

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE CIVIL DIVISION: AY
CASE NO.: 50-2021-CA-010831-XXXX-MB

VICKY GRANT,
EL DUB COMMUNITY LAND TRUST INC,
Petitioners

vs.

CITY OF LAKE WORTH BEACH FLORIDA,
OAG INVESTMENT 5 LLC,
Respondents.

_____/

Opinion filed: July 5, 2022

Petition for Writ of Certiorari from the City of Lake Worth Beach City Commission.

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PER CURIAM.

Petitioners, Vicky Grant and El Dub Community Land Trust Inc. (“Petitioners”), petition the Court to quash the City’s Development Order, 2021-04 (the “Development Order”). On appeal, Petitioners argue that the City erroneously applied their Land Development Code (“The Code”). Specifically, Petitioners allege that the City violated Sec.23.2-33, the Sustainable Bonus Incentive Program and Sec 23.3-25, Planned Development District, by approving height, stories and density

for the property located at 1715 N. Dixie Hwy, Lake Worth Beach, Florida (the “Property”) in excess of what is allowed in the Code. Petitioners also argue the Development Order is not supported by competent substantial evidence.

We hold that Petitioners’ arguments raised in the Petition are not preserved because Petitioners failed to object to the application of the Sustainable Bonus Incentive Program and the Transfer of Development Rights Program, to how the height and density were calculated, and failed to challenge the evidence reviewed by the City at the administrative hearing. *Dep’t of Bus. & Prof’l Regulation, Const. Indus. Licensing Bd. v. Harden*, 10 So. 3d 647, 649 (Fla. 1st DCA 2009); *Pullen v. State*, 818 So. 2d 601, 602 (Fla. 1st DCA 2002) (“[a] party cannot argue on appeal matters which were not properly excepted to or challenged in the administrative tribunal”); *Goodwin v. Florida Dep’t of Children & Families*, 194 So. 3d 1042, 1047 (Fla. 1st DCA 2016) (quoting *Verizon ex rel. MCI v. Dep’t of Corrections*, 988 So. 2d 1148, 1150 (Fla. 1st DCA 2008) (“an issue will not be considered on appeal unless the precise legal argument forwarded in the appellate court was presented to the lower tribunal”)). The precise legal arguments contained in the Petition were not made at the administrative hearing.

Since the arguments made in the Petition were not preserved, the Court is constrained to whether there was fundamental error. The fundamental error doctrine applies as an exception to the preservation rule. *Sanford v. Rubin*, 237 So. 2d 134 (Fla. 1970). The Court finds that the City made a fundamental error when calculating the density of the Property. This error is fundamental as it is clearly erroneous on the face of the order and goes to the foundation of the case. *Stevens v. Allegro Leasing, Inc.*, 562 So. 2d 380, 381 (Fla. 4th DCA 1990).

The density depends on the acreage of the Property. The Development Order describes the Property as “consisting of approximately 2.29 acres as more particularly described in Exhibit A.”

Exhibit A describes the Property as a “vacant 2.29 acre parcel.” The Development Order is what is at issue in this appeal, therefore the acreage found in the Development Order controls since that is the acreage that the City relied upon at the time the Development Order was adopted and the Development Order on its face identifies the Property as 2.29 acres. The Development Order allows for 127 units on the Property calculated at 55 units per acre. Since the Property is 2.29 acres as stated in the Development Order, this is a clearly erroneous mathematical error as 2.29 multiplied by 55 equals 125.95. The Code does not allow for rounding up when calculating the allowed density of a property. Code, Sec. 23.1-12. Therefore the density allowed in the Development Order is over two units. Accordingly, we **REVERSE** the Development Order as to the density determination.

CURLEY, ZUCKERMAN, and PARNOFIELLO, JJ., concur.

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Case No.: 50-2021-CA-010831-XXXX-MB

VICKY GRANT,
EL DUB COMMUNITY LAND TRUST INC.

Petitioners,

Opinion/Decision filed: July 5, 2022

v.
CITY OF LAKE WORTH BEACH FLORIDA,
OAG INVESTMENT 5 LLC,

Petition for Writ of Certiorari

Petition filed: September 17, 2021

Respondents.

_____/_____
DATE OF PANEL: JUNE 14, 2022

PANEL JUDGES: CURLEY, ZUCKERMAN, PARNOFIELLO

GRANTED/DENIED/OTHER: PETITION PARTIALLY GRANTED, PARTIALLY DENIED

PER CURIAM OPINION/DECISION BY: PER CURIAM

CONCURRING:	)	DISSENTING:	)	CONCURRING SPECIALLY:)
	)	With/Without Opinion	)	With/Without Opinion)
)))
<u>/s/ G. Joseph Curley Jr.</u>)	_____)	_____)
DATE: 06/17/2022 J.	)	J.	)	J.)
)))
<u>/s/ Ashley Zuckerman</u>)	_____)	_____)
DATE: 06/17/2022 J.	)	J.	)	J.)
)))
<u>/s/ John Parnofiello</u>)	_____)	_____)
DATE: 06/17/2022 J.	)	J.	)	J.)