Petition for Writ of Certiorari to Review Quasi-Judicial Action: Agencies, Boards, and Commissions of Local Government: ZONING – Competent Substantial Evidence – Mobile Home Park – City Council correctly determined, as a preliminary matter, whether adequate and suitable replacement housing existed for mobile home owners pursuant to Section 723.083 before considering the actual zoning application – burden was on rezoning applicant to demonstrate that replacement housing existed – Court cannot substitute its judgment for that of the City Council finding that adequate and suitable replacement housing was not shown to be available – Petition denied. *Wieker Enterprises, Inc. v. City of St. Petersburg,* No. 05-0054-88A (Fla. 6th Cir. App. Ct. April 4, 2006).

IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
APPELLATE DIVISION

WIEKER ENTERPRISES, INC., a Florida Corporation, 048367 N.B., Inc., a Canadian Corporation, and ADAMS LAND HOLDINGS, INC., a Florida Corporation,
Petitioners,
vs.

Appeal No.05-0054AP-88A
UCN522005AP000054XXXXCV

CITY OF ST. PETERSBURG and CITY COUNCIL OF THE CITY OF ST. PETERSBURG,
Respondents.
_____/

ORDER DENYING PETITION FOR WRIT OF CERTIORARI

THIS CAUSE came before the Court on the Petition for Writ of Certiorari, the Response and the Reply. Upon consideration of the same and being otherwise fully advised, the Court finds that the Petition must be denied as set forth below.

The Petitioner, Wieker Enterprises, Inc., a Florida Corporation,[1] (Petitioner), seeks review of the order, entered June 16, 2005,[2] in which the Respondents, City of St. Petersburg and City Council of the City of St. Petersburg (City Council), denied the Petitioner's application to amend the Official Zoning Map of the City for certain real property occupied and used as the Sanderwood Mobile Home Park, from MH-P (Mobile Home Park) to RM-12/15 (Residential Multifamily). The standard of review of such administrative action is whether the petitioner was afforded procedural due process, whether the essential requirements of law were observed, and whether the administrative findings and judgment are supported by competent substantial evidence. See Haines City Community Development v. Heggs, 658 So.2d 523, 530 (Fla. 1995)(setting forth the standard of certiorari review of administrative action).

The record shows that Sanderwood Mobile Home Park was originally developed in 1937 and consists of eight acres located within the City of St. Petersburg. At the time of the hearing, on June 16, 2005, the property contained 76

mobile homes or spaces for mobile homes, 14 apartments/cottages, and a small commercial building. The record is not clear as to the number of mobile homes occupied by owners, but the testimony showed that approximately 23 to 50 persons would need to be relocated if the property were developed into townhomes, as Wieker intended in seeking to rezone the property to residential multi-family.

Wieker's zoning application was considered in two steps. The City Council first considered and voted upon a resolution as to whether Wieker demonstrated that there would be adequate and suitable residential units available to the displaced mobile home owners pursuant to Florida Statutes, § 723.083. This resolution failed on a vote of one in favor and seven opposed. The resolution failed as a majority of the City Council determined that sufficient evidence had not been presented to demonstrate the existence of adequate and suitable residential units for the relocation of mobile home owners occupying the property. As a result, the City Council next denied the zoning application, by a vote of one in favor and seven opposed, from which Wieker timely filed its Petition for Writ of Certiorari.

Before this Court, Wieker raises three arguments: (1) Florida Statutes, § 723.083, does not apply because the rezoning, if approved, would not result in the removal or relocation of mobile home park owners from the park; (2) Florida Statutes, § 723.083, does not apply because Florida Statutes, § 723.061, applies and provides a relocation mechanism, and; (3) If Florida Statutes, § 723.083, applies to this case, the statute does not define the key words "adequate" and "suitable" and the City Council erred in requiring Wieker to show that identical, affordable or equivalent mobile home parks exists. Initially, in addressing these issues, the Court reiterates the standard of review of administrative action. As set forth in Haines City, circuit court review of an administrative agency decision is governed by a three-part standard: whether procedural due process has been accorded; whether the essential requirements of law were observed, and; whether the findings and judgment are supported by competent substantial evidence. See Haines City, 658 So.2d at 530. The Court is not entitled to reweigh the evidence or substitute its judgment for that of the agency. See id. Wieker essentially argues that the decision of the City Council does not adhere to the essential requirements of law nor is supported by competent substantial evidence. As Wieker does not argue that it was denied due process, the Court need not address that prong.

There are two Florida Statutes pertinent to the appeal, Florida Statutes, § 723.083 and § 723.061. Section 723.083 states:

> No agency of municipal, local, county, or state government shall approve any application for rezoning, or take any other official action, which would result in the removal or relocation of mobile home owners residing in a mobile home park without first determining that adequate mobile home parks or other suitable facilities exist for the relocation of the mobile home owners.

Section 723.061 states, in pertinent part:

(1) A mobile home park owner may evict a mobile home owner, a mobile home tenant, a mobile home occupant, or a mobile home only on one or more of the grounds provided in this section.

(d) Change in use of the land comprising the mobile home park, or the portion thereof from which mobile homes are to be evicted, from mobile home lot rentals to some other use, provided all tenants affected are given at least 6 months' notice of the projected change in use and of their need to secure other accommodations. The park owner may not give a notice of increase in lot rental amount within 90 days before giving notice of a change in use.

(3) The provisions of *s.* 723.083 shall not be applicable to any park where the provisions of this subsection apply.

In addressing Wieker's arguments, the Court finds, without the need to result to statutory construction, that the plain language of § 723.083 applies in this case as it is undisputed that Wieker intended to develop the property into residential townhomes if his zoning application were approved. See Crescent Miami Center, LLC v. Florida Dept. of Revenue, 903 So.2d 913, 918 (Fla. 2005)(explaining that rules of statutory construction and a review of legislative history should be explored only when statutory intent is unclear from the plain language of the statute). Since this would necessarily result in the removal or relocation of the Sanderwood mobile home owners, the City Council had to first determine whether adequate or suitable replacement housing existed. In applying § 723.083, the Court finds that it is of no consequence whether the removal or relocation of the mobile home owners happens immediately after the rezoning is approved or at some unspecified future time. The Court also finds that the language in § 723.061(3), which sets forth the grounds and procedure for eviction of mobile home owners and does not directly apply to government action, does not obviate the application of § 723.083 which specifically applies to local government action. Hence, the Court finds that the City Council was required to determine whether adequate mobile home parks or other suitable facilities existed for the relocation of the mobile home owners before the rezoning application could be approved.

As pointed out by both parties, and by the City's attorney in the proceedings below, there is virtually no case law on § 723.083 and the terms "adequate" and "suitable" are not defined by statute. The only published case on this section is Williams v. City of Sarasota, 780 So.2d 182 (Fla. 2d DCA 2001), wherein the Second District Court of Appeal held, without any in-depth analysis, that the City had failed to comply with § 723.083 in passing an ordinance for the purpose of closing the mobile home park without first determining that adequate facilities existed for the relocation of the mobile home residents. However, the Second District ultimately dismissed the appeal

for mootness, as the passage of time had resulted in the ordinance becoming unenforceable. See id. at 183.

The Court finds that the Attorney General Opinion, set forth in a letter, dated January 3, 1986, addressed to Mr. Van B. Cook, Pinellas County Attorney, is informative. Under the same statutory language, the question posed was: "What is the meaning of the phrase 'adequate mobile home parks or other suitable facilities' as used in § 723.083, F.S. (1984 Supp.)?" After a lengthy analysis, the Attorney General concluded that, "the zoning authority would necessarily have to consider the financial abilities of the mobile home owners who may have to relocate, repair or replace their mobile homes" in determining whether there were adequate or suitable replacement housing. The Attorney General also held that such housing could include other facilities such as apartments, trailer parks, and boarding houses within the territorial limits of the county.

In reviewing the transcript of the hearing before the City Council, it is clear that the City Council was very concerned about Sanderwood's residents being able to afford other adequate or suitable housing. As counsel for Wieker expressed in discussing apartments as an alternative, "[y]ou're going to be hard-pressed to find an apartment complex that is going to charge $ 196 or $ 205 accordingly, which are the two rental structures in Sanderwood Mobile Home Park." The rental apartment survey submitted by Wieker showed rental rates ranging from $ 410 to $ 1,600. The survey included those apartment complexes that offered subsidized housing, or housing offered at 30 % of income. However, each such complex had a waiting list and there was concern expressed by one City Council member that there was no assurance that such subsidies would continue.

The most comparable living facilities, other mobile home parks, showed lot rental rates ranging from $ 62.50 to $ 446.00. However, the City Council questioned the credibility of the survey since Wieker did not distinguish between parks such as Sanderwood that charge a flat monthly lot rent and those mobile home parks that are co-ops, which might charge $ 27,000 or more for a share, and then a monthly rent and a maintenance fee. The survey also failed to provide information on which mobile home parks had limitations, such as not allowing mobile homes more than ten years old.

Under these facts, the Court finds that certiorari relief must be denied. The burden was on Wieker, as the rezoning applicant, to demonstrate that suitable and adequate facilities existed for Sanderwood's residents who would, at some point, be forced to relocate due to development of the property into townhomes. While the record shows that counsel for Wieker made a good-faith attempt to provide a comprehensive survey and also appeared to be genuinely concerned about the resident's welfare,[3] the Court cannot substitute its judgment for that of

the City Council. See Haines City, 658 So.2d at 530.

Lastly, the Court finds that providing adequate protection for both the mobile home park owner and mobile home owner, under such circumstances as presented by this case, is something the legislature must resolve, particularly in the wake of today's current real estate market when the displacement of mobile home owners to make way to pricier residential development has become a common occurrence.

It is therefore,

ORDERED AND ADJUDGED that the Petition for Writ of Certiorari is hereby denied.

DONE AND ORDERED in Chambers, at Clearwater, Pinellas County, Florida this _____ day of March 2006.

_____
JOHN A. SCHAEFER
Circuit Judge, Appellate Division

_____
LAUREN LAUGHLIN
Circuit Judge, Appellate Division

_____
JAMES CASE
Circuit Judge, Appellate Division

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[1]
The Court dismisses Petitioners 048367 N.B., Inc., a Canadian Corporation, and Adams Land Holdings, Inc., a Florida Corporation, which did not respond to the City's argument that these corporations lacked standing in this certiorari proceeding. The Court notes that Adams Land Holdings, Inc., is the contract purchaser of the subject property, of which James Marcus Venon, the attorney appearing on behalf of the Petitioners, is the sole stockholder. Dismissal of these Petitioners does not affect the outcome of this appeal.

[2]
This order was not reduced to writing.

[3]
Mr. Vernon testified that he met with several park residents to discuss their individual financial needs and to offer assistance in addition to any statutory monetary assistance each resident may be entitled to.