

IN THE SEVENTEENTH JUDICIAL
CIRCUIT IN AND FOR BROWARD
COUNTY, FLORIDA

CITY OF FORT LAUDERDALE,
A Florida Municipal Corporation,
Petitioner,

CASE NO.: 00-10449 (09)

v.

JUDGE ROBERT LANCE ANDREWS

COOLIDGE-SOUTH MARKETS
EQUITIES, L.P., a Delaware
Limited Partnership, et al.,
Defendants.

ORDER AND OPINION

Defendants, COOLIDGE-SOUTH MARKETS EQUITIES, L.P., et al., and Petitioner, CITY of FORT LAUDERDALE, file Cross Motions for Summary Judgment under Florida Rule of Civil Procedure 1.510. Additionally, Petitioner asks the Court to rule on the issue of reasonable necessity, or alternatively, files a Motion in Limine. The Court having examined the record and submissions, heard arguments of counsel, and otherwise being duly advised in premises finds and decides the following:

At the outset, it is not within the Court's purview to scrutinize the motives of the City Commission, or the means advanced to achieve its objectives. This Court must decide whether the City has met its burden of presenting substantial, competent evidence establishing reasonable necessity to forcibly condemn the site when the owners have complied with pertinent law that regulate consistency of construction.

FACTUAL BACKGROUND

This is an action for the forcible acquisition of land by eminent domain. At stake is the fate of the downtown Fort Lauderdale Hyde Park Market site, a long idle, nearly 1.4 acres parcel. The site is adjacent to the Stranahan House and on the north bank of the New River.

Defendants seek to erect a residential building. The proposed development is a thirty-eight level building. When completed it will be the third tallest of the surrounding skyscrapers. Pertinent zoning ordinances and the City's Comprehensive Plan enable the intended uses. This development appears consistent with its surroundings. The surroundings include the RiverWalk park, high density existing buildings, and other planned developments, except for the Stranahan House. Indeed, the developer sought approval, until proceeding further appeared futile. The developer feared the petition prejudiced its permit application.

Defendants' purchased the site in June 1998. In late 1999 the owners began compliance with the permitting procedures. Under Florida law, the Uniform Land Development Regulations (ULDR) set out the zoning provisions. Presently, the Hyde Park site is zoned to permit the highest level of use. Its designation is Downtown Regional Activity Center-City Center (RAC-CC). As such, "a wide range of employment, shopping, service, cultural high density and other more intense land uses" is contemplated.¹

Usually, owners face little resistance once the proposal appears consistent with its zoning designation. In this case, the owners propose public access with an open space promenade, which opens to the River Walk and the Stranahan House.² The plans were submitted to the City's

¹ UDLR § 47-13.3(A)(1)

² RAC-CC § 47-13.20. Downtown RAC review process and special regulations: (D) Open space for residential uses. For development in the RAC districts, except for RAC-CC, open space shall be required for residential uses. (emphasis added).

Historic Preservation Board as part of the Development Review Process. In addition to the ordinary permitting procedure, the owner was asked to submit an Impact Study of the development's effect on the Stranahan House. This report illustrated the proposal's objective of accentuating the Stranahan House and the River Walk. Defendant also submitted a Shadow Study, though such studies normally are required only for developments on the south bank. However, the City rejected the report and commissioned its own studies. The Janus Report contains recommendations including permitting the construction with marginal changes, though it is largely critical of the development. Additionally, a February 1, 2000, memorandum from the South East Archaeological Research suggests having an archaeologist available for field work.

The historic significance of the Stranahan House is undoubted. Frank Stranahan is commonly referred to as the "father of Fort Lauderdale." He arrived here in 1893. Originally, his business included trade with indigenous peoples, known to be Seminoles. The Seminoles apparently canoed in along the New River; traders docked along there and at an erstwhile slough to the North. Stranahan had a few residences in the surrounding area. He conducted business at various nearby sites. His first commercial location was at Tarpon Bend, roughly half a mile west of the present location. In fact, Stranahan resided and conducted business at no less than three nearby sites. Later, he purchased more than ten acres of land surrounding the home's present location from the prominent Brickell family. The restored, former home was built in 1906, after his 1900 marriage to his wife, Ivy. He continued commercial activities farther West near the railroad. Ivy Stranahan reportedly schooled the oft-journeyed indigenous children. She did so virtually until her death in 1971.

Historical map renderings depict scattered buildings and a clearing surrounding the House. Indeed, a January 27, 1926, New River newspaper article indicates the existence of

makeshift hotels. These structures accommodated the increased stage coach traffic. Over time, Stranahan sold off his real estate holdings. Stranahan's former properties now constitute the bustling and spirited downtown Fort Lauderdale. Similarly, many years later Stranahan partitioned the remaining land and sold the Hyde Park site. The previous owners built a supermarket. After Ivy's death the house was bequeathed to the Seventh Day Adventist church. Later, it was purchased, beautifully restored and preserved to its 1920s condition. It now enjoys a veneration deserving of the support mustered to prevent developing the adjacent site.

Despite the rich history of the entire downtown area, the Hyde Park site has never been categorized as a Historical Preservation District under the ULDR.³ It is categorized as RAC-CC, which permits the most intense uses. Similarly, the City's Comprehensive Plan does not list the site as historically significant. In fact, it only recently has been listed with the Florida Historic Board as a potential archaeological site.⁴

In addition, official plans and studies commissioned for the downtown area have omitted the embattled site. First, in 1986, the city approved and began development of the RiverWalk park. The concept is a linear park connecting the Arts and Theater District running along the banks of the New River to the fledgling, primarily retail shops of Las Olas Boulevard. The park was financed in 1986 by Bond Resolution No. 86-101. A significant study was conducted by the original and adopted Sasaki Associates Plan. Hyde Park market is at the eastern end of the RiverWalk park. In the Sasaki Plan, the park is designed to encourage pedestrian interest in the downtown area. Reportedly, the park was to be the impetus for \$370,000,000 in private development within the downtown area. Fort Lauderdale's RiverWalk gem has revitalized her

³ Uniform Land Preservation District § 47-16.

⁴ File No.: 8BD03280

downtown area. Currently, parks, open spaces, and river access adorn the path. At its completion, total acreage will be nearly 28.8 acres.

Second, the City's oft-amended Comprehensive Plan has consistently confirmed the site's high density use designation. The Comprehensive Plan is the blueprint for the City's long term growth management. Two provisions for parks and preservation of historical resources are relevant. First is the Parks and Recreation Element Future Needs and Demands Analysis. Indeed, the Comprehensive Plan contains the methodology by which Fort Lauderdale may determine parks and open space necessity. As of 2000, there were 942.8 acres within Fort Lauderdale. This includes parks of various classifications.⁵ The Plan's preferred ratio of park space to population is 4.5 acres per thousand persons. The City currently maintains an inventory of 5.9 acres per thousand. With respect to open space, there are 2, 235 acres, or 14 acres per thousand.

Thirdly, the 1996 Comprehensive City Park Bond referendum was circulated to finance the development of the area over the Kinney Tunnel adjacent to the Stranahan House. Though unfinished, the concept is a plaza type promenade to replace the unsightly dead-end road. This plaza is conceived to connect to the RiverWalk park. However, there are indications the Stranahan House resists granting an easement for the promenade connection.

Lastly, the Comprehensive Plan's Historic Preservation Element establishes the preservation goals, respecting the City's historic resources. Chapter 11-1 promotes preservation as a balanced strategy. However, the Historic Preservation Element does not include the subject property.

⁵ Comprehensive Plan chapter 10-8, page 194: Classifications (1) mini parks, (2) neighborhood parks, (3) community parks, (4) schools, (5) large urban, (6) and special facilities.

Nevertheless, unlike other surrounding, equally intense developments, Defendants apparently suffer the misfortune of being targeted by a determined group, as a campaign against the permit was engineered by the board of the Stranahan House. An August 2000, historic impacts review and comments by the Historic Preservation Board did not oppose the development. Indeed, it recommended redesign to highlight the significance of the House, and to ensure archaeological resources are not wasted. Moreover, Petitioner's experts all agree on the significance of the Stranahan House, and nobly attempt to extrapolate equal significance to the adjacent site. One witness, Professor Paul George, Ph.D., was commissioned to write a manuscript about the history of the House and the Stranahans. Yet, even he relents his impressive data to concede the Stranahan House, nonetheless, will maintain its significance under the proposal. An unrelated historical analysis of August 2000, from Dr. George is consistent with this conclusion. The witnesses most adamant about the site's historic significance are the City's employees. Although she is not a historian, the Historic Preservation Element's author, Kathleen Conner, testified as to the significance of the site. In the end, she essentially conceded, after all, the House will remain historically significant.

The City desires to establish a park, instead of the development as an eastern entrance to the RiverWalk. To this end, the Stranahan House paid for and circulated a petition to amass apparent support for condemnation. By January 2000, some 8800 signatures of the estimated 80,000 registered voters were solicited. On January 19, 2000, on the strength of the petition drive and the largesse of the Stranahan board, the City Commission passed Resolution No. 00-10 determining:

it is necessary and desirable for the promotion of municipal purposes and the health, safety and welfare of the citizens of the City that the City undertake the acquisition, demolition and improvement of certain property contiguous with the Stranahan House

to be used for park purposes (the "Park Project") to preserve historic resources and open space on New River. . . .

Besides conclusory statements of public purpose, there is no implicit finding of reasonable necessity. According to City Manager, Floyd Johnson, prior to the campaign by the Stranahan House, no previous proposal, nor an analysis of reasonable necessity was performed for this condemnation.

Subsequently, a divided City Council approved an \$8,000,000 General Obligation Bond to purchase the Hyde Park site.⁶ The specific language of Resolution No. 00-74 presented to the electorate was:

shall the City of Fort Lauderdale, Florida, issue general obligation bonds not exceeding \$8,000,000, maturing within twenty (20) years, bearing interest not exceeding the maximum legal interest rate, payable from ad valorem taxes levied by the City, to pay for acquisition, demolition and improvement of approximately one and one-half acres of property contiguous with the Stranahan House for park purposes to preserve historic resources and open space on the New River. . . .

Petitioner asserts voter approval constitutes a "demand" study. Indeed, on June 6, 2000, the City Commission authorized eminent domain proceedings to acquire the Hyde Park site. The City concludes the site is "necessary for the establishment of an urban park, open space, recreational area, river access, historical site, or any such uses independently or in combination, the same being for a public and municipal purpose and in the best interest of the public welfare and of the City. . . ."

On August 28 and 29, 2001, evidentiary hearings were held before the Honorable J. Leonard Fleet. However, prior to completion of Petitioner's presentation of evidence, on August

⁶ The City has received two conditional grants and another significant donation made toward acquiring the site. The State Historic Board has made a grant of six million dollars, and the Seminole nation has expressed a desire to donate an additional three million for establishing a park with its namesake. Lastly, there is reportedly an anonymous two million dollars donation.

30th, Judge Fleet recused himself. After the case was transferred to this division, Defendants' filed, and Petitioner cross-filed Motions for Summary Judgment.

A summary judgment hearing was held on February 7, 2002. There the City argued for condemnation for use as public park. But, when asked for a determination of reasonable necessity for acquiring the site and not the other vacant and surrounding parcels, counsel for the City simply replied the "City couldn't afford [it]." (TR. 14). Furthermore, the City receded from the specific language of "urban park" from the referendum. The latest incantation of necessity is a "special use park." Under this classification, reasonable necessity of a special use park is not correlated to any rational demand or adopted methodologies.

For the following reasons, the Court denies Petitioner's petition for eminent domain.

ANALYSIS

Under Florida Rule of Civil Procedure 1.510, movants for summary judgment must show they are entitled to prevail on all points as a matter of fact and law. See Holl v. Talcott, 191 So.2d 40 (Fla. 1966); City of Miami Beach v. Manilow, 232 So.2d 759 (Fla. 3d DCA 1970). In the instant matter, determining reasonable necessity is appropriate for summary judgment, since material questions of fact do not exist.

The power to condemn private property is an attribute of sovereignty which the state would have even [though] there were no constitutional grant of the power. Tampa-Hillsborough County Expressway Authority v. K.E. Morris Alignment Service, Inc., 444 So.2d 926 (Fla. 1983); Spafford v. Brevard County 110 So. 451 (Fla. 1926); generally Agins v City of Tiburon, 447 US 255 (1980). Although the government has general power to condemn, it may do so only in compliance with the statute giving it such power. Tosohatchee Game Preserve, Inc. v. Central and Southern Florida Flood Control Dist., 265 So.2d 681 (Fla. 1972).

The City attempts to condemn this site pursuant to the following authority: First, Florida's Home Rule principle broadly enables municipalities to provide services to constituents.⁷ Under Florida Statute § 166.021(4), the Legislature directs wide latitude to be accorded to the municipality to conduct its business. Secondly, under § 166.401(1) Fort Lauderdale has the right to petition this Court for an eminent domain proceeding.⁸ Thirdly, under § 166.411, Petitioner may commence eminent domain proceedings to set up parks.⁹ Yet, these provisions merely grant the authority to condemn and are muted by respect for private property rights.

The government's power to condemn is limited by the coterminous existence of the individual's constitutional right to own and develop property. Indeed, Florida Constitution Article X § 6(a) provides that no private property may be taken except for a public purpose. Constitutional provisions relating to the exercise of the power of eminent domain are wholly for the protection of the individual property owner against the aggressions of government. Abell v Town of Boynton, 117 So. 507 (Fla. 1928). That is because the power of eminent domain is one of the law's most harsh proceedings, and when the sovereign undertakes to condemn private

⁷ Florida Constitution Article VIII, § 2(b). Powers. Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law.

⁸ Florida Statutes § 166.401(1) All municipalities in the state may exercise the right and power of eminent domain; that is, the right to appropriate property within the state, except state or federal property, for the uses or purposes authorized pursuant to this part. The absolute fee simple title to all property so taken and acquired shall vest in such municipal corporation unless the municipality seeks to condemn a particular right or estate in such property.

⁹ Florida Statutes § 166.411 Municipalities are authorized to exercise the power of eminent domain for the following uses or purposes: (1) For the proper and efficient carrying into effect of any proposed scheme or plan of drainage, ditching, grading, filling, or other public improvement deemed necessary or expedient for the preservation of the public health, or for other good reason connected in anywise with the public welfare or the interests of the municipality and the people thereof;
(4) For public parks, squares, and grounds;

property, it must do so only for a public purpose in order to protect an individual's due process rights respecting private property. Wilton v. St. Johns County, 123 So. 527 (Fla. 1929); City of Lakeland v. Bunch, 293 So.2d 66 (Fla. 1974); Brest v. Jacksonville Expressway Authority, 194 So.2d 658 (Fla. 1st DCA 1967), aff'd. 202 So.2d 748 (Fla. 1967); Clark v. Gulf Power Co., 198 So.2d 368 (Fla. 1st DCA 1967).

The judicial question is whether reasonable necessity for the exercise of the eminent domain power is ascertainable and established. See Canal Auth. v. Miller, 243 So.2d 131 (Fla. 1970); City of Lakeland v. Bunch, 293 So.2d 66 (Fla. 1974); Peavy-Wilson Lumber Co. v. Brevard County, 31 So. 2d 483 (Fla. 1947); Dept. of Transp. v. Barbara's Creative Jewelry, Inc., 728 So.2d 240 (Fla. 4th DCA 1998). The role of the judiciary in determining whether the power of eminent domain is exercised in furtherance of a public purpose is narrow. Department of Transp. v. Fortune Federal Sav. and Loan Ass'n, 532 So 2d 1267 (Fla. 1988).

Consistent with this principle, whenever the state, a municipality, or other agent in charge of a public use seeks to acquire, against the consent of the owner, private property for public use, the provisions of the authorizing law require strict construction and substantial compliance. Inland Waterway Development Co. v City of Jacksonville, 37 So. 2d 333 (Fla. 1948); Seaboard All-Florida Ry. v Leavitt, 141 So. 886 (Fla. 1932); Wilton, supra; Florida Cent. & P.R. Co. v Bear, 31 So 287 (Fla. 1901). See Tosohatchee Game Preserve, Inc., supra; Department of Environmental Protection v. Gibbins, 696 So.2d 888 (Fla. 5th DCA 1997)(reh'g. den. 1997); City of Ocala v. Red Oak Farm, Inc., 636 So.2d 81 (Fla. 5th DCA 1994); Clark, supra.

REASONABLE NECESSITY FOR CONDEMNATION

To effect a valid condemnation, Petitioner must prove a reasonable necessity for the private property, which is consistent with the valid public purpose. Condemnor initially must

come forward with proof that there is public purpose for taking and reasonable necessity that land is being taken for contemplated public use. Canal Authority v. Miller, 243 So.2d 131 (Fla. 1970); Bunch, *supra*; Broward County v. Ellington, 622 So.2d 1029 (Fla. 4th DCA 1993); Broward County v. Steele, 537 So.2d 650 (Fla. 4th DCA 1989); School Bd. of Broward County v. Viele, 459 So.2d 354 (Fla. 4th DCA 1984), rev. denied, 467 So.2d 1000 (Fla. 1985).

Subsequently, condemnee must either concede existence of necessity or be prepared to show bad faith or abuse of discretion as affirmative defense. Canal Authority v. Miller, 243 So.2d 131 (Fla. 1970); City of Cocoa v. Holland Properties, Inc., 625 So.2d 17 (Fla. 5th DCA 1993). Thus, by extension, landowners should be given some measure to intelligently mollify a concession to reasonable necessity.

Florida courts do not require pinpoint, absolute necessity. Consistent with the mandates of simple due process, they require some substantial, competent evidence. For example, a petitioner satisfies its initial burden of proof concerning reasonable necessity for condemnation by presenting evidence that it considered relevant factors, such as alternative sites, costs, long-range area planning, environmental and safety considerations, in making its decision. Broward County v. Steele, 537 So.2d 650 (Fla. 4th DCA 1989). Such a showing is intended to safeguard the private property rights against an arbitrary actions by the sovereign. See City of Jacksonville v. Moman, 290 So.2d 105 (Fla. 1st DCA 1974)(cert. den. 297 So.2d 570)(a mere declaration of necessity by municipality intended to justify taking by eminent domain is inadequate); Cf. City of Cocoa v. Holland Properties, Inc., 625 So.2d 17 (Fla. 5th DCA 1993)(condemnor satisfied burden of showing reasonable necessity by hearing officer's findings of facts contemplating each post permit factor, including excessive water demand projections, planned acquisition of additional wells, aquifer storage recovery system wells, and planned

development of creek reservoir). The Court will address the reasonable necessity supporting an urban park pursuant to the referenda, and the condemnation for historic preservation in turn.

A. Establishing an Urban Park

Here, Petitioner presents no implicit showing of reasonable necessity for creation of an urban park. Contrary to counsel's assertion, conclusory statements of necessity, and a reaffirmation of power of eminent domain are not fait accompli. The City did not present evidence of deliberation for alternatives or long-range planning. It appears Petitioner's sole consideration of costs is in setting the bond value. Indeed, City Manager Patterson admitted no prior finding of reasonable necessity was made. This site warranted little pertinent deliberation until the Stranahan House pursued its desire for the site. In all, the record is replete with permuted declarations supported by the Stranahan House. Moreover, Petitioner's witnesses simply repeat the goals and objectives of the Comprehensive Plan and its Historic Preservation Element. The mere declaration of the authority to proceed does not constitute the antecedent public purpose contemplated by the constitutional protection of private property rights. Otherwise, there is little safeguard of private property rights from political caprice.

Courts have denied similar petitions in the absence of articulated, reasonable, substantial evidence. See Pasco County v. Franzel 569 So.2d 877 (Fla. 2d DCA 1990)(county abused its discretion by making a premature decision in selecting any route or roadway based on an insufficient study of relevant factors); Cf. Broward County v. Ellington (where condemnation for airport expansion was upheld, because competent, substantial evidence was presented of the projected growth in area air traffic)(622 So.2d 1029 (Fla. 4th DCA 1993)); Test v. Broward County, 616 So.2d 111 (Fla. 4th DCA 1993); Accord Knappen v. State Dept. of Transp., 352 So.2d 885 (Fla. 5th DCA 1977).

Further, the City's petition depends on advancing a category of "special use park" not bound to the Parks and Recreation Element's usual methodologies. Petitioner's shift from the "urban park" approved by the referenda, to a "special use park" is unavailing, and is an unfair concept of reasonable necessity. Within the Comprehensive Plan, the classification of "special use or purpose facilities" requires an analysis of rate of return or ratio of cost to benefit. This statement's critical inference is a requirement for any articulated evidence correlating the proposal to a change in need.¹⁰ The entire 28.8 acres of the River Walk is special use and open space. Petitioner has an obligation to state a reason for negligibly increasing park space already thirty per cent above the preferred level. An owner should intelligibly comprehend how a 1.4 acre parcel is reasonably necessary in a city with over 3100 acres of parks and open space. Eminent domain's finality should not be based on the caprice of the majority and the present ability to raise the tributary bounty. In Florida, public benefit is not synonymous with public purpose, when it comes to spending the taxpayers' money or taking his property by eminent domain. Wilton v. St. Johns County, *supra*; Baycol, Inc. v. Downtown Development Authority of City of Fort Lauderdale, 315 So.2d 451 (Fla. 1975); Peavy-Wilson Lumber Co. v. Brevard County, 31 So.2d 483 (Fla. 1947).

¹⁰ This case is distinguishable from the instances when courts have permitted taking for some future use. Carlor Co. v. City of Miami, 62 So 2d 897 (Fla. 1953); Test v. Broward County, 616 So 2d 111 (Fla. 4th DCA 1993); Dade County v. Paxson, 270 So 2d 455 (Fla. 3d DCA 1972), cert. dismissed, 283 So 2d 862 (Fla. 1973); City of Miami Beach v. Broida, 362 So 2d 19 (Fla. 3d DCA 1978)(it is not necessary that the officials proceed to make immediate use of the property thus acquired or that they have plans and specifications prepared and all other preparations necessary for immediate construction for such necessity to exist). When the petition is based on competent substantial evidence, a decision to condemn one alternate site over another is not necessarily an abuse of discretion or proof of bad faith. See State ex rel. Ervin v. Jacksonville Expressway Authority, 139 So 2d 135 (Fla. 1962)(the fact a condemning authority may have elected to condemn between two reasonable alternatives either easement or fee simple, does not show bad faith or abuse of discretion in making a particular choice); Catholic Burse Endowment Fund, Inc. v. State Road Dept., 180 So 2d 513 (Fla. 2d DCA 1965)(it is not an abuse of discretion to condemn the entire fee simple when the land would be used solely as a source of fill for the construction and maintenance of an interstate highway; Canal Authority v Litzel, 243 So 2d 135 (Fla. 1970).

In any event, the City argues for broad discretion and claims the record establishes its prima facie case. Petitioner cites the following cases as supporting its positions: Wright v. Dade County, 216 So. 2d 494 (Fla. 3d DCA 1968); Dade County v. Paxson, 270 So. 2d 455 (Fla. 3d DCA 1972); Department of Transportation v. Barbara's Creative Jewelry, 728 So. 2d 240 (Fla. 4th DCA 1998), cert. dismissed, 769 So. 2d 1040 (Fla. 2000); Bunch, supra. Yet, Petitioner fails to appreciate the critical distinction from those cases. In all those cases the condemning authority presented substantial, competent evidence.¹¹

The City's proposition creates an irony whereby it is acceptable to use planning and control ordinances to license the whim of majority when they are enacted to blunt such caprice.¹² The suggestion is untenable under Florida law. A local comprehensive plan is a statutorily mandated legislative plan intended to control and direct the use and development of property within a municipality. The plan is like a constitution for all future development within the governmental boundary. Gardens Country Club, Inc. v Palm Beach County, 590 So 2d 488 (Fla. 4th DCA 1991); Porter v Saddlebrook Resorts, Inc., 596 So 2d 472 (Fla. 2d DCA 1992). Florida Statutes § 163.3194 establishes the legal status of comprehensive plans. Under sections (1)(a), (b), (3)(a) and (4)(b), the Legislature expresses an intent to broadly construe the provisions of

¹¹ In Paxson the court found the condemnation of 180 acres for a park was correlated to the area population of 250,000 persons. The parks agency found a shortage in park space relative to national statistics.

In Wright the court found reasonable necessity, because the condemning authority had anticipated the growth and demonstrated the county's expanding needs.

Finally, in Barbara's Creative Jewelry the DOT's consideration of alternatives and environmental factors, as well as traffic projections, demonstrated reasonable necessity.

¹² In contrast, zoning ordinances have short-term projections. Zoning ordinances are the principal methods by which a municipality may control planning and land development. Zoning designations run a gamut of proposed uses and densities, from entirely residential to commercial uses. These zoning designations carry the force of law. These provisions allow contemplate adaptation, and are not immutable. The City publishes the zoning map including the designations. As a public record, the public and landowners are put on notice to permitted uses of property within the respective designations.

local comprehensive plans to enable the local governments to enforce provisions by only permitting development proposals consistent with zoning and conceptual objectives.¹³ Further, sections 163.3161(5) and (9) establish a heightened sensitivity to private property rights, and explicitly preclude development proposals inconsistent with the provisions of the Comprehensive Plan.¹⁴

B. Historic Preservation

Similarly, Petitioner does not present substantial, competent evidence showing Hyde Park Market as a historical resource maintaining the extraordinary power of condemnation. Indeed, the City again merely restates the policy objectives and preservation goals.

Development plans are rigorously scrutinized under the City's pertinent ordinances and Comprehensive Plan. The Comprehensive Plan's Historic Preservation Element sets out the Goals, Objectives and Policies. Objective 1, Policy 1.2, requires identification and recording of historic resource. Policies 2.1 and 2.2, propose that Fort Lauderdale evaluate eligibility and

¹³ Florida Statutes § 163.3194 (1)(a) After a comprehensive plan, or element or portion thereof, has been adopted in conformity with this act, all development undertaken by, and all actions taken in regard to development orders by governmental agencies in regard to land covered by such plan or element shall be consistent with such plan or element as adopted.

(b) All land development regulations enacted or amended shall be consistent with the adopted comprehensive plan, or element or portion thereof. . .

(3)(a) A development order or land development regulation shall be consistent with the comprehensive plan if the land uses, densities or intensities, and other aspects of development permitted by such order or regulation are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government.

(4)(b) It is the intent of this act that the comprehensive plan set general guidelines and principles concerning its purposes and contents and that this act shall be construed broadly to accomplish its stated purposes and objectives.

¹⁴Florida Statutes § 163.3161(5) It is the intent of this act that adopted comprehensive plans shall have the legal status set out in this act and that no public or private development shall be permitted except in conformity with comprehensive plans, or elements or portions thereof, prepared and adopted in conformity with this act.

(9) It is the intent of the Legislature that all governmental entities in this state recognize and respect judicially acknowledged or constitutionally protected private property rights. It is the intent of the Legislature that all rules, ordinances, regulations, and programs adopted under the authority of this act must be developed, promulgated, implemented, and applied with sensitivity for private property rights and not be unduly restrictive, and property owners must be free from actions by others which would harm their property.

designation of historical resources. Additionally, the provisions advocate for archaeological surveys as part of Development Review Process for sites along the New River. Furthermore, Objective 5, Policy 5.3 affirms preservation efforts may be achieved by eminent domain.

Under Objective 11 the City should integrate the review of impacts on historic and archaeological resources on land development regulations. Policies 11.2 and 11.3 require proposed developments to analyze the potential impacts on nearby historical resources using available assessment methodologies and require reporting all proposed impacts to the Historic Preservation Board for review and comment. Lastly, under the Objective 14, the City should continue to utilize design guidelines and land development standards unique and specific to downtown RAC-CC, and to promote quality development of a desirable nature in the City's downtown. Fort Lauderdale Historic Preservation Board is granted the power to protect these designated resources.¹⁵ The Hyde Park Market site is not included in the zoning designation

¹⁵ULDR § 47-32.3. Powers and duties of Fort Lauderdale Historical Preservation Board.

- A. To take action necessary and appropriate to accomplish the purpose of this board. These actions may include, but are not limited to: (1) Continuing the survey and inventory of historic buildings and areas and archeological sites and the plan for their preservation.
- (2). Recommending the designation of historic districts and individual landmarks and landmark sites.
 - (3). Regulating any alterations, demolition, relocation, adaptive use and new construction to designated property by issuing certificates of appropriateness.
 - (4). Applying the "United States Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings" as guidelines for changes to designated property.
 - (5). Working with and advising the federal, state and county governments and other boards and departments of the city.
 - (6). Advising and assisting property owners and other persons and groups, including neighborhood organizations which are interested in historic preservation.
 - (7). Initiating plans for the preservation and rehabilitation of individual historic buildings.
 - (8). Undertaking education programs including the preparation of publications and the placing of historic markers.
 - (9). Review National Register nominations and provide comments to the appropriate entities.
- B. The board shall have the power to conduct public hearings to consider historic preservation issues. A simple majority of the membership shall be required for decisions involving landmarks, landmark sites, and historic districts. Applicants shall be given written notification of the board's decisions. The board shall prepare and keep on file available for public inspection a written annual report of its historic preservation activities, cases, decisions, qualifications of members and other historic preservation work.

Historic Preservation, H-1, which comes with severe regulatory regime,¹⁶ nor is it found to be a historic resource.

Here, the Court reiterates the now familiar tautology: Due process requires some evidence or an antecedent finding by the Petitioner. See Pasco County v. Franzel, supra. At its core, this petition requires the Court to make the finding. But, the Court's review is limited to finding competent, substantial evidence. Petitioner v. Sapp, 280 So. 2d 443 (Fla. 1973); Florida Power & Light Co. v. Berman, 429 So.2d 79 (Fla. 4th DCA 1983). The record contains data from the era

¹⁶ULDR H-1 Designation

§ 47-16.2. Intent and purpose. H-1 - Historic Preservation District is intended to promote the cultural, economic, educational and general welfare of the people of the city and of the public generally, through the preservation and protection of historically worthy structures. These regulations are intended to insure a harmonious outward appearance of structures and premises, to encourage uses which will lead to their continuance, conservation and improvement in a manner appropriate to the preservation of the cultural and historic heritage of the city, to protect against destruction of or encroachment upon such area, structure or premise, to prevent creation of environmental influences adverse to such purposes, and to assure that new structures, uses and premises within historic districts will be in keeping with the character to be preserved and enhanced.

Historic Preservation Board's power to regulate restrictions on building:

Sec. 47-16.5.(1) Building height and length; (2) Building Site; (3) parks, lots and open space; (4) Minimum Floor Area.

Historic Preservation Board may restrictively regulate by requiring a Certificate of Appropriateness under § 47-16.6.

A. No person shall undertake any of the following actions affecting [sic.] property in an H-1 district without first obtaining a certificate of appropriateness from the historic preservation board in accordance with Sec. 47-24.11.C, Certificate of Appropriateness:

(1) Alteration of an archeological site or the exterior part of a building or a structure or designated interior portion of a building or structure, (2) New construction, (3) Demolition, (4) Relocation, (5) Ordinary repairs and maintenance that are otherwise permitted by law may be undertaken without a certificate of appropriateness, provided this work on a designated landmark, a designated landmark site, or a property in a designated historic district does not alter the exterior appearance of the building, structure or archeological site, or alter elements significant to its architectural or historic integrity.

B. All provisions of Sec. 47-24.11.C, Certificate of Appropriateness, shall apply in the H-1 district.

C. After a certificate of appropriateness is issued in accordance with Sec. 47-24.11.C, Development Permits and Procedures, all other applicable permits, licenses and certificates of compliance must be obtained before any use of the land occurs.

Building may not be used unless the proposed use complies with the list of permitted uses under § 47-16.10(1) Residential (2) Business retail sales (3) Business services (4) Professional offices or (5) Other uses (6) Accessory uses & outdoor site furnishings.

Additionally, § 47-16.20 imposes further restrictions on the permitted uses. § 47-16.21 regulates signs. § 47-16.22 regulates amenity requirements. § 47-16.23 promulgates a parking exemption.

when the zoning ordinances were originally drafted. Hyde Park market has consistently been designated Downtown RAC-CC. The Commission presented no substantial, competent evidence in the deliberations of Resolution 00-74 authorizing this petition.

In contrast, Dr. George's testimony and the Janus Report are critical. In his testimony, Dr. George concedes the development sustains the historic significance and resource of the Stranahan House. His primary concern is the prominence of the House along Las Olas Boulevard. In his opinion, the House should be the central feature of the surroundings. Further, the Janus Report commissioned by the City to refute the developer's own Impact Study recommends the development could coexist with the House and fulfill the City's goals, with mitigation. Similarly, the South East Research memorandum merely recommends the presence of an archaeologist during excavation.¹⁷ The Fort Lauderdale Historic Preservation Board presents no explicit objection. Undoubtedly, the Board has the authority to declare the site a historical resource and effect development. However, the Board does not prohibit the development. The comments and recommendations indicate the two sites may coexist.

Moreover, the Comprehensive Plan's Historic Preservation Element does not preclude coexistence. The rigors of deciding the zoning designation RAC-CC vis a vis H-1 is telling, and the pedantic reports of the record have negligible value. Neither does the Court believe a petition based on a referendum is adequate to overcome facts. This petition is supported by the referendum vote and the opinions of the City's employees. Without fail, they insist no development as contemplated will suitably enhance and complete the RiverWalk, as well as honor the veneration of the Stranahan House. It seems unreasonable to ask the Court to accept lay conclusions instead of the expertise of historians. See Peavy-Wilson Lumber Co., 31 So. 2d

¹⁷ The Hyde Park Market site's listing in the Florida Master File, does not constitute a level of site significance.

at 487. Accepting this as reasonable to justify the extraordinary exercise of eminent domain, is to shorten the distance to tyranny whereby no downtown private property is safe from the caprice of a majority. Accord Id. Due process requires more than mere reiteration of City's powers of condemnation and the present ability to compensate the owners.

Petitioner's commendable desire to increase the park inventory must not be performed capriciously. The record does not indicate whether the City considered the mitigation offered by the owner might very well accomplish its worthy goal. A condemning authority will not be permitted to take a greater interest or estate in property than is necessary to serve the particular public use for which the property is being acquired. Miller, supra. In any case, if the steps taken in a condemnation proceeding are performed consistent with the laudable due process protections, this Court will stand at the vanguard of the efforts to keep our downtown and the enchanted RiverWalk park accessible.

Accordingly, it is

ORDERED and ADJUDGED Defendants', COOLIDGE-SOUTH MARKETS EQUITIES, L.P., a Delaware Limited Partnership, et al., Motion for Summary Judgment is hereby GRANTED.

Further ORDERED and ADJUDGED Petitioner's Motion for Summary Judgment, or alternatively, Motion in Limine is DENIED.

DONE and ORDERED in Chambers, Fort Lauderdale, Broward County, Florida, this 21st day of March 2002.

/S/ ROBERT LANCE ANDREWS
ROBERT LANCE ANDREWS
CIRCUIT COURT JUDGE

copies to counsel of record