

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

CHELSEA HERBERT,

Petitioner,

vs.

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

Case No. 26-CA-2026 CA 000018

CITY OF BUNNELL, FLORIDA, NELL
J. BROWN, JAMES M. BROWN, SR.,
ALBERT B. JOHNSTON, JR.,
SUZANNE B. JOHNSTON, JOLY
ALLEN LANDS, LLC, ARTHUR H.
DURSHIMER, III, GEORGIA L.
DURSHIMER THIBODAux, STEVEN
L. DURSHIMER, AND VIOLET T.
DURSHIMER AS TRUSTEE OF THE
TRUST OF VIOLET T. DURSHIMER,

Respondents.

_____ /

PETITION FOR WRIT OF CERTIORARI

Petitioner CHELSEA HERBERT (“Petitioner”), by and through her undersigned counsel, files this Petition for Writ of Certiorari to review a quasi-judicial zoning decision that Respondent CITY OF BUNNELL, FLORIDA (“City”), rendered on December 9, 2025.

I.

INTRODUCTION

This case involves a challenge by the Petitioner of the City’s quasi-judicial decision to rezone 1,259+/- acres of agricultural property to industrial for the proposed development of more than 13 million square feet of light and heavy industrial uses near US Highway 1, Old Haw Creek Road, and County Road 304 (“US 1 Park Rezoning”). The Petitioner submits that the City’s decision: (1) departed from the essential requirements of law; and (2) is not supported by competent substantial evidence. Accordingly, the Petitioner requests that this Court quash the US 1 Park Rezoning.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 Petitioner has 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 Petitioner owns and resides at the property located at 1965 Old Haw Creek Road, Bunnell, Florida. The Petitioner's property is to the west of, and in close proximity to, the proposed industrial park.

2. The Petitioner will be substantially affected by the City's decision to rezone the subject property. Indeed, given the proximity of the Petitioner's home to the proposed industrial park, the Petitioner and her family will be directly and adversely impacted by the subject rezoning. Moreover, the Petitioner has interests that are furthered and protected by the City's Comprehensive Plan and the City's Land Development Code, including, but not limited to, interests related to intensity of development, compatibility of development, protection of established uses, protection of rural areas, traffic safety, etc. As a property owner in immediate proximity to the proposed industrial park, the Petitioner's interests differ and exceed in kind and degree the interests of the Bunnell community as a whole.

3. On December 8, 2025, the City Commission held a public hearing on the proposed US 1 Park Rezoning. The Petitioner and her counsel appeared at the December 8 public hearing in opposition to the proposed US 1 Park Rezoning. Notwithstanding the unrefuted evidence that

the proposed US 1 Park Rezoning failed to comply with the City's requirements for approval, the City Commission voted three (3) to two (2) to approve the proposed US 1 Park Rezoning.

4. The City Commission's approval is memorialized in Ordinance No. 2025-06 that the City rendered on December 9, 2025. (App., Ex. A).

IV.

ARGUMENT

The Petitioner seeks review of the City's December 8 decision and has 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 City's December 8 decision are not harmless. The City's decision:

- A. Departed from the essential requirements of law because, among other things, the approval constitutes impermissible conditional zoning and fails to comply with the City's applicable land use regulations; and
- B. Is not supported by competent substantial evidence.

Consequently, this Court must quash the US 1 Park Rezoning.

V.

CONCLUSION

In sum, the City's approval of the proposed US 1 Park Rezoning: (1) departed from the essential requirements of law; and (2) is not supported by competent substantial evidence. Accordingly, the Court must quash the City's December 8 decision.

WHEREFORE, Petitioner CHELSEA HERBERT requests that the Court:

- A. Accept jurisdiction to hear this case;
- B. Grant the Petitioner's 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 US 1 Park Rezoning; and

E. Grant such other relief as the Court deems just and appropriate.

RESPECTFULLY SUBMITTED on this 7th day of January 2026.

/s/ S. Brent Spain

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CHELSEA HERBERT

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 Catherine Robinson**, Mayor, City of Bunnell, Florida (crobinson@bunnellcity.us), **Paul Waters, Esquire** (paul@voselaw.com), and **Tara Tedrow, Esquire** (tara.tedrow@lowndes-law.com), on this 7th day of January 2026.

/s/ S. Brent Spain

S. BRENT SPAIN, B.C.S.