

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

THE HAMMOCK COMMUNITY
ASSOCIATION, INC., and KATHY
VIEHE,

Petitioners,

vs.

FLAGLER COUNTY, FLORIDA,
and HAMMOCK HARBOUR, LLC,

Respondents.

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

Case No. 26-CA-2026 CA 000161

PETITION FOR WRIT OF CERTIORARI

Petitioners THE HAMMOCK COMMUNITY ASSOCIATION, INC. (“HCA”), and KATHY VIEHE (“Viehe”) (collectively, the “Petitioners”), by and through their undersigned counsel, file this Petition for Writ of Certiorari to review a site plan approval that Respondent FLAGLER COUNTY, FLORIDA (“County”), rendered on or about February 9, 2026.

I.

INTRODUCTION

This case involves a challenge by the Petitioners of the County’s decision to approve a Settlement Agreement with Respondent Hammock Harbour, LLC (“Hammock Harbour”), following a public hearing on February

9, 2026, whereby the County purportedly simultaneously approved a site plan for the development of a dry-stack boat storage facility on property located at 5658 N. Oceanshore Boulevard in Flagler County, Florida (“Hidden Harbour Site Plan Approval”).

The Petitioners submit that the County’s decision: (1) departed from the essential requirements of law; and (2) is not supported by competent substantial evidence. Accordingly, the Petitioners request that this Court quash the Hidden Harbour Site Plan Approval.¹

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.

¹ 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. The HCA is a non-profit organization formed to promote the conservation, preservation and beautification of the barrier island, including the Hammock area of Flagler County, Florida, in which Hammock Harbour's proposed dry-stack boat storage facility is located.

2. Ms. Viehe owns and resides in a single-family home located at 5676 N. Oceanshore Boulevard in Flagler County, Florida, known as "Lot 40." ("Viehe Property"). The Viehe Property is immediately adjacent to and borders the entire length of the northern property line of Hammock Harbour's property on which the proposed dry-stack boat storage facility is located.

3. The Petitioners will be substantially affected by the County's approval of the Hammock Harbour Site Plan. Indeed, given the proximity of Ms. Viehe's home to the proposed dry-stack boat storage facility, Ms. Viehe will be directly and adversely impacted by the site plan approval. Similarly, given the HCA's interest in the protection of the Hammock Area, including the County's A1A Scenic Corridor Overlay District, the HCA and its members will be directly and adversely impacted by the site plan approval. Moreover, the Petitioners have interests that are furthered and protected by the County's Comprehensive Plan and the County's Land Development Code,

including, but not limited to, interests related to intensity of development, compatibility of development, protection of established uses, protection of the scenic corridor, etc. Further, the Petitioners' interests differ and exceed in kind and degree the interests of the Flagler County community as a whole.

4. On February 9, 2026, the County Commission held a public hearing at which it approved a Settlement Agreement with Hammock Harbour whereby the County purportedly simultaneously approved a site plan for the development of a dry-stack boat storage facility on property located at 5658 N. Oceanshore Boulevard in Flagler County, Florida – *i.e.*, the Hidden Harbour Site Plan.

5. The Petitioners appeared at the February 9 public hearing in opposition to the proposed Hammock Harbour Site Plan. Notwithstanding the unrefuted evidence that the proposed Hammock Harbour Site Plan failed to comply with the County's requirements for approval, the County Commission voted to approve the Settlement Agreement thereby simultaneously approving the Hammock Harbour Site Plan. (App. A).

IV.

ARGUMENT

The Petitioners seek review of the County's February 9 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 February 9 decision are not harmless. The County’s decision:

- A. Departed from the essential requirements of law because, among other things, the approval violates the County’s applicable land use regulations; and
- B. Is not supported by competent substantial evidence.

Consequently, this Court must quash the Hidden Harbour Site Plan Approval.

V.

CONCLUSION

In sum, the County’s approval of the Hidden Harbour Site Plan: (1) departed from the essential requirements of law; and (2) is not supported by competent substantial evidence. Accordingly, the Court must quash the County’s February 9 decision.

WHEREFORE, Petitioners THE HAMMOCK COMMUNITY ASSOCIATION, INC., and KATHY VIEHE 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 Hidden Harbour Site Plan; and
- E. Grant such other relief as the Court deems just and appropriate.

RESPECTFULLY SUBMITTED on this 10th day of March 2026.

/s/ S. Brent Spain

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Petition complies with the font and word count requirements of Florida Rule of Appellate Procedure 9.045.

/s/ S. Brent Spain

S. BRENT SPAIN, B.C.S.

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 the **Honorable Leann Pennington**, Chair, Flagler County Board of County Commissioners (lpennington@flaglercounty.gov), **Michael Rodriguez, Esquire** (mrodriguez@flaglercounty.gov), and **M. Scott Thomas, Esquire** (msthomas@burr.com), on this 10th day of March 2026.

/s/ S. Brent Spain

S. BRENT SPAIN, B.C.S.