

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT  
IN AND FOR SARASOTA COUNTY, FLORIDA

**BDR INVESTMENTS, L.L.C., a Florida  
limited liability company, and RODNEY KREBS,**

Petitioners,

v.

Case No. 2002-CA-16991-NC

**SARASOTA COUNTY, FLORIDA,  
a Political Subdivision of the State of Florida,  
and THE BOARD OF COUNTY COMMISSIONERS  
OF SARASOTA COUNTY, FLORIDA,**

Respondents.

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KAREN L. PUGHING  
CLERK OF CIRCUIT COURT  
SARASOTA COUNTY, FLA.

**ORDER GRANTING PETITION FOR WRIT OF CERTIORARI**

This case is before the court on a Petition for Certiorari to review a decision of the Board of County Commissioners of Sarasota County, Florida, (the "Board") denying petitioners' application to rezone property. The court has carefully reviewed the record, heard the arguments of counsel, and is otherwise duly advised in the premises.

Petitioners applied to rezone property located east of I-75 in Sarasota County from Open Use Rural (OUR) to Open Use Estate-1 (OUE-1) which would allow an increase in density of development from one dwelling unit per 10 acres to one dwelling unit per 5 acres. A hearing took place before the Board during which the Board took testimony, discussed its concerns, and voted unanimously to deny the application for rezoning. In denying the application, the Board found that the request to rezone was inconsistent with the comprehensive plan and that it did not meet the criteria set forth in Section 21 of the Zoning Regulations for Sarasota County. Subsequent to the rendition of the resolution denying the application to rezone the subject property, petitioners filed the Petition for Writ of Certiorari that is before this court.



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In reviewing decisions of administrative bodies acting in a quasi-judicial capacity, the circuit court's review is limited to a determination of whether procedural due process has been accorded, whether the essential requirements of the law have been observed, and whether the decision is supported by competent substantial evidence. See DeGroot v. Sheffield, 95 So.2d 912 (Fla. 1957). Petitioners argue that the Board's decision violated all three prongs of the scope of review.

At the outset, the court has considered petitioners' arguments that the Board departed from the essential requirements of the law and failed to afford due process. During the hearing before the Board, there was ample discussion among the Commissioners about an amendment to the comprehensive plan (the "2050 Plan") that was approved by the Board but was not yet in effect due to a court challenge. Petitioners assert that the Board's primary concern was the effect of the 2050 Plan on any potential rezoning. Specifically, petitioners argue that the Board was concerned that if it approved this rezoning the petitioners would be able to apply for another rezoning in the event that the 2050 Plan becomes effective which could allow petitioners to develop the property at an even greater intensity. Upon review of the record, the court agrees that the Board reached its decision based on a law that may be in effect in the future, rather than the law in effect at that time. Since the Board applied the incorrect law in reaching its decision, the court finds that the Board departed from the essential requirement of the law. Further, the court finds that this process deprived petitioners of due process of law.

Next, the court has considered petitioners' argument that there was no competent, substantial evidence to support the Board's decision. The opinions of the Planning Commission and the testimony of county staff conclude that the proposed rezoning was consistent with the comprehensive plan. The record is devoid of competent, substantial evidence to the contrary.

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Upon due consideration, the court finds that the record does not contain competent, substantial evidence to support the Board's decision to deny the application to rezone the property.

Accordingly, the Petition for Writ of Certiorari is hereby granted, and the decision of the Board denying the application to rezone the subject property is hereby quashed.

**DONE AND ORDERED** in chambers, in Sarasota, Florida this 28 day of July, 2003.


  
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**CHARLES E. ROBERTS**  
Circuit Judge

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished  
by U.S. Mail as follows on this 28 day of July, 2003.

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