision below was supported by substantial, competent evidence. Rather, the district court asks only "whether the circuit court afforded procedural due process and whether the circuit court applied the correct law." *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995); *see also City of Sunny Isles Beach v. Publix Super Markets, Inc.*, 36 Fla. L. Weekly D2325a, 2011 WL 4949827, at *1 (Fla. 3d DCA Oct. 19, 2011) (explaining the standards applicable to second-tier certiorari review).

In this case, the Order violated a clearly established principle of law resulting in a miscarriage of justice because, as explained below, (A) it directed the Village to remove from its Amended Resolution any cap on Palmer Trinity's student enrollment; and (B) it disregarded the Village's findings, supported by competent substantial evidence, that a student population of 1150 students does not comply with the applicable standards.

A. THE ORDER VIOLATES A CLEARLY ESTABLISH PRINCIPLE OF LAW, RESULTING IN A MISCARRIAGE OF JUSTICE, BY DIRECTING THE VILLAGE TO REMOVE FROM ITS AMENDED RESOLUTION ANY STUDENT ENROLLMENT CAPS

A reviewing court has authority to either quash or affirm the order reviewed, but no more. The Order exceeds the circuit court's authority by directing the Village to take a particular course of action. Having failed to address whether the denial of the application to double the student body was supported by competent substantial evidence, the circuit court could not compel the Village to grant Palmer Trinity's 1150 enrollment request.

The Florida Supreme Court has explained repeatedly that "[a]n appellate court has no power in exercising its jurisdiction on certiorari to direct the respondent to take any particular course of action." *See Miami-Dade Cnty. v. Omnipoint Holdings, Inc.*, 863 So. 2d 195, 198 (Fla. 2003); *G.B.V. Int'l*, 787 So. 2d at 844. District courts of appeal have faithfully applied this bright-line rule. *See ABG Real Estate Dev. Co. of Fla., Inc. v. St. Johns Cnty.*, 608 So. 2d 59, 64

(Fla. 5th DCA 1992) (“Certiorari review power does not extend to directing that any particular action be taken, but is limited to quashing the order reviewed.”); *see also Snyder v. Douglas*, 647 So. 2d 275, 279 (Fla. 2d DCA 1994) (explaining that a court on certiorari review “has no authority to take any action resulting in the entry of a judgment or order on the merits or to direct that any particular judgment or order be entered”); *National Advertising*, 491 So. 2d at 1263 (finding that the lower court exceeded its authority by directing the county to take a particular course of action); *Kendale Land Dev., Inc.*, 969 So. 2d at 1181 (explaining that it is a clearly established principle of law that when considering a petition for certiorari the court may not direct the lower tribunal to take any particular course of action).

The Order disregards this clearly established principle of law. Throughout its response to the Motion to Enforce Mandate, the Village repeatedly reminded the circuit court that it must not exceed the scope of its authority on review by directing the Village to take a particular course of action (A. 73). Rather than heed the Village’s warnings, the circuit court did just the opposite, “declin[ing] to address any of the other arguments raised” by the Village (A. 15). According to the Order, the Amended Resolution violated the court’s mandate because it effectively reduced “the maximum number of students allowed below 1150,” thus failing to “render the 900 student cap ineffectual” (A. 12). But while the circuit court could properly quash the 900-student cap, it could not similarly order the

Village to grant Palmer’s Trinity’s 1150 student expansion request. In quashing the original Resolution, the circuit court had found only that no substantial, competent evidence supported a cap of 900 students (A. 693). As the circuit court found, no testimony or evidence presented at the hearing even discussed such a cap. The court did *not* find, however, that no substantial, competent evidence supported denial of the application—because, in fact, as explained below and in the statement of facts, plenty of evidence did support that conclusion. But because the circuit court’s only findings addressed the 900-student cap, its authority was limited to eliminating that cap. The Order rationalizes its decision by explaining that “any provision in the Original Resolution relating to reducing or limiting the maximum number of students allowed to 900, and certainly, to below 900, is within the four corners of the Decision” (A. 12). But nothing in the Decision questions the Village’s conclusion as to the 1150 student request. Its discussion is limited solely to the lack of evidence presented for a 900-student cap.

The Florida Supreme Court has quashed decisions in similar circumstances. In *G.B.V. International*, a developer sought plat approval at ten units per acre for an apartment complex in Broward County. 787 So. 2d at 840. The county commission approved the proposal at only six units per acre, and the developer petitioned the circuit court for certiorari relief, which the court denied. *Id.* at 841. On second-tier review, the district court quashed the circuit court’s order and

remanded to the commission for “entry of an order approving the plat at ten units per acre.” *Id.* In quashing the district court’s decision, the Florida Supreme Court specified the standard of review for both first- and second-tier certiorari. *Id.* at 843. The Court determined that the district court’s error stemmed from its “de novo assessment of the plat application,” which included making its own factual findings “based on the cold record.” *Id.* at 845. The Court explained: “[t]he district court arrogated to itself the authority of the Commission and functioned as a kind of roving super agency.” *Id.* By applying the “wrong” standard of review the district court “depart[ed] from the essential requirements of law.” *Id.*

Because the circuit court lacked authority to command the Village to allow Palmer Trinity to double the size of its student body, the circuit court here also departed from the essential requirements of law and committed a gross miscarriage of justice that requires correction. *See G.B.V. Int’l*, 787 So. 2d at 844.

B. THE ORDER VIOLATES A CLEARLY ESTABLISH PRINCIPLE OF LAW, RESULTING IN A MISCARRIAGE OF JUSTICE, BY IGNORING THE VILLAGE’S FINDINGS REGARDING THE PROPOSED STUDENT EXPANSION EVEN THOUGH THEY WERE SUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE

By deciding in hindsight that the Decision did, after all, require the Village to approve Palmer Trinity’s application, the Order implicitly agreed with Palmer Trinity’s argument that it had presented competent substantial evidence to warrant

approval of its 1150-student expansion application (A. 36). Such a conclusion violates another clearly established principle of law: on certiorari review of quasi-judicial action, the circuit court’s role is limited to deciding whether the local government’s *decision* is supported by competent substantial evidence—not whether the applicant’s request is. *City of Sunny Isles*, 2011 WL 4949827, at *3 (finding that the circuit court “violated clearly established principles of law” by “re-weighing the evidence”). Because competent substantial evidence supported the Village’s denial of Palmer Trinity’s proposal to double the size of its student body, the circuit court simply was not authorized to reweigh the evidence or determine whether Palmer Trinity’s evidence outweighed the Village’s. *See id.* (noting that a circuit court is “prohibited” from reweighing evidence on certiorari review). The circuit court could only consider whether competent substantial evidence supported the Village’s denial – a standard the Village readily met. The circuit court has never even analyzed whether the Village’s decision that a student population of 1150 does not comply with the applicable standards is supported by competent substantial evidence. It follows that the circuit court has never concluded that competent substantial evidence failed to support the Village’s decision. Nor did the Order include such an analysis or such a finding.

It is a clearly established principle of law that a court’s first-tier certiorari review of an agency or local government’s quasi-judicial decision is limited to the

following: (1) whether procedural due process was afforded; (2) whether the essential requirements of law were observed; and (3) whether the administrative findings are supported by competent substantial evidence. *G.B.V. Int'l*, 787 So. 2d at 843 (emphasis added). Indeed, “a local government’s quasi-judicial decision must be upheld if there is *any* competent, substantial evidence in the record to support it.” *Orange Cnty. v. Butler*, 877 So. 2d 810, 813 (Fla. 2004) (emphasis added). As the Florida Supreme Court has specified, circuit courts are “inherently unsuited” to function as “roving super agenc[ies].” *Dusseau v. Metro. Dade Cnty. Bd. of Cnty. Comm’rs*, 794 So. 2d 1270, 1276 (Fla. 2001). Nevertheless, despite a wealth of competent substantial evidence supporting the Village’s finding that the 1150-student expansion “is not in compliance with the applicable standards,” the circuit court not only invalidated the Village’s decision; it expressly declined to even address the Village’s argument that an expansion to 1150 students does not comply with the applicable standards (A. 705).

Palmer Trinity’s motion to enforce the mandate repeatedly argued that competent substantial evidence supported its application (A. 20, 22, 27, 30, 36). But of course that was not the issue—it was whether competent substantial evidence supported the *Village’s* decision. *See Omnipoint Holdings*, 863 So. 2d at 199; *City of Hialeah Gardens v. Miami-Dade Charter Found., Inc.*, 857 So. 2d 202, 204 (Fla. 3d DCA 2003).

As more fully discussed in the statement of facts, the Village Council relied on competent substantial evidence regarding each of the criteria in section 33-151.11-.22, Miami-Dade County Code (A. 200) before determining that Palmer Trinity's expansion request violated applicable standards. Staff also followed the site plan modification standards in section 33-311(A)(7), Miami-Dade County Code (A. 205-06). Applying these standards, the Council had to consider whether approving the application would generate adverse impacts such as excessive noise or traffic, undue burdens on public facilities, overcrowding, nuisances, or other detrimental conditions (A. 200, 204, 205-06).

The Council heard extensive testimony from staff, experts, and the community that (1) the magnitude of Palmer Trinity's proposed changes would detrimentally impact the community, both economically and in terms of excess noise and traffic; (2) the proposed size of the school was incompatible with the community's comprehensive plan; (3) community traffic concerns would only compound due to Palmer Trinity's expansion, and any proposed mitigation efforts would likely fail; and (4) Palmer Trinity's proposed buffer would not prevent excess noise from reaching the surrounding community (A. 506-08, 513-17, 531, 535, 538-42, 546-47, 583, 594). The Village heard ample evidence supporting its decision. For example, one expert testified that doubling the student population would increase the population density of Parcel B "well above what's expected for

that zoning category” (A. 196, 282-84) and that cut-through traffic and illegal driving maneuvers to avoid traffic would reduce traffic safety and back up traffic in the neighborhood (A. 550-53). In addition to the experts, neighborhood residents testified that they already can hear football games at the school even through a two-and-a-half-acre buffer (A. 508). One resident testified she “hear[d] a cacophony of sound from Palmer Trinity school, even though my home is situated many blocks north of the school. . . . The sounds of children at play are tolerable, but the loudspeakers are a harsh invasion of space” (A. 583). Fact-based testimony of neighboring residents is just as much competent substantial evidence as the testimony of experts. *Metro Dade Cnty. v. Section 11 Prop. Corp.*, 719 So. 2d 1204, 1205 (Fla. 3d DCA 1998).

After hearing six-and-a-half hours of testimony and considering about 1000 pages of documents, the Village Council decided that Palmer Trinity’s request to double the school’s student body did not comply with the Village’s zoning standards. Palmer Trinity invited the circuit court to determine whether competent substantial evidence supported *its application* – not the Village’s decision. By requiring the Village to grant the application without even discussing the evidence that had been presented, the circuit court implicitly agreed with Palmer Trinity, and therefore applied the wrong law. Because the circuit court exceeded its authority and departed from the essential requirements of law by refusing to follow *G.B.V.*

International's standard of review, this Court should grant certiorari. See *Education Dev. Ctr., Inc. v. City of West Palm Zoning Bd. of App.*, 541 So. 2d 106, 108 (Fla. 1989).

V.

CONCLUSION

For the reasons stated, this Court should quash the Order and reinstate the Village's denial of Palmer Trinity's application.

Respectfully submitted,

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CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the typeface used in this Petition is Times New Roman 14-point font.



CERTIFICATE OF SERVICE

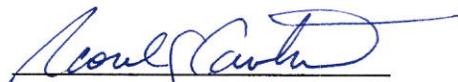
I CERTIFY that on January 23, 2012, a copy of this petition was mailed and faxed, and the accompanying appendix was mailed, to:

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