IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA

DAWN VROOMBOUT, DONNA RIMKUS and CINDY LAUNDERS,

CASE NO.: 2015-CA-3922-O

Petitioners,

v.

ORANGE COUNTY, FLORIDA, a charter county and a political subdivision of the State of Florida, and THE SCHOOL BOARD OF ORANGE COUNTY FLORIDA, a public body corporation organized and existing under the laws and the Constitution of the State of Florida,

Respondents.
_____/

Petition for Writ of Certiorari from the decision of the Board of County Commissioners of Orange County, Florida.

Gregory A. Fencik, Esq.,
for Petitioners.

Jeffrey J. Newton, County Attorney, Joel D. Prinsell, Deputy County Attorney, and Michael R. Bray, Assistant County Attorney, for Respondent, Orange County, Florida.

Scott A. Glass, Esq., for Respondent, The School Board of Orange County Florida.

Before J. KEST, SHEA, and MUNYON, J.J.

PER CURIAM.

FINAL ORDER DENYING SECOND AMENDED PETITION FOR WRIT OF CERTIORARI

Petitioners, Dawn Vroombout, Donna Rimkus, and Cindy Launders ("Homeowners"), petition this Court for certiorari review of a rezoning decision by Orange County. The School

Board of Orange County Florida requested the rezoning to build a school on its property, and so it is also a respondent. We have jurisdiction under Florida Rule of Appellate Procedure 9.030(c)(3). The Second Amended Petition for Writ of Certiorari is denied.[1]

I. Facts

The School Board owns approximately fifty-two acres in the Wedgefield community and plans to build a 155,000-square foot school on the property that would house kindergarten through eighth grades. The School Board is not seeking any waivers to the criteria and standards set forth in Orange County Code Chapter 38 regarding public school siting requirements. Wedgefield is zoned A-2, farmland rural district, which prohibits schools. Because of this, the School Board sought to rezone its property to PD, planned development.

The Planning and Zoning Commission recommended denying the School Board's request, and the School Board appealed to the Board of County Commissioners. On February 24, 2015, the County Commissioners held a six-and-a-half hour public hearing on the request.

So many people attended the hearing that the hearing room and an overflow room were filled to capacity. The county mayor commented that the building probably never had this many people in it before. Many in attendance wore specific colored t-shirts indicating their positions on the rezoning (blue and orange t-shirts for supporters, red for opponents).

Numerous members of the public addressed the Commissioners. Supporters of the rezoning discussed how the schools their children were attending generated long commute times and were already overcrowded. They also noted how Wedgefield was growing. The testimony during the hearing was replete with references to the need for a school in Wedgefield, prompting the County Mayor to note that there is no debate on that issue. The opponents pointed to their

[1] On October 6, 2015, the School Board filed an amended memorandum in opposition to a motion to stay. The court file does not contain a pending motion to stay, however.

rural lifestyle, discussing how a school would destroy it. Some of the opponents played videos. Over half of the hearing was devoted to public comments.

In addition to the public comments, the Commissioners received a Traffic Impact Study stating that the proposed school would result in 2,229 daily car trips. They also heard expert testimony from both the School Board and the county staff.

During the hearing, the Commissioners asked many questions. Their questions included issues regarding traffic, light pollution, where the children that attend the proposed school will go to high school, possible events held at the school, and the noise generated by the school, among other things. The Commissioners discussed the suitability of the site for a school. They addressed the conditions placed on the site if the rezoning is granted and that some of them believed the conditions imposed mitigate the opponents' concerns.

At the end of the hearing, the Commissioners voted unanimously to approve the rezoning. The Homeowners then filed this certiorari proceeding, seeking to quash the decision.

II. Standard of Review

In a certiorari proceeding, the circuit court is limited to determining whether the lower tribunal's decision was supported by competent substantial evidence, whether there was a departure from the essential requirements of the law, and whether procedural due process was accorded. *Fla. Power & Light Co. v. City of Dania*, 761 So. 2d 1089, 1092 (Fla. 2000); *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995); *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982); *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957) (en banc). To meet the threshold of competent substantial evidence, "the evidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." *De Groot*, 95 So. 2d at 916. "The departure

from the essential requirements of the law necessary for granting a writ of certiorari is something more than a simple legal error." *Custer Med. Ctr. v. United Auto. Ins. Co.*, 62 So. 3d 1086, 1092 (Fla. 2010). The Supreme Court of Florida stated that a departure from the essential requirements of the law occurs "only when the lower tribunal has violated a clearly established principle of law resulting in a miscarriage of justice." *Id.*

III. Compliance with Orange County Code Chapter 30

The Homeowners argue that Orange County did not comply with Chapter 30 of its Code. The specific section that the Homeowners contend Orange County violated is section 30-40(b). They argue that Orange County failed to consider the area's development and the relationship between the present and proposed zoning classification district and the adjacent zoning classification district. Homeowners contend that the school would be out of character and incompatible with the surrounding areas, constituting, as they put it, a "blight" that the A-2 zoning was intended to prevent.

Under Orange County Code section 30-40(b), the Commissioners, when determining zoning, are required to *consider* the area's development and the relationship between the proposed zoning and the surrounding properties' remaining zoning, among other things.[2] The Code does not require the Commissioners to make a specific decision regarding those criteria.

[2] Orange County Code section 30-40(b) states, in full:

> In considering any proposals for such amendments and supplements, regardless of the source of the proposed change, the board of county commissioners shall take into consideration the development of the area, the existing and anticipated needs, the existing and proposed improvements in the area, and the relationship between the present and proposed zoning classification district and the adjacent zoning classification districts in the county and the municipalities. Changes shall be made only upon giving consideration to the character of the districts and their special suitability for particular uses, and with the view to conserving the value of the property in the area and encouraging the most appropriate use of land throughout the area.

The hearing transcript demonstrates that the Commissioners did consider the area's development and the relationship between the current zoning and the proposed zoning, as section 30-40(b) requires. They conducted a six-and-a-half hour public hearing on the proposed rezoning and heard extensive commentary from the public. More than half of the hearing transcript's 352 pages are devoted to public comments. The hearing was so well attended that an overflow room was filled to capacity. (Hr'g Tr. 3:20-24.) The County Mayor commented that the building has probably never had this many people in it before. (*Id.* 132:13-14.) Supporters and opponents wore t-shirts indicating their positions on the issue. (*Id.* 130:18-19, 132:25-133:2.) A couple of members of the public that spoke presented videos to the Commissioners. (*Id.* 186:14-16, 203:7, 212:11, 315:8-11.) The Commissioners heard from and questioned expert witnesses from Orange County staff and the School Board. (*Id.* 15:2-22, 16:1-74:3, 16:23-89:13-20, 288:13-305:15.)

Comments before the Commissioners regarding Wedgefield's development and the relationship between the zoning that would allow the proposed school and the surrounding properties' rural zoning permeated the hearing. Rezoning supporters pointed to how quickly Wedgefield has grown and how much a Wedgefield school is needed, while opponents argued that a school is incompatible with the rural lifestyle that they moved to Wedgefield to enjoy.

Supporters of the school made comments similar to this one: "The issue before Orange County Public Schools and yourselves is there are over 700 K-to-8-aged students today that live in Wedgefield. The students now attend overcrowded Columbia and Corner Lake Middle School. As the neighborhood grows, it will only get worse." (*Id.* 171:1-6.)

And several opponents made comments similar to this one:

> We were here first. My husband and I had expectations of enjoying a rural lifestyle far from urban intrusion and protected by A2 zoning and the comprehensive plan. We expected quiet country

> roads, neighbors stopping by with their horses. We expected a rural neighborhood with beautiful houses sitting on A2-zoned land.
>
> We didn't expect a mega school coming one street north of our country home and the possibility of school traffic disturbing our quiet, rural streets, our evenings and weekends to be distracted by activities held at the school.
>
> We expected to retire to a peaceful country life in a rare gem of a neighborhood. We never expected our dream to be thrown under the school bus. Our A2 zoning and the comprehensive plan should have afforded that.

(*Id.* 263:4-20.)

In addition to the public and professional commentary, the Commissioners' questions demonstrate that they considered Wedgefield's development and the relationship between the zoning that would allow the proposed school and the surrounding properties' rural zoning.

The Commissioners discussed the following list of subjects during the hearing regarding the current zoning in relation to the proposed zoning:

- whether the school would be renting its space on the weekends to outside groups that would cause parking issues (Commissioner Thompson) (*Id.* 329:11-21, 24-25);
- the noise generated by these weekend events due to the rural environment (Commissioner Thompson) (*Id.* 331:3-8);
- light pollution issues (Commissioners Boyd and Thompson) (*Id.* 324:4-8, 336:13-341:7);
- appropriateness of the site (Commissioners Clarke and Edwards) (*Id.* 316:25-317:1, 342:14-19, 343:14-17, 343:20-22);
- how imposing conditions, such as the buffer and prohibiting a high school, mitigate the impact on the surrounding community (Mayor Jacobs and Commissioner Edwards) (*Id.* 317:13-17, 345:22-24).

The Commissioners' comments also demonstrate that they considered Wedgefield's development. Commissioner Clarke asked where the children who attend the proposed school will go to high school. (Hr'g Tr. 310:18-311:13.) Commissioner Edwards recognized the complaints about the location because it is a rural area, but he said, "[T]hat's because where the kids are in Wedgefield is out in the east part of Orange County, which is a rural area." (*Id.* 317:8-

10.) These comments show that the Commissioners were thinking about how Wedgefield developed in the past and how it will continue to grow in the future as its children age.

The arguments before the Commissioners boiled down to this: supporters pointed to the area's development and opponents relied on the relationship between the proposed zoning and the surrounding properties' current zoning. The Orange County Code requires the Commissioners to consider both. The hearing transcript makes it clear that they did so.

It is not the role of this Court to decide which one of the two criteria takes precedence. *Marion Cnty. v. Priest*, 786 So. 2d 623, 626 (Fla. 5th DCA 2001) ("when the facts are such that a zoning authority has a choice between two alternatives, it is up to the zoning authority to make the choice, and not the circuit court."); *Town of Indialantic v. McNulty*, 400 So. 2d 1227, 1230 (Fla. 5th DCA 1981) ("The courts should not become 'super' zoning review boards."). Instead, that is the Commissioners' role, as they are the elected officials representing the people most affected by the decision. *McNulty*, 400 So. 2d at 1230 ("Zoning decisions are primarily 'legislative' in nature and such decisions should be made by zoning authorities responsible to their constituents."). When the rezoning request before the Commissioners is as zealously debated as this one, this law is especially pertinent.

The Court's role is to determine whether due process was accorded, whether there was a departure from the essential requirements of the law, and whether competent substantial evidence supports the rezoning decision. *Norwood-Norland Homeowners' Ass'n, Inc. v. Dade Cnty.*, 511 So. 2d 1009, 1012 (Fla. 3d DCA 1987) (noting the standard of review for zoning decisions on petitions for writs of certiorari and adding "Reviewing courts are not empowered to act as super zoning boards, substituting their judgment for that of the legislative and administrative bodies exercising legitimate objectives."); *S.A. Healy Co. v. Town of Highland*

Beach, 355 So. 2d 813, 815 (Fla. 4th DCA 1978) (same). If the Commissioners had not considered these issues, then the Court could possibly quash the decision. As the Commissioners did consider these issues, they complied with Chapter 30 of the Orange County Code, and they did not depart from the essential requirements of the law in granting the rezoning.

IV. Compliance with Orange County Code public school siting regulations

The Homeowners argue that changing the zoning from A-2 to PD violates the Orange County Code's zoning ordinances regarding public school siting regulations. They rely on Orange County Code section 38-1753(a) through (d). Respondents point out that these subsections are guidelines, not requirements, and the guidelines are only applicable if waivers to the criteria or standards are necessary. No waivers were sought by the School Board.

Section 38-1753 has the catchline,[3] "School site guidelines." Section 38-1752(d), which has the catchline, "Applicability of school site guidelines, criteria and standards," states, "Guidelines are not mandatory but may be considered when waivers to criteria and standards are necessary." This section also includes the different situations when criteria and standards apply.

Under the plain language of the Code, section 38-1753 is not mandatory and is considered only when waivers are needed. No waivers were requested. Even if a waiver was requested, the guidelines must only be considered and are not required.

In response, the Homeowners argue that section 38-1751(1) transforms the items in section 38-1753 from guidelines into standards. Section 38-1751(1) states, "Public schools shall

[3] Section 1-3 of the Orange County Code explains catchlines:

> The catchlines of the several sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the sections and shall not be deemed or taken to be titles of such sections, nor as any part of the section, nor, unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or reenacted.

be permitted by right or by special exception in the following zoning categories, subject to *the site and development standards set forth in sections 38-1753 to 38-1755*[.]" (Emphasis added.) The Homeowners argue that because section 38-1751(1) includes the emphasized phrase, those items in 38-1753 must be standards. They argue that section 38-1752 is not applicable because section 38-1751 does not implicate it.

Zoning ordinances follow statutory rules of construction. *Shamrock-Shamrock, Inc. v. City of Daytona Beach*, 169 So. 3d 1253, 1256 (Fla. 5th DCA 2015). "[O]ne provision should not be read in such a way that it renders another provision meaningless." *Katherine's Bay, LLC v. Fagan*, 52 So. 3d 19, 28 (Fla. 1st DCA 2010). Additionally, "all provisions on related subjects [should] be read in pari materia and harmonized so that each is given effect." *Id.*

Section 38-1751 does not change section 38-1753 from guidelines into standards. Its content is not school site requirements. Section 38-1751's catchline is "Zoning categories in which schools are allowed[,]" which indicates that its contents are zoning categories that allow schools, not standards for school sites. The phrase "subject to the site and development standards set forth in sections 38-1753 to 38-1755," does not change guidelines into standards. Instead, it states that schools shall be permitted in these zoning categories, but contingent on any standards that may be found in those sections.

The Homeowners argue that this interpretation does not make sense, because only section 38-1755 has the catchline "standards," and thus there would be no reason to include sections 38-1753 and 38-1754 in section 38-1751(1). Because those other sections are included, the intent must be for those sections to be considered standards.

If the Homeowners' interpretation of section 38-1751 is correct, then there would be no need for section 38-1752(d), which differentiates guidelines, criteria, and standards, as section

38-1751 would transform all of the items in sections 38-1753 and 38-1754[4] into standards. The Homeowners' interpretation also creates conflicts between section 38-1751(1) and sections 38-1753 and 38-1754, because it renders sections 38-1753 and 38-1754 into standards despite their catchlines indicating that they contain guidelines and criteria.

In contrast, if section 38-1751(1) is read as meaning that schools shall be permitted in these zoning categories, but contingent on any standards that may be set out in sections 38-1753, 38-1754, and 38-1755, then all provisions of sections 38-1751 through 38-1755 are given effect, and none are conflicting. Under statutory construction rules, this is the preferred interpretation.

In addition, the language of sections 38-1753 and 38-1755 indicate that they are guidelines and standards, respectively. Section 38-1753 uses the permissive "should" throughout, such as "Elementary school sites *should* be located on local streets or on residential collector streets entirely within residential neighborhoods and as close as practical to existing or planned residential neighborhoods." § 38-1753(b) (emphasis added). Section 38-1755, on the other hand, uses the mandatory "shall": "Plans for public elementary, middle and high schools *shall* comply with the following development standards . . . ." (Emphasis added.) The language in section 38-1755 thus contains mandatory standards, while the language in section 38-1753 contains permissive guidelines. *See Sanders v. City of Orlando*, 997 So. 2d 1089, 1095 (Fla. 2008) ("The word 'shall' is mandatory in nature."); *Mills v. Martinez*, 909 So. 2d 340, 343-44 (Fla. 5th DCA 2005) (normal usage of "shall" is mandatory; it is only directory under three narrow circumstances); *Univ. of S. Fla. v. Tucker*, 374 So. 2d 16, 17 (Fla. 2d DCA 1979) (interpreting "should" in an administrative code rule as "discretionary rather than mandatory in nature."); *State v. Thomas*, 528 So. 2d 1274, 1275-76 (Fla. 3d DCA 1988) (noting that "should" is not the

[4] Section 38-1754's catchline is "School site criteria."

equivalent of "shall," and "'expresses mere appropriateness, suitability or fittingness[,]'" *quoting* Bryan A. Garner, *A Dictionary of Modern Legal Usage* 396 (1987)).[5]

As following the Homeowners' interpretation of section 38-1751 to transform the guidelines in section 38-1753 into standards would render section 38-1752(d) superfluous and make section 38-1751(1) inconsistent with sections 38-1753 and 38-1754, the Court declines to interpret the Orange County Code in this manner and instead holds that Orange County did not violate Chapter 38 of the Code.

V. Siting for proposed school

The Homeowners argue that the use of the property is inconsistent with the Orange County Code. They do not cite any provisions of the Code to support this argument. Instead, they quote various people from the hearing discussing how the site is incompatible with the surrounding area. The Homeowners also argue in their Reply that the decision is not supported by competent substantial evidence. The Homeowners state that the School Board's witnesses did not address the impact of the school on the surrounding community.

These arguments are insufficient to support granting a petition for writ of certiorari. The Court cannot determine whether the proposed use of the property is inconsistent with the Orange County Code without the Homeowners specifying which provision of the Code it is inconsistent with. The Orange County Code contains at least thirty-eight chapters, each with numerous sections and subsections. It is not the role of the Court to develop the parties' arguments for them

[5] The Fifth District Court of Appeal cites the *Thomas* case with a "see" signal in *Ash v. State*, 554 So. 2d 553, 554 (Fla. 5th DCA 1989). In *Ash*, the Fifth District held that the trial court must impose the statutory maximum of prison time, rather than a longer amount as dictated by the prisoner's scoresheet, under the same rule of criminal procedure using "should" that was interpreted in *Thomas*. *Id.* The Fifth District was probably relying on that part of *Thomas* where the Third District stated that the rule of criminal procedure means that when the recommended guideline sentence is more than the statutory maximum, then the statutory maximum becomes the recommended sentence. *Thomas*, 528 So. 2d at 1276. The Fifth District did not address the meaning of "should" in the rule or mention the Third District's discussion of it.

by parsing through the Code trying to decipher which provision the Homeowners claim is inconsistent with the proposed use of the rezoned property.

The Homeowners' argument in their Reply regarding a lack of competent substantial evidence focuses on the idea that there must be competent substantial evidence regarding the impact of a school on the surrounding community.

The County Commissioners made the following ruling:

> overruled the recommendation by the Orange County Planning and Zoning Commission; further, made a finding of consistency with the Comprehensive Plan; and further, approved the request by Tyrone K. Smith, OCPS Planning & Governmental Relations, Wedgefield K-8 school planned development (PD), Case # LUP-14-08-228 to rezone 52.50 gross acres from A-2 (farmland rural district) to PD (planned development district), in order to allow for the development of a kindergarten through eighth grade (K-8) public school campus, on the described property . . . .

(App. 1 at 1.) The Homeowners do not say which portion of the ruling lacks competent substantial evidence.

As previously addressed in this case in the Order Denying the Motion to Dismiss and Striking Portions of the Amended Petition for Writ of Certiorari, a party challenging consistency with the Comprehensive Plan must do so in a de novo action, which this certiorari proceeding is not. § 163.3215, Fla. Stat. (2015). Thus, the Homeowners must not be challenging the Commissioners' finding of consistency with the Comprehensive Plan here.

The Homeowners also do not provide the Court with authority regarding whether the Commissioners must determine a certain level of impact of the proposed zoning on the surrounding community to grant the requested rezoning. As discussed above, the Board must consider the relationship between the proposed zoning and the zoning of adjacent properties

under section 30-40(b) of the Orange County Code, and the hearing transcript provides ample competent substantial evidence that the Commissioners did consider that relationship.

Finally, there was competent substantial evidence that the proposed school will be harmonious with the existing and future needs of the surrounding community, as required under Orange County Code section 30-38(a), which states that the Board may amend zoning to accomplish "harmonious development in accordance with existing and future needs," among other things.[6] The testimony during the hearing was replete with references to the need for a school in Wedgefield, prompting the County Mayor to note that there is no debate on this issue. (Hr'g Tr. 182:12-15.) Supporters consistently stated that their children are traveling forty-five minutes one way to attend an already-overcrowded school. (*Id.* 97:3-6, 99:13-14; 103:2-6, 115:25-116:1; 118:9-13, 125:25-126:3, 155:16-17, 171:3-5, 217:11-13.) The following excerpts typify the comments presented to the Board:

- "My son . . . does ride about a 45-minute bus ride to and from that school every day." (*Id.* 97:3-6.)
- "The zoning boards approved a huge expanse of building new houses in that community. Where are the kids going to go? Are we just going to send them to the overcrowded schools that are already there? Or are we going to go forward and build a new school? " (*Id.* 99:9-15.)

[6] Section 30-38(a) states,

> For the purposes of guiding and accomplishing coordinated, adjusted and harmonious development in accordance with existing and future needs, and in order to protect, promote, and improve public health, safety, comfort, order, convenience, morals, prosperity and general welfare, the board of county commissioners, in accordance with the conditions and procedures specified in this act, may enact or amend a zoning ordinance.

- "My wife and I moved into Wedgefield back in 2005. At that time there were 2,000 families within the City, Reserve and Wedgefield Estates area. Fast-forward ten years, we're now up close to 4,000 families." (*Id.* 115:9-14.)
- "I do not want any delays in the opening of the school at its current location. Just the fact I leave for school with my kids every morning at 7:35 to get to the bus stop. School does not start until 8:45, so we are leaving the home an hour and ten minutes before school starts." (*Id.* 122:2-7.)

"[C]itizen testimony in a zoning matter is perfectly permissible and constitutes substantial competent evidence, so long as it is fact-based." *Metro. Dade Cnty. v. Blumenthal*, 675 So. 2d 598, 607 (Fla. 3d DCA 1996) (cert. granted on reh'g en banc), cited in *Marion Cnty. v. Priest*, 786 So. 2d 623, 626 (Fla. 5th DCA 2001). These comments are fact-based—school commute times, Wedgefield's growth—and thus are competent substantial evidence that a school in Wedgefield would be harmonious with existing and future needs.

Additionally, the Court may not reweigh the evidence before the Commissioners. "[T]he circuit court must simply determine whether the city's decision was supported by competent substantial evidence, not whether there is evidence to support the other side." *Marion Cnty. v. Priest*, 786 So. 2d at 627. When the facts give the Commissioners a choice between alternatives, the Commissioners make that choice, not the circuit court. *Metro. Dade Cnty. v. Blumenthal*, 675 So. 2d at 606 (noting that the evidence could have supported the opposite conclusion of the county commission in addition to the conclusion it did reach, and in such instances, the county commission, not the circuit court, decides). "The circuit court's role is restricted to ascertaining whether there is substantial competent evidence to support the decision actually made . . . ." *Id.* Although the Homeowners point to the comments before the Board supporting their arguments,

this Court would be departing from the essential requirements of the law if it relied on that evidence in granting the petition for writ of certiorari, as that would constitute reweighing the evidence before the Commissioners.

VI. Spot zoning argument

In the Second Amended Petition for Writ of Certiorari, the Homeowners mention spot zoning in passing. They quote one sentence from the concurring opinion in *City of Cape Canaveral v. Mosher*, 467 So. 2d 468, 471 (Fla. 5th DCA 1985) (Cowart, J., concurring), that mentions that spot zoning should be avoided. In the conclusion, the Homeowners write, "By forcing the 'square peg' of the 155,000 square foot facility into the 'round hole' of the Rural Settlement of Wedgefield, the BCC engaged in exactly the type of uncoordinated, *ad hoc* [sic], spot zoning prohibited by the Orange County Code." (Second Am. Pet. Writ Cert. 28.)

These two sentences in the twenty-eight page Second Amended Petition for Writ of Certiorari contain the only mention of spot zoning. Homeowners do not analyze the factors that implicate spot zoning, nor do they discuss or cite cases regarding spot zoning.[7]

Although an argument is mentioned, failing to present the reasons why that argument should prevail precludes appellate review. In *Singer v. Borbua*, the defendants raised an argument that was "not made a separate point on appeal . . . ." 497 So. 2d 279, 281 (Fla. 3d DCA 1986). Because of this, the Third District did not review its merits. *Id.* "It is well settled that, in order to obtain appellate review, alleged errors relied upon for reversal must be raised clearly, concisely and separately as points on appeal." *Id. See also Fla. Emergency Physicians-Kang & Assocs., M.D., P.A. v. Parker*, 800 So. 2d 631, 636 (Fla. 5th DCA 2001) (quoting *Singer*); *Fell v.*

[7] The *Mosher* case did not analyze, either in the majority opinion or in the concurrence, whether the prohibited zoning amendment constituted spot zoning. Instead, the concurrence focused on zoning changes that are inconsistent with a comprehensive land use plan. *City of Cape Canaveral v. Mosher*, 467 So. 2d at 470-71 (Cowart, J., concurring).

Carlin, 6 So. 3d 119, 120 n.1 (Fla. 2d DCA 2009) (same); *State Comprehensive Health Ass'n v. Carmichael*, 706 So. 2d 319, 321 (Fla. 4th DCA 1997) (same); *Time Ins. Co. v. Arnold*, 319 So. 2d 638, 640 (Fla. 1st DCA 1975) (appellant waived point it assigned as error "by failing to brief and argue it."). If the party does nothing more than set forth a conclusion, "without further elucidation on the arguments, [then] this court may not engage in meaningful appellate review." *Fla. Hometown Democracy, Inc. v. Cobb*, 953 So. 2d 666, 672 (Fla. 1st DCA 2007).

Orange County's and the School Board's Responses to the Second Amended Petition do not address a spot zoning argument. But if an appellant simply states a conclusion, without any argument, then the opposing party cannot be required to respond to it, as that point is waived. *Fla. First Nat'l Bank of Jacksonville v. Dent*, 350 So. 2d 481, 482-83 (Fla. 1st DCA 1977).

The Homeowners' Replies to the Responses could be construed as containing more substance regarding the spot zoning argument. In their Reply to Orange County's Response, the Homeowners state,

> One would think that the term comprehensive planning, as it relates to zoning, suggests reasonable uniformity within zoning districts having the same basic characteristics. It does not contemplate setting up individual lots within an otherwise uniform district as a separate zone, completely out of character with the area surrounding those lots. The antithesis of comprehensive planning arises when the property of an individual owner is effectively treated as an independent district. The BCC failed to appreciate the significance of and adhere to the teachings of the seminal *Snyder* case when it approved the spot zoning of the 155,000 square foot facility in the middle of a rural settlement in contravention of the Orange County Code.

(Reply to Orange Cnty. Resp. 4-5.) Both Replies contend that Chapter 30 of the Orange County Code "obligates the BCC to engage in comprehensive planning in the broadest sense; and to

refrain from engaging in arbitrary, *ad hoc* [sic], spot zoning." (Reply to Orange Cnty. Resp. 5; Reply to School Bd.'s Resp. 6.) The Replies also state that the Code prohibits rezoning that

> would create islands of property . . . completely out of character (inconsistent) with the surrounding ocean of property . . . like, say, re-zoning so as to allow a 155,000 square foot facility which will generate upwards of 2,229 . . . daily vehicular trips in the middle of an existing district in which there are nothing but houses which are hundreds of thousands less square feet and which generate thousands less daily vehicular trips.

(Reply to Orange Cnty. Resp. 5; Reply to School Bd.'s Resp. 7.) In the Reply to the School Board's Response, the Homeowners argue that the School Board "asked the BCC to create a special zone consisting solely of its property, wholly out of character with the character of the surrounding properties. This is exactly the type of spot zoning Chapter 30 of the Orange County Code prohibits." (Reply to School Bd.'s Resp. 8.) Just like the Second Amended Petition, the Replies do not contain any citations or discussion of spot zoning cases. The Replies are also missing analysis of all of the spot zoning factors.

Even if this were considered sufficient to review the spot zoning issue, it being solely in the Replies precludes the Court considering it. An argument may not be raised for the first time in a reply. *Parker-Cyrus v. Justice Admin. Comm'n*, 160 So. 3d 926, 928 (Fla. 1st DCA 2015). In *Department of Highway Safety & Motor Vehicles v. Dellacava*, 100 So. 3d 234, 236 (Fla. 5th DCA 2012), the circuit court granted a petition for writ of certiorari based on an argument raised for the first time in the reply to the response to the petition. The Fifth District quashed the circuit court's order, holding that the circuit court deprived the respondent of due process by granting the petition based on an argument raised for the first time in the reply. *Id.* Due process was denied because the respondent did not have an opportunity to address the argument. *Id.*

As noted above, the spot zoning argument was not sufficiently raised for appellate review in the Second Amended Petition. Granting the petition based on arguments supporting spot zoning that were presented for the first time in the Reply, especially when neither Response to the Second Amended Petition discussed spot zoning, would violate Orange County's and the School Board's right to due process.

Finally, even if the Court could consider the argument, the Homeowners failed to present enough information for the Court to evaluate a spot zoning issue.

"Spot zoning is . . . the piecemeal rezoning of small parcels of land to a greater density, leading to disharmony with the surrounding area." *Sw. Ranches Homeowners Ass'n, Inc. v. Cnty. of Broward*, 502 So. 2d 931, 935 (Fla. 4th DCA 1987). Four factors determine whether spot zoning is implicated: 1) the spot's size; 2) the surrounding area's compatibility; "3) the benefit to the owner[;] and 4) the detriment to the immediate neighborhood." *Bird-Kendall Homeowners Ass'n v. Metro. Dade Cnty. Bd. of Cnty. Comm'rs*, 695 So. 2d 908, 909 n.2 (Fla. 3d DCA 1997) (quoting *Parking Facilities, Inc. v. City of Miami Beach*, 88 So. 2d 141 (Fla. 1956)).

The Homeowners did not analyze the spot zoning factors in either their Second Amended Petition or Replies to the Responses. Although the Second Amended Petition and the Replies do address the compatibility with the surrounding area and the perceived detriment to the immediate neighborhood, the Homeowners do not discuss the size of the property being rezoned in comparison to the size of Wedgefield, nor do they address the benefit to the owner. The Homeowners did not provide any information to this Court regarding the size of the property to be rezoned in relation to the size of Wedgefield; thus, even if the Court wished to review the factor regarding the size of the area, we do not have enough information to do so.

As the spot zoning argument was not sufficiently presented for this Court's review, the Homeowners failed to demonstrate that the Commissioners departed from the essential requirements of the law.

VII. Conclusion

Orange County did not depart from the essential requirements of the law because the Commissioners considered the area's development and its compatibility with the proposed rezoning and because the guidelines in Orange County Code Section 38-1753, regarding school siting, are not mandatory. In addition, there is competent substantial evidence that the rezoning is harmonious with the existing and future needs of the surrounding community. Finally, the Homeowners did not sufficiently raise a spot zoning argument for appellate review.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the Second Amended Petition for Writ of Certiorari is **DENIED**.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 7th day of December, 2015.

/S/
JOHN MARSHALL KEST
Presiding Circuit Judge

SHEA and MUNYON, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to: **Gregory A. Fencik, Esq.**, The Law Office of Gregory A. Fencik, P.A., P.O. Box 781460, Orlando, Florida 32878-1460; **Jeffrey J. Newton, County Attorney, Joel D. Prinsell, Deputy County Attorney, and Michael R. Bray, Assistant County Attorney**, Orange County Attorney's Office, Post Office Box 1393, Orlando, Florida 32802-1393; and **Scott A. Glass, Esq.**, Shutts & Bowen, LLP, 300 S. Orange Ave., Orlando, FL 32801, on this 7th day of December, 2015.

/S/
Judicial Assistant