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

APPELLATE DIVISION: AY
CASE NO.: 502025CA008580XXXAMB

CLARIDGE JUPITER ISLAND
CONDOMINIUM ASSOCIATION, INC.,
Petitioner,
v.

PALM BEACH COUNTY
& PK BEACH SOUND, LLC,
Respondents.
____________________________________/

Opinion filed: June 8, 2026

Petition for Writ of Certiorari from the Palm Beach Board of County Commissioners

For Petitioners: Kevin S. Hennessy, Esq.; John J. Cavaliere III, Esq.;
Nicholas R. Bixler, Esq.
100 Second Avenue South, Suite 501-S
Saint Petersburg, FL 33701
khennessy@llw-law.com
jcavaliere@llw-law.com
nbixler@llw-law.com

For Respondents: Darren W. Leiser, Esq.
301 North Olive Avenue
Suite 601
West Palm Beach, FL 33401
dleiser@pbc.gov

Christopher P. Benvenuto, Esq.;
Brian Seymour, Esq.
777 S. Flagler Dr., Suite 500 East
West Palm Beach, FL 33401
cbenvenuto@gunster.com
bseymour@gunster.com

PER CURIAM.

The Petition for Writ of Certiorari is DENIED. *See Ybor Properties, LLC v. City of Tampa*, --- So. 3d. ----, 2026 WL 816564 (Fla. 2d DCA Mar. 25, 2026) (holding that a circuit court did more than determine a City Council's findings were supported by competent substantial evidence by describing the evidence as a "nebulous, . . . polic[y] established . . . solely by hearsay testimony describing a decades-old recollection from a layperson with an interest in the outcome").

KEEVER-AGRAMA and MULLINAX, JJ., concur; DIGANGI, J., concurs specially with opinion.

DIGANGI, J., concurs specially with opinion.

The scope of our review on "first-tier" certiorari is limited to a three-prong determination: "(1) whether procedural due process [wa]s accorded, (2) whether the essential requirements of the law have been observed, and (3) whether the administrative findings and judgment are supported by competent substantial evidence." *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982). With that important backdrop, and based on the current state of binding caselaw, I concur in denying the Petition for Writ of Certiorari ("Petition"). However, I write separately to address two separate but interrelated issues that impact "first-tier" certiorari review.

As an initial matter, it is a core bedrock legal principle in our country that courts are not policymaking institutions. *See, e.g. State v. Dade Cnty. by Bd. of Cnty. Com'rs, Dade Cnty. Port Auth.,* 210 So. 2d 200, 203 (Fla. 1968). Instead, courts at every level must yield to federal, state, and locally elected office-holders to best determine and implement policy for their constituents. Nevertheless, policymakers are still bound by the express terms of their own laws. *See Town of Longboat Key v. Islandside Prop. Owners Coal., LLC*, 95 So. 3d 1037, 1042 (Fla. 2d DCA 2012) ("As the wording of its laws binds a legislature, the Town is bound by the wording of its Code. This mounts a bulwark against the Town's unfettered exercise of power."); *Bd. of Cnty. Comm'rs of Brevard Cnty. v. Snyder*, 627 So. 2d 469, 474 (Fla. 1993) (noting that local governments and agencies must strictly adhere to town development plans and zoning codes).

The Palm Beach County Unified Land Development Code ("ULDC") was promulgated to "ensure that all Development Orders approved in unincorporated Palm Beach County (PBC) are consistent with the Comprehensive Plan and its managed growth systems." ULDC art. 1, ch. A, § 1(C)(1) (2025). Article 2, Chapter B, Section 7(D) of the ULDC governs "Type 2 Waiver[s],"

which "allow flexibility for residential, mixed-use or infill redevelopment projects, or architectural design, site design, or layout, where alternative solutions can be allowed, subject to performance criteria or limitations." ULDC art. 2, ch. B, § 7(D) (2025). Section 7(D)(6) deals with granting a Type 2 Waiver for RH/RM Zoned Beachfront Properties – the zoning at issue in this case. This portion of the ULDC provides four mandatory standards which must be utilized by the Board of County Commissioners and Zoning Commission in determining whether a Type 2 Waiver should be granted for redevelopment of an existing multifamily structure. *Id*. The ULDC is unequivocal in this regard – "[a] request which fails to meet any of these Standards shall be deemed adverse to the public interest and shall not be approved." *Id*.

While all four standards are of equal import, the standard that warrants discussion in this matter is standard (d) entitled "Changed Conditions or Circumstances." This standard allows a Type 2 Waiver if "[t]here are changed site conditions or circumstances, as demonstrated by the Applicant's Justification Statement, that necessitate a redevelopment of an existing structure in order to address government regulations that have changed since the initial construction." *Id*. The plain meaning of this language is clear – redevelopment of an existing structure is ***necessary*** due to changed conditions or circumstances. Merriam-Webster defines "necessary" as "absolutely needed." "Necessary." Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/necessary. Accessed 17 Apr. 2026. Even Black's Law Dictionary defines "necessary" as "needed for some purpose or reason; essential." "Necessary." Black's Law Dictionary (12th ed. 2024). Stated differently, redevelopment under a Type 2 Waiver shouldn't serve as a boon – it should only be considered when absolutely needed – a standard mandated by the UDLC.

Based on the current state of the law describing "first-tier" certiorari review of "competent,

substantial evidence," it appears that any evidence supporting a lower tribunal's decision is sufficient to withstand appellate scrutiny because this court "may not reweigh the evidence nor substitute its judgment for that of the agency." *City of Deerfield Beach v. Boca Dominium*, 795 So. 2d 145, 146 (Fla. 4th DCA 2001). As the First District has held, "[t]he sole starting (and ending) point is a search of the record for competent substantial evidence *supporting* the decision." *State, Dept. of Highway Safety & Motor Vehicles v. Wiggins*, 151 So. 3d 457, 464 (Fla. 1st DCA 2014). Based on this very limited scope of review, PK Beach Sound, LLC (the "Developer") met their burden by providing the following "competent, substantial evidence" in their justification statement:

> ***Applicant's Response:*** *Since the existing building was developed in 1984, there have been significant changes in government regulations at all levels. These include new building requirements, the impacts from regulations following the tragedy in Surfside, a change in the Coastal Construction Control Line, requirements related to xeriscaping, and flood plain elevation increases. These change in government regulations necessitate a modification or redevelopment of the subject existing structure. The proposed development meets these new regulations where the existing building does not, which creates a hazard not only for the residents of Beach Sound, but the surrounding area as well.*

(App. Vol. 3, p. 12). The Developer further had an expert planner testify as to these same facts at the hearing on the Type 2 Waiver. (App. Vol. 4, p. 37 – 8) This Court cannot substitute its judgment for that of the County Commission in relying on this evidence to reach its decision. *See Dusseau v. Metropolitan Dade County Board of County Commissioners,* 794 So. 2d 1270 (Fla. 2001).

I write separately to address the deficiencies in Palm Beach County's (the "County") procedure in approving such a waiver. The County's planners and zoning directors are crucial experts who serve as gatekeepers to the County Commission in determining whether applicants have complied with the ULDC. The County Commission relies on their knowledge, experience, and expertise in rendering decisions that have long-standing, consequential impacts on their constituents. It is also a well-known fact that these paramount players in the County's development and redevelopment are over-burdened and often under-staffed.

That said, the following was the entirety of the Staff Analysis prepared for the Zoning Commission regarding standard (d) in this matter:

Staff Analysis: **YES.** The proposed residential re-development is warranted due to changes in government regulations that necessitate a modification or redevelopment of the subject existing structure.

(App. Vol. 1, p. 626). The following, albeit somewhat lengthier, was the Staff Analysis prepared for the County Commission:

Staff Analysis: **YES W1 and W2.** Since the existing building was developed there have been changes to government regulations locally and by the state. It is the Applicant's intent to demolish the building to build a new building. The new building would be required to meet current development and construction code requirements. The proposed residential re-development is warranted due to changes in government regulations that necessitate a modification or redevelopment of the subject existing structure.

While standard (d) does allow an applicant's justification statement to demonstrate the necessity of redeveloping an existing structure, citizens deserve more "analysis" by the County when deciding whether to approve applications for development and redevelopment that ultimately leave a lasting legacy, for better or worse, on the community at large. The purpose of the staff report is to provide competent, substantial evidence for the governing body to rely upon in reaching its decision. Indeed, courts treat the staff report's recommendation as competent, substantial evidence. *See Vill. of Palmetto Bay v. Palmer Trinity Private Sch., Inc.*, 128 So. 3d 19, 27 (Fla. 3d DCA 2012) (finding staff report recommendations constitute competent substantial evidence); *City of Hialeah Gardens v. Miami–Dade Charter Found., Inc.,* 857 So. 2d 202, 205 (Fla. 3d DCA 2003) (confirming that the testimony of professional staff, when based on "professional experiences and personal observations, as well as [information contained in an] application, site plan, and traffic study" constitutes competent substantial evidence); *Palm Beach Cnty. v. Allen Morris Co*., 547 So. 2d 690, 694 (Fla. 4th DCA 1989) (confirming that professional staff reports analyzing a proposed use constituted competent substantial evidence); *Metro. Dade Cnty. v. Fuller*, 515 So. 2d 1312, 1314 (Fla. 3d DCA 1987) (stating that staff recommendations constituted evidence);

Dade Cnty. v. United Res., Inc., 374 So. 2d 1046, 1050 (Fla. 3d DCA 1979) (confirming that the recommendation of professional staff "is probative"). Here, the "analysis" is essentially a regurgitation of the applicant's statement. The people of Palm Beach County deserve more.

The second issue meriting discussion is the impact of our long-standing jurisprudence regarding deference to a municipality's interpretation of its own code in light of the passage of article V, section 21 of the Florida Constitution[1] and in the wake of *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). The First DCA declined to address whether *Loper Bright* extends beyond the federal Administrative Procedure Act. *See Dixon v. Brown*, 423 So. 3d 963, 970 (Fla. 1st DCA 2025); *but see CBHIV LLC v. Walton County*, 405 So. 3d 536, 542 fn. 3 (Fla. 1st DCA 2025) ("We recognize that the Supreme Court recently overturned *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984), in which courts are instructed to defer to an agency's interpretation. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 144 S.Ct. 2244, 219 L.Ed.2d 832 (2024). Courts are now required to exercise their independent judgment in interpreting the law."). Although the amendment to the Florida Constitution and the holding of *Loper Bright* specifically address the fallacy behind deference to an administrative agency's interpretation of a rule, law, or statute, the logic behind these changes rings true for deference to a municipality's interpretation of its own code.

"It is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. 137, 177 (1803). "The judicial power, as originally understood, requires a court to exercise its independent judgment in interpreting and expounding upon the laws." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 414, 144 S.Ct. 2244, 219 L.Ed.2d 832

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[1] Article V, § 21 of the Florida Constitution provides, "In interpreting a state statute or rule, a state court or an officer hearing an administrative action pursuant to general law may not defer to an administrative agency's interpretation of such statute or rule, and must instead interpret such statute or rule de novo."

(2024) (Thomas, J., concurring) (citation omitted). "Under the basic concept of separation of powers that flows from the scheme of a tripartite government adopted in the Constitution, the judicial Power ... cannot be shared with the other branches." *SEC v. Jarkesy*, 603 U.S. 109, 127, 144 S.Ct. 2117, 219 L.Ed.2d 650 (2024) (internal quotation marks and citation omitted). "Or, as Alexander Hamilton wrote in The Federalist Papers, 'there is no liberty if the power of judging be not separated from the legislative and executive powers.' " *Id.* (*quoting* The Federalist No. 78 (Alexander Hamilton)).

While I recognize the petition for writ of certiorari standard is much narrower than the standard on direct appeal, and in turn may require more deference, *see Cent. Fla. Invs., Inc. v. Orange Cnty*., 295 So. 3d 292 (Fla. 5th DCA 2019) ("Certiorari review considers whether the correct law was applied; review by appeal goes further to also consider whether the law was correctly applied."), I believe it is constitutionally impermissible to require courts to defer to any non-judicial interpretation of a rule, law, or statute. Nevertheless, under our current binding standard, and under the facts of this case, I am compelled to concur in the denial of the petition for writ of certiorari.