



Neil M. Schiller, Esq. | (561) 771-9330 office | nschiller@govlawgroup.com

July 27, 2023

Ms. Katerri Johnson
Delray Beach City Clerk
City of Delray Beach
100 NW First Avenue
Delray Beach, Florida 33444

RE: Appeal of Rezoning Action 2023-107-REZ-CCA

Dear Ms. Johnson,

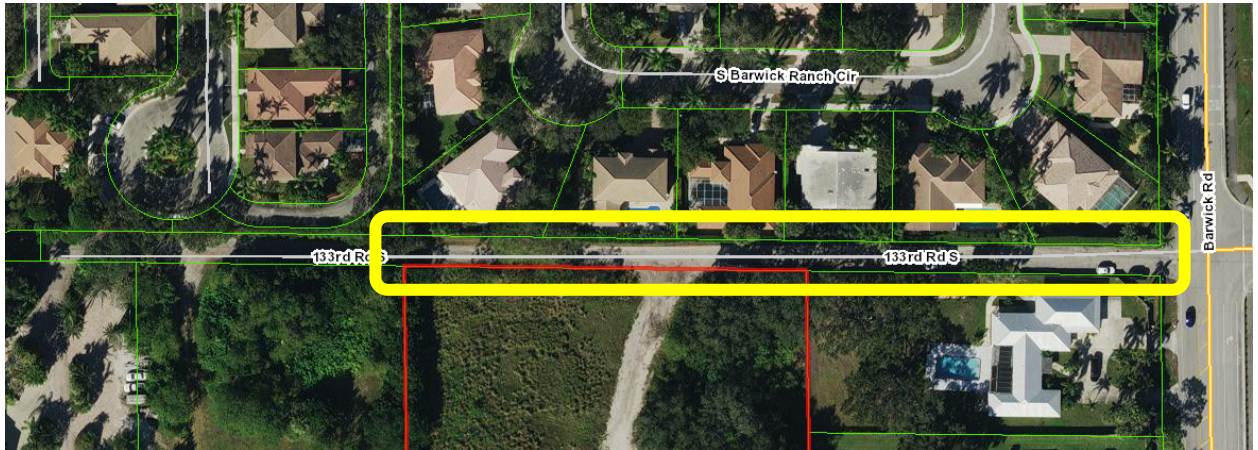
Pursuant to City of Delray Beach Land Development Regulation Section 2.4.7(E), my client Cocoon Development III, seeks to appeal the Planning and Zoning Board's decision of July 17, 2023, of denial of the proposed rezoning application for 4593 133 Road South. The application at issue goes with two other applications for a privately initiated land use map amendment and a privately initiated annexation. The subject property is part of Palm Beach County and is surrounded by properties in the City of Delray Beach, making this an enclave.

The below information are the items as per the referenced LDR section: 2.4.7(E)(2):

- The name of the appellant;** Cocoon Development III, LLC / Angelo S. Natale
- Identification of the action being appealed;** Appeal of the Planning & Zoning Board Denial of a rezoning application associated with a voluntary annexation
- Identification of who took the action and when it was made;** Planning & Zoning Board acted July 17, 2023
- The basis of the appeal:** The appeal is based on the Planning and Zoning Board's ("Board") failure to rely on or cite competent and substantial evidence when it denied the rezoning application referenced above. The July 17, 2023, Planning and Zoning Board heard three applications for annexation, land use map amendment and rezoning. (2023-109-ANX-CCA, 2023-108-LUM-CCA and 2023-107-REZ-CCA) The rezoning application was properly heard as a quasis-judicial hearing where the Applicant's representative provided expert testimony based on his review as a professional planner to the Board and was given a chance to cross examine witnesses and provide rebuttal testimony. The only two parties to provide testimony to the Board was the Applicant's

representative and Delray Beach Zoning Staff, and both qualify as competent and substantial evidence.

Based on a thorough review of the hearing, it appears that the denial was primarily based on the suitability of 133 Road South (the “Road”) to function as a roadway and concurrency issues. The Applicant’s representative raised the fact that the roadway is currently 18’ wide without a sidewalk and that the Applicant would repair the Road to its 18’ and install a new sidewalk from the Applicant’s Western boundary to Barwick Road.



Several Board members spoke about the Road only being 18’ wide, which they called, “sub-standard” and were concerned about the Road being able to handle the traffic associated with the proposed 16 single-family homes that would result from these applications. Both the Applicant’s representative and Staff testified that the 18’ improved Road and new sidewalk would meet the demands of the property being developed with 16 single-family homes. Staff testified that 18’ roadways are not uncommon and are used by planners to slow down traffic because drivers use extra caution on narrow roadways. Despite the professional’s testimony of competent and substantial evidence that the Road was suitable.

From a traffic perspective, the Applicant’s representative not only produced the expert’s analysis, but also Palm Beach County’s Traffic Division both of which indicate a de minimis (and acceptable) increase in trips. Despite any information to the contrary several board members, who are not traffic engineers, were positive that the Road could not handle the traffic. The Board’s line of flawed reasoning extended to emergency vehicles accessing the Road. The Applicant’s representative testified that the Fire Department wanted 20’ but could live with 18’, which was confirmed by a Board member who also spoke to someone at the City’s Fire Department (and failed to disclose this in ex parte disclosures); however during the deliberations Board members used this “want 20’ but can live with 18’” as evidence of that the Road would not be suitable for the proposed 16 single-family homes and the associated R-1-AA zoning. There was no evidence presented during the hearing that contradicted the Applicant’s consultant’s report, the County’s Traffic Performance Standards letter, the Applicant’s representative’s testimony,

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or the City's testimony.

The Board's citation of concurrency issues as a basis for denial of the rezoning application was not based on competent and substantial evidence. The concurrency analysis required by the City's Land Development Regulations looks at Traffic, Schools, Utilities, Water, Sewer, Solid Waste and Drainage. No competent and substantial evidence was submitted at the hearing that contradicts anything but positive findings. As discussed above, the issues related to the Road as expressed by members of the Board is not competent and substantial evidence. The fact the Board relied on their own beliefs and opinions, rather than the facts presented to it by professionals in the field, violates the quasi-judicial rules, and established case law governing such proceedings.

It appears that the Board also based its denial on the fact that provision of service may be affected by the proposed annexation and development of the property. Several Board members said that this project resulted having additional police and fire personnel assigned to the area. Not only is this a patently false statement, which City Staff specifically pointed out to the Board on two different occasions, but the Staff Memo says, "the growth of the development in the west corridor area of the City of Delray Beach would necessitate one additional officer added to the police unit in order to maintain current response times." It appears that Board members used this as basis for denial despite Staff both orally and in writing expressing otherwise. The provision of police and fire services is NOT a consideration under the Concurrency criteria when evaluating a rezoning application.

The Board failed to base its denial of the Applicant's rezoning application on competent and substantial evidence, as required by law and thus the Applicant's appeal is valid, should be swiftly heard, and overturned by the City Commission. The relevant fee accompanies this correspondence.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Neil M. Schiller', followed by a long horizontal flourish.

Neil M. Schiller
For the Firm

cc: Lynn Gelin, Esq., City Attorney
Anthea Gianniotis, Development Services Director
Rebekah Dasari, Principal Planner
Grisel Rodriguez, Senior Planner