STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DOUGLAS J. WEILAND and ELIZABETH C. SIRNA,	)	
Appellants,	)	
vs.	)	Case No. 05-2265
COMMUNITY DEVELOPMENT BOARD, CITY OF CLEARWATER and SPINECARE PROPERTIES, LLC,	)	
Appellees.	)	

FINAL ORDER

This case involves an appeal of the Development Order issued by the City of Clearwater (City) authorizing SpineCare Properties, LLC (SpineCare), to construct a two-story medical office building with an adjacent 225-space parking lot (the Project) on a 4.5 acre parcel on the west side of McMullen-Booth Road (the Property). The appeal was brought by Douglas J. Weiland and Elizabeth C. Sirna (Appellants), who live immediately to the west of the Property.

The Division of Administrative Hearings (DOAH), by contract and pursuant to Sections 4-501.B.1 and 4-505 of the City's Community Development Code (Code), has jurisdiction over this appeal. Oral argument was held in this case on October 12, 2005, before Administrative Law Judge T. Kent Wetherell, II.

At oral argument, the record before the Community Development Board (Board) was received and argument was presented by the parties. See Code § 4-505.B.[1] The parties submitted briefs detailing their respective positions, and they were also afforded the opportunity to submit proposed final orders, which they did. See Code § 4-505.D. Due consideration has been given to the parties' written submittals and oral arguments.

Code Section 4-505.D was recently amended to eliminate the requirement that this Final Order include findings of fact. See City Ordinance No. 7413-05, § 21 (effective May 5, 2005). The Final Order is only required to include "conclusions of law and a determination approving, approving with conditions, or denying the requested development application." Code § 4-505.D. A brief procedural history and overview of the Project are included to provide the context necessary to evaluate the issues raised by Appellants in this appeal.

I. Procedural History and Project Overview

On April 29, 2005, SpineCare filed a sworn flexible development application seeking approval of the Project as a "comprehensive infill redevelopment project." The Project requires Level Two approval because it proposes reductions in the minimum setbacks and an increase in the maximum height specified in the Code and because the parking lot will be

located on property that will be zoned Low Medium Density Residential (LMDR).

In addition to the flexible development application, SpineCare filed an application to annex 0.358 acres of the Property along McMullen-Booth Road into the City, an application to change the designation of the Property on the future land use map (FLUM), and an application to rezone the property. The parties represented at oral argument that the City Council has deferred final action on those matters (as well as the Development Agreement discussed below) pending resolution of this appeal.

If the FLUM change and rezoning applications are approved by the City Council, the western 2.06 acres of the Property will be designated Residential Low (RL) on the FLUM and LMDR on the zoning map, and the eastern 2.44 acres of the Property along McMullen-Booth Road (including the 0.358 acres being annexed) will be designated Institutional on the FLUM and the zoning map.

The development currently on the Property consists of a 13-unit low-income apartment complex in two one-story buildings and a single-wide trailer with several ancillary sheds. One of the neighboring property owners who spoke at the hearing referred to the existing development on the Property as a "blighted low-cost housing area that we've had to call the police on many times."[2]

The existing structures on the Property will be demolished to construct the Project.

The proposed two-story medical office building will be located on the portion of the Property that will be zoned Industrial. The parking lot for the building and a stormwater retention pond will be located on the portion of the Property that will be zoned LMDR.

McMullen-Booth Road is a six-lane, divided arterial highway. The parcels across McMullen-Booth Road from the Property, which are in the City of Safety Harbor, are zoned Hospital Facility (HF) and are developed with medical office buildings. The parcel to the south of the eastern half of the Property is also zoned HF and is developed with a single-story assisted living facility. The parcels to the south of the western half of the Property are zoned Low Density Residential (LDR) and are developed with single-family residences. The parcels to the north and west of the Property are zoned LMDR and LDR and are developed with single-family residences.

SpineCare negotiated a Development Agreement with the City and the homeowners' association that includes the residents to the north of the Property. The Development Agreement includes operational restrictions for the medical office building and buffering requirements that exceed the requirements in the Code. For example, the Development Agreement requires SpineCare to

construct and maintain a “6-foot concrete wall (with stucco finish)” and “vegetation no less than 10 feet in height” along the north property line and a “6-foot privacy fence” along the south property line. The Development Agreement also limits the number of parking spaces along the north property line, restricts the hours of operation of the medial office building, requires imaging equipment to be located on the south side of the building, and requires SpineCare to “attempt to preserve seventy percent (70%) of all existing trees over 12 inches in diameter.” The restrictions in the Development Agreement will be recorded as restrictive covenants on the Property, and the homeowners' association will have standing to enforce the restrictions.

The buffers provided for in the Development Agreement are primarily on the north and south property lines. There is no wall or fence required on the west property line, which is adjacent to Appellants’ property. However, the Development Agreement specifically requires SpineCare to “reduce or eliminate lighting on the West side of the Property during non-peak times, consistent with safety concerns.”

There will be approximately 160 feet between the western property line of the Property (which abuts Appellants’ property) and the parking lot. The only development in that area will be a wet stormwater retention pond. The landscape plan for the

Project shows most of the existing trees in that area being retained and additional trees being planted, primarily around the stormwater retention pond. The dense stand of trees shown on the tree survey between the area where the stormwater retention pond will be located and the existing buildings on the Property will be removed to construct the parking lot, but the landscape plan shows a number of new trees and shrubs surrounding the parking lot as well as trees on the islands that are interspersed throughout the parking lot.

City planning department staff recommended approval of the flexible development application for the Project. A detailed Staff Report was prepared by Mark Parry, Consulting Planner. Among other things, the Staff Report states that "[t]he proposed, two story building design and architectural style is similar in character with regard to size and scale of other buildings in the area"; that the "[p]roposed landscaping mitigates setback reductions, buffering adjacent uses, adhering to neighborhood character"; and that the "development is compatible with the surrounding area and will enhance other redevelopment efforts." As reflected in the checklists contained in the Staff Report, the planning department staff found the Project to be consistent with the each of the flexibility criteria in Code Sections 2-204[3] and 2-1204, as well as the general criteria in Code Section 3-913.

The Board held a quasi-judicial hearing on the flexible development application for the Project on May 17, 2005. The Board also considered the FLUM change and the Development Agreement at that hearing.

Mr. Parry's testimony at the Board's hearing referenced and was consistent with the Staff Report. Specifically, he testified that the City planning department staff found the Project to be consistent with the Code based upon its review of the site plan and, also, the Development Agreement.

An attorney representing SpineCare also gave testimony at the hearing. His testimony focused on the additional restrictions governing the Project that are contained in the Development Agreement.

Appellants were granted “party status” and testified in opposition to the Project. Their testimony focused on the incompatibility of the proposed medical office building and parking lot with the surrounding neighborhood because of the building’s height and bulk and also because of the noise generated by the patients coming and going throughout the day and into the night.

The witness testimony was sworn,[4] and the opportunity for cross-examination was provided. Neither Mr. Parry nor any of the other witnesses was cross-examined.

In addition to the individuals who testified and were subject to cross-examination, several individuals spoke on the Project during the "public comment" portion of the hearing. The individuals who spoke in opposition to the Project were neighbors who, like Appellants, had concerns about the compatibility of the Project with the adjacent residential uses.

A representative of the homeowners' association to the north of the Property spoke in favor of the Project and focused on the various concessions agreed to by SpineCare in the Development Agreement. A representative of the homeowners' association to the south of the Property also spoke in favor of the Project, and he stated that the assisted living facility has been a "great neighbor[]"; that the facility's lighting has helped to eliminate trespassers in the area; and that the Project would be an improvement on the "blighted" uses currently on the Property.

At the conclusion of the hearing, the Board unanimously voted to approve the flexible development application for the Project. The Board also unanimously voted to recommend approval of the Development Agreement and the FLUM change. (The Board apparently was not required to take action on the rezoning or the annexation.)

The Board's approval of the flexible development application was memorialized in the Development Order dated

May 27, 2005, which approves the Project with conditions. Consistent with the Staff Report, the Development Order expressly finds/concludes that the Project complies with the criteria in Code Sections 2-1204.A, 2-204.C, and 3-913, and that "[t]he development is compatible with the surrounding area and will enhance other redevelopment efforts." Although not explicitly stated in the Development Order, it is clear from the Staff Report and the testimony before the Board that the approval of the Project is also implicitly conditioned on the City Council's approval of the related annexation, FLUM change, rezoning, and Development Agreement.[5]

On or about May 31, 2005, Appellants timely filed an Appeal Application contesting the Development Order and the Board's approval of the Project. The appeal was transferred to DOAH on June 22, 2005.

II. Scope of Appeal and Standards of Review

In this appeal, the burden is on Appellants to show that:

> [1] the decision of the [Board] cannot be sustained by substantial competent evidence before the board, or [2] that the decision of the board departs from the essential requirements of law.

Code § 4-505.C.

The scope of review in this appeal is limited to those two issues. See Belniak v. Top Flight Development, LLC, Case No. 04-2953, at 14-15 (DOAH Nov. 23, 2004).

When used as an appellate standard of review (as is the case in Code Section 4-505.C), competent substantial evidence has been construed to be "legally sufficient evidence" or evidence that is "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." DeGroot v. Sheffield , 95 So. 2d 912, 916 (Fla. 1957).

In determining whether the Board's decision is supported by competent substantial evidence, the undersigned is not permitted to second-guess the wisdom of the decision, reweigh conflicting testimony presented to the Board, or substitute his judgment for that of the Board as to the credibility of witnesses. See, e.g., Haines City Community Development v. Heggs, 658 So. 2d 523, 530 (Fla. 1995); Belniak, supra, at 13-15. Moreover, it is immaterial that the record contains evidence supporting the view of the Appellants so long as there is competent substantial evidence supporting the findings (both implicit and explicit) made by the Board in reaching its decision. See, e.g., Florida Power & Light Co. v. City of Dania, 761 So. 2d 1089, 1093 (Fla. 2000); Collier Medical Center, Inc. v. Dept. of Health & Rehabilitative Servs., 462 So. 2d 83, 85 (Fla. 1st DCA 1985); Belniak, supra, at 15.

On these points, the Florida Supreme Court has admonished that:

> the 'competent substantial evidence' standard cannot be used by a reviewing court as a mechanism for exerting covert control over the policy determinations and factual findings of the local agency. Rather, this standard requires the reviewing court to defer to the agency's superior technical expertise and special vantage point in such matters. The issue before the court is not whether the agency's decision is the 'best' decision or the 'right' decision or even a 'wise' decision, for these are technical and policy-based determinations properly within the purview of the agency. The circuit court has not training or experience -- and is inherently unsuited -- to sit as a roving 'super agency' with plenary oversight in such matters.

Dusseau v. Metropolitan Dade County, 794 So. 2d 1270, 1275-76 (Fla. 2001).

The issue of whether the Board's decision departs from the essential requirements of law is synonymous with whether the Board applied the correct law. See, e.g., Haines City Community Development Corp., 658 So. 2d at 530; City of Deerfield Beach v. Valliant, 419 So. 2d 624, 626 (Fla. 1982); Belniak, supra, at 14.

III. Analysis of Appellants' Arguments and Conclusions of Law

First, Appellants argue that the Board departed from the essential requirements of law by failing to consider Goal 2, Objective 2.2, and Policy 2.2.1 of the Future Land Use Element

(FLUE) of the City's comprehensive plan in reaching its decision. Those provisions state:

> Goal 2
>
> THE CITY OF CLEARWATER SHALL UTILIZE INNOVATIVE AND FLEXIBLE PLANNING AND ENGINEERING PRACTICES, AND URBAN DESIGN STANDARDS IN ORDER TO PROTECT HISTORIC RESOURCES, ENSURE NEIGHBORHOOD PRESERVATION, REDEVELOP BLIGHTED AREAS, AND ENCOURAGE INFILL DEVELOPMENT.
>
> Objective 2.2
>
> The City of Clearwater shall continue to support innovative planned development and mixed use development techniques in order to promote infill development that is consistent and compatible with the surrounding environment.
>
> Policy 2.2.1
>
> On a continuing basis, the Community Development Code and the site plan approval process shall be utilized in promoting infill development and/or planned developments that are compatible.

A determination of the consistency of the Project with the FLUE (or any other portion of the City's comprehensive plan) is beyond the scope of this appeal. That issue must be litigated in a "de novo action for declaratory, injunctive or other relief" filed pursuant to Section 163.3215, Florida Statutes. The fact that such an action need not be filed until after this "local administrative appeal" is exhausted, see § 163.3215(3), Fla. Stat., does not change the fact that a civil action is the

"exclusive method[] . . . to appeal and challenge the consistency of a development order with a comprehensive plan . . . ." § 163.3215(1), Fla. Stat.

Nevertheless, the Board's failure to consider the "compatibility" of the Project with surrounding development (which is the crux of Appellants' argument related to the comprehensive plan provisions) is cognizable in this appeal because Code Section 3-913 requires that issue to be considered by the Board. See, e.g., Code § 3-913 (Criteria Nos. 1 and 5). However, contrary to Appellants' argument, the record reflects that the Board did consider the compatibility issue in approving the Project. For example, the completed checklists in the Staff Report show that staff considered each of the criteria in Code Sections 2-204.C, 2-1204.A, and 3-913; the Staff Report states that "[p]roposed landscaping mitigates setback reductions, buffering adjacent uses, adhering to neighborhood character" and that the "development is compatible with the surrounding area"; and Mr. Parry testified that staff took into account the surrounding uses in its review of the Project.

It appears that what Appellants are actually arguing on this issue is not that the Board failed to consider the compatibility of the Project with surrounding development, but rather that the evidence presented to the Board on this issue establishes that the Project is not compatible with the

surrounding residential development. See, e.g., Initial Brief, at 6-8. The fact that there was testimony before the Board supporting Appellants' position that the Project is incompatible with the surrounding development is immaterial for purposes of the undersigned's review. See Florida Power & Light, 761 So. 2d at 1093. As long as the record contains competent substantial evidence to support the Board's decision that the Project is compatible with surrounding properties, the decision must be affirmed. Id.

The record contains competent substantial evidence supporting the Board's conclusion that the Project is compatible with the surrounding development. The proposed medical office building will be located on the far east side of the Property, adjacent to McMullen-Booth Road and is similar to the other institutional uses along that road. The parking lot is adequately buffered from the adjacent residential uses with a six-foot high wall and trees along the north property line, a six-foot high privacy fence along the south property line, and approximately 160-feet of open space with trees and a stormwater retention pond between the west property line and the parking lot.

Next, Appellants argue that the Board departed from the essential requirements of law with respect to its approval of the parking lot as part of the Project within the LMDR zoning

district. Appellants rely primarily on Code Section 2-204.C.3, which provides that off-street parking spaces in the LMDR zoning district are to be "screened by a wall or fence of at least three feet in height which is landscaped on the external side with a continuous hedge or non-deciduous vine."

Appellees contend that Appellants waived this issue by not raising it before the Board. That contention is rejected. Even though Code Section 2-204.C.3 was not specifically mentioned during Appellants' presentations to the Board, the issues of the parking lot's incompatibility with the adjacent residential uses and the insufficiency of the buffer area to minimize the incompatibility were generally raised by Appellants and the other individuals who spoke in opposition to the Project.

Appellees also contend that Code Section 2-204 must be read together with Code Section 2-1204 because the Project was approved as a "comprehensive infill redevelopment project." Specifically, Appellees cite Code Section 2-1204.A.7, which allows flexibility "in regard to lot width, required setbacks, height and off-street parking [if] justified by benefits to the community character and the immediate vicinity of the parcel proposed for development and the City of Clearwater as a whole" (emphasis supplied).

Code Section 2-1204.A establishes the flexibility criteria for development in the Institutional zoning district. By

contrast, Code Section 2-204.C establishes the flexibility criteria for development in the LMDR zoning district. The medical office building is to be located in the Institutional zoning district, whereas the parking lot is to be located in the LMDR zoning district. As reflected in the Staff Report (and as acknowledged at oral argument), Level Two approval is required for both aspects of the Project even though the Project was considered and approved as a whole.

The flexibility criteria in Code Section 2-204.C (not those in Code Section 2-1204.A) govern the approval of the parking lot. The checklist in the Staff Report indicated that the Project is "consistent" with the above-quoted requirement in Code Section 2-204.C.3, but the basis of that finding as it relates to the west property line appears to be the buffering provided by the stormwater retention area because it is undisputed that no fence or wall is proposed along the west property line. On this point, the Staff Report states:

> The residential uses to the west will be buffered from the parking lot by approximately 150 [sic] feet in which will be located a stormwater retention facility. Residential uses to the north and south will be buffered by solid fencing and walls six feet in height.

Appendix III, Exhibit 7, at 3.

Similarly, Appellees contend on appeal that the 160-foot buffer area satisfies the "purpose" of Code Section 2-204.C.3,

which they assert is to “provide a buffer between non-residential off-street parking and adjacent properties." See Joint Response to Initial Brief, at 14. While that may be true, there is nothing in Code Section 2-204.C that authorizes the Board to approve off-street parking spaces in the LMDR zoning district without a fence or wall even if an expansive buffer area is provided. Thus, to the extent that the Board’s approval of the parking lot was based upon its determination that the 160-foot buffer area is a reasonable substitute for a fence or wall and/or that the approval of the parking lot is governed by Code Section 2-1204.A, rather than Code Section 2-204.C, the Board departed from the essential requirements of law.

Next, Appellants argue that the Board departed from the essential requirements of law by not imposing conditions on the approval of the Project as required by Code Section 3-913. That Code section no longer requires conditions to be imposed, but it does require the Project to meet “each and every one of” the following criteria to be approved:

> 1. The proposed development of the land will be in harmony with the scale, bulk, coverage, density, and character of adjacent properties in which it is located.
>
> 2. The proposed development will not hinder or discourage the appropriate development and use of adjacent land and buildings or significantly impair the value thereof.

> 3. The proposed development will not adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use.
>
> 4. The proposed development is designed to minimize traffic congestion.
>
> 5. The proposed development is consistent with the community character of the immediate vicinity of the parcel proposed for development.
>
> 6. The design of the proposed development minimizes adverse effects including visual, acoustic and olfactory and hours of operation impacts, on adjacent properties.

Code § 3-913, as amended by City Ordinance No. 7413-05, § 18 (effective May 5, 2005).

There is competent substantial evidence in the record to support the Board's determination that the Project meets the criteria in Code Section 3-913, including the three criteria (Nos. 1, 5 and 6) specifically contested by Appellants. See Initial Brief, at 10. For example, in addition to the evidence referenced above relating to the "compatibility" issue, there is competent substantial evidence in the record that the Project will not generate traffic congestion; that adverse effects on the surrounding properties have been minimized through the additional buffering requirements and operational restrictions in the Development Agreement; that the medical use to the south of the Property (i.e., the assisted living facility) enhances safety on the surrounding residential properties; and that the

Project will similarly enhance the area by removing the "blighted" low-income housing complex that is currently on the Property.

The conclusion that there is competent substantial evidence to support the Board's finding that the Project meets the criteria in Code Section 3-913 is not inconsistent with the conclusion that the Board departed from the essential requirements of law in approving the parking lot in the LMDR zoning district without a fence or wall along the west property line. The latter conclusion was based upon the Code Section 2-204.C.3, which, as noted above, unambiguously requires the parking lot to be screened by a wall or fence even though there is competent substantial evidence that the parking lot will be adequately buffered from the residential uses to the west of the Property.

Finally, Appellants argue that the Board's decision is not supported by competent substantial evidence to the extent that it is based upon the testimony of Mr. Parry because (1) he did not provide his resume to the Board as experts are required to do under Code Section 4-206 and (2) his testimony "consisted only of simple conclusory statements." This argument is rejected.

On the first point, it has been held that an expert's failure to submit a resume in accordance with Code Section 4-206

is the nature of a due process violation that is beyond the scope of this appeal. See Belniak, supra, at 16. Moreover, because Appellants did not object at the hearing regarding Mr. Parry's failure to submit a resume, they may not raise the issue on appeal. Id. at 19 n.2. Accord Clear Channel Communications, Inc. v. City of North Bay Village, 2005 WL 2219617, at *1 (Fla. 3d DCA Sept. 14, 2005) (concluding that circuit court sitting in its appellate capacity over a local government's resolution did not misapply the law "in holding that petitioners failed to preserve legal challenges for appellate review by not filing proper objections before the city commission"). In light of these conclusions, it is not necessary to reach the Appellees' contention that Mr. Parry has been designated as a "standing expert" and, therefore, is not required to submit a resume each time he appears before the Board. See Joint Response to Initial Brief, at 18-19 (relying on Supplemental Appendix Exhibits 3-5, which were not received as part of the record in this appeal).

On the second point, that portion of Mr. Parry's testimony that was specifically directed to the flexible development application must be considered in conjunction with the detailed Staff Report on the application and Mr. Parry's testimony on the interrelated FLUM change and Development Agreement that were being considered by the Board at the same time. Indeed, Mr. Parry began his presentation to the Board stating that he

intended to address all of the pending applications related to the Property in "one presentation" and the Board agreed to that procedure. See Supplemental Appendix, Exhibit 1, at 8-9.

In any event, contrary to Appellants' argument, Mr. Parry's testimony at the hearing consisted of more than just "simple conclusory statements." He specifically testified regarding the consistency of the Project with the other institutional uses along McMullen-Booth Road, and he also testified that staff reviewed the site plan, took into account the surrounding uses, and considered the provisions of the Development Agreement in formulating the Staff Report that recommended approval of the Project. In that regard, Mr. Parry's testimony was fact-based and is similar to that which was found sufficient to support the local government's decision in City of Hialeah Gardens v. Miami-Dade Charter Foundation, Inc., 857 So. 2d 202 (Fla. 3d DCA 2003).

In sum, Appellants failed to show that the Board's decision is not supported by competent substantial evidence, but they did show that the Board departed from the essential requirements of law when it approved the parking lot in the LMDR zoning district without requiring a fence or wall along the west property line.

IV. Determination

As noted above, Code Section 4-505.D authorizes the undersigned "approv[e], approv[e] with conditions, or deny[] the

requested development application." The Code does not specifically authorize a remand of the matter to the Board for additional fact-finding, as suggested by the parties at oral argument. In any event, a remand is not necessary under the circumstances of this case.

In approving the flexible development application for the Project, the only area in which the Board departed from the essential requirements of law was its approval of the parking lot without a wall or fence along the west property line as required by Code Section 2-204.C.3. That error can be cured by conditioning the approval of the Project on a requirement that SpineCare construct and maintain "a wall or fence of at least three feet in height which is landscaped on the external side with a continuous hedge or non-deciduous vine" along the west property line. The Board could have imposed such a condition as part of its approval of the Project, see Code § 4-404 (last sentence), and such a condition is a minor revision that does not require additional Board review. See Code § 4-406.A.

Additionally, the approval of the flexible development application should be expressly conditioned on the City Council's approval of the related annexation, FLUM change, rezoning, and Development Agreement. The parties agreed at oral argument that this condition is implicit in the Board's approval of the Project, but the condition should be made explicit.

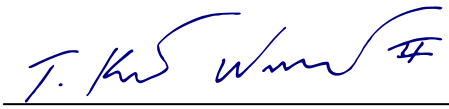
Based upon the foregoing, the Board's decision approving the flexible development application for the Project is affirmed, and the application is approved subject to:

1. the conditions set forth in the Development Order;

2. the City Council's approval of the related annexation, FLUM change, rezoning, and Development Agreement; and

3. a requirement that SpineCare construct and maintain a wall or fence of at least three feet in height, which is landscaped on the external side with a continuous hedge or non-deciduous vine, along the west property line.

DONE AND ORDERED this 31st day of October, 2005, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of October, 2005.

ENDNOTES

1/ The "record before the community development board" is defined by Code Section 4-505.A, but with the agreement of the

parties, the record received at oral argument also includes transcripts of the Board's hearing on the application (Appendix I and Supplemental Appendix, Exhibit 1) and the Development Agreement considered by the Board in conjunction with the flexible development application for the Project (Supplemental Appendix, Exhibit 6). Exhibits 3, 4, and 5 in the Supplemental Appendix were not received because those exhibits were not part of the record before the Board and no timely motion to supplement the record was filed. See Code § 4-505.A.

2/ Board Member Coates made a similar comment prior to making the motion to approve the application. He stated:

> I just wanted to make one comment addressed to safety issues as regards what is out there right now. And having a parking lot that's well lit at night, I would take the parking lot, frankly. Having been out there and seen the place and driven around, I'll take an open parking lot any day.

Supplemental Appendix, Exhibit 1, at 58-59.

3/ The checklist on pages 4 and 5 of the Staff Report refers to Code Section 2-203, but the correct reference is Code Section 2-204.

4/ The transcripts of the Board's hearing do not reflect that any of the witnesses was sworn immediately prior to giving their testimony. However, it was represented at oral argument that the Board's practice is to swear all individuals who intend to make presentations to the Board en masse at the outset of the hearing, and there is no dispute that the policy was followed in this case.

5/ Counsel for each of the Appellees confirmed at oral argument that if those items are not approved by the City Council, then development of the Project cannot go forward.

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NOTICE OF RIGHT TO JUDICIAL REVIEW

This decision is final and is subject to judicial review by filing a petition for common law certiorari with the appropriate circuit court in accordance with Section 4-505.D of the City of Clearwater Community Development Code.