

**Second DCA Denies Landowners' Petition for Second-Tier Certiorari Relief Despite Lower Court Error**

This case stems from a rezoning application filed by Balm Road Investment, LLC; Cassidy Holdings, LLC; Ballen Investment, LLC; Highway 301 Investors, LLC; and McGrady Road Investment, LLC (collectively, the "Petitioners"). The Petitioners applied to develop a residential community in a planned development zoning district. Not one county agency, office, or adjacent governmental entity, including the Hillsborough County Planning Commission, that reviewed the Petitioners' rezoning application had any objection. The Hillsborough County Zoning Hearing Master also considered the application and the evidence, and recommended approval. The application then came before the Hillsborough County Board of County Commissioners (the "Board") at a public hearing where four local residents spoke out against the application. After the hearing, a divided Board denied the application.

The Petitioners sought first-tier certiorari relief in the circuit court from the Board's denial. The court acknowledged that the Petitioners' application "appeared to approach stated goals in terms of the clustering ratios, buffers, and land dedicated for commercial and service-oriented uses." However, the court held that the Petitioners failed to meet their initial burden of showing their proposed rezoning was consistent with the County's Comprehensive Plan.

The Petitioners appealed to the Second DCA for second-tier certiorari relief. The Second DCA found that the circuit court's conclusion was not justified. After examining the record, the Second DCA found overwhelming evidence that the proposed development was consistent with the comprehensive plan. Accordingly, the Petitioners satisfied their burden under the zoning burden shifting framework and it was the Board's obligation to provide competent substantial evidence in support of a legitimate public purpose. The Second DCA found that the Board's "legitimate public purpose" of maintaining the existing agricultural zoning classification to preserve agricultural land does not have evidentiary support. The Second DCA also opined that "perhaps not coincidentally" Hillsborough County passed a moratorium in the area surrounding the property shortly after this application was denied.

Despite the Petitioners' satisfying their evidentiary burden and the Board failing to provide competent substantial evidence in support of denying the rezoning application, the Second DCA was unable to give relief to the Petitioners because of the limited scope of review on second-tier certiorari appeal. In its current framework, second-tier certiorari review is extremely limited and extremely deferential. The Second DCA recognized that certiorari review of zoning decisions can often lead to troubling results, much like the present case where the Petitioners' private property rights were violated but the Second DCA cannot cure the violation.