

Douglas, Jessica

From: Arnold, Bradley
Sent: Wednesday, June 01, 2011 10:00 AM
To: Douglas, Jessica
Cc: George Angelidas (george@hoganlawfirm.com)
Subject: FW: Corrected Version of Response to Petition for Writ of Certiorari (Shelley)
Attachments: Response to Petition for Writ of Certiorari (00275351).PDF

Jessica,

Please add this on the 6/14/11 agenda under the County Attorney reports as For Information Only

Bradley

From: Shawna Morales [mailto:shawna@hoganlawfirm.com]
Sent: Wednesday, June 01, 2011 9:33 AM
To: Arnold, Bradley
Subject: Corrected Version of Response to Petition for Writ of Certiorari (Shelley)

Brad:

Attached is the corrected version of our Response to Petition for Writ of Certiorari.

The original version indicated that the vote was 11-4. The new version shows 7-4.

Should you have any questions, please contact me.

Thanks!

*Shawna Morales, FRP
Florida Registered Paralegal*



We mean business™

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IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR SUMTER COUNTY, FLORIDA

JAMES DAVID SHELLEY, JR., and
BARBARA SHELLEY,

Petitioners,

vs.

Case No. 2011-CA-473

BOARD OF COUNTY COMMISSIONERS
OF SUMTER COUNTY, FLORIDA,

Respondent.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

COMES NOW, the Respondent, the BOARD OF COUNTY COMMISSIONERS OF SUMTER COUNTY, FLORIDA (Hereinafter referred to as Respondent or "BOCC"), by and through its undersigned counsel, and files this, its Response to the Petition for Writ of Certiorari filed by the Petitioner, JAMES DAVID SHELLEY, JR. and BARBARA SHELLEY (Hereinafter referred to as Petitioner or "SHELLEY"); pursuant to Rule 9.030(c)(3) and 9.100, Fla.R.App.P., as well as §§13-236(c) and (d) of the Sumter County Land Development Code, seeking review of a decision of the BOCC after a quasi-judicial hearing held on March 22, 2011, and reduced to writing on March 29,

2011¹, App. B, p.1, and in furtherance thereof states the following:

GENERAL ALLEGATIONS

1. This Court has jurisdiction over the parties and the subject matter pursuant to Rule 9.100, Fla.R.App.P., §26.012(1), Florida Statutes, and relevant portions of the Sumter County Land Development Code (“LDC”).

2. Venue for this matter is proper in Sumter County, Florida, as the property and action involved in this action are situated in Sumter County, Florida.

3. SHELLEY is the owner of certain property located in Sumter County, Florida, and said property was the subject of the Administrative Decision which is at issue in the instant proceedings.

4. The BOCC is the governing body of Sumter County, having the authority to regulate the use of real property within the County, pursuant to the powers granted to it by virtue of the mandates set forth in Florida Statute §163.3164, *et. seq.*

¹ The Petitioner has provided the Court with an Appendix which contains all of the Exhibits which are relevant to this Court’s review. The Respondent does not intend to add any additional exhibits for the Court’s consideration, as the Petitioner’s record is complete. In the interests of judicial economy, and in an effort to simplify the review process, the Respondent will utilize the Record presented to this Court by Petitioner as it’s Appendix. References to the Petitioner’s Appendix will be cited as “App. _____, p. _____”, with appropriate reference to applicable Appendix tabs and page numbers.

5. The BOCC, pursuant to the powers granted to it as detailed above, adopted its LDC; the LDC provides for the establishment of a Planning Commission, possessing quasi-judicial powers, as well as the enactment, interpretation, enforcement of its regulations, and the administrative review of potential violations of same. The LDC also provides the BOCC with the ability to provide final approval or disapproval of petitions for Conditional Use Permits through the quasi-judicial hearing process. The provisions of the LDC also provide for the administration of development requirements in an efficient and equitable manner.

6. SHELLEY, through its agent, Compost USA, applied to the BOCC for a Conditional Use Permit for a composting facility on real property owned by SHELLEY located within Sumter County, Florida. After a quasi-judicial hearing on the matter, the BOCC elected to deny the applicant's request by a four-to-one (4-1) vote.

7. Based upon the foregoing, SHELLEY has sufficient standing to raise the issues set forth in its Petition for Writ of Certiorari; SHELLEY is an aggrieved or adversely affected party pursuant to §163.3184(1)(a), Florida Statutes; furthermore, SHELLEY has timely filed all requests for administrative review required by the LDC, and has timely filed its Petition for Writ of Certiorari.

STATEMENT OF THE CASE

8. On June 17, 2010, Compost USA, acting in their capacity as authorized agents of SHELLEY, applied to the Sumter County Zoning and Adjustment Board ("ZAB") for a Conditional Use Permit to conduct composting operations on SHELLEY's property located within Sumter County, Florida

9. After staff and expert reviews, the Conditional Use Permit Application was submitted to the ZAB on December 20, 2010. At that meeting, the matter was continued to the February 7, 2011 ZAB meeting. App. H, p.1.

10. On February 7, 2011, the ZAB conducted a public hearing on the Compost USA Conditional Use Permit Application. After the presentation of the Sumter County staff, presentation by the applicant and presentation of citizens not in favor of the permit application, the ZAB decided to recommended to the BOCC that the Conditional Use Permit be granted with conditions, by a vote of seven-to-four (7-4). App. B, p.1.

11. On March 22, 2011, the BOCC considered the Conditional Use Permit application in a duly noticed quasi-judicial hearing. After considering the testimony of staff, the applicant and members of the public, the BOCC voted to deny Compost USA's application for a Conditional Use Permit. App. A, p.1.

12. On March 29, 2011, SHELLEY was formally notified, in writing, of

the BOCC's decision to deny the request for a Conditional Use Permit to allow composting operations on the SHELLEY's property. App. A, p.1.

STATEMENT OF THE FACTS

13. SHELLEY is the owner of real property located within Sumter County, Florida, which is more particularly described in App. B, p.2.

14. Compost USA, Inc., a corporation duly organized under the laws of the State of Florida, became interested in conducting composting operations on the SHELLEY's property, and began the process of determining what permits they would be required to obtain to conduct composting operations within Sumter County.

15. Composting is not specifically delineated within the "Table of Permitted Uses" enumerated within Section 13-362 of Sumter County's LDC, App. B, p.3.

16. When a potential use is not specifically delineated within the LDC's "Table of Permitted Uses", they are addressed by considering the most similar use contained in the LDC. App. B. p.3.

17. Sumter County staff determined that the proposed composting use was most similar to a landfilling or re-cycling operation, which is permitted within the Agricultural Future Land Use and Zoning Districts with the approval of a

Conditional Use Permit. *Id.*

18. The Conditional Use Permit process is designed to provide for the review of the proposed use to consider general suitability and general conditions to minimize and mitigate potential adverse impacts. *Id.*

19. If a Conditional Use is approved, then the applicant is required to obtain an Operating Permit through a second public hearing process. The Operating Permit provides the specific engineering details and appropriate conditions to provide for the actual construction and operation of the proposed use.

Id.

20. Section 13-362 of the Sumter County LDC defines a Conditional Use as follows:

This use is hereby established to conditionally allow specified uses that, because of their unique characteristics, are not permitted as a matter of right, special use or otherwise allowed by this Code. Such conditional uses, unless properly controlled, pose potentially serious health, safety or welfare concerns for the community. Therefore, it is the intent of the commission to ensure, through available and reasonable methods, that the location, construction, operation, and maintenance of a conditional use produces minimal adverse effect on the environment and public health, safety, and welfare, and to fully balance the need for such conditional use with the broad interests of the public. A conditional use permit is not a permit of right and there is no presumption that such a permit will be granted. *Id.*

21. In reviewing Compost USA's request for a Conditional Use Permit to conduct composting operations on the SHELLEY property, the Sumter County

staff recognized that there would be potential adverse impacts on the environment, and the public health, safety and welfare. In addressing these concerns, the Sumter County Staff identified several issues, including the following:

- a. That the proposed composting use would be located within an 86 acre portion of a larger 630 acre parcel. The location of the composting use would be placed on the east side of the property to maximize its distance from the most developed residential area to the west along CR 577. This developed residential area is approximately 1,700 feet from the proposed composting use.
- b. That the adjacent property to the east of the proposed composting site is located within the City of Leesburg. This property is undeveloped and has a zoning that would allow for future residential development. However, this property was part of previously proposed Development of Regional Impact (DRI) called Renaissance Trails. The DRI did not move forward and was abandoned.
- c. That the adjacent property to the north is located within the City of Wildwood. This property is undeveloped and has an Agriculture land use. As with the City of Leesburg property, this property was

also part of the abandoned DRI.

- d. The closest property to the south, developed with a home site and not under the ownership of the Shelleys, is approximately 2,000 feet away from the proposed composting use. App. B, p. 4.

22. Sumter County staff also determined that the project area for the composting operation included wetlands and areas within the 100-year floodplain; however, staff concluded that with the proper separation, the composting operations would not encroach upon the 100-year floodplain area. *Id.*

23. Sumter County also engaged the services of a hydro-geological consultant to review the proposed composting operation. Sumter County's hydro-geological consultant, Tetra-Tech provided detailed comments regarding the proposed conditional use in correspondence to Brad Cornelius, Sumter County Planning Director, dated December 6, 2010. The aforementioned correspondence was included in the materials submitted to the BOCC, and is contained in the record of these proceedings at App. G, p.20-21.

24. Tetra-Tech indicated in its correspondence of December 6, 2010, that a conditional use requires that the proposed use not infringe on the rights of property owners in the vicinity of the use. Furthermore, Tetra-Tech recognized that proposed use of the project property may not be compatible with the Planned

Unit Development (PUD) zoning to the east of the proposed project boundary. App. G, p. 20.

25. Tetra-Tech further recognized that comments received from Bill Wiley, from the City of Leesburg, Florida's staff, expressed concern over infringement of odors, traffic, and leachate control due to the proximity of the proposed composting operations. App. G, p. 20.

26. While Mr. Cornelius indicates in his report that the PUD to the east of the proposed project boundary was abandoned, he does acknowledge that the area to the east is undeveloped, but does possess a zoning that would allow for future residential development. App. B, p. 4.

27. Mr. Cornelius acknowledges Tetra-Tech's concerns in his report by indicating that composting operation would be required to obtain an operational permit to minimize potential impacts, particularly odor, in surrounding residential properties. *Id.*

28. While Mr. Cornelius's recommendation to the BOCC was to approve the Petitioner's Conditional Use Permit, this recommendation was subject to several conditions which acknowledged the existence of the incidental and negative impacts a composting operation would have on the surrounding residential areas and Sumter County in general. App. B, p. 4.

29. Specifically, Mr. Cornelius's conditional recommendation included:
- a. Conditions related to the provision of a detailed operating plan; conditions related to providing a detailed Site Plan; conditions related to compliance with other State and Regulatory agencies.
 - b. Conditions related to the protection of surface and groundwater.
 - c. Conditions related to traffic circulation.
 - d. Conditions related to setbacks and buffers.
 - e. Conditions related to the protection of threatened and endangered species.
 - f. Conditions related to the protection of historic resources.
 - g. Conditions related to the hours of operation.
 - h. Conditions related to security.
 - i. Conditions related to hazardous materials.
 - j. Conditions related to air pollution, including odor monitoring and mitigation.
 - k. Prohibitions regarding the cancellation of the SHELLEY's existing special use permit for the application of liquid residuals. App. B, p. 6-8

30. The conditions outlined by Mr. Cornelius were an obvious acknowledgment and attempt to minimize the obvious negative impacts associated with a composting operation in the proposed area.

31. Mr. Cornelius indicated in his testimony at the March 22, 2011

hearing that the ZAB's recommendation was to approve the conditional use permit by a vote of seven to four (7-4). However, of the four ZAB members that voted against the recommendation, Mr. Cornelius testified that they had "expressed concerns about the potential impacts to those residential neighborhoods and the ability to properly mitigate it and address those concerns." App. J, p. 26.

32. Of particular concern to the BOCC were the odors which would be created by Compost USA's operations. Glen Stewert, Compost USA's representative at the March 22, 2011 hearing, acknowledged that he could not guarantee that the operations would be odor free. App. J, p. 66.

33. While recommending approval, it was clear that the Sumter County staff had considerable concerns over the proposed composting operations in the area in question, and crafted its conditions in an attempt to reduce the negative impacts on the area. However, as established at the quasi-judicial hearing on March 22, 2011, there was sufficient competent substantial evidence to deny the Petitioner's request for a Conditional Use Permit.

34. During the March 22, 2011 hearing, Mr. Cornelius testified that there was an established rural-residential development to the west and to the south of the subject property which were identified by red triangles. App. J, p. 9.

35. Mr. Cornelius further testified that the closest homes were anywhere

between 1,700 – 2,000 feet from the composting site. App. J, p. 11.

36. Mr. Cornelius also testified regarding the impact on traffic which would be caused by the proposed composting operation. Specifically, Mr. Cornelius testified that it was estimated that taking into consideration truck traffic and employee traffic, there would be sixty (60) trips per day. App. J, p. 15.

37. With regard to traffic, Mr. Cornelius also testified that if the traffic were to be at a higher level, the staff would have to go back and re-look at the transportation impact because it was not assessed at a higher level. App. J, p. 16.

38. Mr. Glen Stewart, a representative of Compost USA, also testified at the March 22, 2011 hearing regarding the composting process.

39. Ms. Robin Simmons, a resident of Sumter County testified at the March 22, 2011 hearing that she was one of the “red boxes”, indicating that she was a resident in the affected area. App. J, p. 36.

40. Ms. Simmons provided a Resolution from the City of Center Hill, Florida, objecting to the proposed composting operations. App. M, p. 8-9.

41. Ms. Simmons also testified that she had visited an existing Compost USA facility, and provided photographs which depicted composting activities which were substantially different than the photographs contained in the applicant’s brochure. Specifically, the photographs depicted composting activities

which contained standing water and windrows which were not properly maintained. App. J, p. 38; App. M, p. 3.

42. Ms. Simmons also provided the BOCC with a non-compliance letter from the Florida Department of Environmental Protection ("FDEP") to Compost USA regarding their Marion County operations. As reflected in the non-compliance letter, FDEP representatives indicated that their investigation revealed that "the corrective actions initiated to mitigate the excessive odors emanating from the facility have not adequately addressed the problem." App. M, p. 6.

43. Also testifying was Ms. Valerie Simmons, who indicated that she visited the Marion County Compost USA facility and that it was a mess, and contained standing water. App. J, p. 41. Ms. Valerie Simmons also testified that the mixing pad was not visible due to all the mud. App. J, p. 41.

44. There were also three (3) letters and several emails which were mailed in by citizens in opposition to the proposed Conditional Use Permit in this matter. These materials were part of the packet which was submitted to the BOCC for their consideration during the quasi-judicial hearing. There was also a letter in favor of the proposal included in the materials. App. I, p. 1-22.

45. These letters in opposition to the proposed Conditional Use Permit cited various reasons for denying the Conditional Use Permit application, including

but not necessarily limited to: diminution in property value, excessive odor, excessive truck / vehicle traffic, previous non-compliance from the property owner in his current use of the property for the disposal of bio-solids and inconsistency with the current rural-residential nature of the area.

46. Mr. Stewart provided rebuttal testimony after the presentation from public in opposition to the application.

47. With regard to the pictures submitted by Ms. Simmons, Mr. Stewart testified that it was a rainy day when the pictures were taken; however, Mr. Stewart never addressed the issue of standing water or the disorganization of the site. App. J, p. 63.

48. With regard to the Marion County facility operated by Compost USA, Mr. Stewart testified that the company did in fact have complaints in Marion County. App. J, p. 65. Mr. Stewart went on to testify that the Marion County site was surrounded by three (3) landfills and a permitted wastewater treatment plant, as well as a rendering plant down the road that processes dead animal carcasses. App. J, p. 65.

49. Finally, Mr. Stewart, as representative for Compost USA, presumably in an attempt to explain the odors produced at the Compost USA facility in Marion County, testified as follows: "I've had times that I've had to leave. I've had times

that I've had odors. But I can tell you that these other places that I just named off to you have had more. I cannot guarantee you that if we do operations at Shelley's property, that 100 percent of the time we will be odor free." App. J, p. 66.

50. After the presentation of the testimony and evidence, the BOCC had an opportunity to discuss the proposed Conditional Use Permit application before their vote.

51. Commissioner Mask pointed out the fact that the Marion County Compost USA operations were in close proximity to three (3) landfills. Commissioner Mask reasoned: "That's probably an appropriate place." App. J, p. 67.

52. Commissioner Breeden, the lone vote for approval of Petitioner's application, indicated that he understood the methodology of composting, and that he had also visited the Marion County Compost USA location. Commissioner Breeden indicated that he "felt like the management at the site was poor." App. J, p. 69.

53. After the conclusion of the discussion, a motion was made not to approve the Petitioner's Conditional Use Permit for composting operations, which passed by a vote of four-to-one (4-1). App. J, p. 72.

NATURE OF RELIEF REQUESTED

The nature of the relief requested by BOCC is a determination by the Court that BOCC, properly denied SHELLEY's application for a Conditional Use Permit to allow composting operations on their real property in Sumter County, Florida, and that said decision to deny the applications was based upon competent substantial evidence.

SCOPE OF REVIEW

Certiorari review in the Circuit Court of a local quasi-judicial, site specific administrative matter is not truly discretionary, as said review is a matter of right. The Circuit Court in such a review is not entitled to re-weigh the evidence or substitute its judgment for that of the agency. *Educational Development Center v. City of West Palm Beach*, 541 So.2d 106 (Fla. 1989); *Haines City Community Development d/b/a Park Village v. Haggs*, 658 So.2d 253 (Fla. 1995).

The BOCC acknowledges that the three (3) prong test set forth in SHELLEY's Amended Petition for Writ of Certiorari is the appropriate test for the Court to apply in this matter. Namely, (1) whether the local government afforded petitioner procedural due process; (2) whether the local government's decision was supported by competent substantial evidence; and, (3) whether the local government's decision constituted a departure from the essential requirements of

law. *City of Deerfield Beach v. Valliant*, 419 So.2d 624 (Fla. 1982). If this Court can find *any* competent substantial evidence in the record that rationally supports the BOCC's decision, then this Court is obligated to uphold that decision. *Dusseau v. Metropolitan Dade County Board of County Commissioners*, 794 So.2d 1270 (Fla. 2001); *Dorian v. Davis*, 874 So.2d 661 (Fla. 5th DCA 2004)(noting that *any* competent substantial evidence in the record is enough to support a local government's determination).

SUMMARY OF THE ARGUMENT

The Petitioner concedes that the first prong of the Valliant test has been satisfied. Thus, the primary issue which must be addressed by this Court is whether the BOCC relied on competent substantial evidence in the record of these proceedings sufficient to justify the denial of SHELLEY's Conditional Use Permit application.

If the Court determines that BOCC did, in fact, rely on competent substantial evidence in making its decision, the Court must then determine whether the essential requirements of the law have been observed in denying the application in question, thus satisfying the second and third prongs of the *Valliant* test.

ARGUMENT

A. THE BOCC'S DECISION TO DENY THE CONDITIONAL USE PERMIT APPLICATION MUST BE UPHELD BECAUSE IT WAS

SUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE IN THE RECORD.

As indicated above, the primary issue which must be addressed by this Court is whether the BOCC relied on competent substantial evidence in the record in this case, sufficient to justify denial of SHELLEY's Conditional Use Permit application.

In furtherance of its obligation to make its decision on competent substantial evidence, the BOCC addressed SHELLEY's application for a Conditional Use Permit pursuant to the quasi-judicial procedures provided in the LDC as well as the law. Specifically, the BOCC was required to hold a public hearing to determine the facts, apply the law to those facts and reach a factually based conclusion. *Board of County Commissioners of Brevard County v. Snyder*, 627 So.2d 469 (Fla. 1993); *City of Apopka v. Orange County*, 299 @o.2d 657 (Fla. 4th DCA 1974).

As referenced in SHELLEY'S Petition for Writ of Certiorari, in order for a local governing body to conclude that something is a fact, as opposed to unsupported opinion or popular sentiment, the law requires that each factual determination be supported by competent substantial evidence presented to the board. *Valliant at*, 626. Petitioner correctly points out that "competent evidence" is defined as "evidence sufficiently relevant and material to the ultimate

determination “that a reasonable mind would accept it as adequate to support the conclusion reached.” *City of Hialeah Gardens v. Miami Dade Charter Foundation, Inc.* 857 So.2d 202, 204 ((Fla 3rd DCA 2003) quoting *DeGroot v. Sheffield*, 95 So.2d 912, 916 (Fla. 1957). Additionally, the term “substantial evidence” has been defined as “evidence that provides a factual basis from which a fact at issue may reasonable be inferred.” *Id; Metropolitan Dade County v. Blumenthal*, 675 So.2d 598 (Fla 3rd DCA 1995).

It is clear that the law established in this area and how it is to be applied is clear. The distinction to be drawn in the arguments of the parties is what evidence each believes is or is not competent and substantial. The main issues as addressed by the BOCC in denying the SHELLEY’S permit application was the proposed operations inconsistency with the surrounding area, and the inability to sufficiently mitigate negative impacts of the composting operations, including, but not limited to traffic, water quality and smell.

Petitioner emphasizes the fact that it is well settled law that lay testimony is not competent substantial evidence to be considered in cases involving technical planning issues. However, the record contains sufficient documentation, evidence and testimony from experts which support the BOCC’s denial in this case. Petitioner would have this Court believe that the BOCC relied on nothing but the

lay testimony from upset property owners from the surrounding areas. However, the record reflects that the BOCC was in possession of sufficient competent substantial evidence from non-lay witnesses in this case which justify the BOCC's decision.

While there was lay testimony in the record establishing that many of the neighbors believed that Petitioner's composting operations, if allowed, would devalue their property, there is also evidence to conclude that the BOCC had sufficient evidence to conclude that the authorization of the Petitioner's Conditional Use Permit would have resulted in composting operations in a rural-residential area that was inconsistent with such a use, and would have resulted in negative impacts to the area.

The evidence presented at the quasi-judicial hearing was clear regarding the fact that the property SHELLEY wishes to conduct composting operations is located in vicinity of a rural-residential area. The evidence revealed that there was a developed residential area as close as 1,700 feet from the proposed composting operations.

In addition, there was evidence in the record from the BOCC's expert, Tetra-Tech, which identified their concerns with the proposed application being inconsistent with current zoning in the area. Of particular concern to Tetra-Tech

was the fact that the proposed project boundary to the east may not be compatible with a residential Planned Unit Development (PUD) in the City of Leesburg, coupled with comments from the City of Leesburg staff (acknowledged in the Tetra-Tech correspondence dated December 6, 2010) that the proposed composting operations would cause infringement from odors, traffic and leachate control. While Mr. Cornelius indicated in his staff report that the area to the east located in Leesburg was part of an abandoned Development of Regional Impact (DRI), he further indicated that the property currently has a zoning classification that would allow for future residential development. Mr. Cornelius also testified that there was a developed residential area approximately 1,700 feet to the west of the proposed composting site, and a developed home site 2,000 feet to the south. This fact was before the BOCC, and this fact alone is sufficient to justify the BOCC's denial of the Petitioner's application.

Mr. Cornelius's recommendation to the BOCC was to approve the Petitioner's Conditional Use Permit; however, this recommendation was subject to several conditions which acknowledged the existence of the incidental and negative impacts a composting operation would have on the surrounding residential areas and Sumter County in general. Inherent in the conditions outlined by Mr. Cornelius was an obvious acknowledgment and attempt to minimize these

obvious negative impacts associated with a composting operation in the proposed area. It is clear that the proposed conditions related to the composting operations set a very high standard for SHELLEY and Compost USA to follow due to the great concern staff had with the proposed project. These concerns were obvious to the BOCC in their consideration to SHELLEY'S request. In addition, while the Petitioner attempts to minimize the significance of the testimony regarding the non-compliance issues raised against SHELLEY and his current operations as well as Compost USA and its Marion County operations, these issues are in fact, very significant. Specifically, if the BOCC were to grant the Petitioner's request conditioned upon the high standards set forth by the Sumter County staff and experts, it would be obligated to do so with some measure of confidence that the applicants would be able to comply with these conditions. SHELLEY and Compost USA's history in Marion County proved to be contrary to this requirement. Specifically, there was evidence in the record related not only to SHELLEY's non-compliance with his current use of the property in disposing of bio-solids, there was evidence that Compost USA had received a Non-compliance letter from FDEP which raised issues related to excessive odors and the sufficiency of its mitigation efforts. This fact was before the BOCC, and this fact alone is sufficient to justify the BOCC's denial of the Petitioner's application.

Also of great concern to the BOCC were the odors which would be created by Compost USA's operations. Glen Stewart, Compost USA's representative at the March 22, 2011 hearing, acknowledged that he could not guarantee that the operations would be odor free. In fact, Mr. Stewart in his testimony stated: "I've had times that I've had to leave. I've had times that I've had odors. But I can tell you that these other places that I just named off to you have had more. I cannot guarantee you that if we do operations at Shelley's property, that 100 percent of the time we will be odor free." This fact was before the BOCC, and this fact alone is sufficient to justify the BOCC's denial of the Petitioner's application.

There was testimony from Ms. Simmons that she had visited an existing Compost USA facility, and provided photographs which depicted composting activities which were substantially different than the photographs contained in the applicant's brochure. Specifically, the photographs depicted composting activities which contained standing water and windrows which were not properly maintained. In an effort to explain the photographs, Mr. Stewart indicated that Ms. Simmons had taken the pictures on a rainy day. Commissioner Breeden, indicated that he understood the methodology of composting, and that he had also visited the Marion County Compost USA location. Commissioner Breeden indicated that he "felt like the management at the site was poor." This fact was before the BOCC,

and this fact alone is sufficient to justify the BOCC's denial of the Petitioner's application.

There was also testimony regarding the location of the Compost USA facility in Marion County. Specifically, Mr. Stewart testified that the company did in fact have complaints in Marion County. Mr. Stewart went on to testify that the Marion County site was surrounded by three (3) landfills and a permitted wastewater treatment plant, as well as a rendering plant down the road that processes dead animal carcasses. During the discussion phase of the hearing, Commissioner Mask pointed out the fact that the Compost USA operations in Marion County were in close proximity to three (3) landfills. Commissioner Mask correctly reasoned that this was probably an appropriate place for a composting facility. This fact was before the BOCC, and this fact alone is sufficient to justify the BOCC's denial of the Petitioner's application.

As correctly pointed out by Petitioner. The threshold necessary for a local government to meet the competent substantial evidence requirement is quite low. As stated above, if this Court can find *any* competent substantial evidence in the record that rationally supports the BOCC's decision, then this Court is obligated to uphold that decision. *Dusseau v. Metropolitan Dade County Board of County Commissioners*, 794 So.2d 1270 (Fla. 2001); *Dorian v. Davis*, 874 So.2d 661 (Fla.

5th DCA 2004)(noting that *any* competent substantial evidence in the record is enough to support a local government's determination).

It is clear from a review of the record in this case that the BOCC relied on competent substantial evidence in reaching its decision to deny SHELLEY's Conditional Use Permit application. For the reasons cited above, it is also clear that the BOCC has satisfied the second prong of the *Vallaint* test.

B. THE BOCC'S DECISION TO DENY THE PETITIONER'S CONDITIONAL USE PERMIT APPLICATION MUST ALSO BE UPHOLD BECAUSE THE BOCC DID NOT DEPART FROM THE ESSENTIAL REQUIREMENTS OF LAW IN MAKING IT'S DECISION.

The Petitioner attempts to establish that the BOCC's decision was reached for primarily political reasons and was based on the sentiments of other residents, and that Petitioner's application was denied without any political support. The Petitioner correctly states that the purpose of a public hearing is to provide interested parties an opportunity to present competent witnesses and other evidence from which the BOCC may make a reasoned decision consistent with applicable code provisions, citing City of *Apopka v. Orange County*, 299 So.2d 657, 659 (Fla. 4th DCA 1974).

The BOCC's decision to deny the Petitioner's application was not based

upon the wishes of persons who appeared for or against the granting of the application, but on the facts as demonstrated above.

While Petitioner has cited the Court to the correct law to be applied in this matter, it's argument is flawed in it's presentation of what it believes was the competent substantial evidence relied upon by the BOCC at the March 22, 2011 hearing. Petitioner places great weight on the testimony of lay witnesses and neighbors in the surrounding areas, when it is clear that the BOCC took all of the evidence into account, including the testimony of its staff and its witnesses, the testimony of the applicant and the testimony of the lay witnesses and neighbors. When the record is reviewed in its entirety, it is clear that the BOCC relied on all of the competent substantial evidence it had at its disposal. The fact that Petitioner has drawn a different conclusion from reviewing the same evidence does not support its conclusion that the BOCC did not rely on competent substantial evidence in denying SHELLEY's permit application. As the Court reasoned in *Board of County Commissioners of Brevard County v. Snyder*, 627 So.2d 469 (Fla. 1993), quasi-judicial decisions are not wholly discretionary political decisions but rather, must be rationally based upon evidence adduced at a fair hearing.

A review of the record in this case clearly establishes that the BOCC

provided the Petitioner with a fair, impartial review of the evidence presented at the March 22, 2011 quasi-judicial hearing, thus following the essential requirements of law and satisfying the third prong of the *Valliant* test.

CONCLUSION

The Circuit Court, after reviewing the record, the Petition, and this Response, together with the record submitted in this case, should deny the Petitioner's Petition for Writ of Certiorari. The BOCC has demonstrated that it relied upon competent substantial evidence in denying SHELLEY'S Application for Conditional Use Permit. As set forth herein, if this Court can find *any* competent substantial evidence in the record that rationally supports the BOCC's decision, then this Court is obligated to uphold the BOCC's decision. It is clear from a review of the record that the BOCC had several components of competent substantial evidence in which to base its denial of Petitioner's application, any of which is rationally supports the BOCC's decision. Therefore, this Court is obligated to uphold the BOCC's decision in this matter.

WHEREFORE, the BOCC prays that the Court deny Petitioner's Petition Writ of Certiorari, and uphold the actions taken by the BOCC in denying SHELLEY's application at the March 22, 2011, quasi-judicial hearing, for the reasons set forth herein.

Respectfully submitted, this 31st day of May, 2011.



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Counsel for BOCC

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Response to Petition for Writ of Certiorari complies with the font requirements of Florida Rule of Appellate Procedure 9.100(1), in that it has been prepared using Times New Roman 14-point font.



George G. Angeliadis, Esquire

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Response to Petition for Writ of Certiorari has been furnished to: Scott A. Glass, Esq., Shutts & Bowen LLP, 300 South Orange Avenue, Suite 1000, Orlando, Florida 32801, via facsimile and regular U.S. mail delivery, this 31st day of May, 2011.

THE HOGAN LAW FIRM


George G. Angeliadis, Esquire