

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT  
IN AND FOR FLAGLER COUNTY, FLORIDA

PRESERVE FLAGLER BEACH AND  
BULOW CREEK, INC., a Florida not  
for profit corporation, and STEPHEN  
NOBLE,

Petitioners,

vs.

FLAGLER COUNTY, FLORIDA, a  
political subdivision of the State of  
Florida, and PALM COAST  
INTRACOASTAL, LLC, a Florida  
limited liability company,

Respondents.

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Filed Pursuant to Fla. R.  
App. P. 9.100(f)

Case No. 20-CA- 2020 CA 000565

**PETITION FOR WRIT OF CERTIORARI**

Petitioners PRESERVE FLAGLER BEACH AND BULOW CREEK, INC.,  
and STEPHEN NOBLE (collectively, “Petitioners”), by and through their  
undersigned counsel, file this Petition for Writ of Certiorari to review a quasi-judicial  
zoning decision that Respondent Flagler County, Florida (“County”), made on  
November 16, 2020.<sup>1</sup>

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<sup>1</sup> Although the County made its decision at its meeting on November 16,  
2020, the County did not render its written decision until November 25, 2020. *See*  
Fla. R. App. P. 9.020(i) (“An order is rendered when a signed, written order is filed  
with the clerk of the lower tribunal.”). Nonetheless, in an abundance of caution and  
to avoid any untimeliness arguments, the Petitioners have initiated this certiorari  
proceeding within thirty (30) days of the County’s pronouncement of its decision at  
its November 16 meeting.

## I.

### INTRODUCTION

This case involves a challenge by the Petitioners of the County's quasi-judicial decision approving a modification to the Planned Unit Development ("PUD") Site Development Plan for the Hammock Beach River PUD and the Preliminary Plat for the Hammock Beach River PUD (collectively, "PD Amendments"). The Petitioners submit that the County's decision: (1) violated the Petitioners' right to procedural due process; (2) departs from the essential requirements of law; and (3) is not supported by competent substantial evidence. Accordingly, the Petitioners request that this Court quash the County's November 16 decision approving the PD Amendments.<sup>2</sup>

## II.

### JURISDICTION

Jurisdiction to review this action is based upon Florida Rule of Appellate Procedure 9.030(c)(3) and Article V, Section 5(b) of the Florida Constitution.

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<sup>2</sup> This Petition for Writ of Certiorari is a "bare bones" petition which has been filed solely to timely invoke the Court's jurisdiction. Simultaneously with the filing of this Petition, the Petitioners have filed a Motion for Leave to Serve an Amended Petition for Writ of Certiorari and an Amended Appendix. *See Penate v. State*, 967 So. 2d 364, 364 (Fla. 5th DCA 2007) (reiterating that a petitioner who receives an order shortly before the expiration of the thirty (30) day jurisdictional deadline for seeking certiorari review should file a "bare bones" petition along with a request for leave to amend).

### III.

#### **FACTUAL BACKGROUND**

1. Petitioner Preserve Flagler Beach and Bulow Creek, Inc. (“Preserve”), is a Florida not for profit corporation, created to further and protect the interests of residents and concerned citizens in preserving the beauty and environment of Flagler County. Petitioner Stephen Noble (“Noble”), who is a member of the Preserve, is the owner of residential property located at 614 John Anderson Highway, Flagler Beach, Florida, which is adjacent to the property that is the subject of the PD Amendments.

2. The Petitioners will be substantially affected by the adverse impacts associated with the PD Amendments and the County’s failure to adhere to its land use regulations, including, but not limited to, land use compatibility issues, increased traffic, environmental impacts, and other negative impacts associated with the PD Amendments.

3. On September 21 and November 16, 2020, the Flagler County Board of County Commissioners (“County Commission”) held a public hearing on the PD Amendments. The Petitioners appeared at the County Commission’s September 21 and November 16 hearing in opposition to the PD Amendments.

4. At the conclusion of the November 16 hearing and despite the indisputable evidence that the Petitioners submitted establishing the legal deficiencies of the proposed PD Amendments, the County Commission voted three (3) to two (2) to approve the same. The County’s decisions are memorialized in written letters from

the County’s Growth Management Director to Respondent Palm Coast Intracoastal, LLC’s representative dated November 25, 2020. (App., Exs. A and B).

#### IV.

#### ARGUMENT

The Petitioners seek review of the County’s November 16 decision and have timely filed this Petition for Writ of Certiorari pursuant to Florida Rule of Appellate Procedure 9.100(c). The Florida Supreme Court has held that such review, although undertaken pursuant to a petition for writ of certiorari, is a matter of right, and not discretionary:

[C]ertiorari review in circuit court to review local administrative action under Florida Rule of Appellate Procedure 9.030(c)(3) is not truly discretionary common-law certiorari, because the review is of right. In other words, in such review the circuit court functions as an appellate court. . . .

We have held that circuit court review of an administrative agency decision, under Florida Rule of Appellate Procedure 9.030(c)(3), is governed by a three-part standard of review: (1) whether procedural due process is accorded; (2) whether the essential requirements of law have been observed; and (3) whether the administrative findings and judgment are supported by competent substantial evidence.

*Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995) (citations omitted).

A circuit court on certiorari review of a governmental board’s quasi-judicial action is the first tier of judicial review, and the scope of review is akin to a direct appeal. *See City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982). Thus, a “departure from the essential requirements of the law” for purposes of first-tier circuit court review can be “no more than the same level of error that would

require reversal on a direct appeal – a substantive or procedural error that was not harmless error.” *Elliott Pt. Cmty. Grp., Inc. v. City of Ft. Walton Beach*, 5 Fla. L. Weekly Supp. 787 (Fla. 1st Cir. Ct. June 10, 1998); *see also Cook v. City of Lynn Haven*, 7 Fla. L. Weekly Supp. 176 (Fla. 14th Cir. Ct. Dec. 7, 1999).

The substantive and procedural errors that occurred regarding the County’s November 16 decision are not harmless. The County’s decision:

- A. Violated the Petitioners’ right to procedural due process;
- B. Departs from the essential requirements of law because, among other things, the PD Amendments violate the County’s applicable land use regulations; and
- C. Is not supported by competent substantial evidence.

Consequently, this Court must quash the County’s November 16 decision.

## V.

### CONCLUSION

In sum, the County’s approval of the PD Amendments: (1) violated the Petitioners’ right to procedural due process; (2) departed from the essential requirements of law; and (3) is not supported by competent substantial evidence. Accordingly, the Court must quash the County’s November 16 decision to approve the PD Amendments.

WHEREFORE, Petitioners PRESERVE FLAGLER BEACH AND BULOW CREEK, INC., and STEPHEN NOBLE request that the Court:

- A. Accept jurisdiction to hear this case;
- B. Grant the Petitioners' Motion for Leave to Serve an Amended Petition for Writ of Certiorari and an Amended Appendix, filed simultaneously with this "bare bones" Petition;
- C. Issue an Order to Show Cause pursuant to Florida Rule of Appellate Procedure 9.100(h);
- D. Quash the County's November 16 approval of the Plan Amendments;  
and
- E. Grant such other relief as the Court deems just and appropriate.

RESPECTFULLY SUBMITTED on this 16th day of December 2020.

*/s/ S. Brent Spain*

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NOBLE

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I electronically filed the foregoing with the Clerk of the Court by using the *ePortal* system and served a copy thereof via Electronic Mail to:

**DONALD O'BRIEN, JR., CHAIRMAN**  
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on this 16th day of December 2020.

/s/ *S. Brent Spain*

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S. BRENT SPAIN, ESQUIRE