APPEALS OF LOCAL GOVERNMENT DECISIONS: CONSTRAINTS ON JUDICIAL REVIEW BEFORE, DURING, AND AFTER THE APPEAL

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I. INTRODUCTION

The Florida Constitution provides jurisdiction in the Supreme Court, the district courts of appeal, and the circuit courts to conduct appellate review over administrative actions.[1] The Florida Rules of Appellate Procedure provide the method for initiating judicial review of administrative actions and the rules of procedure to be followed for administrative appeals.[2]

Quasi-judicial decisions of local governments—municipalities, as an example—are appealable as a matter of right to the circuit courts.[3]

The question thus arises: Does appellate review of quasi-judicial final decisions differ in any meaningful respect from review of a lower court final judgment? Trial courts can act only in a judicial capacity in determining the controversies before them. Local governments act in multiple capacities—executive, legislative, and quasi-judicial. Because local governments make, enforce, and interpret their laws, they bring a unique aspect to the quasi-adjudicative process.

This Article answers the question by examining the jurisprudential constraints placed on judicial review of local government decision-making at three points in the appellate process: before, during, and after appellate review. The Article introduces the Florida sources of judicial review over local government quasi-

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1. FLA. CONST. art. V, §§ 3(b)(2), 4(b)(2), 5(b).
2. FLA. R. APP. P. 9.190.
3. FLA. CONST. art. V, §§ 5(b), 20(c)(3).

judicial decisions. Next, the Article examines the types of decisions subject to appeal (quasi-judicial) and the types of decisions immune from appeal (executive and legislative). Given the type of decision properly before an appellate court, this Article further explores the limitations on the reviewing court during the appeal relative to the standard of review and after the appeal relative to the constraints on the reviewing court's ability to direct the agency on remand.

II. SOURCES OF DIRECT JUDICIAL REVIEW OF LOCAL GOVERNMENT ACTION

A. The Florida Constitution

Direct judicial review is grounded in the Florida Constitution. The constitution provides for review of administrative action at each level of appeals court. Thus, the constitution articulates the authority for review of administrative decisions by the Supreme Court,[4] the district courts of appeal,[5] and the circuit courts.[6]

4. *Id.* § 3(b)(2). The authority of the Supreme Court to directly review administrative action is narrow. When provided by general law, the Supreme Court reviews actions of "statewide agencies relating to rates or service of utilities providing electric, gas, or telephone service." *Id.*; *see also* FLA. R. APP. P. 9.030(a)(1)(B)(ii) (articulating the Supreme Court's jurisdiction over administrative actions). General law provides for Supreme Court review of statewide agencies "relating to rates or service of utilities providing electric, gas, or telephone service." FLA. STAT. § 350.128; *see also id.* § 366.10 (giving jurisdiction to the Supreme Court over public service commission decisions related to electric or gas); *id.* § 364.381 (giving jurisdiction to the Supreme Court over public service commission decisions related to telecommunications companies).

5. The district courts of appeal have the power of direct review of administrative action by appeal if provided by general law. FLA. CONST. art. V, § 4(b)(2); *see also* FLA. R. APP. P. 9.030(b)(1)(C) (articulating the district courts of appeal's jurisdiction over administrative actions). Florida's Administrative Procedure Act, or APA, provides for judicial review by the district courts of appeal of final and non-final agency action. FLA. STAT. § 120.68. The types of agencies subject to the APA and the types of agencies excluded from the APA are set forth in the Act. *Id.* § 120.52(1) (defining "agency" and listing entities included and not included within the definition). *Compare* FLA. CONST. art. V, § 4(b)(1) (stating that district courts of appeal have jurisdiction to hear appeals from final judgments or orders of trial court, "including those entered on review of administrative action, not directly appealable to the [S]upreme [C]ourt or a circuit court"); *with* Morris v. City of Hialeah, 140 So. 2d 615 (Fla. 3d Dist. Ct. App. 1962) (stating that district court of appeal had jurisdiction over appeal from final judgment of circuit court denying petition for writ of certiorari to review a judgment of an administrative board).

6. FLA. CONST. art. V, § 5(b); *see also* FLA. R. APP. P. 9.030(c)(1)(C) (articulating the circuit courts' jurisdiction over administrative action).

The Florida Constitution has provided the circuit courts with jurisdiction to review administrative action by appeal if provided by general law.[7] There are several instances where the legislature has chosen to provide for direct review of local government decisions, for example, in the areas of code enforcement and suspension and revocation of driver's licenses; in such cases, review is initiated by filing a direct appeal to the circuit court.[8]

B. The Rules of Procedure

The Florida Rules of Appellate Procedure define "[a]dministrative action" as including, inter alia, "quasi-judicial decisions by any administrative body, agency, board[,] or commission not subject to the Administrative Procedure Act" and "administrative action for which judicial review is provided by general law."[9]

Where appellate review of administrative action is not provided by general law, quasi-judicial administrative action is reviewed by filing a petition for writ of certiorari in the circuit court.[10]

Where a party is entitled to seek review in the circuit court from a local government decision, review is not discretionary but "is a matter of right and is akin . . . to a plenary appeal."[11]

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7. FLA. CONST. art. V, § 5(b).

8. *See, e.g.*, FLA. STAT. §§ 26.012(1), 162.11 (providing circuit courts appellate jurisdiction over final administrative orders of local government code enforcement boards); FLA. STAT. § 322.31 (providing for circuit court review of decisions denying, cancelling, revoking, or suspending driver's licenses by writ of certiorari in accordance with the Florida Rules of Appellate Procedure); *id.* § 321.051(2) (providing that a final order of the Department of Highway Safety and Motor Vehicles "denying, suspending, or revoking a wrecker operator's participation in the system shall be reviewable . . . only by a writ of certiorari issued by the circuit court"); FLA. STAT. § 333.11 (providing that "[a]ny person aggrieved, or taxpayer affected, by any decision of a board of adjustment" relative to airport zoning may apply for judicial relief by filing a petition for writ of certiorari in the circuit court "within 30 days after rendition of the decision by the board of adjustment").

9. FLA. R. APP. P. 9.020(a)(3)–(4).

10. Broward Cnty. v. G.B.V. Int'l, Ltd., 787 So. 2d 838, 845 (Fla. 2001) (noting that a quasi-judicial decision by a local government agency is reviewable by writ of certiorari); *see also* FLA. R. APP. P. 9.100(c)(2) (setting forth the filing requirements for "[a] petition to review quasi-judicial action of agencies, boards, and commissions of local government, which action is not directly appealable under any other provision of general law but may be subject to review by certiorari").

11. *See Broward Cnty.*, 787 So. 2d at 843.

III. AGENCY ACTION SUBJECT TO APPEAL: QUASI-JUDICIAL VERSUS EXECUTIVE AND LEGISLATIVE DECISIONS

The ordinary decision-making of local governments, such as municipalities, is diverse and runs the gamut of decisions on legislation, personnel, zoning, code enforcement, and the granting of building permits. The first limitation on judicial review of local government decision-making relates to the character of the decision and occurs as a pre-condition to review. Local governments act in different capacities: quasi-judicial, legislative, and executive. As a threshold requirement to review, the reviewing court must ascertain whether the decision under review is quasi-judicial as opposed to legislative or executive. Certiorari does not lie to review either an executive or a legislative decision of an administrative body.[12]

A. Definition of Quasi-Judicial Action: *De Groot v. Sheffield*

The seminal Florida Supreme Court case of *De Groot v. Sheffield*[13] is the oft-cited starting point for determining whether a decision of local government is quasi-judicial and therefore subject to judicial review.

In *De Groot*, the Florida Supreme Court compared quasi-judicial action to executive action.[14] The court explained the distinction between a quasi-judicial administrative decision for which an appeal lies and an executive decision for which the proper recourse is an original action in the circuit court.[15] The court stated:

12. *See id.* (noting that only quasi-judicial actions of an agency are reviewable); De Groot v. Sheffield, 95 So. 2d 912, 915–16 (Fla. 1957) (noting that certiorari is available for quasi-judicial actions of an agency); Sun Ray Homes, Inc. v. Cnty. of Dade, 166 So. 2d 827, 829 (Fla. 3d Dist. Ct. App. 1964) (noting that certiorari is not available in a legislative action of a board of county commissioners but is available for quasi-judicial action).

13. 95 So. 2d 912.

14. *Id.* at 914–15. The Supreme Court explained that, at that time, within recent years, a substantial body of jurisprudence had developed regarding administrative law in light of the expansion of the number of boards, commissions, bureaus, and officials "having authority to make orders or determinations which directly affect[ed] both public and private rights" and the corresponding "increasing number of cases involving the extent of the authority . . . [and the] correctness of their conclusions in particular instances." *Id.* at 914. Hence, the Court undertook the task of reconciling past opinions and establishing an orderly procedure for review. *Id.*

15. *Id.* at 915.

> The reviewability of an administrative order depends on whether the function of the agency involved is judicial or quasi-judicial in which event its orders are reviewable or on the contrary whether the function of the agency is executive in which event its decisions are not reviewable by the courts except on the sole ground of lack of jurisdiction. In the latter event the order is, of course, subject to direct or collateral attack.[16]
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> As to the character of a quasi-judicial decision, it stated:
>
> [W]hen notice and a hearing are required and the judgment of the board is contingent on the showing made at the hearing, then its judgment becomes judicial or quasi-judicial as distinguished from being purely executive.[17]

The court found that a decision of a civil service board was quasi-judicial, as it "arrived at its decision after a full hearing pursuant to notice based on evidence submitted in accordance with the statute . . . involved."[18]

In a subsequent opinion, the Florida Supreme Court in *Board of County Commissioners of Brevard County v. Snyder*[19] compared quasi-judicial action with legislative action.[20] The court further explained the character of quasi-judicial decision-making that would subject the decision to judicial review:

> [R]ezoning actions which have an impact on a limited number of persons or property owners, on identifiable parties and interests, where the decision is contingent on a fact or facts arrived at from distinct alternatives presented at a hearing, and where the decision can be functionally viewed as policy application, rather than policy setting, are in the nature of . . . quasi-judicial action . . . .[21]

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16. *Id.* at 914.
17. *Id.* at 915.
18. *Id.*
19. 627 So. 2d 469 (Fla. 1993).
20. *Id.* at 474.
21. *Id.* (quoting Snyder v. Bd. of Cnty. Comm'rs of Brevard Cnty., 595 So. 2d 65, 78 (Fla. 5th Dist. Ct. App. 1991)); *see also* Park of Commerce Assocs. v. City of Delray Beach, 636 So. 2d 12, 15 (Fla. 1994) (quoting *Snyder*, 595 So. 2d at 78).

B. Decisional Law Differentiating Between Quasi-Judicial and Executive or Legislative Decisions

Since *De Groot*, a body of caselaw has developed interpreting the definition of "quasi-judicial" given by the Supreme Court. That jurisprudence has emphasized that the character of a quasi-judicial decision is not based merely upon the conduct of an evidentiary hearing alone.[22] Quasi-judicial action is set apart from its counterparts in executive and legislative action by the existence of a decision reached after evidentiary hearing, which is *required* and has an impact on a limited number of parties and identifiable interests.[23] As a result, caselaw has developed subjecting various decisions to judicial review while at the same time shielding other decisions from review in the appellate division of the circuit courts.

1. Voluntarily Affording Notice and a Hearing

An agency voluntarily subjecting itself to a hearing will not confer jurisdiction for judicial review over executive or legislative action.[24] Something more is required to subject a local government decision to appellate review.

The Third District Court of Appeal in the case of *Vazquez v. Housing Authority of City of Homestead*[25] upheld the circuit court's ruling that it lacked jurisdiction over an appeal from the decision of the Housing Authority of Homestead where the city

22. *See* Bruce Epperson, *Redefining "Quasi-Judicial": The Diminishing Role of Quasi-Judicial Determinations in Local Government Personnel Actions*, FLA. B.J., Aug. 2006, at 59, 60–61 (analyzing some of the post-*De Groot* decisions).

23. *See* Jeremy N. Jungreis, *A Formal Affair: Land Use Decisionmaking, and Obstacles Thereto, in the Post-*Snyder *Era*, FLA. B.J., Dec. 1996, at 52, 53 (noting that a court determined an action was quasi-judicial because the action "had an impact on a limited number of persons" and "the impact was on identifiable parties and interests, rather than the public at large").

24. An agency may not confer jurisdiction upon the circuit court to hear an administrative appeal. *See* Kontos v. Menz, 136 So. 3d 714, 717 (Fla. 2d Dist. Ct. App. 2014) (stating that "[n]othing in either [A]rticle V of the Florida Constitution or [S]ection 26.012 permits a city, county, or other municipal body to confer jurisdiction on a circuit court by enacting local laws or codes"); Pleasures II Adult Video, Inc. v. City of Sarasota, 833 So. 2d 185, 188 (Fla. 2d Dist. Ct. App. 2002) (finding that "[b]estowing judicial authority to review municipal permitting decisions was not a power 'heretofore conferred' on municipalities"); Cherokee Crushed Stone, Inc. v. City of Miramar, 421 So. 2d 684, 685 (Fla. 4th Dist. Ct. App. 1982) (stating that an ordinance cannot "confer jurisdiction on a circuit court where none otherwise exists").

25. 774 So. 2d 813 (Fla. 3d Dist. Ct. App. 2000).

voluntarily provided an evidentiary hearing to an employee challenging disciplinary action.[26] In that case, Vazquez was designated an at-will employee of the Housing Authority and was subject to disciplinary action without judicial oversight by the executive director.[27] When he was demoted, he was afforded counsel to assist him in a hearing before the executive director and a hearing officer who was the chairman of the Housing Authority.[28] Even though he was not entitled to a pre-demotion hearing, he was allowed to "present evidence and engage in argument on the record before a hearing officer who, ultimately, confirmed the disciplinary action taken by the [e]xecutive [d]irector."[29] The Court of Appeal denied the petition for review,[30] stating: "These voluntary procedures did not turn the [e]xecutive [d]irector's executive decision into a quasi-judicial proceeding."[31]

In *MRO Software, Inc. v. Miami-Dade County*,[32] the Third District Court of Appeal followed its opinion in *Vazquez* with another decision finding that the voluntary submission to a process that resembles a quasi-judicial determination will not confer jurisdiction for review of what is otherwise executive action.[33] There, Miami-Dade County awarded a bid for a government contract.[34] The county code provided a process that resembled the procedures for a quasi-judicial determination.[35] Nonetheless, the Court of Appeal found, notwithstanding the process provided for in the county code, that the award of a bid is an executive function.[36] Hence, in that case, there was no jurisdiction for judicial review by the circuit court in its appellate capacity.[37]

The lack of a hearing requirement was significant to the Fourth District Court of Appeal, which found that a decision by the Palm Beach County Building Code Advisory Board was not a

26. *Id.* at 814–15.
27. *Id.* at 814.
28. *Id.*
29. *Id.*
30. *Id.* at 815.
31. *Id.* at 814.
32. 895 So. 2d 1086 (Fla. 3d Dist. Ct. App. 2004).
33. *Id.* at 1086, 1088.
34. *Id.* at 1086.
35. *Id.* at 1086, 1088.
36. *Id.* at 1086.
37. *Id.* at 1086, 1088.

quasi-judicial decision and not subject to appellate review.[38] In *Building Code Advisory Board v. Southern Building Products, Inc.*,[39] the county advisory board voted at a meeting to require certain inspections of a manufacturer's plants, and the manufacturer petitioned the circuit court for review over the board's action.[40] Although the circuit court declined to determine whether the board was empowered to conduct hearings, it found that the board had denied the manufacturer due process, and therefore it remanded the case with instructions to provide a hearing that satisfied due process.[41] The advisory board petitioned the Fourth District, which held that the board's decision was not quasi-judicial.[42] In reaching this decision, the court stated that "[n]o code or regulation required that [the manufacturer] receive notice and an opportunity to be heard."[43]

In *Board of County Commissioners of Hillsborough County v. Casa Development Ltd., II*,[44] the Second District Court of Appeal considered whether the denial of an application for a franchise was quasi-judicial or quasi-legislative where Hillsborough County conducted a hearing upon notice.[45] The Court of Appeal determined that the decision to deny the franchise was quasi-legislative.[46] The court reasoned that "[w]hile there was a public hearing upon notice, a quasi-judicial type of hearing was neither contemplated nor conducted."[47]

2. *Rejection of Administrative Complaints by Local Government*

Certain decisions made by the local government prior to the conduct of a quasi-judicial process can be considered executive and therefore outside the scope of appellate review. In this regard, it has been established that a local government's decision

38. Bldg. Code Advisory Bd. v. S. Bldg. Prods., Inc., 622 So. 2d 10, 12–13 (Fla. 4th Dist. Ct. App. 1993).
39. 622 So. 2d 10.
40. *Id.* at 11–12.
41. *Id.*
42. *Id.* at 12.
43. *Id.*
44. 332 So. 2d 651 (Fla. 2d Dist. Ct. App 1976).
45. *Id.* at 654.
46. *Id.*
47. *Id.*

not to hear a matter is quasi-executive and not subject to judicial review.

In *Fisher Island Holdings, LLC v. Miami-Dade County Commission on Ethics & Public Trust*,[48] the Third District Court of Appeal held that the refusal of the Miami-Dade County Commission on Ethics and Public Trust to entertain an ethics complaint was quasi-executive and not subject to appellate review.[49] The Commission on Ethics found an ethics complaint to be "legally insufficient (as not stating a possible violation under the applicable [county] ordinance) and dismissed [the complaint] without proceeding to the investigation and probable cause determination."[50] The complainant petitioned the circuit court for certiorari review.[51] The Commission moved to dismiss the appeal arguing inter alia that the dismissal on legal sufficiency was not a reviewable action.[52] On second-tier certiorari review, the Third District stated, "We agree with the circuit court's reasoning that the decision is akin to a prosecutor's determination not to file an information or seek an indictment in a criminal action, a decision which has long been held to be completely discretionary and not subject to judicial interference."[53] The Third District upheld the circuit court's decision not to hear the appeal and denied the petition for second-tier certiorari.[54]

3. Personnel Decisions as Executive Action

By far, the courts of Florida are in accord that decisions made by local government administrators with regard to management

48. 748 So. 2d 381 (Fla. 3d Dist. Ct. App 2000).
49. *Id.* at 382.
50. *Id.*
51. *Id.*
52. *Id.*
53. *Id.*
54. *Id.* The Third District in *Fisher Island* followed the opinion of the Second District Court of Appeal in *Tenney v. State Commission on Ethics*. *Id.* In *Tenney*, the Second District held that the dismissal of a complaint made to the State of Florida Commission on Ethics was executive action and not subject to judicial review. 395 So. 2d 1244, 1246–47 (Fla. 2d Dist. Ct. App. 1981). Perhaps the most recent pronouncement in this area was from the Fourth District Court of Appeal in *Gershman v. Florida Elections Commission*. 127 So. 3d 686, 687 (Fla. 4th Dist. Ct. App. 2013). There, a complainant alleged an elections violation by an opponent. *Id.* at 686. The Florida Elections Commission dismissed the complaint as legally insufficient. *Id.* The Fourth District held that the dismissal of the elections complaint was "a non-reviewable, quasi-executive decision." *Id.* at 687.

of the workforce are executive decisions insulated from judicial review.[55]

The Supreme Court in *De Groot* stated:

> In *Bryan v. Landis*, it was pointed out that where one holds office at the pleasure of the appointing power and the power of appointment is coupled with the power of removal contingent only on the exercise of personal judgment by the appointing authority, then the decision to remove or dismiss is purely executive and not subject to judicial review. In the same opinion, however, we pointed out that if removal or suspension of a public employee is contingent upon approval by an official or a board after notice and hearing, then the ultimate judgment of such official or board based on the showing made at the hearing is subject to appropriate judicial review.[56]

Recently, in *City of Miami v. Martinez-Esteve*,[57] the Third District Court of Appeal compared an appeal from a civil service board making a recommendation to the city manager regarding employee discipline to an original action challenging the decision of the city manager to reject that recommendation of the board.[58] There, the plaintiff, a former city employee, filed suit in circuit court challenging the decision of the city manager to reject the

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55. *See* De Groot v. Sheffield, 95 So. 2d 912, 915 (Fla. 1957) (stating that, when one holds the power to appoint and the power to remove, a decision to appoint or remove is purely executive in nature and not subject to judicial review). Lying in contrast to the decision of a local government administrator is a decision made by a civil service board of a local government agency. *See id.* (finding that a civil service board "abolishing a position in the classified service" was a quasi-judicial action); *see also* City of Hollywood v. Litteral, 446 So. 2d 1152, 1154 (Fla. 4th Dist. Ct. App. 1984) (finding that the denial of a hearing by a civil service board was reviewable by certiorari to a circuit court). In cases involving a decision of a mandatory personnel board empanelled to conduct an evidentiary hearing and render a final binding decision, the courts have held that the decision is quasi-judicial and appropriate for an appeal or petition for writ of certiorari. *E.g.*, Anoll v. Pomerance, 363 So. 2d 329, 329–30 (Fla. 1978) (finding that the appropriate manner to appeal a decision of a personnel board is through a petition of writ of certiorari because decisions of personnel boards are quasi-judicial).

56. 95 So. 2d at 915; *see also* Walton v. Health Care Dist. of Palm Beach Cnty., 862 So. 2d 852, 854–55 (Fla. 4th Dist. Ct. App. 2003) (type face altered) (citation omitted) (The court found that a decision of the district to terminate a nurse was not quasi-judicial because no law required that an employee of a special taxing district be afforded notice and an opportunity to be heard prior to termination, stating that "[w]hether a termination decision is quasi-judicial turns . . . not upon whether the employee was provided notice and a hearing, but, instead, upon whether the employee was *entitled* to such notice and hearing.").

57. 125 So. 3d 295 (Fla. 3d Dist. Ct. App. 2013).

58. *Id.* at 297–98.

board's recommendation of reinstatement of the plaintiff.[59] The city sought dismissal of the action, asserting that the city manager's decision, which followed a hearing by the board, was quasi-judicial.[60] The Third District disagreed:

> The City's first argument is that Martinez-Esteve's circuit court lawsuit should have been dismissed, and that the exclusive venue for his claims of wrongful termination by the City Manager would have been the appellate division of the circuit court. If the quasi-judicial determination by the Civil Service Board had been the controlling ruling, the City would be correct that the determination should be reviewed by the appellate division of the circuit court. But the Board's ruling was not the governmental action that precipitated Martinez-Esteve's independent lawsuit.
>
> Rather, the City Manager's executive action—the unfounded rejection of, and refusal to abide by, the Board's ruling—was the subject matter of the independent lawsuit . . . . Had the City Manager and City sought review of the Board's quasi-judicial action by the circuit court appellate division, the City's argument would be persuasive, and an independent lawsuit by Martinez-Esteve would have been subject to dismissal. But that is not what happened.[61]

When a hearing is neither conducted nor required, and the administration has the exclusive authority to render the employment decision, courts find that the decision is executive and outside appellate review. *Lee County v. Harsh*[62] involved the appeal from a decision of the county manager to uphold the termination of employees.[63] Following the termination of several employees, a hearing was held before a grievance committee pursuant to county policies.[64] The grievance committee recommended that the county manager uphold the terminations.[65] The county manager upheld some terminations but reinstated other employees.[66] The employees filed a petition for writ of certiorari to the circuit court

59. *Id.* at 297.
60. *Id.*
61. *Id.* at 297–98 (internal citations omitted).
62. 44 So. 3d 239 (Fla. 2d Dist. Ct. App. 2010).
63. *Id.* at 240.
64. *Id.* at 240–41.
65. *Id.* at 241.
66. *Id.*

seeking review of the manager's decision.[67] Lee County moved to dismiss the petition arguing that the circuit court lacked subject matter jurisdiction because the manager's decision was an executive, as opposed to a quasi-judicial, decision.[68] The circuit court rejected the county's jurisdictional argument, granted one employee certiorari relief, and stayed the action as to the remaining employees who had a parallel pending action in circuit court challenging their terminations.[69]

On second-tier certiorari, the Second District granted the petition and quashed the decision of the circuit court in its appellate capacity.[70] Explaining that certiorari relief is not available for executive decisions, the Court of Appeal stated that "as a practical matter, when an executive makes a decision without conducting a hearing, there is nothing for the circuit court to review."[71] The holding turned on the fact that the county manager was not required to conduct a hearing and was not bound by the committee's recommendation:

> The county manager is not required to conduct a hearing when reviewing the grievance committee's recommendations and findings. Rather, the county manager has the sole authority to "render a decision upholding, reversing[,] or modifying" the recommendations of the grievance committee, and the county manager's decision is "final." . . . While the grievance committee conducted a hearing on the employees' grievances, the county manager was not bound by the grievance committee's recommendation, and he rendered his decision without conducting a hearing.[72]

The Second District in *Harsh* analogized the case to the decision of the Fourth District Court of Appeal in *Payne v. Wille*.[73] In *Payne*, the Palm Beach County Sheriff demoted the petitioner after a recommendation of the department's Hearing Review Board.[74] The hearing was held pursuant to a special act of the

67. *Id.*
68. *Id.*
69. *Id.*
70. *Id.* at 241, 243.
71. *Id.* at 242 (quoting City of St. Pete Beach v. Sowa, 4 So. 3d 1245, 1247 (Fla. 2d Dist. Ct. App. 2009)) (internal brackets omitted).
72. *Id.* at 242.
73. Payne v. Wille, 657 So. 2d 964, 964 (Fla. 4th Dist. Ct. App. 1995).
74. *Id.*

legislature that permitted an employee of the sheriff's office to request a hearing before the board.[75] The act further provided that "the sheriff may approve or disapprove the board's recommendation and has the sole discretion to overrule the findings of the board."[76] Relying on *De Groot*, the Fourth District held that the decision was an executive one and not subject to certiorari review.[77]

Another factor considered by the courts in determining whether personnel action is executive or quasi-judicial is if the employee has the protections of civil service.[78] In *Board of Public Instruction of Dade County v. McQuiston*,[79] the appellate division of the circuit court exercised jurisdiction over an appeal from the discharge of a non-instructional employee, which was approved by the Board of Public Instruction of Dade County.[80] The circuit court quashed the order of the board and ordered a rehearing.[81] However, the board appealed to the Third District Court of Appeal, which reversed, holding that the circuit court "erred in construing the proceedings for dismissal of the employee as a quasi-judicial administrative action, when it is apparent that the action of the Board in discharging a non-instructional employee (not protected by classified service) was an executive action not reviewable by certiorari."[82]

4. Land Use Decisions

a. Legislative Action

The Florida Supreme Court has stated, "Generally speaking, legislative action results in the *formulation* of a general rule of policy, whereas judicial action results in the *application* of a general rule of policy."[83]

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75. *Id.* at 965.
76. *Id.*
77. *Id.*
78. "Civil service" generally refers to "[t]he administrative branches of a government" or "[t]he group of people employed by these branches." BLACK'S LAW DICTIONARY 281 (Bryan A. Garner ed., 9th ed. 2009).
79. 233 So. 2d 168 (Fla. 3d Dist. Ct. App. 1970).
80. *Id.* at 168.
81. *Id.* at 169.
82. *Id.*
83. Bd. of Cnty. Comm'rs of Brevard Cnty. v. Snyder, 627 So. 2d 469, 474 (Fla. 1993).

The Second District found the denial of an application for issuance of a water and sewer franchise to be quasi-legislative action.[84] In *Board of County Commissioners of Hillsborough County v. Casa Development Ltd.*,[85] the applicant sought to develop 820 acres for residential use.[86] In conjunction with the development, the applicant sought water and sewer franchises.[87] The court found that, in accordance with the test articulated in cases such as *De Groot*, the decision of the County was quasi-legislative:

> Measured by this test, the action of the Board of County Commissioners of Hillsborough County was clearly quasi-legislative in character. The Special Act contained no criteria which required the issuance of a franchise under specified circumstances. While there was a public hearing upon notice, a quasi-judicial type of hearing was neither contemplated nor conducted. About all that happened was that appellees' representative made some unsworn statements in support of the application and the county attorney responded with opinions of his own. It was obvious from the discussion that the appellees had been negotiating with the county for some time concerning the issuance of a franchise upon certain conditions. Appellees were unwilling to meet these conditions, so the Board voted to deny the application. Therefore, a review by certiorari was an inappropriate remedy.[88]

Further, the Supreme Court in *Martin County v. Yusem*[89] held that an amendment to a comprehensive land use plan was

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84. Bd. of Cnty. Comm'rs of Hillsborough Cnty. v. Casa Dev. Ltd., 332 So. 2d 651, 651, 654 (Fla. 2d Dist. Ct. App. 1976).

85. 332 So. 2d 651.

86. *Id.* at 653.

87. *Id.*

88. *Id.* at 654. The Second District noted that there was some confusion when the case was before the circuit court because the circuit court decided to limit the introduction of evidence, leading the Second District to conclude that the proceedings were "neither 'fish nor fowl.'" *Id.* at 655. The Second District stated, "The record of the hearing before the County Commission was inadequate in the sense that it was not the record of a quasi-judicial hearing." *Id.* Further, the circuit "court allowed the record to be supplemented [but] in a limited manner," curtailing the Board's ability to demonstrate that its action was not arbitrary, capricious, confiscatory, or in violation of the constitution. *Id.* Thus, the court remanded the case for consideration as an original action in circuit court for declaratory and injunctive relief. *Id.*

89. 690 So. 2d 1288 (Fla. 1997).

legislative action, noting that comprehensive rezonings that affect a large portion of the public were legislative determinations.[90]

b. Executive Action

Certain decisions that impact the use of land can be executive and outside the scope of certiorari review. In *City of St. Pete Beach v. Sowa*,[91] a city official granted a building permit to repair a damaged apartment building.[92] A neighbor challenged the permit by filing a petition for writ of certiorari in circuit court.[93] The circuit court granted the writ and quashed the permit, finding that it was issued in violation of the city code.[94] In reaching the conclusion, the circuit court relied upon documents supplied in an appendix to the petition.[95] The property owner sought review from the Second District Court of Appeal, which quashed the circuit court's decision, finding that "[a] single city official made an executive decision to grant [the] permit application; no hearing was conducted on the matter."[96] The Court of Appeal explained:

> Here, because no hearing was conducted, the circuit court had no record to review. Instead, [the circuit court] relied on documents supplied by [the neighbor] in an attempt to construct a record upon which it could review the City official's decision to issue the permit. By proceeding in this fashion when it lacked

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90. *Id.* at 1293. On the other side of a similar spectrum is *Board of County Commissioners of Brevard County v. Snyder*. 627 So. 2d 469, 474 (Fla. 1993) (denying an application for rezoning was quasi-judicial). In that case, the Supreme Court agreed with the district court of appeal and held:

> Rezoning actions which have an impact on a limited number of persons or property owners, on identifiable parties and interests, where the decision is contingent on a fact or facts arrived at from distinct alternatives presented at a hearing, and where the decision can be functionally viewed as policy application, rather than policy setting, are in the nature of . . . quasi-judicial action.

Id. (internal brackets omitted) (internal citations omitted). *See also* Park of Commerce Assocs. v. City of Delray Beach, 636 So. 2d 12, 15 (Fla. 1994) (denying a site plan was quasi-judicial action); Am. Riviera Real Estate Co. v. City of Miami Beach, 735 So. 2d 527, 528 (Fla. 3d Dist. Ct. App. 1999) (deciding on a design approval for construction was quasi-judicial); Walgreen Co. v. Polk Cnty., 524 So. 2d 1119, 1120 (Fla. 2d Dist. Ct. App. 1988) (county commission's action in denying variance was quasi-judicial).

91. 4 So. 3d 1245 (Fla. 2d Dist. Ct. App. 2009).

92. *Id.* at 1246.

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.* at 1247.

jurisdiction to do so, the circuit court departed from the essential requirements of the law.[97]

IV. LIMITATIONS IMPOSED UPON JUDICIAL REVIEW OF QUASI-JUDICIAL DECISIONS

A. Standard of Review

There are further constraints on the process of judicial review of quasi-judicial, local government decisions. It is well settled that administrative determinations are "entitled to judicial deference as long as [they are] within the range of possible permissible interpretations."[98]

Further, included within the standard of review[99] of administrative decisions is the principle that the appellate court cannot reweigh the evidence—as long as the underlying administrative decision is supported by competent substantial evidence, the factual findings are conclusive.[100]

The *De Groot* Court explained the competent substantial evidence standard:

> In certiorari the reviewing court will not undertake to reweigh or evaluate the evidence presented before the tribunal or agency whose order is under examination. The appellate court merely examines the record made below to determine whether the lower tribunal had before it competent substan-

97. *Id.* The courts have found other permitting actions to be quasi-judicial. The Fifth District Court of Appeal considered a decision of the Orange County Commission rejecting the Board of Zoning Adjustment's recommended approval of a special exception permit. Splash & Ski, Inc. v. Orange Cnty., 596 So. 2d 491, 493 (Fla. 5th Dist. Ct. App. 1992). The permit was to operate six watercraft at "Shooter's Waterfront Cafe" in Orlando. *Id.* The Fifth District determined that the refusal to approve a special exception permit was a quasi-judicial act reviewable by certiorari. *Id.* at 493 n.5.

98. Paloumbis v. City of Miami Beach, 840 So. 2d 297, 298–99 (Fla. 3d Dist. Ct. App. 2003); *see also* Las Olas Tower Co. v. City of Ft. Lauderdale, 742 So. 2d 308, 312 (Fla. 4th Dist. Ct. App. 1999) (stating that courts should defer to an agency's interpretation of a statute or ordinance over which that agency is responsible, unless the interpretation is clearly erroneous).

99. The complete standard of review of the appellate court is three-fold: the court reviews an administrative agency's decision for whether the agency afforded due process, whether the decision is supported by competent substantial evidence, and whether the decision complies with the essential requirements of the law. City of Deerfield Beach v. Vaillant, 419 So. 2d 624, 626 (Fla. 1982); *see also* Haines City Cmty. Dev. v. Heggs, 658 So. 2d 523 (Fla. 1995) (articulating the standard of review set forth in *Vaillant*).

100. *Heggs*, 658 So. 2d at 530.

> tial evidence to support its findings and judgment which also must accord with the essential requirements of the law. It is clear that certiorari is in the nature of an appellate process. It is a method of obtaining review, as contrasted to a collateral assault.
>
> We have used the term "competent substantial evidence" advisedly. Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred. We have stated it to be such relevant evidence as a reasonable mind would accept as adequate to support a conclusion. In employing the adjective "competent" to modify the word "substantial," we are aware of the familiar rule that in administrative proceedings the formalities in the introduction of testimony common to the courts of justice are not strictly employed. We are of the view, however, that the evidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. To this extent the "substantial" evidence should also be "competent."[101]

B. Constraints on the Reviewing Court

1. First-Tier Review

In addition to the foregoing deference relative to the standards of review, the circuit court on first-tier certiorari review has no jurisdiction, to make factual findings or to enter a judgment on the merits of the underlying controversy.[102]

The boundary of the appellate courts in conducting judicial review over quasi-judicial decisions was squarely addressed by the Florida Supreme Court in *Broward County v. G.B.V. International, Ltd.*[103] There, at issue before the county commission was whether to amend the land use plan to change the designation of a parcel of land and allow a density of ten dwelling units per acre for a residential development.[104] The county commission adopted

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101. De Groot v. Sheffield, 95 So. 2d 912, 916 (Fla. 1957) (internal citations omitted); *see also* Duval Util. Co. v. Fla. Pub. Serv. Comm'n, 380 So. 2d 1028, 1031 (Fla. 1980) (quoting *De Groot*, 95 So. 2d at 916).

102. *See, e.g.*, Broward Cnty. v. G.B.V. Int'l, Ltd., 787 So. 2d 838, 845 (Fla. 2001).

103. *Id.*

104. *Id.* at 840.

the amendment but at a compromise, allowing a density of six units per acre.[105] The developer sought certiorari review by the circuit court.[106] The circuit court denied the petition, holding that the developer was estopped because of misrepresentations it made to the committee.[107] The Supreme Court held that the circuit court exceeded the scope of its authority by embarking on its own independent review of a plat application and making its own factual findings:

> [R]ather than limiting its review of the Commission decision to the three "first-tier" factors set forth in *Vaillant*, the court embarked on an independent review of the plat application and made its own factual finding based on the cold record (i.e., the court determined that G.B.V. had misrepresented its position on flex). In other words, instead of simply reviewing the record to determine *inter alia* whether the Commission's decision was supported by competent substantial evidence, the court combed the record and extracted its own factual finding. The court thus exceeded the scope of its authority under *Vaillant*.[108]

The Second District Court of Appeal found that the above rule was violated when the circuit court considered testimony in denying a petition for writ of certiorari challenging a decision of the Charlotte County Development Review Committee.[109] In *Evergreen Tree Treasurers of Charlotte County v. Charlotte County Board of County Commissioners*,[110] the Committee approved a project that called for the removal of trees.[111] Petitioners, who opposed the project, filed a petition for writ of certiorari as well as a motion for temporary injunction, which was granted on an ex parte basis.[112] On the developers' motion to dissolve the injunction, the circuit court held an evidentiary hearing, after which it dissolved the injunction and denied the petition.[113] On review,[114]

105. *Id.*
106. *Id.* at 841.
107. *Id.*
108. *Id.* at 845; *see also supra* note 99 (setting out the first-tier factors in *Vaillant*).
109. Evergreen Tree Treasurers of Charlotte Cnty. v. Charlotte Cnty. Bd. of Cnty. Comm'rs, 810 So. 2d 526, 530–31 (Fla. 2d Dist. Ct. App. 2002).
110. 810 So. 2d 526.
111. *Id.* at 528.
112. *Id.* at 528–29.
113. *Id.* at 529.

the district court of appeal explained that this procedure was improper:

> In ruling on the petition in this case, the circuit court applied the incorrect law in several respects. First, the court considered sworn and unsworn testimony given at the evidentiary hearing on respondents' motion to dissolve. A circuit court's certiorari review of an administrative decision is essentially an appellate proceeding and should be limited to the administrative record and those items attached to the petition. Seated in its appellate capacity, the circuit court has no jurisdiction, in certiorari, to make factual findings or to enter a judgment on the merits of the underlying controversy.[115]

The Second District reached a similar conclusion in *Vichich v. Department of Highway Safety & Motor Vehicles*,[116] a case involving a petition to review the permanent revocation of a driver's license.[117] The circuit court, in reviewing the petition for writ of certiorari in that case, "ordered the [department] to supplement the record with some authentication or further proof of [the petitioner's out-of-state] driving record."[118] The Second District granted a second-tier petition for writ of certiorari, finding that the circuit court departed from the essential requirements of the law by engaging in fact-finding:

> [W]e understand the circuit court's pragmatic desire to function as a trial court and attempt to resolve the disputed issue of fact presented in this case. Nevertheless, the circuit court had no authority to request or obtain the additional, extra-

114. The Second District found that the petition was moot, but reviewed the petition and rendered an opinion because the errors were capable of repetition. *Id.* at 528.

115. *Id.* at 530. The Second District further stated:

> In the present case, the circuit court relied on testimony from county attorneys and staff members who provided information about the application process and the DRC's role in that process. . . . The court applied the incorrect scope of review by making [its own] factual findings and should have limited its analysis to considering whether petitioners were given notice and a meaningful opportunity to be heard, whether the DRC departed from the essential requirements of the law, and whether its findings and decision were supported by competent, substantial evidence. We suspect that the circuit court may have reached a different conclusion if it had limited its inquiry to these three issues, particularly the first.

Id. at 531.

116. 799 So. 2d 1069 (Fla. 2d Dist. Ct. App. 2001).

117. *Id.* at 1070.

118. *Id.* at 1072.

> record information . . . . To the extent that the circuit court relied upon this new information in making its decision that the earlier order was supported by competent, substantial evidence, the circuit court departed from the essential requirements of the law."[119]

2. *Second-Tier Review*

The constraints on review are not limited to first-tier judicial review. Upon second-tier review by the district court of appeal,[120] the remedies of the court are limited to quashal of the circuit court's decision.[121]

The Supreme Court addressed the parameters of "second-tier" review[122] in *Broward County v. G.B.V. International, Ltd.*,[123] reversing the decision of the district court of appeal because it had exceeded the scope of its authority by conducting a *de novo* evaluation of the administrative decision and directing the county commission on remand.[124] The court articulated this principal of restricted review:

> The district court proceeded to evaluate the merits of the Commission's decision and remanded for entry of an order directing the Commission to approve the plat at ten units per acre. This was improper. Pursuant to *Vaillant*, the district court's role on second-tier certiorari review was limited to a two-pronged review of the *circuit court* decision, not a de novo review of the *agency* decision. Once the district court granted certiorari and quashed the circuit court order—i.e., once the

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119. *Id.* at 1074. The Second District stated that, pursuant to the standard of review, "[t]he circuit court in this process performs a 'review'; it does not sit as a trial court to consider new evidence or make additional findings." *Id.* at 1073. The court further noted that, pursuant to Florida Rule of Appellate Procedure 9.190(c)(1), "[t]he record before the circuit court 'shall include only materials furnished to and reviewed by the lower tribunal in advance of the administrative action to be reviewed by the court.'" *Id.* (quoting FLA. R. APP. P. 9.190(c)(1)).

120. "As a case travels up the judicial [review] ladder" from first- to second-tier, review becomes narrower. Haines City Cmty. Dev. v. Heggs, 658 So. 2d 523, 530 (Fla. 1995). Upon second-tier review, the district court of appeal determines "whether the circuit court afforded procedural due process and . . . applied the correct law," i.e., departed from the essential requirements of the law. *Id.*

121. *Id.* at 526.

122. The court also addressed the limitations of first-tier review. *See supra* Part IV(B)(1) (discussing first-tier review).

123. 787 So. 2d 838 (Fla. 2001).

124. *Id.* at 845.

> court halted the miscarriage of justice—the district court's job was ended. By conducting its own de novo assessment of the plat application, the district court arrogated to itself the authority of the Commission and functioned as a kind of roving "super agency."[125]

The Third District Court of Appeal, in *Dougherty ex rel. Eisenberg v. City of Miami*,[126] observed the constraint required by this rule in a land use case, even though it may have preferred to direct the lower tribunal on remand:

> [B]ecause we can only affect the Circuit Court's, and not the City Commission's, decision, we grant the petition for writ of certiorari, and quash the Circuit Court's PCA decision. . . . If we were able to direct the City Commission to affirm the Zoning Board's determination, the result which would have occurred but for the City Commission's erroneous de novo review almost eight years ago, we would do so.[127]

V. CONCLUSION

Given the nature of quasi-judicial local government decision-making, there are constraints on judicial review, which are evident before, during, and after the appellate decision. At the inception of the appellate process, the reviewing court is limited in the type of decision subject to appeal.[128] Quasi-judicial decisions are the only types of appealable decisions, leaving legislative and executive decisions outside the parameters of review.[129] The reviewing court is further constrained during its consideration of the appeal by the applicable standard of review.[130] This standard accords deference to reasonable decisions within the agency's expertise and generally accords factual findings conclusive ef-

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125. *Id.* (referring to City of Deerfield Beach v. Vaillant, 419 So. 2d 624 (Fla. 1982)).

126. 89 So. 3d 963 (Fla. 3d Dist. Ct. App. 2012).

127. *Id.* at 966.

128. *See supra* Part III (explaining what types of agency decisions are subject to review).

129. *See supra* Part III (noting Florida cases that define and interpret quasi-judicial actions and compare them with executive and legislative actions).

130. *See supra* Part IV (discussing the applicable standard of review when courts are reviewing quasi-judicial actions and how it places limitations on the reviewing court).

fect.[131] Finally, after the appellate court makes its decision, the appellate court is limited in its ability to direct the lower tribunal on remand. The circuit court in its review capacity may not make factual findings or enter judgment on the merits of the case.[132] Neither can the district court of appeal on second-tier review direct either the circuit court or the local government.[133]

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131. *See supra* Part IV ("[A]s long as the underlying administrative decision is supported by competent substantial evidence, the factual findings are conclusive.").

132. *See supra* Part IV(B)(1) (discussing the limitations placed on courts when a quasi-judicial action is on first-tier certiorari review).

133. *See supra* Part IV(B)(2) (discussing the limitations of second-tier certiorari review).