Author

CHRISTOPHER D. DONOVAN*

Chapter 25 REVIEW OF QUASI-JUDICIAL DECISIONS

Synopsis

Chapter 25REVIEW OF QUASI-JUDICIAL DECISIONS

§ 25.1. INTRODUCTION

A. Scope Of Review

B. Applicable Rules Of Court

§ 25.2. JURISDICTIONAL CONSIDERATIONS

A. Introduction

B. Ministerial Versus Discretionary Decisions

C. Types of Discretionary Decisions

1. In General

2. Legislative Decisions

3. Executive Decisions

4. Quasi-Judicial Decisions

a. General Rule: Reviewable By Certiorari

---

* J.D. with honors, 2004, Stetson University. Mr. Donovan is a member of The Florida Bar and the Council of Sections Committee of The Florida Bar. He is Florida Bar Board Certified in Appellate Practice. Mr. Donovan is the immediate past Chair of the Appellate Practice Section of The Florida Bar, past President of the Michael R.N. McDonnel American Inn of Court, immediate past President of the Trial Law Section of the Collier County Bar Association, and is the Secretary of the Collier County Bar Association. Mr. Donovan was a staff attorney for the Florida District Court of Appeal, Second District, from 2004 to 2006. He is currently a shareholder at Roetzel & Andress and co-Practice Group Manager of the firm's Appellate Practice Group.

b. Exceptions

§ 25.3. PROCEDURAL CONSIDERATIONS

A. Introduction

B. Timing Requirements And Rendition

1. In General

2. Tolling

C. Parties, Participants, And Standing

D. Technical Requirements Of Petition

E. The Record

F. Show Cause Order, Response, And Reply

G. Technical Requirements Of Motions

H. Oral Argument

I. Standard of Review

1. First-tier Certiorari Is A Matter Of Right

2. Failure To Afford Procedural Due Process

3. Departure From Essential Requirements Of Law

4. Competent, Substantial Evidence

5. Other Applicable Appellate Doctrines

§ 25.4. RELIEF AVAILABLE ON CERTIORARI REVIEW

A. Circuit Court Review

B. District Court Review

C. Florida Supreme Court Review

End of Document

Author

CHRISTOPHER D. DONOVAN*

§ 25.1. INTRODUCTION

A. Scope Of Review

The Florida Rules of Appellate Procedure identify the following three forms of administrative actions:

(1) final and nonfinal agency action that is expressly governed by the Administrative Procedure Act (APA), *F.S.* Chapter 120 (see Chapter 8 of this manual);

(2) administrative action for which the Florida Legislature has provided a specific statutory method of judicial review (see § 25.2.C.4.b); and

(3) quasi-judicial decisions of administrative bodies, agencies, boards, or commissions that are not governed by the APA or general law.

Fla. R. App. P. 9.020(a)(1)–(a)(4).

This chapter focuses on the third form. Whenever quasi-judicial action is not governed by the APA or another statute, the point of entry for judicial review is a petition for common-law writ of certiorari relief in the circuit court with geographic jurisdiction over that administrative body, agency, board, or commission. *Broward County v. G.B.V. International, Ltd., 787 So. 2d 838 (Fla. 2001)*. This is commonly known as "first-tier certiorari review" (or simply "first-tier review"). See *id.* The practitioner should note that although the Florida Legislature has removed most of the appellate jurisdiction of circuit courts, such as county-to-circuit-court appeals, this change does not affect circuit court jurisdiction over first-tier certiorari review of quasi-judicial decisions. *F.S. 26.012(1)*.

First-tier certiorari most frequently arises in the context of local governments, such as municipalities and counties, rendering quasi-judicial decisions on matters of zoning and

---

* J.D. with honors, 2004, Stetson University. Mr. Donovan is a member of The Florida Bar and the Council of Sections Committee of The Florida Bar. He is Florida Bar Board Certified in Appellate Practice. Mr. Donovan is the immediate past Chair of the Appellate Practice Section of The Florida Bar, past President of the Michael R.N. McDonnel American Inn of Court, immediate past President of the Trial Law Section of the Collier County Bar Association, and is the Secretary of the Collier County Bar Association. Mr. Donovan was a staff attorney for the Florida District Court of Appeal, Second District, from 2004 to 2006. He is currently a shareholder at Roetzel & Andress and co-Practice Group Manager of the firm's Appellate Practice Group.

land-use planning. See, *e.g.*, *id.* However, first-tier review also applies to other quasi-judicial decisions made by local governments for which no other statutory method of review exists. See, *e.g.*, *Florida International University v. Ramos, 335 So. 3d 1221 (Fla 3d DCA 2021)* (student code-of-conduct violations); *Retirement Board of City of Coral Gables v. Piñon, 992 So. 2d 357 (Fla. 3d DCA 2008)* (retirement board); *Davies v. Howell, 192 So. 2d 43 (Fla. 2d DCA 1966)* (civil-service board). Additionally, first-tier review may also apply when a statute requires reviewing the administrative action by certiorari, such as annexation under *F.S. 171.081* and final orders on driver's licenses under *F.S. 322.31*. See, *e.g.*, *Dept. of Highway Safety & Motor Vehicles v. Sperberg, 257 So. 3d 560 (Fla. 3d DCA 2018)* (license revocation); *County of Volusia v. City of Deltona, 925 So. 2d 340 (Fla. 5th DCA 2006)* (annexation).

Finally, the practitioner should note that writs of common-law certiorari have a much broader application than just reviewing quasi-judicial decisions. Although there are many similarities between reviewing quasi-judicial action and reviewing other decisions by certiorari, there are also important differences, such as the standards of review. For further discussion of certiorari's general requirements and broader application, see Chapter 11 of this manual.

B. Applicable Rules Of Court

Although first-tier certiorari is filed in Florida's circuit courts (see § 25.24), the proceedings are governed by the Florida Rules of Appellate Procedure, in particular *Fla. R. App. P.* 9.100 and 9.190(b)(3). These rules are also supplemented by the filing and service rules in Florida Rules of General Practice and Judicial Administration. *Rule 9.420*.

Historically, some courts determined that *Fla. R. Civ. P. 1.630* also governed first-tier review in the circuit courts. See, *e.g.*, *Concerned Citizens of Bayshore Community, Inc. v. Lee County ex rel. Lee County Board of County Commissioners, 923 So. 2d 521 (Fla. 2d DCA 2005)*. However, these cases were based on a 1984 Amendment that attempted to supplement *Rule 9.100* with special procedures designed for circuit courts. *In re Amendments to Rules of Civil Procedure, 458 So. 2d 245 (Fla. 1984)*. This amendment generated much confusion among the bench and the bar, especially when the two rules conflicted.

As a result, in 2013, all references to certiorari were removed from *Rule 1.630* to make it clear that only the Florida Rules of Appellate Procedure apply to all forms of certiorari, including first-tier review of quasi-judicial decisions in the circuit court. *In re Amendments to Florida Rules of Civil Procedure, 131 So. 3d 643 (Fla. 2013)*. Insofar as other writs apply—such as mandamus or prohibition—*Rule* 1.630 still applies.

The local government's rules, practices, and ordinances may also be relevant in applying first-tier certiorari's standards of review, especially when evaluating whether the local government afforded procedural due process and did not depart from the essential requirements of the law. See §§ 25.3.I.2–25.3.I.3. Many of these local regulations and

ordinances are posted on the local government's website. Florida's county and city regulations are also posted online (available at *www.municode.com*).

However, insofar as a local government attempts to change the method for judicially reviewing its quasi-judicial decisions, courts have found these local regulations unconstitutional because only the legislature has authority to expand or alter appellate remedies, which can happen only by general law, not by special act or local ordinance. *Art. V, § 5(b), Fla. Const.*; *Pleasures II Adult Video, Inc. v. City of Sarasota, 833 So. 2d 185 (Fla. 2d DCA 2002)*. Nor can local regulations attempt to dictate which procedures a circuit court must follow, its standards of review, or how the circuit court's jurisdiction is triggered. *Dr. Emanuel Kontos, D.M.D., P.A. v. Menz, 136 So. 3d 714 (Fla. 2d DCA 2014)*; *Holden Ave. Inter-Neighborhood Council, Inc. v. Orange County, 719 So. 2d 1002 (Fla. 5th DCA 1998)*; *Cherokee Crushed Stone, Inc. v. City of Miramar, 421 So. 2d 684 (Fla. 4th DCA 1982)*. The Florida Rules of Appellate Procedure supersede any local law to the contrary on these issues. *Rule 9.010*; 1996 Committee Note to *Rule* 9.190(b)(3); *Smull v. Town of Jupiter, 854 So. 2d 780 (Fla. 4th DCA 2003)*.

End of Document

Author

CHRISTOPHER D. DONOVAN*

§ 25.2. JURISDICTIONAL CONSIDERATIONS

A. Introduction

Local governments make a variety of decisions every day. However, not all decisions are exclusively reviewed in the circuit court through first-tier certiorari relief, like quasi-judicial decisions. Knowing the different kind of decisions and their differing methods of review is a threshold jurisdictional question. See *Teston v. City of Tampa, 143 So. 2d 473 (Fla. 1962)*. Mistakes can cost clients time and money. In extreme cases, mistakes can result in foreclosing the correct method of review. See, *e.g.*, *American Riviera Real Estate Co. v. City of Miami Beach, 735 So. 2d 527 (Fla. 3d DCA 1999)* (affirming dismissal of declaratory and relief action when proper remedy to challenge quasi-judicial land-use decision was by certiorari). This section discusses the different types of local-government decisions and how they are reviewed.

B. Ministerial Versus Discretionary Decisions

Broadly speaking, each local-government decision comes in two forms: ministerial and discretionary. The first type of decision is somewhat of a misnomer because legally it is not really a decision. A "ministerial decision" is one that the law compels a local-government official to perform out of a legal duty. *RHS Corp. v. City of Boynton Beach, 736 So. 2d 1211 (Fla. 4th DCA 1999)*. True ministerial decisions leave no room for discretion. *Id.* Rather, the law defines the duty with such certainty and precision that the local-government official must perform it because the petitioner has a clear legal right to its performance. See *id.*; *State ex rel. Zuckerman-Vernon Corp. v. City of Miramar, 306 So. 2d 173 (Fla. 4th DCA*

---

* J.D. with honors, 2004, Stetson University. Mr. Donovan is a member of The Florida Bar and the Council of Sections Committee of The Florida Bar. He is Florida Bar Board Certified in Appellate Practice. Mr. Donovan is the immediate past Chair of the Appellate Practice Section of The Florida Bar, past President of the Michael R.N. McDonnel American Inn of Court, immediate past President of the Trial Law Section of the Collier County Bar Association, and is the Secretary of the Collier County Bar Association. Mr. Donovan was a staff attorney for the Florida District Court of Appeal, Second District, from 2004 to 2006. He is currently a shareholder at Roetzel & Andress and co-Practice Group Manager of the firm's Appellate Practice Group.

1974), *receded from on other grounds* *359 So. 2d 509*. If the law affords the local government or public officer any discretion whatsoever, the act is discretionary—not ministerial. *Id.*

Ministerial decisions are not subject to review by certiorari. *Florida Motor Lines v. Railroad Commissioners, 100 Fla. 538, 129 So. 876 (1930)*. Rather, they are reviewed by a petition for mandamus relief to the circuit court. *RHS*; *Town of Manalapan v. Rechler, 674 So. 2d 789 (Fla. 4th DCA 1996)*. See Chapter 12 of this manual for a detailed discussion of the procedures for mandamus. In contrast, certiorari is the only available method to review discretionary decisions. *Florida Motor Lines*; *Park of Commerce Associates v. City of Delray Beach, 606 So. 2d 633 (Fla. 4th DCA 1992)*, *approved* *636 So. 2d 12*.

Two examples illustrate the difference between ministerial versus discretionary decisions. First, if the Florida Statutes or local regulations require local governments to convene a hearing, the convening of the hearing constitutes a ministerial act. *DeNigris v. City of Fort Lauderdale, 518 So. 2d 469 (Fla. 4th DCA 1988)*. If refused, an aggrieved party can petition for mandamus to compel the hearing. *Id.* On the other hand, if the local government's decisionmakers must interpret its rules to determine whether it has jurisdiction to have a hearing, the failure to convene a hearing is discretionary and must be reviewed by certiorari—not mandamus. *Id.*

A second example is the act of making or "rendering" final, quasi-judicial decisions. As discussed below, *Fla. R. App. P. 9.020(h)* requires all lower tribunals exercising quasi-judicial authority to produce a final, reviewable order by "rendering" the decision, which reduces an oral pronouncement to writing, executes that written decision, and delivers it to the lower tribunal's clerk. This act constitutes a ministerial duty that petitioners can compel local governments to perform through mandamus relief. *Sowell v. State, 136 So. 3d 1285 (Fla. 1st DCA 2014)*; *Zuckerman*.

On the other hand, mandamus is not available to compel a particular outcome, such as granting a development permit or compelling enforcement of the local government's regulations in a particular manner. See, *e.g.*, *City of Jacksonville Beach v. BCEL 4, LLC, 262 So. 3d 835 (Fla. 1st DCA 2019)* (reversing mandamus when approving or denying concept plan for plat application was not purely ministerial); *Key Biscayne Gateway Partners, LTD v. Village of Key Biscayne, 172 So. 3d 499 (Fla. 3d DCA 2015)* (ruling mandamus could not be used to compel approval of proposed site plan); *Marion County v. Kirk, 965 So. 2d 330 (Fla. 5th DCA 2007)* (finding certiorari, not mandamus, proper remedy to review quasi-judicial action concerning special use permit); *RHS, 736 So. 2d at 1213* (finding mandamus could not be used to compel local governments to "inspect certain property and enforce its land development regulations against a private property owner"); *Zuckerman* (holding mandamus did not lie to compel approval of proposed plat and issuance of building permits).

A potential exception to this latter principle was recognized by the District Court of Appeal, Fourth District, in *Broward County v. Narco Realty, Inc., 359 So. 2d 509 (Fla. 4th DCA 1978)*, in which the court compelled a local government by mandamus to approve a plat.

In so doing, the court reasoned that because all parties had stipulated that the property owner met every legal requirement for approving the plat, the local government lacked discretion to refuse approval because it had risen to the level of a ministerial duty. *Id.*

However, the Florida Supreme Court may have overruled *Narco Realty*, at least implicitly, in *Broward County v. G.B.V. International, Ltd., 787 So. 2d 838, 841 (Fla. 2001)*, by recognizing that plat-approval is quasi-judicial, not legislative, and is therefore subject to review by certiorari, in which a circuit court may quash a local government's decision if there is no evidence that the plat request does not meet the objective legal requirements in the local government's land-use regulations. At a minimum, the Fourth District has limited its *Narco Realty* decision to only when there is no dispute that the plat request satisfies each objective legal requirement in the local government's regulations. See *Broward County v. Coral Ridge Properties, Inc., 408 So. 2d 625, 626 (Fla. 4th DCA 1982)* (finding mandamus exists when "a governmental unit simply refuses to take any action on an application" for plat approval; limiting *Narco Realty* to when facts are stipulated and rejecting mandamus when petitioner's argument was that certain local requirements were inapplicable and others met).

C. Types of Discretionary Decisions

1. In General

Most local-government decisions are discretionary and therefore not subject to review by mandamus. But not all discretionary decisions are reviewable by certiorari. It depends on the type of discretionary decision, which falls into one of three governmental powers: executive, legislative, and quasi-judicial. See *Florida Motor Lines v. Railroad Commissioners, 100 Fla. 538, 129 So. 876 (Fla. 1930)*; *School Board of Leon County v. Mitchell, 346 So. 2d 562 (Fla. 1st DCA 1977)*.

The type of discretionary jurisdiction dictates the method of review in Florida's circuit courts. Generally, certiorari is available only to review quasi-judicial decisions. *Broward County v. G.B.V. International, Ltd., 787 So. 2d 838 (Fla. 2001)*. On the other hand, an original complaint for declaratory or injunctive relief is generally the proper method to review executive or legislative decisions. *City of Fort Pierce v. Dickerson, 588 So. 2d 1080 (Fla. 4th DCA 1991)*; *Hirt v. Polk County Board of County Commissioners, 578 So. 2d 415 (Fla. 2d DCA 1991)*.

Although Florida's circuit courts are typically the destination for reviewing a local government's executive, legislative, and quasi-judicial decisions, appellate lawyers must still cautiously analyze the kind of decision at issue and choose the correct method of review for two reasons. First, certiorari review and declaratory or injunctive relief have substantially different procedures. For example, unlike declaratory and injunctive relief, certiorari review has a 30-day filing deadline. *Fla. R. App. P. 9.100(c)*; *American Riviera Real Estate Co. v. City of Miami Beach, 735 So. 2d 527 (Fla. 3d DCA 1999)*. See § 25.3.B.1.

Although *Fla. R. Civ. P. 1.110(b)* and *1.130(a)* allow complaints for declaratory and injunctive relief to be alleged in short, plain statements, with limited attachments, *Rule 9.100(g)* requires petitions for certiorari relief to fully discuss the facts and arguments on which relief is based and include an extensive appendix of the record before the local government. See §§ 25.3.D–25.3.E. Unlike the circuit court's de novo review for declaratory and injunctive relief, the circuit court on certiorari has a very limited standard of review that is strictly restricted to the record and arguments made below. *City of Jacksonville Beach v. Marisol Land Development, Inc., 706 So. 2d 354 (Fla. 1st DCA 1998)*. The circuit court also cannot order discovery, mediation, or take additional evidence on certiorari review. See, *e.g.*, *Areizaga v. Board of County Commissioners of Hillsborough County, 935 So. 2d 640 (Fla. 2d DCA 2006)*; *Evergreen Tree Treasurers of Charlotte County, Inc. v. Charlotte County Board of County Commissioners, 810 So. 2d 526 (Fla. 2d DCA 2002)*. Nor can the court issue an injunction or award damages on certiorari. *Seminole Entertainment, Inc. v. City of Casselberry, Florida, 813 So. 2d 186 (Fla. 5th DCA 2002)*.

Second, and perhaps more importantly, the appellate lawyer should carefully choose the correct method of review because, as previously stated, it is a matter of jurisdiction. See *Dickerson*. Pleading the wrong method may preclude review. See, *e.g.*, *Dabbs v. City of Tampa, 613 So. 2d 1378 (Fla. 2d DCA 1993)* (affirming declaratory-relief action's dismissal because quasi-judicial decisions could only be reviewed in certiorari proceedings); *City of Melbourne v. Hess Realty Corp., 575 So. 2d 774 (Fla. 5th DCA 1991)* (finding circuit court lacked jurisdiction to consider sufficiency of evidence supporting denial of conditional-use permit because that could only be considered in timely petition for certiorari, not by complaint for injunction); *Stansberry v. City of Lake Helen, 425 So. 2d 1157 (Fla. 5th DCA 1983)* (affirming certiorari denial because local government's decision to abolish public employee's position entirely was executive or legislative, not quasi-judicial).

Generally, however, if the wrong remedy is sought, the cause must be treated as if the correct remedy had been requested. *Rule 9.040(c)*.See, *e.g.*, *City of Cape Canaveral v. Rich, 562 So. 2d 445 (Fla. 5th DCA 1990)* (remanding certiorari denial to allow amending pleading to seek declaratory relief over legislative action). To convert an improper complaint for declaratory or injunctive relief into a petition for certiorari relief, the complaint must have been timely when it was originally filed. See *Dickerson* (remanding to determine whether improper complaint was timely filed under *Rule 9.100(c)*); *Hess Realty Corp.* (finding certiorari's 30-day deadline cannot be avoided by simply seeking declaratory relief). But certiorari and declaratory or injunctive relief cannot be simultaneously alleged in the same pleading or case. See, *e.g.*, *Rhyne v. City of Wilton Manors, 392 So. 2d 992 (Fla. 4th DCA 1981)*; *Loew v. Dade County, 188 So. 2d 869 (Fla. 3d DCA 1966)*.

If in doubt about the kind of decision or its method of review, the lawyer should timely file a petition for certiorari relief and, in the petition's introduction or initial footnote, request that the circuit court grant relief under *Rule 9.040(c)* if the wrong relief has been sought. See *Id.* ("it shall not be the responsibility of the court to seek the proper remedy"); *Melbourne*. Because circuit courts do not regularly proceed under the Florida Rules of Appellate Procedure, many may be unaware of this requirement. So, bringing this rule to the circuit court's attention early could avoid the time and expense of having to seek review in the district court if the circuit court summarily dismisses for lack of jurisdiction.

Historically, doubt existed regarding the correct method of review, which was not surprising because the lines between executive, legislative, and quasi-judicial decisions were often blurred, especially in some of Florida's pre-1990's cases. See, *e.g.*, *Modlin v. City of Miami Beach, 201 So. 2d 70 (Fla. 1967)*; *De Groot v. Sheffield, 95 So. 2d 912 (Fla. 1957)*. However, in the early 1990s, courts began differentiating between these discretionary decisions by applying a functional analysis, under which courts look at (1) the nature of the decision, and (2) the procedural manner that the local government used to reach the decision. *Martin County v. Yusem, 690 So. 2d 1288 (Fla. 1997)*, citing *Board of County Commissioners of Brevard County v. Snyder, 627 So. 2d 469 (Fla. 1993)*. See *Hirt*. Using this analysis, Florida courts began to classify routine local-government decisions. See generally *Park of Commerce Associates v. City of Delray Beach, 636 So. 2d 12 (Fla. 1994)*; *City Environmental Services Landfill, Inc. of Florida v. Holmes County, 677 So. 2d 1327 (Fla. 1st DCA 1996)*. However, even when a decision is clearly quasi-judicial, there are some limited exceptions to the general rule that quasi-judicial decisions are subject to review by certiorari. This analysis, the classification of certain decisions, and the exceptions to the general rule concerning quasi-judicial decisions are discussed in turn below for each of the three kinds of discretionary decisions.

2. Legislative Decisions

In applying the functional analysis test (see § 25.2.C.1) to distinguish between legislative and quasi-judicial decisions, Florida courts have identified two defining differences. First, legislative decisions create or make new law, whereas quasi-judicial decisions interpret or apply existing law. *Hirt v. Polk County Board of County Commissioners, 578 So. 2d 415 (Fla. 2d DCA 1991)*. In other words, legislative decisions look to the future and change existing conditions by formulating a new law of general applicability. *Board of County Commissioners of Brevard County v. Snyder, 627 So. 2d 469 (Fla. 1993)*. They create broad rules of policy in the form of ordinances through the procedures in *F.S. 166.041*. *Lee County v. Sunbelt Equities, II, Limited Partnership, 619 So. 2d 996 (Fla. 2d DCA 1993)*. Legislative decisions ask the question: What should the law be? *Id.*

Second, courts look to how local governments reached their decisions. For example, although legislative decisions must comply with F.S. 166.041, 286.011, and 286.0114—which includes affording notice a certain number of days before a public hearing, requiring local governments to reach these decisions in public meetings, and allowing public comment before adoption—legislative decisions require significantly less due process than quasi-judicial hearings. See *City Environmental Services Landfill, Inc. of Florida v. Holmes County, 677 So. 2d 1327 (Fla. 1st DCA 1996)*; *Hirt*. For example, local decisionmakers are not required to be impartial when considering and passing legislation. See, *e.g.*, *Izaak Walton League of America v. Monroe County, 448 So. 2d 1170 (Fla. 3d DCA 1984)* (finding political officeholders cannot be disqualified or otherwise prevented from performing their elected duties in voting on legislation merely because they have previously expressed an opinion on the subject of their vote). Local decisionmakers also have very broad legislative authority that is tempered only by perhaps its charter, its comprehensive plan, and state and federal preemption. See *City of Hollywood v. Mulligan, 934 So. 2d 1238 (Fla. 2006)*.

Courts have characterized the following decisions as legislative:

- creating or amending a comprehensive zoning code and zoning districts, see, *e.g.*, *Florida Land Co. v. City of Winter Springs, 427 So. 2d 170 (Fla. 1983)* (city ordinance effecting zoning change was legislative act subject to referendum vote of citizens); see generally *Snyder*; *Hirt*;
- enacting, amending, or declining to amend comprehensive land-use plans under *F.S.* Chapter 163, see, *e.g.*, *Minnaugh v. County Commission of Broward County, 783 So. 2d 1054 (Fla. 2001)* (small-scale comprehensive-plan amendments were legislative in nature); *Coastal Development of North Florida, Inc. v. City of Jacksonville Beach, 788 So. 2d 204 (Fla. 2001)* (addressing novel issue, court held that small-scale development amendments were legislative decisions); *Martin County v. Yusem, 690 So. 2d 1288 (Fla. 1997)* (amendments to comprehensive plans were legislative decisions); *Section 28 Partnership, Ltd. v. Martin County, 642 So. 2d 609 (Fla. 4th DCA 1994)* (reaching same conclusion even when requested by landowner for specific property);
- adopting a sewage impact-fee ordinance and challenging the fees charged under the ordinance, *City of Cape Canaveral v. Rich, 562 So. 2d 445 (Fla. 5th DCA 1990)*;
- establishing a new schedule of rates for water and sewer services within a county, *Board of County Commissioners of Manatee County v. Circuit Court of Twelfth Judicial Circuit ex rel. Manatee County, 433 So. 2d 537 (Fla. 2d DCA 1983)*;
- imposing a special assessment tax for fire and rescue, *Rainbow Lighting, Inc. v. Chiles, 707 So. 2d 939 (Fla. 3d DCA 1998)*;

- adopting a corridor plan extending a county road 5.5 miles, despite the plan affecting only a limited number of adjacent property owners, *Board of County Commissioners of Sarasota County v. Karp, 662 So. 2d 718 (Fla. 2d DCA 1995)*; and
- annexing property into a local government's jurisdictional limits, *Martin County v. City of Stuart, 736 So. 2d 1264 (Fla. 4th DCA 1999)* (en banc).

Legislative decisions are generally reviewed in an original, de novo action for declaratory or injunctive relief. See generally *Hirt*. Similarly, challenges to the validity and constitutionality of the underlying local regulation used to take the action also sounds in declaratory or injunctive relief. See *City of Melbourne v. Hess Realty Corp., 575 So. 2d 774 (Fla. 5th DCA 1991)*. However, appellate lawyers should also consult the Florida Statutes because general law has specified other methods of review for some local legislative decisions. See, *e.g.*, *County of Volusia v. City of Deltona, 925 So. 2d 340 (Fla. 5th DCA 2006)* (recognizing annexation decision, although legislative, are reviewed by certiorari under *F.S. 171.081(1)*).

3. Executive Decisions

It is the nature of the decision that typically distinguishes executive decisions from legislative decisions. Unlike the nondiscriminatory, forward-looking nature of legislative decisions (§ 25.2.C.2), executive decisions retroactively apply existing rules or policies to specific persons or situations. *Modlin v. City of Miami Beach, 201 So. 2d 70 (Fla. 1967)*. In this respect, executive decisions are dissimilar to legislative decisions, but similar to quasi-judicial decisions. *Id.*

However, executive decisions generally differ from quasi-judicial decisions in the process used to reach the decision. See *id.*; *De Groot v. Sheffield, 95 So. 2d 912 (Fla. 1957)*. Unlike quasi-judicial decisions, which are resolved after notice and a hearing (see § 25.2.C.4.a), executive decisions are those typically made by a single government official without notice or a hearing. *Pleasures II Adult Video, Inc. v. City of Sarasota, 833 So. 2d 185 (Fla. 2d DCA 2002)*.

Although notice and a hearing are the distinguishing features between executive and quasi-judicial decisions, the appellate lawyer should be aware that simply because government officials afford due process does not automatically turn an otherwise executive decision into a quasi-judicial decision. *Walton v. Health Care District of Palm Beach County, Florida, 862 So. 2d 852 (Fla. 4th DCA 2003)*. Rather, state and local regulations must be considered and reviewed to determine whether notice and a hearing are required. See *Miami-Dade County v. City of Miami, 315 So. 3d 115, 120 (Fla. 3d DCA 2020)*, citing *Board of County Commissioners of Brevard County v. Snyder, 627 So. 2d 469 (Fla. 1993)* ("in categorizing a governmental function, the focus should be on the nature of the proceedings"; "[i]t is the character of a hearing which determines whether or not county or municipal action is legislative or quasi-judicial"). If required, the decision is

quasi-judicial. See § 25.2.C.4. If not, it is executive. *Walton*. On the other hand, a local government cannot turn an otherwise quasi-judicial decision into an executive decision by giving the agency head veto authority, because the veto would be inextricably intertwined with the quasi-judicial process. *Miami-Dade County*.

The following are some common examples of executive decisions:

- granting or denying building permits, certificates of occupancy, fire permits, or other permits when a hearing is not required, see, *e.g.*, *City of St. Pete Beach v. Sowa, 4 So. 3d 1245 (Fla. 2d DCA 2009)* (single city official made executive decision to grant permit without conducting hearing); *Pleasures II Adult Video* (city official made executive decision to deny business permit without conducting hearing);
- awarding a public contract to one bidder over another after a competitive bid, see, *e.g.*, *MRO Software, Inc. v. Miami-Dade County, 895 So. 2d 1086 (Fla. 3d DCA 2004)* (contract award was executive function, rather than quasi-judicial act subject to certiorari review); *Charles M. Schayer & Co. v. Board of County Commissioners of Dade County, 188 So. 2d 871 (Fla. 3d DCA 1966)* (highest bidder was not entitled to certiorari because port authority's act of leasing store space was not judicial or quasi-judicial in nature); but see *Biscayne Marine Partners, LLC v. City of Miami, 273 So. 3d 97 (Fla. 3d DCA 2019)* (reviewing city-appointed hearing officer's denial of bid protest that was reached after hearing);
- approving parking calculations via a letter from a local government's planning director or city manager, *Neapolitan Enterprises, LLC v. City of Naples, 185 So. 3d 585 (Fla. 2d DCA 2016)*;
- deciding whether to hire, terminate, or demote public employees, even if that decision ultimately adopted a grievance committee's recommendation after affording the employee a fact-finding hearing, see, *e.g.*, *Kremps v. Manatee County Board of County Commissioners, 233 So. 3d 526 (Fla. 2d DCA 2018)* (county administrator adopting hearing officer's recommendation to terminate employee was executive action); *Lee County v. Harsh, 44 So. 3d 239 (Fla. 2d DCA 2010)* (termination decision made by county manager); *Payne v. Wille, 657 So. 2d 964 (Fla. 4th DCA 1995)* (sheriff's decision to demote officer); *Walton* (county's health-care district's termination of nurse);
- deciding to abolish public employee's position entirely, *DeGroot v. Sheffield, 95 So. 2d 912 (Fla. 1957)*; see also *Stansberry v. City of Lake Helen, 425 So. 2d 1157 (Fla. 5th DCA 1982)* (suggesting that it could alternatively be legislative in nature); and
- giving notice that a party will need to apply for a county license before commencing dredge and fill operations, *Broward County v. Florida National Properties, 613 So. 2d 587 (Fla. 4th DCA 1993)*.

Because certiorari is typically a record-based review (see § 25.3.E), executive decisions are not subject to review by certiorari because, without a hearing, there is no record to review. *Pleasures II Adult Video*. Instead, executive decisions are generally reviewed in a de novo action to the circuit court by filing a complaint for declaratory or injunctive relief. *Kemps*; *Sowa*.

As a practical matter, however, many local codes have a method for administratively appealing executive decisions to the local governing board or an intermediate advisory board, which method must be exhausted before seeking declaratory or injunctive relief. *Galaxy Fireworks, Inc. v. City of Orlando, 842 So. 2d 160 (Fla. 5th DCA 2003)*; *Central Florida Investments, Inc. v. Orange County Code Enforcement Board, 790 So. 2d 593 (Fla. 5th DCA 2001)*. And because these administrative appeals generally result in quasi-judicial decisions after giving notice and a hearing, the method of review would eventually be certiorari review. See *City of Sunny Isles Beach v. Publix Super Markets, Inc., 996 So. 2d 238 (Fla. 3d DCA 2008)* (finding first-tier certiorari was another administrative remedy to exhaust before seeking declaratory or injunctive relief). But see *Braden Woods Homeowners Ass'n, Inc. v. Mavard Trading, Ltd., 277 So. 3d 664 (Fla. 2d DCA 2019)* (recognizing exception when executive decision constitutes ultra vires action, which allows pursing declaratory relief without first exhausting administrative remedies).

Finally, courts have also recognized that some executive decisions are simply unreviewable by the judiciary because to do so would violate the separation-of-powers doctrine. *Detournay v. City of Coral Gables, 127 So. 3d 869 (Fla. 3d DCA 2013)*. Examples include:

- deciding to file, prosecute, abate, settle, or voluntarily dismiss a lawsuit or other legal action, *id.* (whether to enforce building code was executive action that judiciary could not supervise); see also *City of West Palm Beach, Inc. v. Haver, 330 So. 3d 860 (Fla. 2021)* (finding no cognizable claim for injunctive relief to compel local government to enforce zoning ordinance against third party);
- dismissing as legally insufficient a complaint alleging violation of a local government's local ethics code, *Fisher Island Holdings, LLC v. Miami-Dade County Commission on Ethics & Public Trust, 748 So. 2d 381 (Fla. 3d DCA 2000)*; and
- requesting the production of documents of a company by a local government's inspector general, who is delegated broad authority to investigate ethics violations, including the power to subpoena witnesses and require production of documents, *Sirgany International, Inc. v. Miami-Dade County, 845 So. 2d 1017 (Fla. 3d DCA 2003)*.

4. Quasi-Judicial Decisions

a. General Rule: Reviewable By Certiorari

The Florida Supreme Court has listed four characteristics of a quasi-judicial decision:

(1) quasi-judicial action results in the application of a general rule of policy;

(2) a quasi-judicial decision has an impact on a limited number of persons or property owners and on identifiable parties and interests;

(3) a quasi-judicial decision is contingent on facts arrived at from distinct alternatives presented at a hearing; and

(4) a "quasi-judicial act determines the rules of law applicable, and the rights affected by them, in relation to past transactions."

Board of County Commissioners of Brevard County v. Snyder, 627 So. 2d 469, 474 (Fla. 1993).

In applying the functional analysis (see § 25.2.C.1) to quasi-judicial decisions, Florida courts have identified two defining attributes. First, quasi-judicial decisions are judicial inquiries that investigate, declare, and enforce rights and liabilities based on specific facts and existing laws. *Lee County v. Sunbelt Equities, II, Limited Partnership, 619 So. 2d 996 (Fla. 2d DCA 1993)*. These decisions enforce or apply the law to a specific situation, but they do not create new law. *Id.* Quasi-judicial decisions tend to answer the questions—Did a party do something to violate the law?—or—Does the law authorize a party to do what it requests? *Id.* As previously stated, these decisions tend to directly affect a more limited number of people than legislative decisions. *Snyder*; *Park of Commerce Associates v. City of Delray Beach, 636 So. 2d 12 (Fla. 1994)*.

Second, quasi-judicial decisions are reached only after affording due process. See *De Groot v. Sheffield, 95 So. 2d 912 (Fla. 1957)*. In other words, decisions are quasi-judicial in nature when they are made after providing notice, a meaningful opportunity to be heard, and then neutrally applying the evidence presented to pre-existing legal standards, instead of the whims and promises of politics. *Neapolitan Enterprises, LLC v. City of Naples, 185 So. 3d 585 (Fla. 2d DCA 2016)*; *Lee County*. The requirement for due process in quasi-judicial decisions was recently addressed in *Miami-Dade County v. City of Miami, 315 So. 3d 115 (Fla. 3d DCA 2020)*, in which the court recognized that " 'the quality of due process required in a quasi-judicial hearing is not the same as that to which a party to full judicial hearing is entitled.' " *Id. at 125*, quoting *Jennings v. Dade County, 589 So. 2d 1337, 1340 (Fla. 3d DCA 1991)*. As explained by the court in *Jennings*:

> Quasi-judicial proceedings are not controlled by strict rules of evidence and procedure. Nonetheless, certain standards of basic fairness must be adhered to in order to afford due process. Consequently, a quasi-judicial decision based upon the record is not conclusive if minimal standards of due process are

> denied. A quasi-judicial hearing generally meets basic due process requirements if the parties are provided notice of the hearing and an opportunity to be heard. In quasi-judicial zoning proceedings, the parties must be able to present evidence, crossexamine witnesses, and be informed of all the facts upon which the commission acts.

Id. at 1340.

Procedural flaws do not alter the quasi-judicial nature of a decision. *Walton v. Health Care District of Palm Beach County, 862 So. 2d 852 (Fla. 4th DCA 2003)*; *Walgreen Co. v. Polk County, 524 So. 2d 1119 (Fla. 2d DCA 1988)*. Nor can local governments turn an otherwise quasi-judicial decision into a legislative decision by declaring their existing law invalid when its application to specific facts produces a politically unfavorable result. See *Verizon Wireless Personal Communications, L.P. v. Sanctuary at Wulfert Point Community Ass'n, Inc., 916 So. 2d 850 (Fla. 2d DCA 2005)*. In addition, the fact that a local government may issue its quasi-judicial decisions in the form of "ordinances" does not change the proceeding's inherent nature. *City of Melbourne v. Hess Realty Corp., 575 So. 2d 774, 775 (Fla. 5th DCA 1991)*.

Florida courts have generally classified land-use planning and development decisions as quasi-judicial, including the granting or denying of

- site-specific rezoning requests, *Snyder*; *Lee County*; *City of Jacksonville Beach v. Marisol Land Development, Inc.*, 706 So. 2d 354 (Fla. 1st DCA 1998);
- special zoning exceptions, *Miami-Dade County v. Publix Supermarkets, Inc., 305 So. 3d 668 (Fla. 3d DCA 2020)*; *Grace v. Town of Palm Beach, 656 So. 2d 945 (Fla. 4th DCA 1995)*; *City of St. Petersburg v. Cardinal Industries Development Corp., 493 So. 2d 535 (Fla. 2d DCA 1986)*;
- building permits, *Park of Commerce Associates*; but see *Braden Woods Homeowners Ass'n, Inc. v. Mavard Trading, Ltd.*, *277 So. 3d 664* (Fla. 2d DCA 2019) (county official issuing building permit without hearing was executive decision, not quasi-judicial decision, and thus not reviewable by certiorari review);
- site-plan reviews and approvals, *Key Biscayne Gateway Partners, LTD v. Village of Key Biscayne, 172 So. 3d 499 (Fla. 3d DCA 2015)*; *Stranahan House, Inc. v. City of Fort Lauderdale, 967 So. 2d 1121 (Fla. 4th DCA 2007)*;
- plat-approval or plat-vacation applications, *Broward County v. G.B.V. International, Ltd., 787 So. 2d 838 (Fla. 2001)*; *Blair Nurseries, Inc. v. Baker County, 199 So. 3d 534 (Fla. 1st DCA 2016)*;
- conditional-use, special-use, or unusual-use permits, *Miami-Dade County v. Omnipoint Holdings, Inc., 863 So. 2d 195 (Fla. 2003)*; *Lake Sana Developments, LLC v. Miami-Dade County, 306 So. 3d 169 (Fla. 3d DCA 2020)*; *Hess*; *Alachua County v. Eagle's Nest Farms, Inc., 473 So. 2d 257 (Fla. 1st DCA 1985)*;

- variance requests, *City of Atlantic Beach v. Wolfson, 118 So. 3d 993 (Fla. 1st DCA 2013)*; *Fine v. City of Coral Gables, 958 So. 2d 433 (Fla. 3d DCA 2007)*; *Walgreen Co. v. Polk County, 524 So. 2d 1119 (Fla. 2d DCA 1988)*;
- approval of placement and construction of telecommunication towers on city-owned property, *Verizon Wireless Personal Communications*;
- residential lot divisions, *Bush v. City of Mexico Beach, 71 So. 3d 147 (Fla. 1st DCA 2011)*; and
- vested rights determinations for purposes of being exempt from subsequent land-use restrictions, *Alger v. United States, 300 So. 3d 274 (Fla. 3d DCA 2020)*.

Other local-government decisions have also been classified as quasi-judicial, including

- removing, suspending, or demoting public employees when local regulations require notice and a hearing before a final decisionmaker, *De Groot*;
- condemning and demolishing a person's house after affording them notice and a hearing, *City of Fort Pierce v. Dickerson, 588 So. 2d 1080* (Fla. 4th DCA 1991);
- denying benefits under a public-pension contract after affording notice and a hearing, *Terry v. Board of Trustees of City Pension Fund, 854 So. 2d 273* (Fla. 4th DCA 2003); *Dabbs v. City of Tampa, 613 So. 2d 1378* (Fla. 2d DCA 1993);
- denying an application for a certificate of public convenience and necessity to operate 30 taxicabs within a municipality, *Taxi USA of Palm Beach, LLC v. City of Boca Raton, Florida, 162 So. 3d 119* (Fla. 4th DCA 2014);
- challenging the validity of an individual's water and utility bill after a formal hearing before a hearing officer, *Miami-Dade County v. Reyes, 772 So. 2d 24* (Fla. 3d DCA 2000);
- approving a settlement related to a zoning dispute, *City of Coral Gables v. Alliance Starlight III, LLC, 2022 Fla. App. LEXIS 195 (Fla. 3d DCA 2022)*; and
- renewal of an occupational license or a business's certificate of use, *Miami-Dade County v. Snapp Industries, Inc., 319 So. 3d 739 (Fla. 3d DCA 2021)*; *DiPietro v. Coletta, 512 So. 2d 1048 (Fla. 3d DCA 1987)*.

With limited exceptions (see § 25.2.C.4.b), quasi-judicial decisions are exclusively reviewed in the circuit court through first-tier certiorari relief. *Park of Commerce Associates*; *G.B.V. International*. These decisions cannot be reviewed by declaratory or injunctive relief. *Dickerson*. For a detailed discussion of the procedural aspects of first-tier certiorari relief, see §§ 25.3.I.1–25.3.I.4.

b. Exceptions

There are several exceptions to the general rule that quasi-judicial decisions are subject to review by certiorari, including:

- The Administrative Procedures Act, *F.S.* Chapter 120. *F.S. 120.68* provides for direct appellate review of final-agency decisions. However, generally, *F.S.* Chapter 120 applies only to actions by state agencies. *Hill v. Monroe County, 581 So. 2d 225 (Fla. 3d DCA 1991)*. It rarely, if ever, applies to a local government's quasi-judicial decision. See *id.* Accord *Broward County v. G.B.V. International, Ltd., 787 So. 2d 838 (Fla. 2001)*; *Sweetwater Utility Corp. v. Hillsborough County, 314 So. 2d 194 (Fla. 2d DCA 1975)*. See Chapter 8 of this manual.

- Challenges to Development Orders as Inconsistent with Comprehensive-Plans. *F.S. 163.3215* carves out an exception to challenging quasi-judicial land-use decisions when the challenge concerns their consistency with the local government's comprehensive plan. Generally, consistency challenges must be pursued in a de novo action for declaratory, injunctive, or other relief within 30 days of the decision. *F.S. 163.3215(3)*. If, however, local governments have adopted the extensive requirements of *F.S. 163.3215(4)*, the exception under *F.S. 163.3215(3)* does not apply and review is by certiorari. But few local governments have adopted *F.S. 163.3215(4)*'s requirements. Lawyers often misfile these consistency challenges by including them in their petitions for certiorari relief when the local government has not adopted the requirements under *F.S. 163.3215(4)*. In this instance, the circuit court must dismiss the consistency challenge for lack of certiorari jurisdiction. *Seminole Tribe of Florida v. Hendry County, 106 So. 3d 19 (Fla. 2d DCA 2013)*; *Stranahan House, Inc. v. City of Fort Lauderdale, 967 So. 2d 1121 (Fla. 4th DCA 2007)*. Compare *Heine v. Lee County, 221 So. 3d 1254 (Fla. 2d DCA 2017)* (suggesting that consistency challenges may be raised in certiorari action when they do not concern use, density, or intensity of use), with *IMHOF v. Walton County, 328 So. 3d 32 (Fla. 1st DCA 2021)* (finding *F.S. 163.3215*'s procedures proper for all consistency challenges and certifying conflict with *Heine*).

- Code-Enforcement Decisions. *F.S. 162.11* also creates an exception to seeking certiorari review of a local government's quasi-judicial decision. If those decisions arise in the code-enforcement context, review is by direct appeal to the circuit court under *Fla. R. App. P. 9.110* and *9.190*. See *City of Palm Bay v. Palm Bay Greens, LLC, 969 So. 2d 1187 (Fla. 5th DCA 2007)*. Accord *City of Ocala v. Gard, 988 So. 2d 1281 (Fla. 5th DCA 2008)* (finding error in granting writ of prohibition when landowner failed to timely seek appellate review of code-enforcement decision by direct review under *F.S. 162.11*). The more liberal standards of review for direct appeals apply. *Central Florida Investments,*

Inc. v. Orange County, 295 So. 3d 292 (Fla. 5th DCA 2019). See Chapter 6 of this manual. The typical appellate rules on briefing, the record, and deadlines apply as well. See *Rules* 9.110, 9.190, 9.200, and 9.210. On the other hand, review of a circuit court's appellate review of the code-enforcement decision is by second-tier certiorari to a district court of appeal. *Hayes v. Monroe County, 337 So. 3d 442 (Fla. 3d DCA 2022)*.

- Challenges to Prejudicial Ex parte Communication. In *Jennings v. Dade County, 589 So. 2d 1337 (Fla. 3d DCA 1991)*, the court carved-out a very limited, judicially created exception to the general rule that quasi-judicial decisions may be reviewed only by certiorari. That case concerned whether ex parte communications between a landowner's agent and a county commissioner deprived the landowner of due process during the quasi-judicial hearing. The court noted that although these decisions are generally limited to certiorari relief, that remedy was inadequate because certiorari review is limited to the record as it existed before the commission and that, by their nature, ex parte communications would not be in the record. Given that "[e]x parte communications are inherently improper and are anathema to quasi-judicial proceedings," the court held that an equitable claim, such as declaratory relief, could be used for the limited purpose of proving prejudicial ex parte communications. *Id. at 1341–1342*.

  As of the date of publication of this manual, no reported case has expressly discussed *Jennings* in terms of allowing parties to challenge quasi-judicial decisions on grounds of ex parte communication through a declaratory-relief action instead of certiorari. Although *Jennings* has not been over-turned, abrogated, or even disagreed with on this ground, the enactment of *F.S. 286.0115* may raise doubt about its continued validity in most instances. That statute allows cities or counties to adopt a procedure by which the decisionmakers announce any ex parte communications or site visits on the record at the beginning of the quasi-judicial hearing. *F.S. 286.0115(1)*. Some local governments have adopted these procedures. If these procedures are adopted, and if the substance of any ex parte communications are placed on the record, the presumption that the ex parte communications were prejudicial is removed. *Id.*

  Although no reported case has discussed *Jennings*'s limited declaratory-relief exception and *F.S. 286.0115(1)*'s procedure, logic compels that if ex parte communications are put on the record, a party or participant would have no need to challenge the communications by declaratory relief because it was placed on the record and could be challenged during the quasi-judicial hearing and on first-tier certiorari review. On the other hand, if local

governments have not adopted F.S. 286.0115's procedures or if undisclosed ex parte communications are later discovered, *Jennings*'s limited declaratory-relief exception may remain viable.

- Constitutional Challenges. Neither facial nor as applied constitutional challenges can be raised on first-tier certiorari review. They can only be raised in direct actions seeking declaratory or injunctive relief. *Miami-Dade County v. Omnipoint Holdings, Inc., 863 So. 2d 195 (Fla. 2003)*; *Nannie Lee's Strawberry Mansion v. City of Melbourne, 877 So. 2d 793 (Fla. 5th DCA 2004)*; *Nostimo, Inc. v. City of Clearwater, 594 So. 2d 779 (Fla. 2d DCA 1992)*; *Bama Investors, Inc. v. Metropolitan Dade County, 349 So. 2d 207 (Fla. 3d DCA 1977)*. Certiorari is not the proper vehicle for even arguments that "ultimately amount[] to a preemption challenge." *Somerset Academy, Inc. v. Miami-Dade County Board of County Commissioners, 314 So. 3d 597, 599 (Fla. 3d DCA 2020)*.

End of Document

Author

CHRISTOPHER D. DONOVAN*

§ 25.3. PROCEDURAL CONSIDERATIONS

A. Introduction

Although the procedural mechanics of first-tier certiorari review are like other certiorari proceedings, this section discusses the nuances and interpretative case law particular to reviewing quasi-judicial decisions. For further discussion of certiorari's general procedural requirements, see Chapter 11 of this manual.

B. Timing Requirements And Rendition

1. In General

The petition for first-tier certiorari review of a local government's quasi-judicial decision must be filed within 30 days of its rendition. *Fla. R. App. P. 9.100(c)(2)*. Although most deadlines in appellate proceedings may be extended, this deadline cannot because it is jurisdictional. *Bank of Port St. Joe v. State, Dept. of Banking & Finance, 362 So. 2d 96 (Fla. 1st DCA 1978).*

If a petitioner fails to timely file the petition for any reason, the circuit court lacks subject-matter jurisdiction and must dismiss the appeal. *F.S. 59.081(2)*; *Roadrunner Construction, Inc. v. Dept. of Financial Services, Division of Workers' Compensation, 33 So. 3d 78 (Fla. 1st DCA 2010).*

The decision's "rendition" date dictates when the 30-day deadline begins to run. Rendition is controlled by *Rule 9.020(h)*, which provides that rendition occurs "when a signed, written order is filed with the clerk of the lower tribunal." See *Smull v. Town of*

---

[*] J.D. with honors, 2004, Stetson University. Mr. Donovan is a member of The Florida Bar and the Council of Sections Committee of The Florida Bar. He is Florida Bar Board Certified in Appellate Practice. Mr. Donovan is the immediate past Chair of the Appellate Practice Section of The Florida Bar, past President of the Michael R.N. McDonnel American Inn of Court, immediate past President of the Trial Law Section of the Collier County Bar Association, and is the Secretary of the Collier County Bar Association. Mr. Donovan was a staff attorney for the Florida District Court of Appeal, Second District, from 2004 to 2006. He is currently a shareholder at Roetzel & Andress and co-Practice Group Manager of the firm's Appellate Practice Group.

Jupiter, 854 So. 2d 780 (Fla. 4th DCA 2003). The date a local government verbally decides a matter or holds the quasi-judicial hearing does not start the clock. See *id.*; *City Supplemental Pension Fund for Firemen & Policemen in City of Miami v. Mendelson, 601 So. 2d 594 (Fla. 3d DCA 1992)*. Nor does the date a mayor or agency head signs the written order. *5220 Biscayne Boulevard., LLC v. Stebbins, 937 So. 2d 1189 (Fla. 3d DCA 2006)*.

Rather, the local government's decision must not only be reduced to a signed writing, but it must also be filed with the local government's clerk. *Sumner v. Board of Trustees, City of Pensacola Firefighters' Relief & Pension Fund, 78 So. 3d 123 (Fla. 1st DCA 2012)*. If the signed, written decision has not been filed with the local government's clerk, it has not been rendered and the appellate deadline does not start. *Id.*; *Smull*. Written decisions are not, however, required to be formal. A letter advising petitioners about an earlier oral decision may constitute a "rendered" decision as long as it is signed and filed with the local government's clerk. *Kowch v. Board Of County Commissioners, 467 So. 2d 340 (Fla. 5th DCA 1985)*.

Determining who qualifies as the local government's "clerk" can be difficult at times. Under *Rule 9.020(b)*, the "clerk" is either the person or official who is specifically so designated or "who most closely resembles a clerk in the functions performed." See *Presidents' Council of SD, Inc. v. Walton County, 36 So. 3d 764 (Fla. 1st DCA 2010)*. In other words, the person who maintains the local government's records constitutes the clerk absent specific designations. 1977 Committee Note to *Rule* 9.020(b). See *Speed v. Florida Dept. of Legal Affairs, 387 So. 2d 459 (Fla. 1st DCA 1980)*. At least one court has suggested, albeit in dictum, that evidence may be received to determine who most resembles the local government's clerk. *Bank of Port St. Joe*.

In *Pettway v. City of Jacksonville, 264 So. 3d 210, 211 (Fla. 1st DCA 2018)*, a local rule provided that "the 'date of rendition of the order shall be the date of mailing' … to the applicant and affected parties." Because of a delay in its mailing, the trial court's written decision was not mailed until almost one month after it was signed and filed with the local government's secretary, who the court described as the person designated as the local government's clerk. On appeal, the appellate court gave effect to the local rule and held that rendition occurred when the decision was mailed, thereby giving the applicant and affected parties clear notice. In attempting to reconcile the local rule with *Rule* 9.020(h), the *Pettway* court explained that the local rule simply meant that the date the decision was mailed serves the purpose of the "filing" date under *Rule 9.020(h)*. *Pettway*, 264 So. 3d at 213.

The *Pettaway* court did not address cases such as *Smull*, which seems to contradict *Pettaway* by holding that local rules cannot alter the Florida Rules of Appellate Procedure on rendition and on when the appellate clock starts. Prudent appellate lawyers will calculate the 30-day certiorari deadline by relying on the earliest possible date when some form of decision was made, such as by attending the quasi-judicial

hearing during which the local government orally votes to decide the matter or regularly watching the local government's website on which many post their decisions for the public.

Calculating the deadline using the earliest possible date also ensures that there is sufficient time to fully prepare the petition for certiorari relief and its record. Unlike in direct appeals, in which a simple notice of appeal is sufficient under *Rule 9.110(b)* to invoke appellate jurisdiction, both the full certiorari petition containing the facts, argument, and legal citations, as well as the appellate record, are technically due 30 days after local governments render their decision. *Rules 9.100(c)(2)*, *(g)*. See *DSA Marine Sales & Service, Inc. v. County of Manatee, 661 So. 2d 907 (Fla. 2d DCA 1995)*.

This can be an extremely difficult deadline to meet, especially when the record below, such as the transcript of the quasi-judicial hearing, may not be completed within the 30-day period. *DSA Marine Sales & Service*. If the appellate lawyer is faced with that scenario or with a scenario in which the lawyer received the decision well into the 30-day deadline, the lawyer should timely file a "bare bones" petition accompanied with a motion for extension of time or to amend that explains the circumstances and seeks additional time to amend the petition and supplement its appendix. *Penate v. State, 967 So. 2d 364 (Fla. 5th DCA 2007)*. Some courts have held that even filing a timely one-page notice of intention to file a petition for writ of certiorari is sufficient to trigger jurisdiction and avoid dismissal. See, *e.g.*, *Holden Avenue Inter-Neighborhood Council, Inc. v. Orange County, 719 So. 2d 1002 (Fla. 5th DCA 1998)*; *Ceslow v. Board of County Commissioners, Palm Beach County, 428 So. 2d 701 (Fla. 4th DCA 1983)*.

The majority of Florida courts have also held that due process requires circuit courts to give petitioners at least one chance to amend their petition or appendix, if requested. See, *e.g.*, *Kirrie v. Indian River County Code Enforcement Board, 104 So. 3d 1177 (Fla. 4th DCA 2012)*, citing *Rule* 9.220(a) (appellants were denied due process when circuit court, acting in its appellate capacity, affirmed per curiam, administrative determination of the county code enforcement board, without ruling on pending motion to supplement); *DSA Marine Sales & Service* (summary disposition by circuit court of petition for writ of certiorari, filed following denial of application by county board of commissioners without allowing petitioner reasonable time to assemble complete record in support of its position, constituted deprivation of procedural due process rights and required remand). But see *James v. Crews, 132 So. 3d 896, 897 (Fla. 1st DCA 2014)* (stating, albeit in mandamus context, that amendments to pleadings seeking extraordinary relief are "not contemplated"). Generally, amending a petition for writ of certiorari is permitted to include additional, substantive arguments when required in the interest of justice. *Cook v. City of Winter Haven Police Dept., 837 So. 2d 492 (Fla. 2d DCA 2003)*, citing *Rule* 9.040(d) (permitting any part of proceeding to be amended "[a]t any time in the interest of justice").

Although the case law appears to permit these procedures, they are "not an ideal scenario" and should not be relied on, and every effort should be made to file a complete petition and record within the 30-day deadline. *Penate*.

2. Tolling

As previously stated, a petition for first-tier certiorari review of a quasi-judicial decision must be filed within 30 days of its rendition, Fla. R. App. P. 9.100(c)(2), and this deadline cannot be extended because it is jurisdictional. *Bank of Port St. Joe v. State, Dept. of Banking & Finance, 362 So. 2d 96 (Fla. 1st DCA 1978)*. There are two procedural mechanisms, however, that may delay this deadline.

The first is a motion for rehearing. Under *Rule* 9.020(h)(1), an "authorized and timely filed … motion for rehearing" tolls an order's rendition, which, in turn, delays the start of the 30-day deadline. Critical here is whether the rehearing motion is expressly "authorized" under local ordinances or administrative rules. See *City of Palm Bay v. Palm Bay Greens, LLC, 969 So. 2d 1187 (Fla. 5th DCA 2007)*. If authorized, a timely rehearing motion will toll the deadline. See *id.* On the other hand, if the local regulations or administrative rules are silent on the matter, the rehearing motion will not toll the deadline. See *id.*; *Systems Management Associates, Inc. v. State, Dept. of Health & Rehabilitative Services, 391 So. 2d 688 (Fla. 1st DCA 1980)*. Although local governments have inherent jurisdiction to reconsider their quasi-judicial decisions at any time before a certiorari petition is filed or its deadline expires, *Smull v. Town of Jupiter, 854 So. 2d 780 (Fla. 4th DCA 2003)*, this inherent jurisdiction is not sufficient to toll rendition or the start of the certiorari deadline under *Rule* 9.020(h)(1), *City of Palm Bay*.

The second is the Florida Land Use and Environmental Dispute Resolution Act (FLUEDRA), *F.S.* 70.51. This is a voluntary, alternative-dispute resolution proceeding to resolve disputes over zoning decisions and other types of development orders through a neutral magistrate that is selected by the parties. See generally *Scott v. Polk County, 793 So. 2d 85 (Fla. 2d DCA 2001)*. This statutory administrative proceeding is separate and distinct from formal judicial review. See *id.* To initiate a FLUEDRA proceeding, the property owner must apply for FLUEDRA relief within 30 days of receiving the quasi-judicial decision or notice of the local government's action. *F.S. 70.51(3)*. If timely initiated, the FLUEDRA proceeding "tolls the time for seeking judicial review … until the magistrate's recommendation is acted on by the local government." *F.S. 70.51(10)(a)*. See *Peninsular Properties Braden River, LLC v. City of Bradenton, Florida, 965 So. 2d 160 (Fla. 2d DCA 2007)* (FLUEDRA's tolling provision does not infringe on Florida Supreme Court's exclusive rule-making authority).

Because there is presently no precedential case as of the date of publication of this manual that addresses how FLUEDRA's tolling provision operates, the lawyer should be aware of two potential traps for the unwary. First, it is not clear whether FLUEDRA

tolls "rendition" of the quasi-judicial decision in the same manner as a motion for rehearing under *Rule* 9.020(h). If it does, a party has a full 30-days after the FLUEDRA proceeding concludes to petition for certiorari. But notably, "rendition" is a term of art that is absent from F.S. 70.51. And F.S. 70.51(10) provides that only "the time for seeking judicial review" is tolled, which is different than providing, as Rule 9.020(h) does, that rendition is tolled because the statute temporarily suspends only the appellate deadline, while the rule suspends finality of the local government's decision. Because FLUEDRA and certiorari are both due within 30 days of the quasi-judicial decision, it is possible that filing a FLUEDRA action on the 29th day could mean that once it ends, a party has only one day left to file the certiorari petition and appendix. The statute is ambiguous on this point, and no reported case has yet to clarify it.

Second, a party likely cannot stack the rehearing, FLUEDRA, and certiorari deadlines. In other words, if local regulations authorize motions for rehearing within 15 days of rendition, a party cannot move for rehearing, wait for its denial, then apply for FLUEDRA, wait for its adverse decision, and then petition for certiorari relief. Unlike *Rule* 9.020(h), which, as previously noted, provides that an "authorized and timely" rehearing tolls appellate deadlines, F.S. 70.51 makes no mention of rehearings tolling FLUEDRA's deadlines. Although no district court has expressly addressed this issue, at least one circuit court has dismissed an untimely certiorari petition that sought to stack these deadlines, which dismissal was affirmed per curiam on appeal. *Cardome, LLC v. City of Bonita Springs, Florida*, 2016 WL 11301263 (Fla. Cir. Ct. Sept. 15, 2016), *aff'd 226 So. 3d 825*.

C. Parties, Participants, And Standing

Because quasi-judicial hearings before local governments are public meetings, they are often attended by members of the public. F.S. 286.011(1). This is especially true in the land-use context in which residents and adjoining neighbors often advocate for or against a landowner's requested development of his or her property. See, *e.g.*, *Carillon Community Residential v. Seminole County, 45 So. 3d 7 (Fla. 5th DCA 2010).*

As a result, there is a distinction between those who are a "party" to a quasi-judicial proceeding—like the landowner applicant—and those who are only participants—like the public attendees. See *id.* This important distinction affects the level of due process that local governments must afford. Only parties to quasi-judicial hearings must be given the full panoply of rights, such as the right to cross-examine witnesses, because of a party's direct interest in the proceeding's outcome. *Id.* Participants, on the other hand, have only the general right to speak about the matter subject to the local government's control, which generally limits presentations to only a few minutes for each participant. F.S. 286.0115(2)(b). See generally *Jones v. Heyman, 888 F.2d 1328 (11th Cir. 1989)* (limiting content and allotting only two to three minutes). Participants are also not required to be

sworn or qualified as experts, and they do not have the right to cross-examine witnesses. F.S. 286.0115(2)(b); *Carillon*.

This distinction may also affect who has standing to seek first-tier certiorari review and who is automatically a party to those judicial proceedings. As with any judicial action, only those with standing—in other words, those with legally recognizable interest adversely affected by the quasi-judicial action—may seek first-tier certiorari review. See *Solares v. City of Miami, 166 So. 3d 887 (Fla. 3d DCA 2015)* (recognizing that this is threshold issue).

Landowners who were denied a development request or public employees who were terminated will generally have no difficulty showing standing because of their status as parties in the quasi-judicial hearing and their direct interest in the decision. See, *e.g.*, *Highwoods DLF EOLA, LLC v. Condo Developer, LLC, 51 So. 3d 570 (Fla. 5th DCA 2010)* (property owner that obtained approval of master plan amendment allowing it to construct high-rise building, but that was not named as party to neighbor's certiorari proceeding challenging city's approval of amendment, was entitled to intervene in certiorari proceeding).

On the other hand, participants during the quasi-judicial hearing often have a more difficult time showing standing on first-tier certiorari review for two reasons. First, the case law is clear that standing must be first proven through evidence at the quasi-judicial hearing before the local government. See, *e.g.*, *City of Ft. Myers v. Splitt, 988 So. 2d 28 (Fla. 2d DCA 2008)*; *Battaglia Fruit Co. v. City of Maitland, 530 So. 2d 940 (Fla. 5th DCA 1988)*. Participants, whether appearing pro se or through counsel, often overlook the need to present evidence of standing to the local government during the quasi-judicial hearing. Standing cannot be argued for the first time in a certiorari petition, and the circuit court cannot go outside the appellate record to take additional evidence of standing. *Id.* Rather, if there is no evidence supporting standing in the record at the quasi-judicial hearing, the petition for first-tier certiorari relief must be dismissed. *Id.* But see *Alger v. United States, 300 So. 3d 274 (Fla. 3d DCA 2020)* (issue of participant's standing was waived when it was not challenged before administrative body); *Town of Indialantic v. Nance, 485 So. 2d 1318 (Fla. 5th DCA 1986)* (same).

The second reason participants often struggle to show standing is that not all adversely affected interests qualify as "legally recognizable" for purposes of obtaining certiorari relief. Each case must be independently researched based on the nature of the challenge and the interest affected. See *Albright v. Hensley, 492 So. 2d 852 (Fla. 5th DCA 1986)*. Some statutes may even control particular kinds of challenges. See, *e.g.*, *Matlacha Civic Ass'n, Inc. v. City of Cape Coral, 273 So. 3d 243 (Fla. 2d DCA 2019)* (recognizing that standing to challenge annexation by is controlled by F.S. 171.081(1)).

If a statute does not control, the Florida Supreme Court's decision in *Renard v. Dade County, 261 So. 2d 832 (Fla. 1972)*, controls. *Renard* has two standards that depend on the nature of the challenge to the local government action. If the challenge is procedural (*i.e.*, the local

government failed to comply with the procedural requirements in issuing its decision, such as giving notice), any affected resident, citizen, or property owner in the governmental unit has standing. *Id.* Standing for these procedural errors is limited, however, to "how the resolution was enacted," not "what was enacted." *Save Brickell Avenue, Inc. v. City of Miami, 395 So. 2d 246, 247 (Fla. 3d DCA 1981)*. Stated differently, this broader form of standing concerns "only the procedural legality, rather than the wisdom of the municipal decision." *Miami Beach Homeowners Ass'n v. City of Miami Beach, 579 So. 2d 920 (Fla. 3d DCA 1991).*

There are likely few instances in which this procedural standard for standing applies. Common examples include

- failing to give the requisite notice before a hearing, *Bhoola v. City of St. Augustine Beach, 588 So. 2d 666 (Fla. 5th DCA 1991)*; *Albright*; *Brickell*;
- reaching a decision without taking evidence despite the requirement to hold a hearing and consider various factors before acting, *Bhoola*; *Albright*; and
- acting illegally in violation of the Sunshine Law, *Albright*; *Upper Keys Citizens Ass'n, Inc. v. Wedel, 341 So. 2d 1062 (Fla. 3d DCA 1977)*.

On the other hand, if the challenge is substantive (*i.e.*, whether the local government's decision was unreasonable or failed to correctly apply the law in issuing its decision), standing is limited to only those who can show a special injury that differs in kind, rather than degree, from others in the community. *Renard*. See also *Splitt* (distinguishing between certiorari's narrow standing grounds and "aggrieved or adversely affected" standard under *F.S. 163.3215*). Under this "special injury" test, merely being an abutting landowner or one entitled to notice of the quasi-judicial hearing may be a factor, but it generally cannot be the sole factor. *Battaglia*. A participant must also show that his or her affected interest is different in kind from others in the community at large. *Renard*; *Battaglia*.

The following examples address standing under *Renard*'s "special injury" test in the quasi-judicial context:

- Merely being a taxpayer or resident in the local government's geographic jurisdiction will generally not confer standing, *Combs v. City of Naples, 834 So. 2d 194 (Fla. 2d DCA 2002).*
- Alleging only that the proposed development will increase traffic and make parking more difficult will generally not confer standing, because everyone in the community will suffer these injuries, *Skaggs-Albertson's Properties, Inc. v. Michels Belleair Bluffs Pharmacy, Inc., 332 So. 2d 113 (Fla. 2d DCA 1976)*; but see *City of St. Petersburg, Board of Adjustment v. Marelli, 728 So. 2d 1197 (Fla. 2d DCA 1999)* (finding neighboring property owners had standing to challenge legality of variance allowing reduction in parking from 14 spaces to 7 spaces); *Exchange Investments, Inc. v. Alachua County, 481 So. 2d 1223, 1225 (Fla. 1st DCA 1985)* (recognizing that "while the authorities generally agree that traffic is a matter of general concern and does not

grant standing in zoning matters, property owners do have a legal interest in their own off-street parking facilities").

- Challenging a track of land's rezoning by claiming injuries due to the noise, increased traffic, diminution in land values, and other adverse effects, may not confer standing, *Pichette v. City of North Miami, 642 So. 2d 1165 (Fla. 3d DCA 1994)*.
- Challenging a zoning decision allowing a competitor to open a nearby business may confer standing due to the increased competition, *Rayan Corp. v. Board of County Commissioners of Dade County, 356 So. 2d 1276 (Fla. 3d DCA 1978)*; *ABC Liquors, Inc. v. Skaggs-Albertson's, 349 So. 2d 657 (Fla. 4th DCA 1977)*; but see *Michels Belleair Bluffs Pharmacy* (suggesting loss of business due to increased competition would not support standing).
- Substantially depreciating neighboring property values may confer standing, *Rinker Materials Corp. v. Metropolitan Dade County, 528 So. 2d 904 (Fla. 3d DCA 1987)*; *ABC Liquors*; *Elwyn v. City of Miami, 113 So. 2d 849 (Fla. 3d DCA 1959)*.
- Violating a municipal ordinance will confer standing when a private citizen can prove special damages differing in kind from damages suffered by the community as a whole, *Kagan v. West, 677 So. 2d 905 (Fla. 4th DCA 1996)*.
- Challenging zoning violations for the construction of a structure may confer standing, see, *e.g.*, *State ex rel. Gardner v. Sailboat Key, Inc., 306 So. 2d 616 (Fla. 3d DCA 1974)* (adjacent landowners had standing to maintain action to enjoin claimed zoning violations arising out of construction of two-story parking garages that would allegedly have net effect of raising vertical clearance on entire island, thereby obstructing landowners' view and possibly causing delay in recession of storm waters, thus aggravating flood risk); compare *Messett v. Cohen, 741 So. 2d 619 (Fla. 5th DCA 1999)* (claim that development would obstruct challenger's view did not constitute legally cognizable interest to support standing).
- Alleging anything more than a mere possibility is insufficient to meet the special injury requirement to confer standing, see, *e.g.*, *Liebman v. City of Miami, 279 So. 3d 747, 752 (Fla. 3d DCA 2019)* (petitioner's claim that "he would *consider* submitting a bid if the City issues a new request for proposal" was insufficient for standing purposes).

These are just a few examples. Each case must be considered on its own facts as to the interest or interests at stake and the nature of the government action challenged. See *Renard*.

When a first-tier certiorari action is filed, the person challenging the local government's decision is called the "petitioner." *Fla. R. App. P. 9.020(g)(3)*. The "respondent" is always at least the local government, which is an indispensable party to any first-tier certiorari proceeding. *Rule 9.020(g)(4)*; *Zimmerman v. Civil Service of City of Boca Raton, 366 So. 2d 24 (Fla. 1978)*.

When a member of the public is the petitioner challenging the quasi-judicial decision, there has historically been confusion about whether the landowner who requested and received the land-use action is an indispensable party. The confusion began with an early Florida Supreme Court case that held a petition for certiorari cannot be dismissed for failure to join the applicant landowner because he or she is not an indispensable party. *Brigham v. Dade County, 305 So. 2d 756 (Fla. 1974)*. This decision was based, in part, on the absence of any appellate rule at the time requiring the applicant's joinder as a party. However, in 1992, *Rule 9.100(b)* was amended to recognize that "all parties in the lower tribunal be named as either petitioners or respondents." *In re Amendments to Florida Rules of Appellate Procedure, 609 So. 2d 516, 517 (Fla. 1992)*.

Despite the 1992 Amendment, the District Court of Appeal, Second District, has twice continued to rely on *Brigham* to find certiorari petitions cannot be dismissed for failure to join an applicant as an indispensable party. *Concerned Citizens of Bayshore Community, Inc. v. Lee County ex rel. Lee County Board of County Commissioners, 923 So. 2d 521 (Fla. 2d DCA 2005)*; *City of St. Petersburg Board of Adjustment v. Marelli, 728 So. 2d 1197 (Fla. 2d DCA 1999)*. The court in *Concerned Citizens* recognized the requirement in *Rule* 9.100(b), but held that *Fla. R. Civ. P. 1.630* controlled over *Rule* 9.100(b) and that *Rule* 1.630 makes no mention about who are respondents.

On the other hand, the Fifth District in *Highwoods DLF EOLA, LLC v. Condo Developer, LLC, 51 So. 3d 570 (Fla. 5th DCA 2010)*, held that the rule change to *Rule 9.100(b)(1)* abrogated *Brigham*, *City of St. Petersburg*, and *Concerned Citizens*. The Second District's reliance on *Rule* 1.630 in *Concerned Citizens* is also undercut by the Florida Supreme Court's removal of all references to certiorari from *Rule* 1.630 in 2013, thereby making all certiorari proceedings strictly controlled by the Florida Rules of Appellate Procedure. *In re Amendments to Florida Rules of Civil Procedure, 131 So. 3d 643 (Fla. 2013)* (amending *Rule* 1.630 to exclude certiorari).

Therefore, despite some early confusion, the landowner applicant and anyone who had status as a party below, but who is not the petitioner, is automatically a respondent in all certiorari proceedings. *Rule 9.100(b)(1)*. See also *Rule 9.020(g)(4)*.

D. Technical Requirements Of Petition

The technical requirements for preparing, filing, and serving petitions for first-tier certiorari relief of a local government's quasi-judicial decision are governed by the Florida Rules of Appellate Procedure and are virtually identical to filing any other type of certiorari petition. See *In re Amendments to Florida Rules of Civil Procedure, 131 So. 3d 643 (Fla. 2013)* (making it clear that *Fla. R. Civ. P. 1.630* no longer applies to certiorari proceedings). Although certiorari's technical requirements are generally discussed in § 11.10 of this manual, this section highlights a few additional requirements and general practice pointers relevant to first-tier certiorari proceedings.

Fla. R. App. P. 9.100(f) contains additional requirements for certiorari petitions filed in the circuit courts. The most notable of these is *Rule 9.100(f)(2)*, which requires the petition to expressly refer to subdivision (f) in its caption. This helps the circuit-court clerk process the petition as an appellate proceeding, rather than as a typical lawsuit. For example, *Rule 9.100(f)(4)* prohibits the circuit-court clerk from entering defaults for not responding to the petition. Additionally, *Rule 9.100(f)(3)* requires the circuit-court clerk to immediately transmit the petition to the assigned circuit judge or judges to determine whether to issue an order to show cause. See § 25.3.F.

The petition's caption must also contain the name of all parties involved in the proceeding below, including the local government who rendered the quasi-judicial decision. *Rule 9.100(b)(1)*. See § 25.3.C. However, the petition is not required to provide the name of the individual members of the local government that rendered the quasi-judicial decision. *Rule 9.100(b)(3)(B)*.

The petition cannot exceed 13,000 words if computer-generated or 50 pages if handwritten or typewritten and must contain:

(1) the basis for invoking the jurisdiction of the court;

(2) the facts on which the petitioner relies;

(3) the nature of the relief sought; and

(4) argument in support of the petition and appropriate citations of authority.

Rule 9.100(g). See *Blake v. St. Johns River Power Park System Employees' Retirement Plan, 275 So. 3d 804 (Fla. 1st DCA 2019)* (perfunctory, offhand, or conclusory statements of error lacking supportive arguments or legal authority are deemed waived). If the petitioner seeks an order directed to a lower tribunal, the petition must be accompanied by an appendix, and the petition must contain references to the appropriate pages of the supporting appendix. *Rule* 9.100(g).

Like any other document filed in the circuit court, *Rule* 9.420(a) requires electronically filing first-tier petitions through the e-portal in accordance with the requirements under *Fla. R. Gen. Prac. & Jud. Admin.* 2.525. Notably, the legally correct filing date for purposes of determining timeliness is when the petition is received by the clerk's office, even if the clerk's office puts it in the e-portal's "pending queue" because of some technical procedural problem. *Pettway v. City of Jacksonville, 264 So. 3d 210 (Fla. 1st DCA 2018)*.

Similarly, *Rule* 9.420(c) requires electronically serving the petition and its appendix in accordance with the requirements under *Rule* 2.516(b), except that petitions invoking original jurisdiction must be served both by e-mail and in paper format. *Rule* 9.420(c). This requirement is often overlooked by appellate lawyers. Requiring both electronic and paper service for the certiorari petition ensures that all parties have adequate notice that a first-tier proceeding has commenced.

Determining who, at the local government, should receive service of the petition and its appendix can be difficult because of competing rules. *Rule* 9.100(b)(3) requires serving "the official who issued the order that is the subject of the petition." The "official who issued the order" likely means the official who executed the written quasi-judicial decision as the agency head after the local government's oral decision was reduced to writing. On the other hand, *Rule* 2.516(b) provides that "[w]hen service is required or permitted to be made upon a party represented by an attorney, service must be made upon the attorney." Because many local governments typically have legal representation, this rule suggests that service should be on the government's lawyer. Until the rules are clarified, prudent appellate lawyers should serve both the official who executed the decision on the local government's behalf and the government's lawyer.

Finally, when drafting a petition for certiorari relief or a response, appellate lawyers should be conscience of who is their audience. Few circuit judges have significant experience in local-government affairs, especially land-use matters. Circuit judges also do not typically sit in an appellate capacity in which they are limited to applying standards of review to a cold record. Therefore, persuasive petitions in the circuit court will often require devoting more attention to explaining relevant land-use concepts and certiorari's standards of review before attempting to apply them in a given case.

E. The Record

Unlike direct appeals under *Fla. R. App. P. 9.110*, the local government's clerk generally does not transmit a record to the circuit court. *Rule 9.100(j)*. Rather, the petitioner for certiorari bears the burden of preparing the record on appeal in the form of an appendix. *Rule 9.100(g)*; *Baez v. Padron, 715 So. 2d 1128 (Fla. 3d DCA 1998)*. Without an adequate record, the circuit court cannot review the quasi-judicial decision and must deny certiorari. *DiPietro v. Coletta, 512 So. 2d 1048 (Fla. 3d DCA 1987)*. However, the failure to file an appendix with the petition within certiorari's 30-day deadline is not jurisdictional, and the circuit court has inherent jurisdiction to allow the petitioner to file or amend the appendix, provided the petition was timely filed. *Levine v. State Dept. of Health & Rehabilitative Services, Division of Health, 320 So. 2d 844 (Fla. 2d DCA 1975)*.

The appendix should include only those matters that were considered by the local government before it rendered its quasi-judicial decision. See *St. Johns County v. Smith, 766 So. 2d 1097 (Fla. 5th DCA 2000)* (finding circuit court could not consider staff presentations made subsequent to quasi-judicial decision). Petitioners should include in the appendix everything that was considered by the local government in reaching its decision, including:

- the initial application and its attachments;
- the applicant's exhibits and any PowerPoint presentation;

- the staff's recommendations, memorandums, and exhibits;
- any intermediate board or official's recommendation;
- meeting notices; and
- any other written submissions, such as citizens' letters and statements.

If the local government has a website, it will often post these materials on its website. Appellate lawyers may also contact the local government's clerk for assistance. If necessary, a public-records request under F.S. 119.07 may be made.

The appendix must include a transcript of the quasi-judicial hearing. *DiPietro*. Otherwise, circuit courts cannot determine whether the petitioner's arguments are preserved and whether the quasi-judicial decision is supported by competent, substantial evidence. *Pleasures II Adult Video, Inc. v. City of Sarasota, 833 So. 2d 185, 189 (Fla. 2d DCA 2002)*; *DiPietro*. A court reporter should be present at the quasi-judicial hearing if the lawyer intends to challenge the decision by certiorari. The importance of this cannot be understated, which is why F.S. 286.0105 requires local governments to include this imperative in their hearing notices.

Many lawyers overlook this need or believe it is unnecessary because local governments will often record their public meetings and post them on their website. But the audio or video recordings must be transcribed to be included in the appendix. *Rule 9.190(c)(5)*. And, generally, court reporters will be unable to accurately transcribe a hearing after the fact using an audio or video recording because public meetings are often attended by a multitude of people whom the court reporter may not know and because things often happen, or are said, off microphone during a quasi-judicial hearing. Thus, it is highly recommended that the lawyer hire a court reporter to attend the quasi-judicial hearing in person.

The appendix format is governed by Rule 9.220. Under this rule, the appendix must be prepared as a Portable Document Format (PDF) and filed separate from the certiorari petition. Rule 9.220(c). It must contain a cover page, a table of contents, and a certificate of service. Rule 9.220(b). It must also include a copy of the quasi-judicial decision on review. *Rule* 9.220(c). For the court's convenience, it is recommended that the quasi-judicial decision be the appendix's first document and then all other documents follow chronologically.

Appellate lawyers often overlook *Rule* 9.220(c)'s requirement that each document be searchable, bookmarked, and paginated so that the page numbers match the PDF viewer's pagination. Because many appendices include multiple documents spanning hundreds or even thousands of pages, this latter requirement exists for the convenience of judges and their staff, many of whom electronically review appendices on their computers or tablets.

F. Show Cause Order, Response, And Reply

When the petition and appendix are filed, *Fla. R. App. P. 9.100(f)(3)* requires the circuit-court clerk to immediately transmit them to the assigned circuit judge or judges. Some circuits decide first-tier certiorari petitions by a single judge, while others use traditional three-judge panels. *Broward County v. G.B.V. International, Ltd., 787 So. 2d 838 (Fla. 2001)*. See also *In re: Amendments to Florida Rules of Appellate Procedure—2017 Regular-Cycle Report, 256 So. 3d 1218 (Fla. 2018)* (declining proposed rule change that would have required uniform, three-judge panels in every circuit).

After receiving the petition, *Rule 9.100(f)(3)* requires the circuit judge or judges to review the petition and appendix to determine whether it states a preliminary basis for relief. In other words, the circuit court must determine whether the petition makes a prima facie showing that the local government failed to afford due process, departed from the essential requirements of the law, or issued a decision that is not supported by competent, substantial evidence. See *Brasota Mortgage Co. v. Town of Longboat Key, 865 So. 2d 638* (Fla. 2d DCA 2004). For a detailed discussion of these three inquiries, see §§ 25.3.I.1–25.3.I.4.

If the petition does not state a preliminary basis for relief, the circuit court may summarily dismiss it without a response or hearing. *Fine v. City of Coral Gables, 958 So. 2d 433 (Fla. 3d DCA 2007)*; *Wingate v. State, Dept. of Highway Safety & Motor Vehicles, 442 So. 2d 1023 (Fla. 5th DCA 1983)*. If the petition states a preliminary basis for relief, the circuit court must issue an order to show cause or otherwise request a response. *Rule 9.100(h)*. The circuit court cannot treat a respondent's preliminary motion, such as a motion to dismiss, as a formal response to the petition. See *Evergreen Tree Treasurers of Charlotte County, Inc. v. Charlotte County Board of County Commissioners, 810 So. 2d 526 (Fla. 2d DCA 2002)*. Rather, respondents are not required to respond until ordered by the court. *Rule* 9.100(h); *Dept. of Highway Safety & Motor Vehicles v. Snell, 832 So. 2d 177 (Fla. 5th DCA 2002)*.

Although some circuit courts issue show-cause orders relatively quickly, others may take several months or longer. See *Rightler v. Pompano Beach Police & Fireman's Pension Fund, 467 So. 2d 461 (Fla. 4th DCA 1985)* (exceeding one year). The case cannot be dismissed for lack of prosecution because, once the petition is filed, it is the circuit court's duty to either issue a show-cause order or dismiss the petition as facially insufficient. See *id.* If an inordinate amount of time has passed, the lawyer for the petitioner may inquire about the petition with the judge's judicial assistant, schedule a hearing, or send the judge a generic cover letter with a proposed show-cause order. This may help avoid unnecessary delay from a potential lack of familiarity either by the clerk's office with its obligations under *Rule 9.100(f)(3)* or by the circuit judge under *Rule* 9.100(h) because, in other forms of litigation, circuit judges typically do not act without a hearing or without bringing the matter to their attention. Before taking these actions, however, the lawyer should ensure that these actions are not prohibited by local rules.

The order to show cause establishes the deadline for the response. *Rule 9.100(j)*. Customarily, the deadline is 20 or 30 days after the order to show cause. If the order is sent

electronically, as most are, there are no additional days added to the deadline. *Fla. R. Gen. Prac. & Jud. Admin.* 2.514(b), 2.516(b)(1)(D). In addition, if the order issues the day before a weekend or legal holiday, the deadline does not begin until the next day that is not a weekend or legal holiday. *Rule* 2.514(a)(1)(A).

The response cannot exceed 13,000 words if computer-generated or 50 pages if handwritten or typewritten. *Rule* 9.100(j). Proper pinpoint cites to both legal authority and the supporting appendices is required. *Id.* The response may also include an appendix, which must comply with the requirements under *Rule 9.220*. *Rule* 9.100(j). For the convenience of the circuit court and its staff, however, the response's appendix should be limited to only those portions of the quasi-judicial record omitted from the petitioner's appendix.

Finally, the petitioner may file a reply and supplemental appendix 30 days after the response's service or at another time set by the court. *Rule 9.100(k)*. The reply cannot exceed 4,000 words if computer-generated or 15 pages if handwritten or typewritten. *Id.* Further briefing after the reply is improper, especially if not accompanied by a motion to amend. *Progressive Express Insurance Co. v. Fry Enterprises, Inc., 264 So. 3d 1008 (Fla. 2d DCA 2019)*.

G. Technical Requirements Of Motions

The technical requirements for motions are governed by *Fla. R. App. P. 9.045* and *9.300*. A motion must state the grounds for relief and be supported by argument and proper legal citations, and it may include an appendix of the documents necessary to resolve the motion unless those documents are already in the appellate record. *Rule* 9.300(a). The respondent may file a response 15 days after the motion's service unless the court orders a different deadline. *Id.* Both the motion and the response must be in 14-point Bookman Old Style or 14-point Ariel font. *Rule* 9.045(a)–(b). Unlike petitions, the rules do not contain a word or page limit on motions and responses, but courts prefer brevity. Replies are generally not authorized unless otherwise ordered by the court. See *Lurie v. Auto-Owners Insurance Co., 605 So. 2d 1023 (Fla. 1st DCA 1992)*. With limited exceptions identified in *Rule* 9.300(d), most motions will toll the proceeding's other deadlines, such as the court's order to show cause, until the motion is resolved. *Rule 9.300(b)*. See *Downey v. Zier & Hacker, P.A., 556 So. 2d 509 (Fla. 4th DCA 1990)*.

Like most appellate proceedings, motion practice is rare on first-tier certiorari and generally discouraged because motions often slow down the case's progression, are unhelpful to the court, and waste the court's and parties' time and resources. See generally *Sarasota County v. Ex, 645 So. 2d 7 (Fla. 2d DCA 1994)*; *Dubowitz v. Century Village East, Inc., 381 So. 2d 252 (Fla. 4th DCA 1979)*. There are, however, two exceptions.

The first is a motion to dismiss due to a jurisdictional defect, such as untimeliness or lack of certiorari jurisdiction because the local government's decision was not quasi-judicial. See

City of Fort Pierce v. Dickerson, 588 So. 2d 1080 (Fla. 4th DCA 1991) (recognizing that these are threshold jurisdictional issues); §§ 25.2.A–25.2.C.4.b (discussing jurisdictional considerations). Courts generally prefer to resolve jurisdictional defects early in the proceeding by motion. *Orange County v. Hewlings, 152 So. 3d 812 (Fla. 5th DCA 2014)*. As a practical matter, however, the respondent may wish to preserve resources by waiting until after an order to show cause issues because the circuit court may, in its preliminary review, discover the defect. See *Wade v. Florida Dept. of Children & Families, 57 So. 3d 869 (Fla. 1st DCA 2011)* (recognizing that courts have independent duty to examine jurisdiction in every case). If the motion is denied, this does not preclude raising the jurisdictional defect again in the response. See *Barner v. Barner, 673 So. 2d 886 (Fla. 4th DCA 1996)*. A petition for writ of prohibition may also be appropriate if the motion is denied. *City of Palm Bay v. Palm Bay Greens, LLC, 969 So. 2d 1187 (Fla. 5th DCA 2007)*; *Board of County Commissioners of Manatee County, v. Circuit Court of Twelfth Judicial Circuit ex rel. Manatee County, 433 So. 2d 537 (Fla. 2d DCA 1983)*. See Chapter 13 of this manual (elaborating on prohibition's requirements).

The second exception is a motion for extension of time to file a response or reply. *Rule 9.300(a)* requires consultation with opposing counsel before filing a motion for extension and then an accurate representation of whether there is opposition to the request. *Merritt v. Promo Graphics, Inc., 679 So. 2d 1277 (Fla. 5th DCA 1996)*. Reasonable extensions are generally granted and should be agreed to by opposing counsel as a matter of professional courtesy unless the client would suffer an articulable prejudice.

H. Oral Argument

Like any other appellate proceeding, oral argument in a first-tier certiorari proceeding is governed by *Fla. R. App. P. 9.320*. *Rule* 9.320 provides that "[o]ral argument *may* be permitted" [emphasis added]. Thus, the reviewing court, even when it finds that a preliminary showing has been made in the petition for writ of certiorari, is not required to grant the petitioner's request for an oral argument. *Fine v. City of Coral Gables, 958 So. 2d 433 (Fla. 3d DCA 2007)*. If requested, the petitioner must request oral argument no later than 15 days after the reply's deadline. *Rule* 9.320. Again, oral argument is not required, and many circuit courts do not typically have them. See *Vincent v. Cardoso, 301 So. 3d 938 (Fla. 3d DCA 2019)* (upon considering respondents' motion requesting oral argument, following review of petition for writ of certiorari and responses and reply thereto, court denied motion and dismissed petition).

I. Standard of Review

1. First-tier Certiorari Is A Matter Of Right

Common-law certiorari has existed since the early days of the English common law as a special mechanism for allowing an upper court to become informed about the proceeding in a lower tribunal and evaluate it for regularity. *Broward County v. G.B.V. International, Ltd., 787 So. 2d 838 (Fla. 2001)*; *Haines City Community Development v. Heggs, 658 So. 2d 523 (Fla. 1995)*. The writ serves as a safety net for halting a miscarriage of justice when no other legal remedy exists. See *Williams v. Oken, 62 So. 3d 1129, 1133 (Fla. 2011)*, quoting *G.B.V. International, Ltd., 787 So. 2d at 842* ("Certiorari review is 'intended to fill the interstices between direct appeal and the other prerogative writs' and allow a court to reach down and halt a miscarriage of justice where no other remedy exists.' ").

Under *Fla. R. App. P. 9.030(c)(3)*, circuit courts have jurisdiction, on first-tier certiorari, to review quasi-judicial actions of local agencies not expressly subject to the Florida Administrative Procedure Act (APA), *F.S.* Chapter 120. Although certiorari is typically discretionary in other contexts, see §§ 11.4 and 11.8 of this manual, it is a matter of right for those with standing in the context of quasi-judicial decisions that are not otherwise reviewable by a statutory method. See, *e.g.*, *Heggs*. See also *City of Atlantic Beach v. Wolfson, 118 So. 3d 993 (Fla. 1st DCA 2013)*; *Achord v. Osceola Farms Co., 52 So. 3d 699 (Fla. 4th DCA 2010)*; *Seminole Entertainment, Inc. v. City of Castleberry, Florida, 813 So. 2d 186 (Fla. 5th DCA 2002)*.

Despite being a matter of right, however, first-tier review is extremely limited out of deference to the local government's superior expertise in local affairs and because, at its core, a local government's decision is a mix of both judicial and legislative action. *Id.* Thus, the circuit court's standard of review on first-tier certiorari is limited to the following three narrow inquiries, which the petitioner must show:

(1) Was procedural due process afforded before the quasi-judicial decision was reached?

(2) Does the decision depart from the essential requirements of the law?

(3) Is the decision supported by competent, substantial evidence?

Id.

The second inquiry is shared by first-tier certiorari and certiorari in other contexts, such as nonfinal circuit-court decisions in civil and criminal cases. Compare §§ 11.4 and 11.8 of this manual. Similarly, first-tier certiorari's third inquiry is the same standard for reviewing factual decisions in direct appeal. Compare § 6.3 of this manual. Therefore, in applying these latter two inquiries to quasi-judicial decisions, their application in other contexts may prove helpful and analogous. See §§ 25.3.I.3–25.3.I.4.

The practitioner should note that at least one appellate court judge has recently questioned whether certiorari review should still be the method for reviewing a local government's quasi-judicial decisions after the addition of *Article V, § 21, of the Florida*

Constitution, which prohibits courts from giving deference to an administrative agency's interpretations of statutes or rules. See *Evans Rowing Club, LLC v. City of Jacksonville, 300 So. 3d 1249 (Fla. 1st DCA 2020)* (B.L. Thomas, J., concurring specially); *Neptune Beach FL Realty, LLC v. City of Neptune Beach, 300 So. 3d 140 (Fla. 1st DCA 2020)* (B.L. Thomas, J., concurring specially). Others disagree, suggesting that the constitutional provision's plain language applies only to state agencies and not local governments. See *Evans* (Wolf, J., concurring). As of the date of publication of this manual, however, the Florida Supreme Court has not considered the issue, and certiorari remains the proper vehicle for reviewing quasi-judicial decisions. For further discussion of the effect of *Article V, § 21, of the Florida Constitution* and standards of review in administrative appeals, see Chapter 8 of this manual.

2. Failure To Afford Procedural Due Process

The first inquiry on first-tier certiorari is whether procedural due process was afforded before the quasi-judicial decision was reached. In general terms, procedural due process is the method for ensuring fair treatment through the proper administration of justice when substantive rights are at issue. *Dept. of Law Enforcement v. Real Property, 588 So. 2d 957 (Fla. 1991)*. No single, inflexible test exists for satisfying procedural due process. *Id.* Rather, the requisite level of due process hinges on the character of the interests and the nature of the proceedings involved. *Id.*; *Carillon Community Residential v. Seminole County, 45 So. 3d 7 (Fla. 5th DCA 2010).*

The requisite level of procedural due process in the quasi-judicial context is generally much less stringent than in the judicial context. *Id.* For example, quasi-judicial proceedings are not controlled by strict rules of evidence and procedure. *Carillon Community Residential*; *Jennings v. Dade County, 589 So. 2d 1337 (Fla. 3d DCA 1991).* Rather, quasi-judicial proceedings need only be "essentially fair." *Carillon Community Residential, 45 So. 3d at 9*. At its core, this means giving fair notice of the quasi-judicial hearing and a meaningful opportunity to be heard. *Id.* "Meaningful opportunity" generally means the ability to appear at the hearing through counsel, present evidence and argument, and cross-examine witnesses before an impartial adjudicator. See *Miami-Dade County v. City of Miami, 315 So. 3d 115 (Fla. 3d DCA 2020)*; *Carillon Community Residential*; *Seminole Entertainment, Inc. v. City of Casselberry, 811 So. 2d 693 (Fla. 5th DCA 2001)*; *Miami-Dade County v. Reyes, 772 So. 2d 24 (Fla. 3d DCA 2000).*

Although courts have recognized that strict rules of evidence and procedure do not control quasi-judicial proceedings, this does not mean that these proceedings are informal meetings where anything goes or where results can be politically motivated, rather than based on the rule of law. See, *e.g.*, *Seminole Entertainment*. Courts have soundly rejected this idea. See, *e.g.*, *Lee County v. Sunbelt Equities, II, Ltd. Partnership, 619 So. 2d 996 (Fla. 2d DCA 1993)* (quasi-judicial decisions should be "isolated as far as is

possible from the more politicized activities of local government"); *City of Apopka v. Orange County, 299 So. 2d 657, 659 (Fla. 4th DCA 1974)* (quasi-judicial decisions must be based on applying published legal criteria to admitted evidence, rather than subjective "polling" of nearby residents). When a local-government decision is quasi-judicial, minimum levels of procedural due process still apply. *Reyes*; *Jennings*.

The following are examples of procedural due-process violations in the quasi-judicial context:

- Failing to afford notice of a final hearing at which quasi-judicial action is taken, *Gulf & Eastern Development Corp. v. City of Fort Lauderdale, 354 So. 2d 57 (Fla. 1978)*; but see *City of Jacksonville v. Huffman, 764 So. 2d 695 (Fla. 1st DCA 2000)* (recognizing that this violation can be waived or even cured in later de novo quasi-judicial hearings); *Schumacher v. Town of Jupiter*, 643 So. 2d 8 (Fla. 4th DCA 1994) (same);
- Curtailing a party's opportunity to be heard, see *Florida International University v. Ramos, 335 So. 3d 1221 (Fla 3d DCA 2021)* (depriving opportunity to elicit evidence of witness's bias and motive); *Miami-Dade County v. Snapp Industries, Inc., 319 So. 3d 739 (Fla. 3d DCA 2021)* (refusing to allow party's lawyer to proffer additional information at hearing's conclusion); *Powell v. City of Sarasota, 953 So. 2d 5 (Fla. 2d DCA 2006)* (reaching similar conclusion in prohibiting petitioner from presenting or even proffering evidence of selective enforcement); *Kupke v. Orange County, 838 So. 2d 598 (Fla. 5th DCA 2003)* (finding due-process violation when county was permitted to present as many witnesses as it wished on variety of relevant subjects, but landowner was limited on evidence and subjects he could present);
- Failing to reach decisions after neutrally applying the facts to the law, but are instead reaching decisions that were infected by pervasive bias, impartiality, and prejudgment, see *Casselberry, 811 So. 2d at 695–697* (finding mayor's and other commissioners' comments and actions before hearing reflected "bias so pervasive as to have rendered the proceeding violative of the basic fairness component of due process"); *ABC Ventures, Inc. v. Board of County Commissioners of Brevard County*, 1996 WL 35065370 (Fla. Cir. Ct. 1996) (finding commissioner's motion to deny rezoning in the beginning of quasi-judicial hearing before receiving any evidence was cause to question the commissioner's impartiality); see also *Hess v. Hess, 290 So. 3d 512, 517 (Fla. 2d DCA 2019)* (finding in judicial context that judge's declaration before opening and before hearing evidence that judge would not consider particular issue constituted pre-judging matter that denied due process);

- Reaching a decision based on an officer's, board's, or commission's own information that is outside the record rather than evidence presented at a hearing, *Snapp*; and
- Misapplying evidentiary rules, such as by creating improper presumptions or inferences, see *Reyes* (changing landowner's burden of proof to create near irrebuttable presumption against landowner violated due process); *City of Miami v. Jervis, 139 So. 2d 513 (Fla. 3d DCA 1962)* (finding board expressed improper inferences and presumptions concerning officer's failure to submit to lie-detector test violated officer's due-process rights in suspension hearing).

On the other hand, the following due-process challenges have been rejected in the quasi-judicial context:

- Refusing to allow a person to testify as an expert at the quasi-judicial hearing when he was not previously listed as a witness, *Fine v. City of Coral Gables, 958 So. 2d 433 (Fla. 3d DCA 2007)*; and
- Failing to observe rules of parliamentary procedure, such as concerning an initial tie vote among decisionmakers, *Battaglia Fruit Co. v. City of Maitland, 530 So. 2d 940 (Fla. 5th DCA 1988)*.

3. Departure From Essential Requirements Of Law

The second inquiry on first-tier certiorari is whether the local government's decision departs from the essential requirements of the law. *Broward County v. G.B.V. International, Ltd., 787 So. 2d 838 (Fla. 2001)*. This inquiry is very narrow and often difficult to prove. It does not allow circuit courts to conduct de novo review. *City of Jacksonville Beach v. Marisol Land Development, Inc., 706 So. 2d 354 (Fla. 1st DCA 1998)*. Rather, the standard means " 'an inherent illegality or irregularity, an abuse of judicial power, an act of judicial tyranny perpetrated with disregard of procedural requirements, resulting in a gross miscarriage of justice.' " *Haines City Community Development v. Heggs, 658 So. 2d 523, 527 (Fla. 1995)*, quoting *Jones v. State, 477 So. 2d 566, 569 (Fla. 1985)* (Boyd, C.J., concurring specially). It requires something more than simple legal error or interpreting the law contrary to how the lower tribunal may have interpreted it. *Ivey v. Allstate Insurance Co., 774 So. 2d 679 (Fla. 2000)*; *Combs v. State, 436 So. 2d 93 (Fla. 1983)*.

Rather, departure from the law's essential requirements means completely applying the wrong law. *Heggs*. It is effectively an act of either judicial tyranny by refusing to apply binding law or gross incompetence by applying a law that is not relevant to the dispute. See, *e.g.*, *Progressive Express Insurance Co. v. Devitis, 924 So. 2d 878 (Fla. 4th DCA 2006)*. Applying the correct law incorrectly does not, however, rise to the level of a departure from the essential requirements of the law. *Stranahan House, Inc. v. City of Fort Lauderdale,*

967 So. 2d 1121 (Fla. 4th DCA 2007); *Progressive Express Insurance*. Many appellate lawyers miss this important nuance.

To illustrate, consider Martin County v. City of Stuart, 736 So. 2d 1264 (Fla. 4th DCA 1999) (en banc). In that case, the county sought second-tier review of the circuit court's first-tier decision concerning the city's annexation of 29 parcels. The county acknowledged that the circuit court had identified the correct statute, but it argued that the court erroneously applied it to the case's facts. On appeal, the district court denied certiorari because the circuit court did, in fact, apply the correct law by identifying the correct statute.

Another analogous example is *Dept. of Highway Safety & Motor Vehicles v. Robinson, 93 So. 3d 1090 (Fla. 2d DCA 2012)*. That case concerned certiorari review of a circuit court's order invalidating a driver license suspension because the court construed a particular statute as requiring an arresting officer to appear at the suspension hearing. The district court denied certiorari because the circuit court had identified the correct statute, but because there was no binding precedent concerning that statute's correct interpretation, there was no departure from the law's essential requirements.

As illustrated from *Robinson*, an additional difficulty in satisfying this inquiry is that the quasi-judicial decision must depart from a "clearly established law." Allstate Insurance Co. v. Kaklamanos, 843 So. 2d 885, 890 (Fla. 2003). The sources for "clearly established law" can arise from several sources, including constitutional law, statutes, controlling case law, and even a local government's laws. *Id.*; City of Coral Gables Code Enforcement Board v. Tien, 967 So. 2d 963 (Fla. 3d DCA 2007). For example, failure to apply the plain and unambiguous language of a statute or ordinance constitutes a departure from clearly established law. *Mt. Plymouth Land Owners' League v. Lake County, 279 So. 3d 1284 (Fla. 5th DCA 2019)*. Adding, modifying, or limiting a statute beyond its unambiguous terms or their reasonable implication also constitutes a departure from clearly established law. Elso v. State, 260 So. 3d 489 (Fla. 3d DCA 2018). Failure to apply binding case law constitutes a classic example of a departure from clearly established law. Dept. of Highway Safety & Motor Vehicles v. Chakrin, 304 So. 3d 822 (Fla. 2d DCA 2020). On the other hand, a quasi-judicial decision does not depart from clearly established law if there is no controlling statute or case law. See Alger v. United States, 300 So. 3d 274 (Fla. 3d DCA 2020); *Biscayne Marine Partners, LLC v. City of Miami, 273 So. 3d 97 (Fla. 3d DCA 2019)*.

The following are examples when courts have ruled that a local government's quasi-judicial decision departs from the essential requirements of the law:

- decisions that are not based on the local government's published criteria or factors, see Alvey v. City of North Miami Beach, 206 So. 3d 67 (Fla. 3d DCA 2016) (granting rezoning based on perceived economic benefit to city, which was not published criteria); Wolk v. Board of County Commissioners of Seminole County, 117 So.

3d 1219 (Fla. 5th DCA 2013)* (granting variance by finding one was unnecessary, rather than determining whether variance request met local code's six criteria); *City of Jacksonville v. Taylor, 721 So. 2d 1212 (Fla. 1st DCA 1998)* (granting variance because other landowners had received similar variances, which was not one of local code's published criteria); *City of Naples v. Cent. Plaza of Naples, Inc., 303 So. 2d 423 (Fla. 2d DCA 1974)* (finding denial of special exception improper because it was based on development's traffic impact and whether construction would create excessive demands on utilities and other services through overpopulation, neither of which were relevant to the city's published criteria);

- applying the wrong local-code provision, see *Surf Works, L.L.C. v. City of Jacksonville Beach, 230 So. 3d 925 (Fla. 1st DCA 2017)* (finding departure when circuit court and local government denied rezoning application by relying on code section concerning zoning amendments instead of section concerning redevelopment districts, which governed application at issue); *Shamrock-Shamrock, Inc. v. City of Daytona Beach, 169 So. 3d 1253 (Fla. 5th DCA 2015)* (relying on code provision for single-family development when proposed condominium clearly met code's definition of multi-family development);

- refusing to apply a local ordinance's plain language in favor of longstanding traditions or declining to apply it as purportedly invalid, *Town of Longboat Key v. Islandside Property Owners Coalition, LLC, 95 So. 3d 1037 (Fla. 2d DCA 2012)*; *Miami-Dade County v. Omnipoint Holdings, Inc., 863 So. 2d 375 (Fla. 3d DCA 2003)*; *Colonial Apartments, L.P. v. City of DeLand, 577 So. 2d 593 (Fla. 5th DCA 1991)*; but see *Verizon Wireless Personal Communications, L.P. v. Sanctuary at Wulfert Point Community Ass'n, Inc., 916 So. 2d 850 (Fla. 2d DCA 2005)* (local government properly applied existing ordinance even though it violated earlier settlement agreement and well-established tradition against certain construction in particular area); and

- adding procedures, conditions, requirements, or exceptions not expressed in a statute or local code, see *City of Homestead v. McDonough, 232 So. 3d 1069, 1072 (Fla. 3d DCA 2017)* ("Florida courts are 'without power to construe an unambiguous statute in a way which would extend, modify or limit its express terms or its reasonable and obvious implications. To do so would be an abrogation of legislative power.' "); see, *e.g.*, *Broward County v. Florida National Properties, Inc., 510 So. 2d 1247 (Fla. 4th DCA 1987)* (conditioning plat approval on "notation" added to plat that it had only been reviewed for limited development when local code did not permit creating conditions by notation).

4. Competent, Substantial Evidence

The final inquiry on first-tier certiorari is whether the quasi-judicial decision is be supported by competent, substantial evidence in the record, which is identical to the standard of review for factual findings in direct appeals. See § 6.3 of this manual. The standard does not refer to "the quality, character, convincing power, or the weight of the evidence presented ." *Scholastic Book Fairs, Inc. Great American Division v. Unemployment Appeals Commission, 671 So. 2d 287, 289 n.3 (Fla. 5th DCA 1996)*. Rather, "substantial evidence" is evidence that establishes a substantial basis of fact from which the ultimate fact at issue can be reasonably inferred. *De Groot v. Sheffield, 95 So. 2d 912 (Fla. 1957)*. And in using "the adjective 'competent' to modify the word 'substantial,' " the Florida Supreme Court intended that the evidence should be "sufficiently relevant and material that a reasonable mind would accept as adequate to support the conclusion reached." *Id. at 916*.

As succinctly summarized in *Scholastic Book Fairs*:

> "Competency of evidence" refers to its admissibility under legal rules of evidence. "Substantial" requires that there be some (more than a mere iota or scintilla), real, material, pertinent, and relevant evidence (as distinguished from ethereal, metaphysical, speculative or merely theoretical evidence or hypothetical possibilities) having definite probative value (that is, "tending to prove") as to each essential element of the offense charged.

Id. at 289 n.3.

In applying this standard, the circuit court is strictly limited to reviewing the record as it existed when the local government reached its quasi-judicial decision. *Broward County v. G.B.V. International, Ltd., 787 So. 2d 838 (Fla. 2001)*; *St. Johns County v. Smith, 766 So. 2d 1097 (Fla. 5th DCA 2000)*. The circuit court cannot take new evidence, reweigh the evidence in the record, draw different inferences from the record, re-evaluate witnesses' credibility, or otherwise substitute its factual determination for the local governments. *City of Hialeah Gardens v. Miami-Dade Charter Foundation, Inc., 857 So. 2d 202 (Fla. 3d DCA 2003)*; *City of Fort Lauderdale v. Multidyne Medical Waste Management, Inc., 567 So. 2d 955 (Fla. 4th DCA 1990)*. Even if only one witness supports the quasi-judicial decision, despite eight witnesses to the contrary, some evidence exists in support of the decision and certiorari must be denied. *Lantz v. Smith, 106 So. 3d 518 (Fla. 1st DCA 2013)*. The circuit court cannot second guess the quasi-judicial decision's factual conclusions. *Blake v. St. Johns River Power Park System Employees' Retirement Plan, 275 So. 3d 804 (Fla. 1st DCA 2019)*.

Whether competent, substantial evidence exists in the record to rebut or oppose a local government's quasi-judicial decision is irrelevant and beyond this standard's inquiry. *Dusseau v. Metro. Dade County Board of County Commissioners, 794 So. 2d 1270 (Fla. 2001)*. Rather, the circuit court's inquiry is strictly limited to determining whether competent, substantial evidence exists in the record to support the quasi-judicial decision. *Id.*;

Florida Power & Light Co. v. City of Dania, 761 So. 2d 1089 (Fla. 2000). Each criteria or factor required by the local government's published code for a particular quasi-judicial decision must have evidentiary support. *Alvey v. City of North Miami Beach, 206 So. 3d 67 (Fla. 3d DCA 2016)*. This standard of review is not a factual inquiry, but a legal one: Is the quasi-judicial decision supported by any evidence in the record. *Lee County v. Sunbelt Equities, II, Ltd. Partnership, 619 So. 2d 996 (Fla. 2d DCA 1993)*. If so, the circuit court's inquiry is over; it must close the file and deny certiorari. *Dusseau*.

What constitutes "competent, substantial evidence" in the quasi-judicial context is quite broad and includes:

- documentary evidence (*e.g.*, maps, diagrams, reports) and testimony from witnesses, including experts and even the applicant, see, *e.g.*, *Miami-Dade County v. Walberg, 739 So. 2d 115 (Fla. 3d DCA 1999)*; *Metropolitan Dade County v. Sportacres Development Group, Inc., 698 So. 2d 281 (Fla. 3d DCA 1997)*; *Riverside Group, Inc. v. Smith, 497 So. 2d 988 (Fla. 5th DCA 1986)*;
- the recommendation and testimony of the local government's professional staff, who are generally recognized as experts in their field, see, *e.g.*, *Payne v. City of Miami, 52 So. 3d 707 (Fla. 3d DCA 2010)*; *Palm Beach County v. Allen Morris Co., 547 So. 2d 690 (Fla. 4th DCA 1989)*; but see *Town of Longboat Key v. Islandside Property Owners Coalition, LLC, 95 So. 3d 1037 (Fla. 2d DCA 2012)* (rejecting planning director's testimony about local code's meaning as "evidence" of particular interpretation because courts are just as capable of determining code's meaning); *Florida Mining & Materials Corp. v. City of Port Orange, 518 So. 2d 311 (Fla. 5th DCA 1987)* (finding staff's recommendation insufficient to deny zoning exception when it lacked sufficient detail as to how proposed development trucks would increase traffic congestion any more than any other business's large trucks traversing that area);
- the written report of the local government's professional staff, which one court has described as "strong evidence" supporting a decision, *ABG Real Estate Development Company of Florida, Inc. v. St. Johns County, 608 So. 2d 59, 62 (Fla. 5th DCA 1992)*;
- the planning advisory board's recommendation and file, *Palm Beach*; *Riverside Group*; and
- hearsay as long as it is not the only evidence supporting the decision, *Spicer v. Metropolitan Dade County, 458 So. 2d 792 (Fla. 3d DCA 1984)*; *Jones v. City of Hialeah, 294 So. 2d 686 (Fla. 3d DCA 1974)*.

Despite the standard's breadth, courts have found that the following does not constitute competent, substantial evidence to support quasi-judicial decisions:

- A lawyer's statements and arguments about the evidence or about why the local government should vote for or against a matter, see *National Advertising Co. v. Broward County, 491 So. 2d 1262 (Fla. 4th DCA 1986)* (finding only evidence supporting variance grant was argument of counsel, which is not evidence);
- Evidence that is legally flawed, see *First Baptist Church of Perrine v. Miami-Dade County, 768 So. 2d 1114 (Fla. 3d DCA 2000)* (finding traffic study was legally flawed and thus not probative because it accounted for less than 100% of additional students expected for expanded grades);
- Judicial notice when this was not presented to or considered by the local government in the quasi-judicial hearing, *Nicholas v. First Interstate Development Corp., 315 So. 2d 238 (Fla. 4th DCA 1975)*; and
- conjecture and generalized statements that are not fact-based, *Miami-Dade Charter Foundation*; *Conetta v. City of Sarasota, 400 So. 2d 1051 (Fla. 2d DCA 1981)*.

Finally, as previously discussed, quasi-judicial hearings are often attended by members of the public, who, at least in the land-use context, have the right to briefly speak before quasi-judicial action is taken. *F.S. 286.011(1)*, *286.0115(2)(b)*. However, as a general rule, the public's unsubstantiated opinions and statements for or against administrative action do not constitute competent, substantial evidence. See *Town of Ponce Inlet v. Rancourt, 627 So. 2d 586 (Fla. 5th DCA 1993)* (neighbors' lack of objection was not evidence or sufficient to support variance approval); *Pollard v. Palm Beach County, 560 So. 2d 1358, 1360 (Fla. 4th DCA 1990)* (residents' opinions that proposed action would cause traffic problems and light and noise problems was "not factual evidence"); *Flowers Baking Co. v. City of Melbourne, 537 So. 2d 1040*, 1041 (Fla. 5th DCA 1989) ("Objections of local residents to the conditional use permit based on fears as to increased traffic do not constitute such substantial, competent evidence."); *BML Investments v. City of Casselberry, 476 So. 2d 713 (Fla. 5th DCA 1985)* (residents' conjecture that project would increase crime and that developer would not comply with proscription against rendering guesthouses were insufficient to deny preliminary development plan); *City of Apopka v. Orange County, 299 So. 2d 657 (Fla. 4th DCA 1974)* (unsworn statements of layperson's objection to special exception was not evidence supporting its denial even if local code requires considering proposed special exception's effect on public).

There are, however, two limited exceptions to this general rule. First, if the public is presenting actual and specific facts, relevant to the quasi-judicial decision—rather than generalizations, conjecture, or opinions—the public's statements may constitute competent, substantial evidence. *Miami-Dade Charter Foundation*; *Marion County v. Priest, 786 So. 2d 623 (Fla. 5th DCA 2001)*. Second, if the testimony is on subjective matters that do not require expertise—such as the development's impact on the area's natural beauty—the testimony may constitute competent, substantial evidence if the subjective

matter is relevant to the legal inquiry. *Katherine's Bay, LLC v. Fagan, 52 So. 3d 19 (Fla. 1st DCA 2010)*; *Board of County Commissioners of Pinellas County v. City of Clearwater, 440 So. 2d 497 (Fla. 2d DCA 1983)*. See also *Jesus Fellowship, Inc. v. Miami-Dade County, 752 So. 2d 708 (Fla. 3d DCA 2000)* (finding testimony must be relevant). However, if the members of the public offer testimony on technical matters that require expertise—such as potential traffic problems, light and noise pollution, or the impact on home values—the testimony does not constitute competent, substantial evidence unless the witness is qualified as an expert in that area. See *Katherine's Bay* (lay witnesses may offer their views in land use cases about matters not requiring expert testimony; lay witnesses may testify about natural beauty of area because this is not issue requiring expertise, but their speculation about potential traffic problems, light and noise pollution, and general unfavorable impacts of proposed land use do not constitute competent, substantial evidence); *Metro. Dade County v. Blumenthal, 675 So. 2d 598, 601 (Fla. 3d DCA 1995)* (lay witness' testimony on "trend" in zoning towards specific density cap did not constitute competent, substantial evidence because she was not qualified as expert in zoning).

5. Other Applicable Appellate Doctrines

Because certiorari is a review proceeding, traditional appellate doctrines also apply in the local government context, including:

- The rule of preservation, which prohibits the reviewing court from considering new arguments for the first time on certiorari that were not raised and considered by the local government, see *Matlacha Civic Ass'n, Inc. v. City of Cape Coral, 273 So. 3d 243 (Fla. 2d DCA 2019)* (fair reading of record shows alternative theory not raised below); *Clear Channel Communications, Inc. v. City of North Bay Village, 911 So. 2d 188 (Fla. 3d DCA 2005)* (finding legal challenge to municipal decision unpreserved despite questioning of witness); *Miami-Dade County v. Omnipoint Holdings, Inc., 863 So. 2d 195 (Fla. 2003)* (finding district court erred by considering unpreserved issue on second-tier review from zoning board's decision); *Minnaugh v. County Commission of Broward County, 752 So. 2d 1263 (Fla. 4th DCA 2000)* (refusing to consider unpreserved procedural due-process violation); *Sun Ray Homes, Inc. v. Dade County, 166 So. 2d 827 (Fla. 3d DCA 1964)* (finding argument that petitioners should have been allowed to supplement record was unpreserved).
- The invited-error doctrine, which prevents parties from complaining about an error that they caused, see *Central Florida Investments, Inc. v. Orange County, 295 So. 3d 292 (Fla. 5th DCA 2019)* (ruling no error in applying certiorari's limited standards of review to code-enforcement decision, as requested by petitioner, even though those decisions are typically reviewed by plenary appeal standards); *City of Coral Gables v. Alliance Starlight III, LLC, 2022 Fla. App. LEXIS 195 (Fla.*

3d DCA 2022) (finding circuit court did not exceed jurisdiction by deciding issue requested by party).

- The harmless-error doctrine, which requires denying first-tier certiorari despite an error if it did not prejudice the petitioner or affect the outcome, see *City of Coral Gables* (refusing to grant certiorari despite departure from essential requirements of law when no party challenged ultimate result reached by circuit court); Seminole Entertainment, Inc. v. City of Casselberry, Florida, 813 So. 2d 186 (Fla. 5th DCA 2002) (recognizing that circuit courts can find that local government's evidentiary rulings did not violate petitioner's procedural due-process rights because they were harmless in light of ultimate decision); City of Jacksonville v. Huffman, 764 So. 2d 695 (Fla. 1st DCA 2000) (finding city's failure to strictly comply with notice requirement not prejudicial when petitioner appeared and fully participated at final quasi-judicial hearing).
- The tipsy-coachman doctrine, which requires affirming a local government's decision when it is correct for the wrong reasons, see Broward County v. G.B.V. International, Ltd., 787 So. 2d 838, 845 n.22 (Fla. 2001) ("The district court thus reached the right result albeit for the wrong reason."); *Rancho Santa Fe, Inc. v. Miami-Dade County, 709 So. 2d 1388 (Fla. 3d DCA 1998)* (refusing to quash circuit court's certiorari denial even though it applied wrong standard of review because it ultimately reached correct result); Dade County School Board v. Radio Station WQBA, 731 So. 2d 638 (Fla. 1999) (discussing doctrine generally outside quasi-judicial context).
- The doctrine of mootness also applies when the issue on review has been so fully resolved that a judicial determination would not have any effect, see Nannie Lee's Strawberry Mansion v. City of Melbourne, 877 So. 2d 793 (Fla. 5th DCA 2004) (finding circuit court properly dismissed as moot certiorari petition directed at site plan approved in 2002 ordinance when one year later, local government approved revised site plan).
- The law-of-the-case doctrine, which prohibits lower tribunals from ignoring questions of law that were presented to and actually resolved by an appellate court in an earlier appellate proceeding in the same case, see Dougherty ex rel. Eisenberg v. City of Miami, 23 So. 3d 156 (Fla. 3d DCA 2009); *Parker Family Trust I v. City of Jacksonville, 804 So. 2d 493 (Fla. 1st DCA 2001)*; but see City National Bank of Florida v. City of Tampa, 67 So. 3d 293 (Fla. 2d DCA 2011) (acknowledging doctrine's application, but finding it inapplicable to that case).

End of Document

Author

CHRISTOPHER D. DONOVAN*

§ 25.4. RELIEF AVAILABLE ON CERTIORARI REVIEW

A. Circuit Court Review

Unlike direct appeals and declaratory or injunctive actions, the ultimate relief on first-tier certiorari review is very limited. *Broward County v. G.B.V. International, Ltd., 787 So. 2d 838 (Fla. 2001)*. As previously stated, certiorari's sole purpose is to halt the miscarriage of justice, nothing more. *Williams v. Oken, 62 So. 3d 1129 (Fla. 2011)*. So, if the circuit court finds that the quasi-judicial decision was improper, the only relief it can afford is to quash the decision. See *id.*

Quashing the decision merely leaves the parties and controversy pending in the local government as if no decision had ever been entered. *Id.* The parties' stand on their pleadings and proof as it existed before the decision, and the local government can proceed to rehear the quasi-judicial issue, accept additional evidence, and even grant or deny the underlying requested relief again, albeit on a different ground. See *Dorian v. Davis, 874 So. 2d 661 (Fla. 5th DCA 2004)*. However, the law-of-the-case doctrine will preclude the local government from disregarding the circuit court's ruling and reaching the same result on the same legal ground that the circuit court had previously found erroneous. *Dougherty ex rel. Eisenberg v. City of Miami, 23 So. 3d 156 (Fla. 3d DCA 2009)*. See § 25.3.I.5.

When it quashes the quasi-judicial decision, the circuit court lacks jurisdiction to adjudicate the dispute on the merits, such as by ordering the local government to grant or deny the underlying requested relief. *G.B.V. International*; *Town of Manalapan v. Gyongyosi, 828 So. 2d 1029 (Fla. 4th DCA 2002)*. It also cannot quash and remand with specific directions. *Miami-Dade County v. Snapp Industries, Inc., 319 So. 3d 739 (Fla. 3d DCA 2021)*; *St. Johns County v. Smith, 766 So. 2d 1097 (Fla. 5th DCA 2000)*. But see *Volusia County v. Transamerica*

---

[*] J.D. with honors, 2004, Stetson University. Mr. Donovan is a member of The Florida Bar and the Council of Sections Committee of The Florida Bar. He is Florida Bar Board Certified in Appellate Practice. Mr. Donovan is the immediate past Chair of the Appellate Practice Section of The Florida Bar, past President of the Michael R.N. McDonnel American Inn of Court, immediate past President of the Trial Law Section of the Collier County Bar Association, and is the Secretary of the Collier County Bar Association. Mr. Donovan was a staff attorney for the Florida District Court of Appeal, Second District, from 2004 to 2006. He is currently a shareholder at Roetzel & Andress and co-Practice Group Manager of the firm's Appellate Practice Group.

Business Corp., 392 So. 2d 585 (Fla. 5th DCA 1980) (finding circuit court's order compelling local government to take particular action on remand from first-tier certiorari was harmless under facts of case because no other result was possible on remand). A reviewing court does have inherent authority to enforce its mandate. *Dept. of Highway Safety & Motor Vehicles v. Azbell, 154 So. 3d 461 (Fla. 5th DCA 2015)*; *Village of Palmetto Bay v. Palmer Trinity Private School, Inc., 128 So. 3d 19 (Fla. 3d DCA 2012)*.

B. District Court Review

Although a circuit court's decision on first-tier review is generally conclusive, an unhappy party may seek further certiorari review to the governing district court of appeal for that circuit. *Florida Power & Light Co. v. City of Dania, 761 So. 2d 1089 (Fla. 2000)*. This is often called "second-tier" certiorari review. See *id.* Unlike first-tier certiorari, second-tier review is not a matter of right, but rather is left to the district court's sound discretion, even if the petitioner has no other available remedy. *United Automobile Insurance Co. v. Palm Chiropractic Center, Inc., 51 So. 3d 506 (Fla. 4th DCA 2010)*; *Brasota Mortgage Co. v. Town of Longboat Key, 865 So. 2d 638 (Fla. 2d DCA 2004)*.

A petition for second-tier certiorari must be filed within 30 days of the circuit court's decision. *Fla. R. App. P. 9.100(c)*. If a timely and authorized rehearing was sought in the circuit court under *Rule 9.330*, the circuit court's decision is not deemed rendered for purposes of starting the 30-day deadline until the rehearing's disposition. *Rule 9.020(i)*. The technical requirements of seeking second-tier certiorari are identical to first-tier certiorari except that *Rule 9.100(f)* does not apply.

As the case moves up the judicial ladder, the standards of review become much narrower. *City of Deerfield Beach v. Vaillant, 419 So. 2d 624 (Fla. 1982)*. The district court's review on second-tier certiorari is limited to determining whether the circuit court "afforded procedural due process and applied the correct law." *Haines City Community Development v. Heggs, 658 So. 2d 523, 529 (Fla. 1995)*. These two inquiries are similar to the first two inquiries in the circuit court. See *id. at 530* (finding phrase "applied the correct law" synonymous with "departed from the essential requirements of the law" standard used in first-tier review); *Florida Power & Light Co., 761 So. 2d at 1092* (finding due-process inquiries same). However, the focus of these inquires is strictly limited to whether the circuit court—not the local government—afforded procedural due process and applied the correct law. *City of Atlantic Beach v. Wolfson, 118 So. 3d 993 (Fla. 1st DCA 2013)*; *Seminole Entertainment, Inc. v. City of Casselberry, Florida, 813 So. 2d 186 (Fla. 5th DCA 2002)*.

Another important distinction between first-tier and second-tier certiorari is the lack of the competent-substantial-evidence inquiry. Only circuit courts can make that determination; district courts cannot. *Education Development Center, Inc. v. City of West Palm Beach Zoning Board of Appeals, 541 So. 2d 106 (Fla. 1989)*.

However, if the circuit court misapplied the competent, substantial evidence standard on first-tier review (see § 25.3.I.4), the district court can review that issue. *Florida Power & Light Co.* For example, as previously noted, this standard requires the circuit court to determine whether the record contains competent, substantial evidence supporting the quasi-judicial decision. *Id.* If, however, the circuit court instead looked for evidence rebutting that decision or supporting the petitioner's position, the circuit court has applied the wrong law by misapplying first-tier's standard of review. *Id.* The district court can correct this issue on second-tier review. *Id.* But it cannot then analyze whether competent, substantial evidence supports the quasi-judicial decision. *Id.* Rather, the district court can only quash the circuit court's erroneous decision and remand it back to the circuit court to perform the necessary record review. *Id.* See also *Dusseau v. Metropolitan Dade County Board of County Commissioners, 794 So. 2d 1270 (Fla. 2001)* (illustrating this distinction).

Although second-tier certiorari's standards of review are stringent, the district courts of appeal are not "legal potted palms," who are unable correct "manifest errors of law and policy" when they arise. *Auerback v. City of Miami, 929 So. 2d 693, 695 n.3 (Fla. 3d DCA 2006)*.

Examples of cases finding that the circuit court failed to afford procedural due process include:

- failing to consider whether the petition timely invoked first-tier certiorari jurisdiction, *Florida Mobile Home Relocation Corp. v. City of South Daytona, 80 So. 3d 1061 (Fla. 1st DCA 2012)*;
- failing to allow a petitioner to amend a timely filed petition, especially when petitioner filed a motion to amend, *Cook v. City of Winter Haven Police Dept., 837 So. 2d 492 (Fla. 2d DCA 2003)*;
- deciding certiorari's merits without first ruling on party's pending motion directed at the briefs or the record, *Progressive Express Ins. Co. v. Fry Enterprises, Inc., 264 So. 3d 1008 (Fla. 2d DCA 2018)*; and
- resolving certiorari's merits based on arguments in respondent's motion to dissolve improper injunction without giving notice that the court was treating the motion as a merit's response to the certiorari petition, *Evergreen Tree Treasurers of Charlotte County, Inc. v. Charlotte County Board of County Commissioners, 810 So. 2d 526 (Fla. 2d DCA 2002)*.

Examples of cases finding that the circuit court applied the wrong law include:

- erroneously determining its certiorari jurisdiction, see *Bush v. City of Mexico Beach, 71 So. 3d 147 (Fla. 1st DCA 2011)* (finding certiorari jurisdiction existed to extent petition raised issues other than consistency challenge); *City of St. Pete Beach v. Sowa, 4 So. 3d 1245 (Fla. 2d DCA 2009)* (proceeding without certiorari jurisdiction because decision was executive in nature); *Board of County Commissioners of Clay County v.*

Qualls, 772 So. 2d 544 (Fla. 1st DCA 2000) (same, but decision was legislative in nature);

- applying the wrong test for determining standing for the particular type of quasi-judicial decision being challenged, see *Matlacha Civic Ass'n, Inc. v. City of Cape Coral, 273 So. 3d 243 (Fla. 2d DCA 2019)* (incorrectly applying *F.S. 171.081(1)*'s standing test for challenging annexation); *City of Ft. Myers v. Splitt, 988 So. 2d 28 (Fla. 2d DCA 2008)* (applying more liberal test for consistency challenges under *F.S. 163.3215*, rather than more restrictive test for enforcing zoning ordinances);

- incorrectly applying the law in determining whether local governments had afforded procedural due process, see *Powell v. City of Sarasota, 953 So. 2d 5 (Fla. 2d DCA 2006)* (finding nuisance-abatement board denied landowner due process by not allowing evidence of selective enforcement); *Massey v. Charlotte County, 842 So. 2d 142 (Fla. 2d DCA 2003)* (finding code-enforcement board denied landowner procedural due process by imposing fines and lien without first affording notice and hearing); *Maple Manor, Inc. v. City of Sarasota, 813 So. 2d 204 (Fla. 2d DCA 2002)* (imposing penalties without first giving opportunity to abate nuisance);

- applying the wrong law concerning the local government's code, see *Las Olas Tower Co. v. City of Ft. Lauderdale, 742 So. 2d 308 (Fla. 4th DCA 1999)* (imposing requirements on city not provided for in ordinance); *Auerbach v. City of Miami, 929 So. 2d 693 (Fla. 3d DCA 2006)* (incorrect variance standards); *Miami-Dade County v. Omnipoint Holdings, Inc., 863 So. 2d 375 (Fla. 3d DCA 2003)* (applying federal act instead of local-zoning criteria); *Town of Juno Beach v. McLeod, 832 So. 2d 864 (Fla. 4th DCA 2002)* (incorrect zoning standards); *Metropolitan Dade County v. Fuller, 497 So. 2d 1322 (Fla. 3d DCA 1986)* (applying "use variance" provision instead of "unusual use" provision);

- failing to apply the plain and unambiguous language of a statute or local ordinance, see *Hayes v. Monroe County, Florida, 2022 Fla. App. LEXIS 192 (Fla. 3d DCA 2022)* (failing to make findings of fact as required by statute and local ordinance); *Dept. of Highway Safety & Motor Vehicles v. Chakrin, 304 So. 3d 822 (Fla. 2d DCA 2020)* (rejecting dictionary definitions); *Mt. Plymouth Land Owners' League, Inc. v. Lake County, 279 So. 3d 1284 (Fla. 5th DCA 2019)* (county was bound by language of its own ordinances and regulations when plain language clearly omitted any role of board in granting variances and waivers from requirements of regulations); *14269 BT LLC v. Village of Wellington, Florida, 240 So. 3d 1 (Fla. 4th DCA 2018)*.

- conducting a de novo review by reaching the circuit court's own factual findings after reviewing the record or accepting new evidence, *Broward County v. G.B.V. International, Ltd., 787 So. 2d 838 (Fla. 2001)*; *City of Jacksonville Beach v. Marisol Land Development, Inc., 706 So. 2d 354 (Fla. 1st DCA 1998)*; see *Dept. of Highway Safety &*

Motor Vehicles v. Sperberg, 257 So. 3d 560, 563(Fla. 3d DCA 2018) (finding improper reweighing evidence by referring to uncertified driving record as "suspect since allowing such a record as evidence risks an unjust result").

- applying the wrong standard of review, see *Maturo v. City of Coral Gables, 619 So. 2d 455 (1993)* (finding no evidence of legal hardship to warrant variance); *Miami-Dade County v. Publix Supermarkets, Inc., 305 So. 3d 668 (Fla. 3d DCA 2020)* (applying evidentiary standard instead of competent, substantial evidence standard); *Alvey v. City of North Miami Beach, 206 So. 3d 67 (Fla. 3d DCA 2016)* (failing to consider whether evidence existed as to each factor required by local rezoning standards); *Orange County v. Lust, 602 So. 2d 568, 569–570 (Fla. 5th DCA 1992)* (reviewing for "arbitrary, unreasonable, and confiscatory," rather than for competent, substantial evidence);
- quashing the local government's decision without an opinion explaining its rationale or when the rationale was not clear, see *City of Miami Beach v. Beach Blitz, Co., 279 So. 3d 776 (Fla. 3d DCA 2019)*; *Miami-Dade County v. Torbert, 39 So. 3d 482 (Fla. 3d DCA 2010)*; *Brasota Mortgage Co. v. Town of Longboat Key, 865 So. 2d 638 (Fla. 2d DCA 2004)*; but see *Somerset Academy, Inc. v. Miami-Dade County Board of County Commissioners, 314 So. 3d 597, 599 (Fla. 3d DCA 2020)* (ruling circuit court's decision without opinion " 'will generally not merit certiorari review in the district court, even if the district court might disagree with the result' " [internal citations omitted]);
- quashing the local government's decision with instructions or attempting to fashion an equitable remedy, *Wolfson*; *Clay County v. Kendale Land Development, Inc., 969 So. 2d 1177 (Fla. 1st DCA 2007)*; and
- exceeding proper scope of certiorari by addressing issues neither party raised in any phase of the proceedings, *Sperberg*; see *Miami-Dade County v. Omnipoint Holdings, Inc., 863 So. 2d 195 (Fla. 2003)*.

C. Florida Supreme Court Review

Further review to the Florida Supreme Court is not by another certiorari proceeding, but by discretionary review under *Article V, § 3(b), of the Florida Constitution* and *Fla. R. App. P. 9.030(a)(2)*. The technical requirements are governed by *Rule 9.120*. See §§ 4.7–4.15 of this manual. These discretionary proceedings are rare and generally arise only when a district court certifies a question of great public importance or conflicts with a decision of the Florida Supreme Court or another district court. *Rules* 9.030(a)(2)(A)(iv), (a)(2)(A)(v). See, *e.g.*, *Broward County v. G.B.V. International, Ltd., 787 So. 2d 838 (Fla. 2001)*.

End of Document