IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT OF FLORIDA IN AND FOR MIAMI-DADE COUNTY, FLORIDA

APPELLATE DIVISION

CASE #: 2021-000067 APC

LT Case # Z2021000031 (Zoning Resolution Z-34-21) Miami-Dade Zoning Board November 17, 2021

SAVE CALUSA INC.,
a Florida nonprofit, and

AMANDA PRIETO,

Petitioner,

v.

MIAMI-DADE COUNTY, a political subdivision of the State of Florida,

Respondent.
_____/

PETITION FOR WRIT OF CERTIORARI

Petitioners, SAVE CALUSA, INC. ("SAVE CALUSA") and AMANDA PRIETO ("PRIETO"), by and through undersigned counsel, hereby requests that this Court issue a writ of certiorari quashing the Miami-Dade Zoning Board's approval of RESOLUTION NO. Z-34-21, Applicant KENDALL ASSOCIATES I, LLLP's

Planned Area Development Agreement for the property located at 9400 S 130 Avenue, Miami, Florida 33186, on November 17 2021.

Additionally, Petitioners respectfully request that this Court enter an order staying the issuance of any tree removal and/or building permits until the required environmental studies have been completed.

Photo courtesy of Dennis Horn of DV Nature Photography

I. INTRODUCTION

Residents have the right to take part in the planning of their neighborhoods. This is the foundation of building equitable and inclusive communities that respond to the needs of all residents. The Miami-Dade zoning code and Miami-Dade Comprehensive Development Master Plan (CDMP), the primary documents that govern the master planning of Miami-Dade County, explicitly include language aimed at ensuring that all residents can have a place in the future of the city.

This language is not purely aspirational, it is prescriptive. And yet, the equity-centered directives are too often treated by County officials as lofty ambitions that stand in the way of "progress."

Much to the chagrin of residents, the mandated policies and procedures to protect the character of neighborhoods and provide community members a way to meaningfully engage in the planning process are often flouted by the very government officials they rely on to represent their interests. The benefit, in this dynamic, inures to those with greater access to city employees and elected officials wealth, often through lobbyists and political contributions.

The impact of undermining community participation in this development is particularly pronounced, given the fact that it is precious green space designated "Parks & Recreation."

And lack of public participation is not an accident, as this is a pure political power play to turn 168 acres of "Parks & Recreation" land purchased by developers for $2.7 Million in 2003 into a Billion dollar project.

In addition, the sheer size of this development, with 550 homes being jammed into an already congested community, will transform the entire area in one fell swoop. It is precisely when so much is at stake that residents should be able to actively take part in the proceedings.

This is the story of the approval of the 550-home Calusa development- at multiple junctures, members of the community were not given their due opportunity to raise legitimate questions, present evidence and have their concerns be properly considered regarding a project that stands to transform a neighborhood forever.

As more fully outlined below, the County departed from the essential requirements of law in approving the development. The Miami-Dade Zoning Board meeting approving the project, the sole opportunity for residents to have their voice heard, was not properly noticed, and the approval was not based upon competent,

substantial evidence, and is inconsistent with the policy objectives and goals of the Miami-Dade County Code and Comprehensive Development Master Plan and Land Use Element Policies.

II. PARTIES

AMANDA PRIETO is a resident of Calusa, and lives and owns property within 400 feet of the proposed development. [A0026] [1]

SAVE CALUSA is a Florida not-for-profit corporation organized pursuant to Chapter 718, Florida Statutes, whose members are persons who are interested in the quality of life in the Calusa neighborhood.

MIAMI-DADE COUNTY is a political subdivision of the State of Florida.

SAVE CALUSA and PRIETO have the requisite legal standing to bring this Petition because the County's action challenged fails to adhere to the County's Zoning Code, Comprehensive Land Use Master Plan and Florida Statutes. Because of her close proximity to the proposed project, PRIETO would be negatively impacted in ways

[1] "[A. #:#]" refers to the page number of Petitioner's appendix. All documents in Petitioner's Appendix are part of the Record of the proceedings at the Miami-Dade County Zoning Board available at https://energov.miamidade.gov/EnerGov_Prod/selfservice/MiamiDadeProd#/plan/51da3c66-18a1-4022-ab4b-a3a27b8c1dbd?tab=attachments

that are unique from County residents at large by the increased congestion and traffic and negative impact on her property value.

III. JURISDICTION AND VENUE

This Court has jurisdiction to issue a Writ of Certiorari under Article V, Section 5 of the Florida Constitution, and Rule 9.030(c) and 9.190, Florida Rules of Appellate Procedure. See also *Florida Power and Light Co. v. City of Dania*, 761 So. 2d 1089, 1092 (Fla. 2000) and *Haines City Community Development v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995).

Venue is proper because SAVE CALUSA, PRIETO and the property at issue are all located within Miami-Dade County.

IV. SUBJECT PROPERTY

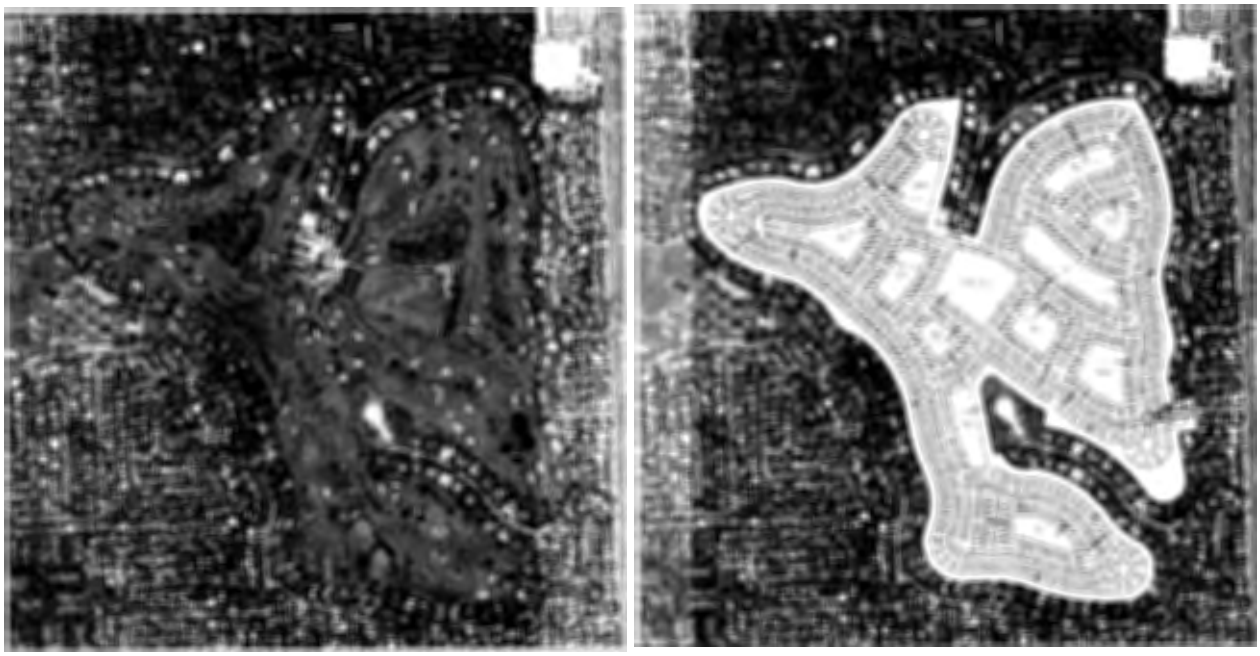
The County Staff Report dated November 11 2021 described the Subject Property as follows:

> The Vacant Land is located in an area designated Parks and Recreation on the Comprehensive Development Master Plan (CDMP) Land Use Plan (LUP) map. The Parks and Recreation designation includes "golf courses and other parks of approximately 40 acres and larger which are significant community features." [A0079]

The Applicant seeks through # Z2021000031 to rezone the 169 acres in order to:

> develop the Property with 550 single family residential units. Together with the aforementioned request, the applicant also seeks an unusual use to permit the filling of portions of the existing lakes and lake excavations, to submit new lake slope plans for improvements to the existing lake features. Additionally, the applicant is seeking ancillary variances to: permit certain units with a reduced private open space; permit the street trees to be placed within 10 to 12 feet from the edge of the roadway or sidewalk; exceed the maximum permissible lawn area; permit the proposed residences with O' of frontage on a public street; and permit access to the public street by means of a private drive; waive the right-of-way dedications for SW 132nd Avenue and SW 96th Street. The main entrance to the proposed PAD development will have direct vehicular and pedestrian access to SW 97th Street which will lead all traffic to SW 137th Avenue, a major north-south corridor, and the proposed development will also have a secondary pedestrian access and residents-only entrance, and an exit to North Calusa Club Drive. Submitted plans indicate that theproposed lots are designed along a network of private drives to allow connectivity for pedestrians and autos alike. Said plans also illustrate amenities such as a clubhouse building with two swimming pools, a children's wet play area, a covered children's playground and basketball and tennis courts. Submitted landscape plans depict landscaping exceeding the code requirements in the form of trees and shrubs provided around the perimeter of the blocks, along the proposed structures, as well as along the edges of the external of the development to buffer the adjacent properties. [A0078]

V. STATEMENT OF FACTS



current *proposed development*

A. October 20 2021 Meeting Notice

The hearing on Item Z2021000031 to consider the zoning change was originally scheduled (and noticed) for the October 20 2021 Miami-Dade Zoning Board Meeting, but was cancelled by Commissioners at their October 19 Regular Meeting[2] as follows:

4:20:15 of Oct 19, 2021 BCC General Meeting

[2] The meeting is available at https://miamidade.granicus.com/MediaPlayer.php?view_id=2&clip_id=6911

Diaz: Commissioner Sosa?

Sosa: Do you have quorum for zoning meeting tomorrow?

Diaz: Thank you for reminding me of that because I'm hearing that we might not have quorum for tomorrow. Those of you that cannot be there, please hold your hand up because I already have 4 notices that said they cannot be there. Yeah a little porquito time but here is the problem we got ladies and gentlemen. I know how hard it is to sometimes go through zoning, but we have to deal with zoning, that's part of our job. So its important that we are here, but I understand that there are issues that come through. So I need to know if I'm going to have a quorum tomorrow. As I see it, I don't think I'm going to have a quorum. How many people can make it, let's hold the hands up.

Sosa: but Mr. chair the clerk already have some that have notified that are

Diaz: No, I get it... so I just want to know those that can be here so I can see if I have a quorum. One, two, three, four, five, am I missing somebody. I'm counting five, six, but you can only be here until 12 and that's an issue, and you could come after 12 but... Alright guys, I don't want to have people show up and stuff and not have us here, that would be embarrassing. So at that point, Mr attorney and Nathan, what do we have to do to move this to the next cycle I guess. Tomorrow's zoning... That makes both, its Zoning and CDMP.

Attorney: Mr. Chairman you can do that by motion.

Diaz: I'm sorry?

Attorney: (repeats) Mr. Chairman you can do that by a motion.

Diaz: Ok so both meetings will be moved to the next cycle which is when? Does somebody have a

calendar? Madam Attorney?

Regalado: It would be November, no?

Higgins: November 17th I think is what I have.

Regalado: Yes, November 17th.

Diaz: Ok, so November 17th . Do I have a motion?

Regalado: and December has been cancelled so...

Diaz: I get it guys, but I mean... I can be here. I just want to make sure, but I'm counting up to five right now.

Higgins: Mr. Chairman, I have a family obligation but I can be here only for the first hour 9:30-10:30 so if we have a short item I could be there.

Diaz: Judging by one of the items that are on there, its not going to be short at all. It will probably be a very long item. Ok, so with that, then I need a motion to move everything to the next meeting for zoning and CDMP.

Attorney: So then the motion would be to cancel tomorrow's hearing and have all items rolled over to the Nov meeting which is scheduled.

Diaz: Thank you madam attorney. Do I have a motion?

Regalado: So moved.

Diaz: Thank you Commissioner Regalado, seconded by Commissioner Sosa. All in favor say Aye, any opposed? None. And that is due to unfortunately the lack of quorum that we will have tomorrow. But I do not want to have people show up, and then get really upset that we won't be here. So with that...

It is important to note the item was not postponed at the noticed Miami-Dade Zoning Board Meeting; rather it was cancelled at the Miami-Dade Board of County Commission Meeting the day before the scheduled/noticed Zoning Board Meeting.

A. November 17 2021 Meeting Notice

While the County takes the position that no legal notice was required to be published in a newspaper, a courtesy Notice of Public Hearing for Item Z2021000031was published on November 5 2021 on the County website.[3] There are a number of problems with this notice.

First, it was issued less than 14 days prior to the hearing. Second, the notice contains the wrong company name- Northeastern Golf LLC, rather than the applicant Kendall Associates I LLLP. [A0166]

Zoning Resolution Z-34-21 approving Applicant's Planned Area Development Agreement was approved at the meeting and transmitted to the Clerk of the Cunty Commission on November 24, 2021. [A0165]

VI. LEGAL STANDARD

In a challenge to a quasi-judicial decision, this court conducts a "first-tier review" and considers: (1) whether the decision-maker observed the essential requirements of the law (2) whether the decision is supported by competent substantial evidence,

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[3] https://www.miamidade.gov/resources/pdf/2021-11-17-bcc-public-hearing.pdf

and (3) whether procedural due process was accorded. *Miami-Dade Cnty. v. Omnipoint Holdings, Inc.*, 863 So. 2d 195, 199-199 (Fla. 2003); *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982)

A. Essential Requirements of Law Standard

Observing the essential requirements of law means applying the correct law in proper fashion. *Haines City Cnty. Dev. V. Heggs*, 658 So.2d 523, 530 (Fla. 1995). Failure of municipal government to follow its own Code constitutes a departure from the essential requirement of the law. *Miami-Dade County v. Omnipoint Holdings, Inc.*, 863 So. 2d 195, 199 (Fla. 2003). Similarly, overlooking sources of established law or applying an incorrect analysis to the law considered result in a departure from the essential requirements of law. See *City of Tampa v. City Nat. Bank of Florida*, 974 So. 2d 408, 411 (Fla. 2d DCA 2007).

B. Competent Substantial Evidence Standard

Competent substantial evidence has been defined as such evidence as is "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." *Smith v. Dep't of Health & Rehab Servs.*, 555 So. 2d 1254, 1255 (Fla. 3d DCA 1989). The court is required to examine whether such evidence in fact exists and is empowered to quash the decision where "the record is devoid of substantial competent evidence to the support the decision." *City of W. Palm Beach*

Zoning Bd. Of Appeals v. Educ. Dev. Ctr., 504 So. 2d 1385, 1386 (Fla. 4th DCA 1987); see also *Jesus Fellowship, Inc. v. Miami-Dade County*, 752 So. 2d 708, 711 (Fla. 3d DCA 2000).

In its appellate capacity, the court must determine if the administrative board made a decision supported by "competent substantial evidence." *City of Hialeah Gardens v. Miami-Dade Charter Foundation, Inc. and Machado*, 857 So.2d 202, 205 (Fla. 3d DCA, 2003). Competent evidence is evidence that is relevant to the final decision that "a reasonable mind would accept it as adequate to support the conclusion." *Id* at 204. Substantial evidence is evidence that provides "a factual basis from which a fact at issue may reasonably be inferred." *Id* at 204. Under this standard, fact-based citizen testimony in a zoning matter constitutes substantial competent evidence while generalized statements unsupported by any discernible, factually-based chain of underlying reasoning should be disregarded. *Id* at 204.

C. Procedural Due Process Standard

In a quasi-judicial proceeding, "certain standards of basic fairness must be adhered to in order to afford due process." *Jennings v. Dade County*, 589 So.2d 1337, 1340 (Fla. 3d DCA 1991).

The United States Supreme Court has held that "[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is

noticed reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), 70 S.Ct. 652, 94 L.Ed. 865 (citing *Milliken v. Meyer*, 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 278, 132 A.L.R. 1357; *Grannis v. Ordean*, 234 U.S. 385, 34 S.Ct. 779, 58 L.Ed. 1363; *Priest v. Board of Trustees of Town of Las Vegas*, 232 U.S. 604, 34 S.Ct. 443, 58 L.Ed. 751; *Roller v. Holly,* 176 U.S. 398, 20 S.Ct. 410, 44 L.Ed. 520).

The notice must be of such nature as reasonably calculated to convey the required information and must afford a reasonable time for those interested persons to make an appearance. *Mullane* at 314. "When notice is a person's due, a process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing" the interested person. *Mullane* at 315.

VII. ARGUMENT IN SUPPORT OF THE PETITION

As the below argument will show, Petitioners have a basis for relief.

The Zoning Board departed from the essential requirements of law in approving Resolution Z-34-21 because the approval was not based upon competent, substantial evidence and is inconsistent with the policy objectives and goals of Miami-Dade County's Zoning Code and Comprehensive Development Master Plan and Land Use Element Policies.

This flawed process began with the failure to provide the notice required by law.

A. County failed to provide proper notice

The County's failure to notice the November 17 2021 meeting violated the Florida Sunshine Law and the County's own code.

Applicable Law on Notice

1. **Florida Sunshine Law**

Section 286.011(1), F.S., Florida's Government in the Sunshine Law, provides:

> *All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting.*

2. **Miami-Dade Citizens Bill of Rights**

> *6. Right to Notice. Persons entitled to notice of a County or municipal hearing shall be timely informed as to the time, place and nature of the hearing and the legal authority pursuant to which the hearing is to be held.*

3. **Miami-Dade County Code § 33-310**

Section 33-310

> *(c) Required notices of hearing. No action on any application shall be taken by the Community Zoning Appeals Boards or the Board of County*

Commissioners, until a public hearing has been held upon notice of the time, place, and purpose of such hearing, the cost of said notice to be borne by the applicant. Except as expressly provided herein, the following notices shall be provided no later than 14 days prior to the public hearing:

(1) Newspaper advertisement. Notice shall be published in a newspaper of general circulation in Miami-Dade County, and said newspaper advertisement shall contain the date, time, and place of the hearing, the applicant's name, the processing number, the property size, the property's location (and street address, if available), and nature of the application, including all specific variances and other requests.

Section 33-310(g)

g) Consequence for failure to provide required notice. Failure to provide the notices required by subsection (c) renders voidable any hearing held on the application. The failure to provide courtesy notices shall not render a hearing voidable.

County failed to provide the notice required by law

Undersigned counsel provided a formal letter protesting the lack of publication in compliance with Section 33-310(c) as a violation of Amanda Prieto's rights under the Miami-Dade Citizen's Bill of Rights. [A0166]

In Florida Attorney General Advisory Legal Opinion AGO 90-56 (July 24, 1990)[4] the Attorney General addressed the notice requirements required for rescheduled meetings:

[4] file:///C:/Users/admin/Downloads/AGO%2090-56%20(Continued%20Meeting%20Must%20be%20Re-Noticed%20under%20Sunshine%20Law).pdf

1. May the board adjourn a properly noticed meeting and, without further publication of notice, reconvene within seven days in order to complete business from the agenda of the adjourned meeting?

Section 286.011(1), F.S., Florida's Government in the Sunshine Law, provides: "All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting."

The Attorney General made clear that it is important to notice each meeting

To allow a meeting noticed for a specific date, time and location to be continued to a future date, time and location without further proper notice, would effectively open the future meeting only to those individuals who attended the initial meeting. This leaves to chance that interested members of the public who happened not to be in attendance at the properly noticed meeting would receive notice of the future meeting.

In this case, residents would have to have been at the Regular Commission Meeting in October to know that the Planning meeting for October was rescheduled to November.

As outlined by the Court in *Daytona Leisure Corp. v. Daytona Beach*, 539 So.2d 597 (Fla. 5th DCA 1989):

> Florida follows the majority view whereby measures passed in contravention of notice requirements are invalid (null and void if not strictly enacted pursuant to the requirement of section 166.041). *Ellison v. City of Fort Lauderdale,* 183 So.2d 193 (Fla. 1966); *Fountain v. City of Jacksonville,* 447 So.2d 353 (Fla. 1st DCA 1984); *City of Gainesville v. G.N.V. Investments,* 413 So.2d 770 (Fla. 1st DCA 1982); *Buntrock; Malley v. Clay County Zoning Commission,* 225 So.2d 555 (Fla. 1st DCA 1969). Where an ordinance substantially affects land use (substantially changes permitted use categories) or rezones specific parcels of private real property, it must be enacted under the procedures that govern zoning and rezoning, *i.e.,* section 166.041(3)(c). *Baywood Construction.*

See also *Bhoola v City of St. Augustine*, 588 So.2d 666 (Fla. 5th DCA 1989) and *Webb v. Town of Hilliard*, 766 So.2d 1241 (Fla. 1st DCA 2000).

B. Approval Conflicts with Miami-Dade Land Use Policies

The application proposes development that is inconsistent with and contrary to CDMP Land Use Element Policies LU-1T, LU-4C[5] and Policies CON-9, CON-9A, CON-9B, CON-9C and CON-9F of the Conservation, Aquifer Recharge and Drainage Element.[6] Collectively, these policies aim at:

> Protecting and restoring environmentally sensitive uplands has been recognized as important to the County's present and future, thus, Miami-Dade County has sought to channel growth toward those areas

[5] https://www.miamidade.gov/planning/library/reports/planning-documents/cdmp/land-use.pdf
[6] https://www.miamidade.gov/planning/library/reports/planning-documents/cdmp/conservation-aquifer-recharge-and-drainage.pdf

that are most intrinsically suited for development. [7]

As outlined below, County Commissioners incorrectly disregarded and refused to properly consider the evidence when approving the zoning change in order to accommodate special interests.

1. Land Use Elements

> **LU-1T.** *Miami-Dade County through its land development regulations shall encourage developments that* ***promote and enhance*** *bicycling and pedestrianism through the provision of bicycle and pedestrian facilities and other measures such as building design and orientation, and* ***shall discourage walled and gated communities.***

The proposed project is a "walled and gated community." [A0006, A0021]

There is no evidence in the record that the proposed project will "promote and enhance bicycling and pedestrianism." To the contrary, residents gave evidence that:

> The aerial view of Calusa' unique design suggests that it was done purposefully to make future development next to impossible, surrounded by a solid wall of houses, only one way in or out and protected by a 99-year covenant until money and lawsuits got involved. From Boca to the Keys, every other course is adjacent to or has easy access to streets and major roads." [A0030]

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[7] https://www.miamidade.gov/planning/library/reports/planning-documents/cdmp/conservation-aquifer-recharge-and-drainage.pdf

> I know that the County guidelines may have been met, but the applicant referred to restricting access to our neighborhood. And having law enforcement provide enforcement to – repeating enforcement a few times, but to enforce that. That means residents, including the development, would not be able to turn into certain parts of the development. The first responders that come home in the morning during the restricted times will not be able to get home. Nurses, airport workers, hospitality, nobody would be able to get home. You can't go to the grocery store and come back. You will be restricted. You'd have to drive all the way around the community to get in some other way. School buses, elderly, transportation picking up elderly people to get to appointments, they would not be able to access the development using the applicant's traffic plan. [A0027]
>
> **LU-4C.** ***Residential neighborhoods shall be protected from intrusion by uses that would disrupt or degrade the health, safety, tranquility, character, and overall welfare of the neighborhood by creating such impacts as excessive density, noise, light, glare, odor, vibration, dust or traffic.***

Residents gave public comment that the proposed project would disrupt or degrade the health, safety, tranquility, character, and overall welfare of the neighborhood by creating such impacts as excessive density, noise, light, glare, odor, vibration, dust and traffic. [A0026, A0027, A0030, A0031, A0033]

There was no evidence placed on the record by developer that Petitioner's neighborhood will be protected from these impacts.

2. **Conservation Elements**

CON-9 ***Freshwater fish, wildlife and plants shall be conserved and used in an environmentally sound manner and undeveloped habitat critical to federal, state or County designated endangered, threatened, or rare species or species of special concern shall be preserved.***

CON-9A. ***All activities that adversely affect habitat that is critical to federal or State designated, endangered or threatened species shall be prohibited unless such activity(ies) are a public necessity and there are no possible alternative sites where the activity(ies) can occur.***

CON-9B. ***All nesting, roosting and feeding habitats used by federal or State designated endangered or threatened species, shall be protected and buffered from surrounding development or activities and further degradation or destruction of such habitat shall not be authorized.***

CON-9C. ***Rookeries and nesting sites used by federal or State designated endangered or threatened species shall not be moved or destroyed.***

CON-9F. ***The County's planning for the future development of open space and wetland mitigation areas shall include the protection, conservation and/or restoration of wildlife habitats.***

The evidence placed in the record is that the subject property is being used by wading birds and other federal, state or County designated endangered, threatened, and/or rare species/ species of special concern. [A0024]

While the County Staff Report acknowledges that there are feeding habitats used by federal or State designated endangered or threatened species, the County Staff Report incorrectly concludes that there is no rookery on site. However, the DERM Report attached to the Staff Report contradicts this, finding that "On September 29, 2021, the applicant submitted a report indicating that a rookery was identified on the southern portion of the site...." [A0139]

C. Commissioners failed to properly consider environmental evidence

The County Staff Report incorrectly indicates that "no rookeries were identified and accordingly it appears that the species use the property for foraging and feeding" [A0172]. In addition, the environmental survey provided by Applicant did not include any surveys during the nesting season.

On the contrary to these conclusions, in September 2021 the Florida Fish and Wildlife Conservation Commission (FWC), added the state threatened tricolored heron colony nesting in the Calusa Rookery during the 2021 nesting season to their map of imperiled wading birds available here: https://myfwc.maps.arcgis.com/apps/webappviewer/index.html?id=b00eccadc9504b96aa4a027b5acd2b99 This map only reflects imperiled wading birds nesting within the past 5 years.

The County was notified of this addition on September 30th via email [A0168], on October 19th via email [A0172] and again during public testimony at the Nov 17th zoning public hearing.

Despite being notified of this change, County staff and Commissioners did not accurately consider the 2021 FWC confirmed nesting of the state threatened tricolored heron. This is of critical importance because the CDMP Conservation Policy 9C indicates:

> **CON-9C.** ***Rookeries and nesting sites used by federal or State designated endangered or threatened species shall not be moved or destroyed.***

The USFWS October 22 2019 letter, consultation guidelines and consultation key for the Florida Bonneted Bat [A0175] indicates "Applicants with projects in the South Florida Urban Bat Area should contact the USFWS for specific guidance addressing this area and individual consultation" [A0181 and A0183]
and that "when a roost is expected, and the proposed activity
will affect that roost, formal consultation is required" [A0176]
However, The US Fish and Wildlife Service (USFWS) has not provided consultation on the approved development. This is of critical importance to determine appropriate effect determination of the approved development on the Federally Endangered Florida Bonneted Bat and its habitat. The project size of more

than 50 acres meets the guidelines for when loss of foraging habitat may affect the fitness of an individual to the extent that it would impair feeding and breeding (pg 3 of USFWS 2019 letter). The timing of this USFWS consultation is also important as a significant number of trees, over 580, are planned to be removed, and the majority of existing lakes are planned to be filled. USFWS was notified of these concerns on October 4th via email, and the County on October 11th via email [A0171].

As such, the approval was given without proper consideration of the environmental conditions at the site and therefore the decision is not based upon competent substantial evidence.

3. The approval is inconsistent with the County's own interpretation of its Code

The Miami-Dade Conservation Elements[8] states:

> Unless otherwise restricted, the privately owned land designated as Parks and Recreation may **be developed for a use or a density comparable to, and compatible with, surrounding development** providing that such development is consistent with the goals, objectives and policies of the CDMP."[9] P. I-59

On July 21 2005, Diane O'Quinn Williams, Director of the of Planning and Zoning at Miami-Dade County, delivered a letter regarding the subject property, stating:

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[8] These interpretive text sections of the CDMP are formally adopted as legally binding parts of the plan that govern development orders.

[9] https://www.miamidade.gov/planning/library/reports/planning-documents/cdmp/land-use.pdf

> In conclusion, I find that the subject property is designated as "Parks and Recreation" on the LUP Map and is limited for future development by a restrictive covenant. If the condition for developing this property as outlined in this letter are met in the future, a development plan may then be approved for 1/3 of the subject site up to the density of the adjacent property, which is Low Density Residential Communities and permits from 2.5 to 6.0 dwelling units per gross acre (emphasis added).

[A0210]

Despite this guidance, a development plan was approved that allows development of the entire 168 acres, not just 1/3 of the site as interpreted in the letter.

VIII. RELIEF REQUESTED

For the reasons above, the Petitioner respectfully requests that this Court:

A. **Quash the decision of the Zoning Board**. This Court should issue a writ of certiorari and quash the decision of the Miami-Dade County Commission on November 17, 2021 because the approval was done without proper notice and is not supported by competent evidence.

B. **Stay issuance of any permits until required environmental studies can be completed**. Petitioner additionally requests that this Court enter an order staying the issuance of any permit by Miami-Dade County pursuant to (Zoning Resolution Z-34-21 until such time as all required environmental studies are completed.

Respectfully submitted,

/djw/

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CERTIFICATE OF COMPLIANCE

I certify this brief complies with the computer-generated rule from Florida Rule of Appellate Procedure 9.100(1). It is double-spaced, in Times New Roman 14-point font, with 1-inch margins and consists of 5,167 words.

/djw/

David J. Winker, Esq., B.C.S
Fla. Bar. No. 73148

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of December, 2021 a true and correct copy of the foregoing Petition for Writ of Certiorari was filed with the Clerk of the Court by using the Florida Courts e-Filing Portal, and emailed and mailed to Geri Bonzon-Keenan, County Attorney, 11 N.W. 1st Street, Suite 2811 Miami, Florida 33128, Jose Rivero, Deputy Clerk, Miami-Dade County Department of Regulatory and Economic Resources, and Harvey Ruvin, Clerk of the Miami-Dade Board of Commissioners.

/djw/
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