

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

WEST VILLAGERS FOR
RESPONSIBLE GOVERNMENT
INC,
JOHN MEISEL,
Plaintiff,

v.

CASE NO. 2022 CA 005583 SC
DIVISION H CIRCUIT

THE CITY OF NORTH PORT
FLORIDA,
Defendant.

ORDER DENYING PETITION FOR WRIT OF CERTIORARI

BEFORE THE COURT is the Petition for Writ of Certiorari (DIN 1), The City of North Port's Response to Petition for Writ of Certiorari (DIN 82), and Petitioner's Reply to City of North Port's Response to Petition for Writ of Certiorari (DIN 91). The Court heard oral argument from the parties on 3 July 2023. Petitioners were represented at oral argument by Luke Lirot, Esq. Respondent was represented at oral argument by Elizabeth Neiberger, Esq.

The Court has reviewed the Petition, Response, and Reply, the entirety of the record contained within the case file, and all relevant legal authority, has considered the arguments of counsel at oral arguments, and is otherwise fully advised in the premises. The Court now enters this Order Denying Petition for Writ of Certiorari as set forth herein.

Parties and Procedural History

Petitioners are West Villagers for Responsible Government, Inc., ("West Villagers") and John Meisel ("Meisel") (collectively, "Petitioners"). Respondent is the City of North Port, Florida ("City"). The City's governing board is the North Port City Commission ("Commission"). West Villagers is a political organization that organized and submitted petitions to the City proposing contraction (or de-annexation) of certain property currently within the City's territorial limits (the "Petition for Contraction"), as provided under Section 171.051(2), *Florida Statutes*. At the conclusion of the quasi-judicial hearing on 29 April 2021, the Commission voted to reject the Petition for Contraction and entered a final order stating same ("2021 Order"). The Petitioners then sought a Writ of Certiorari in Sarasota Case Number 2021CA002673SC. The Petition in Case Number 2021CA002673SC was granted and the 2021 Order under review in that case was quashed by Order Granting Petition for Writ of Certiorari ("2021 Quash Order"). *See* DIN 55. After being denied an appeal by the Second District Court of Appeal (DIN 57), and upon expiration of the time for rehearing (DIN 56, Order Denying Rehearing), the Petitioners' petition returned to the jurisdiction of the City Commission.

On 27 October 2022, the City Commission held a meeting and deliberated on the Petition for Contraction. A transcript of the 27 October 2022 hearing is at DIN 54. The City Commission did not re-open evidence at the 27 October 2022 hearing, and, instead, elected to rely on the evidence presented at the original 29 April 2021 quasi-judicial hearing. On 27 October 2022, the City Commission unanimously voted to reject the Petition for Contraction and entered their final Order Denying Petition for Contraction. *See* DIN 53. The final Order Denying Petition for Contraction (the “2022 Final Order”) is the subject of the present Petition for Writ of Certiorari filed by Petitioners on 2 December 2022.

Petitioners request this Court to “quash[] the City’s Order [Denying Petition for Contraction] and remand this matter to the City of North Port with directions to comply with the mandate of 171.051(2) by initiating municipal contraction in accordance with Sec. 171.051(1) and comply with this Court’s statutory construction of the operative terms of Chapter 171 and grant the contraction, or, based on the clear efforts by the City to manipulate any variable to delay the sought for contraction for as long as possible, submit the question of contraction to a vote of the qualified voters of the area proposed for contraction, as set forth in Secs. 171.051(4) or (5)....” Petition for Writ of Cert., DIN 1.

Jurisdiction and Standard of Review

The Court has jurisdiction to review municipal action on annexation or contraction. Art. V, §5(b), Fla. Const.; *Broward County v. G.B.V. Intern., Ltd.*, 787 So. 2d 838, 842-43 (Fla. 2001); Fla. R. App. P. 9.030(c)(3). In this “first tier” certiorari review, the Court is limited to determining: (1) whether the City afforded procedural due process to the parties; (2) whether the City observed the essential requirements of the law; and (3) whether the City’s decision is supported by competent substantial evidence. *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982); *Martin County v. City of Stuart*, 736 So. 2d 1264, 1266 (Fla. 4th DCA 1999). The Court’s review of the 2022 Final Order is limited to these considerations; it is not a plenary appeal.

Petitioners argue that the City did not observe the essential requirements of the law in entering the 2022 Final Order and that the decision in the 2022 Final Order is not supported by competent substantial evidence. Although the Petitioners have gone to great lengths to detail email exchanges with the City regarding the 27 October 2022 hearing in their Petition, Petitioners have not directly raised any issue regarding procedural due process. Therefore, the Court does not address that prong in this Order.

Given the Court’s limited review, Petitioners’ requests in their Petition for this Court to do anything but to quash the 2022 Final Order is legally improper. *See Miami-Dade County v. Snapp Industries, Inc.*, 319 So. 3d 739, 741 (Fla. 3d DCA 2021) (on a petition for certiorari, “[t]he remedy available to the circuit court was limited to quashing the hearing officer’s order, and nothing more”). On a petition for certiorari, the Court “has no authority to take any action resulting in the entry of a judgment or order on the merits or to direct that any particular judgment or order be entered.” *Snyder v. Douglas*, 647 So. 2d 275, 279 (Fla. 2d DCA 1994) (citation omitted). Further, the Court has no authority to direct the municipality to take any particular action. *See G.B.V. Intern., Ltd.*, 787 So. 2d 838, 844 n. 18.

Statutory Framework for Contraction of Municipal Boundaries

Section 171.051, *Florida Statutes*, governs how municipalities may initiate the contraction of a municipal boundary. §171.051, Fla. Stat. This Court's learned colleague detailed the contraction process in Section 4 of 2021 Quash Order in Case Number 2021CA002673. *See* DIN 55. This Court adopts and accepts as its own *most* of Section 4.

Disagreement with 2021 Quash Order

Where this Court respectfully disagrees with her learned colleague and what is **not adopted** in this Order is the portion of Section 4 which disagrees with Florida's Attorney General. This Court does not interpret Section 171.051(2), *Florida Statutes*, the same way as her colleague in Case Number 2021CA002673 and, rather, believes that the Attorney General's interpretation is more textually sound.

The pre-2023 version of Section 171.051(2), *Florida Statutes*, states

A petition of 15 percent of the qualified voters in an area desiring to be excluded from the municipal boundaries, filed with the clerk of the municipal governing body, may propose such an ordinance. The municipality to which such petition is directed shall immediately undertake a study of the feasibility of such proposal and shall, within 6 months, either initiate proceedings under subsection (1) or reject the petition, specifically stating the facts upon which the rejection is based.

§171.051(2), Fla. Stat (2022).

The 2021 Quash Order seems to interpret this Statute to mean that the "facts upon which the rejection is based" **must** be facts based on "feasibility". Therefore, limiting the municipalities discretion to only reject proposals that are not "feasible". While this Court wholeheartedly agrees with her colleague's interpretation of the word "feasibility", this Court believes that her colleague may have taken the requirements imposed on a municipality by Section 171.051(2) a little too far and limited the municipalities' discretion to reject a proposal in a way that is not textually supported.

The pre-2023 version of Section 171.051(2) requires two specific actions a municipality must take after receiving a petition of 15 percent of the qualified voters in an area desiring to be excluded from the municipal boundaries. First, the municipality **must immediately undertake a study of the feasibility** of such proposal. Next, the municipality, within 6 months, **must decide** whether to initiate proceedings under subsection (1) or reject the petition. If the decision made is to reject the petition, the municipality must specifically state facts upon which the rejection is based. Nowhere in the Statute does it indicate that the facts upon which the rejection is based must be limited to the facts ascertained by the study of feasibility. To read this into the text would be to deviate from the text and to add words to the statute that simply do not exist.

Similarly, this Court disagrees with her colleague that “discretion seems to be afforded at the later section 171.051(4) step in the contraction process”. DIN 55. In Section 171.051(2), the petition filed is a petition *filed by those desiring contraction* proposing an ordinance. If the municipality decides to initiate proceedings, then proceedings are initiated under Section 171.051(1), wherein the municipality, *by ordinance*, proposes the contraction of municipal boundaries. After the introduction of *the ordinance*, municipalities are required to follow the mandates of Section 171.051(3) to notice to the public that *the ordinance* has been proposed, describing the area to be excluded, and to set the time and place of the meeting at which the ordinance will be considered. Pursuant to Section 171.051(4), if, at the meeting noticed pursuant to Section 171.051(3), a petition is *filed by residents in the area proposed for contraction* (who are most likely not in favor of contraction) requesting a *referendum on the question of contraction*, then the municipality **shall** submit the question of contraction to a vote **or** vote not to contract the municipal boundary.

A plain and ordinary reading of the entirety of Section 171.051, *Florida Statutes*, indicates that there is *less* discretion afforded to the municipality in Subsection 4, than in Subsection 2. Subsection 4 only comes into play *after* the municipality has already started the process of passing an ordinance proposing contraction. If the municipality is at the Subsection 4 step, the municipality *only* has two options: (1) put the ordinance to a vote and be subject to the results of that vote (pass or fail), *see* §§171.051 (9), (10), Fla. Stat.; or (2) vote not to contract. §171.051(4), Fla. Stat. If the municipality is at the Subsection 4 step because a petition for a referendum has been filed, there is, in effect, no discretion by the municipality.

Because Section 171.051(4) only applies if there has been a petition for referendum filed after an ordinance for contraction has been proposed and because Section 171.051(4) grants no discretion to the duly elected members of a municipality’s commission, council, or board, it only makes logical sense that the legislative decision to reject a petition for an ordinance would be provided by Subsection 2. A plain and ordinary reading of Section 171.051(2), *Florida Statutes*, clearly indicates that the legislative decision to reject a petition for an ordinance on contraction lies at the beginning of the process, not later in Subsection 4 when the ordinance on contraction has been noticed for a vote of the governing body.

This conclusion is bolstered by the fact that the text of Section 171.051 clearly sets out two ways by which an ordinance proposing contraction may be initiated. The governing body may propose it themselves, thereby making the legislative decision to begin the process of contraction. §171.051(1), Fla. Stat. Or the governing body may be prompted to propose it by a petition proposing the ordinance. §171.051(2), Fla. Stat. However, nothing in Subsection 2 speaks to a restriction of the governing body’s legislative role in either deciding to begin the process of contraction after being prompted by their constituents or deciding not to by rejecting the petition to propose an ordinance, so long as the governing body does so by specifically stating the facts upon which a rejection is based.

While this Court believes that her colleague misinterpreted the process, and the governing body’s permitted discretion at certain stages of the process, contained within Section 171.051, *Florida Statutes*, the Court believes that her colleague’s quashing the 2021 Order was the correct result.

This Court specifically agrees with the following conclusions found within the 2021 Quash Order:

The Commission failed to specifically state the facts upon which the rejection was based and this was a fatal flaw. This Court agrees that the 2021 Order amounted, in large part, to ultimate conclusions and fell well short of the statutory command of Section 171.051(2), *Florida Statutes*. Because of this, there was no way for any court to determine whether the Commission's conclusions were based on competent, substantial evidence. To make that determination would amount to the Circuit Court guessing as to what evidence supported unstated facts.

Res Judicata and "Law of the Case" Doctrine

Petitioners argue that they are entitled to relief based on *res judicata* and the law of the case doctrine. This Court disagrees.

For *res judicata* to apply, the Florida Supreme Court has "held that a ruling must be "on the merits" for an issue to have truly been "decided" and thus preclude the consideration of an issue on the basis of *res judicata*." *Topps v. State*, 865 So. 2d 1253, 1255 (Fla. 2004) (emphasis in original). The law of the case doctrine holds that "questions of law actually decided on appeal must govern the case in the same court and the trial court, through all subsequent stages of the proceedings." *State v. McBride*, 848 So. 2d 287, 289 (Fla. 2003).

Res judicata and the law of the case doctrine are similar and, at times, used interchangeably by litigants. However, "the doctrines of the law of the case and *res judicata* differ in two important ways." *Fla. Dept. of Transp. v. Juliano*, 801 So. 2d 101, 107 (Fla. 2001). "First, law of the case applies only to proceedings within the same case, [] while *res judicata* applies to proceedings in different cases." *Id.* (citations omitted) (internal citations omitted). "Second, the law of the case doctrine is narrower in application in that it bars consideration only of those legal issues that were actually considered and decided in a former appeal, [] while *res judicata* bars relitigation in a subsequent cause of action not only of claims raised, but also claims that could have been raised." *Id.* (citations omitted) (internal citations omitted).

The Court will address Petitioners' arguments as to *res judicata* and the law of the case doctrine separately.

Res Judicata

As to the 2021 Quash Order, on a petition for certiorari, the Court "has no authority to take any action resulting in the entry of a judgment or order on the merits or to direct that any particular judgment or order be entered." *Snyder v. Douglas*, 647 So. 2d 275, 279 (Fla. 2d DCA 1994) (citation omitted). In this situation, when the 2021 Order was quashed, it left the Parties "in the same manner and to the same extent" as if the 2021 Order had never been entered. *Snyder*, 647 So. 2d at 279. "When the order is quashed, as it was in this case, it leaves the subject matter, that is, the *controversy pending* before the tribunal, commission, or administrative authority, as if no order or judgment had been entered and the parties stand upon the pleadings and proof as it existed when the order was made with the rights of all parties to proceed further as they may be

advised to protect or obtain the enjoyment of their rights under the law in the same manner and to the same extent which they might have proceeded had the order reviewed not been entered.” *G.B.V. Intern., Ltd.*, 787 So. 2d at 844 (emphasis added).

Therefore, after this Court’s learned colleague quashed the 2021 Order, the proceeding returned to the City, on the same petition for contraction and on the same evidentiary record as it stood immediately before the 2021 Order was entered. Immediately before the 2021 Order, there was no “ruling” by the Commission, sitting as a quasi-judicial body, on the merits of the Petition for Contraction. Immediately before the 2021 Order, the question as to whether the Petition for Contraction would proceed as a proposed ordinance or be rejected had not been made. Therefore, *res judicata* cannot apply based on the rulings of the 2021 Quash Order.

As to the 2022 Final Order at issue in this case, *res judicata* also does not apply. Again, when the 2021 Quash Order was entered, it was like the 2021 Order had never existed and the “case” had never been closed.

To give an analogy, this situation is akin to a trial court’s Final Judgment being reversed on appeal and remanded for further proceedings to be conducted by the trial court. The reversal in that instance does not decide the merits of the case; the Appellate Court is just telling the trial court: “You did this wrong, but you can fix it”. Comparing the present scenario to the analogy, the Commission is analogous to the trial court; and the Circuit Court in Case Number 2021CA2673SC is analogous to the Appellate Court. Just like the litigants in the analogy cannot claim *res judicata* to bar the trial court from entering a corrected Final Judgment, Petitioners in this case cannot claim *res judicata* to bar the Commission from entering an order that complies with Section 171.052(2), *Florida Statutes*.

Law of the Case Doctrine

The 2021 Quash Order made two critical rulings: (1) that the 2021 Order was deficient because it lacked specific facts on which the rejection was based, pursuant to Section 171.051, *Florida Statutes*, and (2) that the City applied an incorrect interpretation of the term “feasibility”. After the 2021 Quash Order, the matter was returned back to the jurisdiction of the City for it to get to finality.

Lacking Specific Facts

If, after the 2021 Quash Order, the City had just re-entered the same 2021 Order anew, without correcting the error of failing to specifically state the facts upon which the rejection was based pointed out by the Circuit Court in the 2021 Quash Order, the Petitioners’ argument as to the law of the case doctrine *may* have merit. If that is how the City had chosen to proceed, then the parties would now be litigating the exact same order, on the exact same record, with the exact same legal flaws that they litigated resulting in the 2021 Quash Order.

However, that is not what the City did. Rather, the Commission reviewed the pleadings and proof as it existed when the 2021 Order was entered. The Commission held a hearing for deliberations and entered the 2022 Final Order with specific fact findings, as was required by Section 171.052(2), *Florida Statutes*. While the City could have re-opened evidence, it was not

required to if competent, substantial evidence existed on the record to support its specific fact findings. *See St. Petersburg Kennel Club v. Dept. of Business and Prof. Reg.*, 757 So. 2d 1240, 1240 (Fla. 2d DCA 2000).

In fact, this is the task of every trial court after being reversed on appeal and being directed by the Appellate Court to correct its errors of fact-finding omission. Not every remand for further proceedings is a remand requiring an evidentiary hearing or a new trial.

Petitioners want to take the position that the 2021 Quash Order forever precluded the City from fixing the fact finding omissions of the 2021 Order and that the City had to begin anew. This simply is not the case. If competent, substantial evidence existed on the record from the 29 April 2021 quasi-judicial hearing, the Commission could use it to correct their failure to make specific fact findings without implicating a law of the case doctrine bar.

Incorrect Interpretation of “Feasibility”

The issue as to the law of the case doctrine becomes slightly more complicated when addressing the 2021 Quash Order’s ruling that the City incorrectly interpreted Section 171.051(2), *Florida Statutes*, and the interpretation of the City’s discretion to reject the petition. This issue is complicated because this Court fundamentally disagrees with her colleague that Section 171.051(2) requires the “facts upon which the rejection is based” to be facts based on “feasibility”. As this Court has stated, above, this Court believes that interpretation to be textually unsound and far too narrow and restrictive of a municipality’s discretion under the text of Section 171.051(2) to reject the petition.

Notwithstanding, this Court concedes that, based on the law of the case doctrine, she most likely is bound to the Section 171.051(2) interpretation of her colleague in this case. However, this Court need not delve into whether the 2021 Quash Order’s interpretation provides a law of the case bar. This is because the Commission, in entering the 2022 Final Order, does not focus its reasons for rejection on what is or is not “feasible”; but, rather focuses on whether or not the area to be excluded fails to meet the criteria of annexation under Section 171.043, *Florida Statutes*.

While this Court, in contradiction to her colleague, interprets “specifically stating the facts upon which the rejection is based” to mean *any* fact that led to the rejection, this Court wholeheartedly agrees with her colleague that a finding of the Commission that the area proposed to be contracted meets the statutory criteria for annexation would be a valid reason for rejection of the Petition for Contraction, so long as the Commission specifically stated facts leading to that conclusion.

The 2021 Quash Order did not make any rulings on the merits as to whether the area proposed to be excluded fails to meet the criteria of Section 171.043, *Florida Statutes*. Rather, the 2021 Quash Order states “[w]ithout the City ‘specifically stating the facts’ the Court simply cannot discern whether competent, substantial evidence exists that supports unstated facts the Commission may or may not have made.” DIN 55. While the court in Case Number 2021CA002673 went to great lengths to describe certain facts of record, it did not specifically rule that the evidence of record did not support the legal conclusion that the area to be excluded

fails to meet the criteria of Section 171.043; just that it could not discern whether competent substantial evidence existed to prove that legal conclusion. The court in the 2021 Quash Order also went to great lengths to correctly indicate that its role was limited to that of “first tier” review and not as a fact finder able to discern any particular witness’ credibility. This was reiterated in the Order Denying Respondent’s Motion for Rehearing. *See* DIN 56.

Therefore, because the 2022 Final Order primarily relies on stating specific facts on the area to be excluded failing to meet the requirements of Sections 171.052 and 171.043, *Florida Statutes*, as the basis of its rejection, and because there has been no prior ruling, as a matter of law, otherwise, as to this issue, the City’s action to enter the 2022 Final Order and this Court’s decision herein are not barred by the law of the case doctrine. *See Pritz v. School Board of Hernando County*, 260 So. 3d 1117, 1119-20 (Fla. 5th DCA 2018) (“The law of the case doctrine is ‘limited to rulings on questions of law actually presented and considered on a former appeal.’”) (citations omitted).

Essential Requirements of the Law

The Court next analyzes whether, in entering the 2022 Final Order, the City failed to comply with the essential requirements of the law. In Case Number 2021CA002673, the City’s failure to specifically state facts upon which the rejection of the petition was based in the 2021 Order met this bar. As to the entry of the 2022 Final Order that is the subject of the Petition for Writ of Certiorari currently at issue, however, the City has complied with all essential requirements of the law.

In this case, neither Party disputes that a petition of 15 percent of the qualified voters in an area desiring to be excluded from the municipal boundaries proposing an ordinance for contraction was filed. Neither Party disputes that subsequent to that petition being filed that the City contracted to undertake a study of the feasibility of such proposal. Neither Party disputes that a quasi-judicial hearing took place on 29 April 2021 and that the Commission accepted evidence and testimony at said hearing. Neither Party disputes that, after the 2021 Order was quashed, another hearing took place on 27 October 2022, where no additional evidence was received. Neither Party disputes that after the 27 October 2022 deliberations hearing the 2022 Final Order, subject to this Petition for Writ of Certiorari, was entered, rejecting the Petition for Contraction. *See* DIN 53.

A review of the Final Order indicates that the Commission relied on its interpretation of Section 171.052(1) and Section 171.043, *Florida Statutes*, to form its basis of rejection. Therefore, the Court must determine whether the Commission relied on a correct interpretation of the statutes cited to determine whether the City complied with the essential requirements of the law.

Section 171.052(1), *Florida Statutes*, states that

Only those areas which do not meet the criteria for annexation in s. 171.043 may be proposed for exclusion by municipal governing bodies. If the area proposed to be excluded does not meet the criteria

of s. 171.043, but such exclusion would result in a portion of the municipality becoming noncontiguous with the rest of the municipality, then such exclusion shall not be allowed.

§171.052(1), Fla. Stat.

The Commission's reliance on Section 171.052(1), *Florida Statutes*, is proper as it relates directly to statutory permissibility of contraction. Further, this Court finds that the Commission's interpretation of Section 171.052 in the 2022 Final Order complies with the essential requirements of the law.

Reliance on Section 171.052, *Florida Statutes*, by the clear language of the text, requires review of Section 171.043, *Florida Statutes*. Therefore, the Commission's reliance on Section 171.043 in the 2022 Final Order is also proper. Similarly, this Court finds that the Commission's interpretation of Section 171.043 in the 2022 Final Order complies with the essential requirements of the law.

The Final Order also cites to various Sections of Chapter 171, portions of the City's Charter, and citations to past City Ordinances. All citations appearing in the 2022 Final Order appear to correctly cite and interpret the statutes, City Charter, and City Ordinances for the propositions asserted. Therefore, this Court finds that the Commission's interpretation of the various authority cited in the 2022 Final Order complies with the essential requirements of the law.

To the extent it applies, based on the law of the case doctrine, the 2022 Final Order must comply with the rulings given in the 2021 Quash Order as to the interpretation of feasibility. This Court finds that the 2022 Final Order does so. Specifically, the City's 2022 Final Order relies to the following premise: If the contraction is not statutorily permitted by Section 171.052, *Florida Statutes*, then it is not "feasible". This follows with and does not contradict the court's ruling in the 2021 Quash Order. Therefore, the City's reliance on Section 171.052 to reject the Petition for Contraction, and pursuant to the 2021 Quash Order, complies with the essential requirements of the law.

Lastly, pursuant to Section 171.051(2), *Florida Statutes*, the 2022 Final Order had to "specifically stat[e] the facts upon which the rejection is based." §171.051(2), Fla. Stat. (2022). A review of the 2022 Final Order clearly shows that there are specifically stated facts that show the Commission's basis for rejection. Therefore, the City has complied with that essential requirements of Section 171.051(2), *Florida Statutes*. Now, the Court must analyze whether the facts stated to satisfy Section 171.051(2) are supported by competent, substantial evidence.

Competent Substantial Evidence

To determine whether Petitioners are entitled to have their Petition for Writ of Certiorari granted and the Final Order quashed, "[t]he court must review the record and determine *inter alia* whether the agency decision is supported by competent substantial evidence." *Dusseau v. Metropolitan Dade County Bd. Of County Com'rs*, 794 So. 2d 1270, 1274 (Fla. 2001). "Competent substantial evidence is tantamount to legally sufficient evidence." *Id.* It is not this Court's role to usurp the fact-finding authority of the City. *Id.* at 1275. This Court is not

permitted to reweigh the evidence or to determine whether the City's decision was opposed by competent substantial evidence. *See Id.*

The Florida Supreme Court made the court's role in analyzing the "competent substantial evidence" prong of certiorari review very clear in *Dusseau*. The Florida Supreme Court stated as follows:

[T]he "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 no training or experience—and is inherently unsuited—to sit as a roving "super agency" with plenary oversight in such matters.

The sole issue before the court on first-tier certiorari review is whether the agency's decision is lawful. The court's task vis-à-vis the third prong of *Vaillant* is simple: The court must review the record to assess the evidentiary support for the agency's decision. Evidence contrary to the agency's decision is outside the scope of the inquiry at this point, for the reviewing court above all cannot reweigh the "pros and cons" of conflicting evidence. While contrary evidence may be relevant to the wisdom of the decision, it is irrelevant to the lawfulness of the decision. As long as the record contains competent substantial evidence to support the agency's decision, the decision is presumed lawful and the court's job is ended.

Id. at 1275-76.

This Court has done exactly what the Florida Supreme Court mandated in *Dusseau*. It has reviewed the record to assess the evidentiary support for the City's decision to reject the Petition for Contraction pursuant to Sections 171.052 and 171.043, *Florida Statutes*. It has set aside evidence contrary to the City's decision as said evidence is outside the scope of inquiry. This Court has abstained from reweighing the "pros and cons" of conflicting evidence. And, in performing its review, this Court finds that the record contains competent substantial evidence to support the City's decision to reject the Petition for Contraction based on Sections 171.052 and 171.043, *Florida Statutes*, and to support specific facts contained in its 2022 Final Order that form the basis of that decision.

The Petitioners argue that specific factual findings in the 2022 Final Order are not supported by competent substantial evidence because they either mischaracterize the evidence or do not exist in the record before the Court. While the Court does not concede that these arguments have merit, to the extent any reviewing Court finds that any specific factual finding in the 2022 Final Order, independently, is not supported by competent substantial evidence (whether by mischaracterization or omission), the City has sufficiently stated certain facts with specificity that are supported by competent substantial which would satisfy the requirements of Section 171.051(2), *Florida Statutes*, and form the basis of a rejection pursuant to Sections 171.052 and 171.043, *Florida Statutes*. See *Dade County School Bd. v. Radio Station WQBA*, 731 So. 2d 638, 644-45.

Other Issues Raised

To the extent there are any other issues raised by the Parties, the Court has considered said arguments and rejects them without further comment.

Questions Regarding Retroactivity

The Court notes that the Legislature amended Section 171.051, *Florida Statutes*, during the 2023 Legislative Session, with the amendments becoming effective 1 July 2023, after the date of this Petition's filing and before oral arguments in this case. The amendments to Section 171.051 relate directly to the issues presented in this case. However, because the issue of retroactivity was not raised by either Party in this case and because the Court determines that the result would be the same under both the prior and new versions of Section 171.051, *Florida Statutes*, the Court analyzes the issues presented by the Petitioners and Respondents utilizing the prior version of the statute. This Court makes no determination in this Order as to whether the new version of Section 171.051, *Florida Statutes*, currently in effect in the State of Florida, applies retroactively.

NOW, THEREFORE, based on the foregoing, this Court finds as follows:

1. The City afforded procedural due process to the parties in entering the Final Order.
2. The City observed the essential requirements of the law in entering the Final Order.
3. The record contains competent substantial evidence to support the City's decision to reject the petition based on Sections 171.052 and 171.043, *Florida Statutes*, and to support specific facts contained in its 2022 Final Order that form the basis of that decision.

FURTHERMORE, based on the foregoing, Petitioners' Petition for Writ of Certiorari (DIN 1) is hereby **DENIED**.

DONE AND ORDERED in Sarasota, Sarasota County, Florida, on October 09, 2023.

10/9/2023 7:40 PM 2022 CA
005583 SC


e-Signed 10/9/2023 7:40 PM 2022 CA 005583 SC

DANIELLE BREWER
Circuit Judge

SERVICE CERTIFICATE

On October 09, 2023, the Court caused the foregoing document to be served via the Clerk of Court's case management system, which served the following individuals via email (where indicated). On the same date, the Court also served a copy of the foregoing document via First Class U.S. Mail on the individuals who do not have an email address on file with the Clerk of Court.

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