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Filed November 17, 2025

NOT FOR PUBLICATION

**In the
United States Court of Appeals
For the Eleventh Circuit**

No. 23-11323

NATURAL LANDS, LLC,

Plaintiff-Appellee,

versus

CITY OF BOCA RATON,

Defendant-Appellant,

GREATER BOCA RATON BEACH AND PARK
DISTRICT,

Defendant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:19-cv-81407-RS

Before BRANCH, ABUDU, and KIDD, Circuit Judges.

PER CURIAM:

Natural Lands, LLC, (hereinafter, “Natural Lands”) filed suit alleging bias among city council decisionmakers, suggesting a potential federal procedural due process claim. Yet, under our precedent, Natural Lands does not have a viable claim because it did not use the available and adequate State remedy to address its alleged injury. As a result, we find that Natural Lands has not established a federal

procedural due process claim, and we reverse the district court's judgment.

I. BACKGROUND

A. Factual Background

Natural Lands owns an undeveloped beachfront lot in Boca Raton, Palm Beach County, Florida (the "Parcel"). The Parcel is located east of a Coastal Construction Control Line ("CCCL"), which is a regulatory boundary the Florida Department of Environmental Protection imposed and the City of Boca Raton later adopted. The City of Boca Raton (the "City") passed an ordinance that required those seeking to build east of the CCCL to obtain a variance from the City Council.

In 2011, Natural Lands applied for two variances to build a single-family home on the Parcel. Upon learning that its parcel of land was located seaward of the CCCL, Natural Lands later applied for a CCCL variance as well. The review process took several years and required Natural Lands to submit architectural, engineering, and environmental reports. In 2015, the City Council approved Natural Lands's application for lot width and setback variances, but the CCCL variance remained pending. Residents opposing the construction contacted City Council Members, urging them to deny the variance.

Council Members Andrea O'Rourke and Monica Mayotte and Mayor Scott Singer publicly expressed their intentions to deny the CCCL variance. O'Rourke had previously signed a petition opposing development on the Parcel and, once elected, promised to do "everything within [her] power" to prevent construction. Similarly, Mayotte stated she had "no intention"

of granting Natural Lands's CCCL variance, and Mayor Singer had campaigned on protecting the area, even creating a video in front of the Parcel while pledging to vote against the variance.

In July 2019, the City Council held a hearing on Natural Lands's CCCL variance request. Before the hearing, Natural Lands asked for the recusal of O'Rourke, Mayotte, and Mayor Singer, arguing that they could not render an unbiased decision. The City Council denied the request. At the hearing, the City Council unanimously voted to deny Natural Lands's CCCL variance, stating the project did not meet the ordinance requirements.

B. Procedural Background

In October 2019, Natural Lands sued the City in federal court. The amended complaint alleged three separate counts of inverse condemnation under the Takings Clause of the Fifth Amendment, its counterpart section of the Florida Constitution, and the Due Process Clause of the Fourteenth Amendment; and a fourth count seeking declaratory relief. The overall premise of the amended complaint was that the City Council prejudged Natural Lands's application, which resulted in the denial of a fair hearing and caused the loss of economic and beneficial use of the Parcel.

The City moved to dismiss, arguing, in part, that under *McKinney v. Pate*, 20 F.3d 1550 (11th Cir. 1994) (*en banc*), Natural Lands did not have a viable procedural due process claim. After Natural Lands voluntarily withdrew some claims, the district court denied the City's motion as moot.

The district court held a five-day bench trial. At trial, Natural Lands continued to argue that the City

deprived it of procedural due process. Again, the City argued that Natural Lands could not pursue a procedural due process claim and asked the district court to disregard the claim. The court denied the request.

In its findings, the district court admonished Council Members O'Rourke and Mayotte and Mayor Singer for bias and lack of credibility as witnesses. It determined that the City denied Natural Lands a fair and impartial hearing and violated Natural Lands's procedural due process rights. It then granted Natural Lands declaratory relief, declaring the named council members biased and enjoining them from participating in future variance application processes for the Parcel.¹ It also awarded Natural Lands attorney's fees and costs under 42 U.S.C. § 1988 and Federal Rule of Civil Procedure 54(d)(1) to cover the expenses Natural Lands incurred in litigating the due process claim. The City appealed.

II. STANDARDS OF REVIEW

We review the district court's conclusions of law *de novo* and its findings of fact for clear error. *A.I.G. Uru. Compania de Seguros, S.A. v. AAA Cooper Transp.*, 334 F.3d 997, 1003 (11th Cir. 2003). When a district court grants attorney's fees and costs, we review the award for abuse of discretion. *Yellow Pages Photos, Inc. v. Ziplocal, LP*, 846 F.3d 1159, 1163 (11th Cir. 2017). While the abuse of discretion standard gives a district court a range of choices, that discretion is not

¹ The district court also addressed the Takings Clause claim, ruling for the City. The court ruled that the City's conduct did not constitute a "taking" under the Fifth Amendment. Neither party appealed this ruling, so we do not discuss the issue further.

unfettered. *Id.* We will not uphold the award if the district court applied an improper legal standard. *Id.*; *see also Koon v. United States*, 518 U.S. 81, 100 (1996) (“A district court by definition abuses its discretion when it makes an error of law.”).

III. DISCUSSION

On appeal, the City argues that the district court erred in granting declaratory and injunctive relief based on Natural Lands’s procedural due process claim because an adequate State remedy was available. We agree.

This case falls squarely within the province of *McKinney*. 20 F.3d at 1556-57. In *McKinney*, we established that a federal procedural due process claim does not arise “unless and until the State fails to provide due process.” *Id.* at 1557 (quoting *Zinermon v. Burch*, 494 U.S. 113, 126 (1990)). A State fails to provide due process only if it neglects to offer an adequate post-deprivation remedy to address the alleged procedural defect. *Id.* The rationale behind *McKinney* is that a State must have the opportunity to cure procedural defects caused by its subdivisions before federal intervention. *Id.* at 1560. Without the opportunity to review local government action, the State cannot be said to have sanctioned the bias of a limited number of board members. *Id.* at 1563. “A demonstration that the decisionmaker was biased . . . is not tantamount to a demonstration that there has been a denial of [federal] procedural due process.” *Id.* at 1562. Thus, the federal claim arises only if a State lacks adequate remedial procedures. *See Cotton v. Jackson*, 216 F.3d 1328, 1331-33 (11th Cir. 2000) (dismissing a federal due process claim under the *McKinney* rule).

In this case, both parties acknowledge that a writ of *certiorari* to a Florida state court was a remedy available to Natural Lands. Yet, Natural Lands did not avail itself of this remedy. Natural Lands contends that although the remedy was available, it was not adequate. We disagree.

First, we have acknowledged that “*certiorari* is generally an adequate state remedy.” *Cotton*, 216 F.3d at 1331. The adequacy of the *certiorari* remedy is even more evident in this case, as demonstrated by Natural Lands’s reference to the neighboring “Sweetapple Lot,” which successfully petitioned the state court to remove biased City Council Members from its variance review process.² Additionally, nothing in the record suggests that Florida courts conducting *certiorari* review cannot effectively remedy due process concerns. *See Miami-Dade County v. Publix Supermarkets, Inc.*, 305 So. 3d 668, 670-71 (Fla. Dist.

² On September 16, 2020, the Palm Beach County Circuit Court granted the Sweetapple Lot owner’s petition for writ of *certiorari*. *2600 N. Ocean LLC v. City of Boca Raton*, No. 50-2019-CA-004116-XXXX-MB (Palm Beach County Cir. Ct. Sept. 16, 2020). The circuit court quashed the City Council’s decision denying a variance necessary to develop the Sweetapple Lot, finding that two City Council Members were biased, and ordered their recusal from future proceedings. *Id.* at 3. Natural Lands cites this case in its amended complaint to support its contention of biased decisionmakers. Yet in its brief, Natural Lands argues that the Sweetapple Lot case cannot establish the adequacy of the *certiorari* remedy because the circuit court exceeded its authority by ordering recusal, and the order would likely be reversed on appeal. As it turns out, the appellate court denied *certiorari*, declining an opportunity to reverse the circuit court’s decision. *City of Boca Raton v. 2600 Ocean, LLC*, No. 4D20-2505 (Fla. Dist. Ct. App. Aug. 18, 2021). Therefore, Natural Lands’s prediction was wrong, and its argument is unavailing.

Ct. App. 2020) (citing *Fla. Power & Light Co. v. City of Dania*, 761 So. 2d 1089, 1092 (Fla. 2000)). Even if, as Natural Lands contends, *certiorari* review does not permit state courts to order the recusal of city officials, a state court quashing a decision because of bias places significant pressure on the City Council to conform its conduct to ensure due process. Nor is there any reason to conclude the City Council would violate a state court order.

While Natural Lands may have preferred federal court remedies, ultimately, the question is not whether the state remedy would have provided the same relief available in federal court. *McKinney*, 20 F.3d at 1564 (“[T]he state’s remedial procedure need not provide all relief available under section 1983 . . .”). Rather, our focus is on whether the state procedure could have corrected the alleged procedural deficiencies and provided the plaintiff with the process that was constitutionally required. *Cotton*, 216 F.3d at 1331. The *certiorari* process could have remedied the precise harm that Natural Lands alleges: a procedurally defective, biased hearing. Therefore, the writ of *certiorari* is an adequate remedy, and Natural Lands may not pursue its procedural due process violation in federal court.³

³ Because the due process claim was not properly before the district court, it necessarily abused its discretion in awarding Natural Lands attorney’s fees and costs related to that claim. Thus, we reverse the district court’s fee award as well. Natural Lands also appealed the district court’s admission of evidence used to prove City Council Members’ bias. Evidentiary rulings are reviewed for abuse of discretion. *Tampa Bay Shipbuilding & Repair Co. v. Cedar Shipping Co.*, 320 F.3d 1213, 1216 (11th Cir. 2003). Because we reverse and dismiss Natural Lands’s

IV. CONCLUSION

Accordingly, the district court erred in granting relief on Natural Lands's procedural due process claim. We reverse and remand to the district court with instructions to dismiss the claim.

REVERSED AND REMANDED.

procedural due process claim, the court's reliance on evidence of bias will be remedied by the dismissal of those claims.

Filed March 27, 2023

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 19-81407-CIV-SMITH**

NATURAL LANDS, LLC,
Plaintiff,

vs.

CIT[Y] OF BOCA RATON,
Defendant.

_____ /

ORDER ON BENCH TRIAL

This matter came before the Court on a multi-day, non-jury trial which took place between March 20, 2023 and March 24, 2023. Plaintiff Natural Lands, LLC (“Natural Lands”) brought suit against the City of Boca Raton, FL (“City”) after the City denied Natural Lands’s application for a variance to build east of the City’s Coastal Construction Control Line. Plaintiff brings three counts of inverse condemnation and one count for declaratory relief. At the close of the bench trial the Court **ORDERED** as follows:

1. The Court finds in favor of Defendant City of Boca Raton and against Plaintiff Natural Lands, LLC in respect of Counts I, II, and III; and
2. The Court finds in favor of Plaintiff Natural Lands, LLC and against Defendant City of Boca Raton in respect of Count IV.
3. The Court will provide a more detailed Order outlining its findings of fact and conclusions of law.
4. This case is **CLOSED**.

DONE AND ORDERED in Fort Lauderdale,
Florida, this 24h day of March, 2023.

/s/ Rodney Smith

RODNEY SMITH

UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record

Filed March 7, 2024

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.:19-81407-CIV-SMITH

NATURAL LANDS, LLC,

Plaintiff,

v.

CITY OF BOCA RATON,

Defendant.

_____ /

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

This matter came before the Court on a multi-day, non-jury trial, held March 20, 2023 through March 24, 2023. Plaintiff, Natural Lands, LLC, a Delaware limited liability company (“Plaintiff”), brought suit against Defendant, City of Boca Raton (“City”), after the City denied Plaintiff’s application for a variance of the City’s Coastal Construction Line regulation. Plaintiff sought the variance to build a single-family home at 2500 N. Ocean Drive, Boca Raton, Florida.

Plaintiff brings its claim against the City pursuant to the Fifth Amendment of the United States Constitution and Article X, Section 6 of the Florida Constitution. During the trial, the Court heard testimony from the following witnesses: 1) Gavriel Naim, Plaintiff’s Managing Member; 2) Attorney Michael Marshall; 3) George Brown, Deputy City Manager; 4) Scott Singer, City Mayor; 5) Celora Jackson, Environmental Administrator, Florida Department of Environmental Protection; 6) Arthur Koski, Former Executive Director, Greater Boca Raton Beach and

Parks District; 7) Brandon Schaad, City Director of Development; 8) Lief Ahnell, City Manager; 9) Andrea O'Rourke, City Council Member; and 10) Monica Mayotte, City Council Member. The Court has carefully considered the evidence presented and the arguments advanced by counsel. Pursuant to Federal Rule of Civil Procedure 52(a), the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

I. Background Facts

1. Plaintiff, Natural Lands, LLC is the owner of beachfront property located at 2500 N. Ocean Drive, Boca Raton, Palm Beach County, Florida (the "Parcel"). Ex.¹ P-61 [DE 163-1 at 131-133]; Tr.² Mar. 23, 2023 at 123:23-124:1.

2. The Parcel is situated on the east side of State Road A1A and is an undeveloped, rectangular-shaped lot measuring approximately 0.32 acres with approximately 88 feet of frontage on State Road A1A. Ex. P-11 [DE 151-2]; Ex. P-61.

3. On November 18, 1944, the Redlhammer Subdivision, which included the subject Parcel, was recorded at Plat Book 20, page 37 of the Public Records of Palm Beach County, Florida. Ex. P-20 [DE 155-10].

4. In 1955, the Parcel was annexed into the City of Boca Raton. Tr. Mar. 23, 2023 at 133:11-14.

¹ All references to Ex. are to exhibits used in the non-jury trial held between March 20 through 24, 2023.

² All references to Tr. are to the transcript of the trial proceedings of the non-jury trial held between March 20 through March 24, 2023.

5. When the Parcel was annexed into the City, it was grandfathered in with a “vested right” to build a single-family residential dwelling upon its premises. Tr. Mar. 20, 2023 at 12:21-13:23; Tr. Mar. 24, 2023 at 112:2-6.

6. The Parcel is zoned R-3-F, “residential multifamily” zoning, which has amongst its allowable uses a single-family residence, duplex, townhouse, or other multiple dwelling use with an allowable density of 7.5 dwelling units per gross acre. Exs. P-61, P-108.

7. In 1979, the Florida Department of Environmental Protection (“FDEP”) adopted the Coastal Construction Control Line (“CCCL”). The City subsequently adopted the CCCL on November 10, 1981. Ex. P-50 [DE 157-1 at 2].

8. In 2007, the City adopted Ordinance No. 4978, which shifted the CCCL farther westward. Ex. P-132, Section 28-1556, City Code of Ordinances [DE 167-13].

9. The Parcel is east of both the original and revised CCCL lines. Ex. P-61 [DE 160-1 at 1-2].

10. Photographs of the Parcel show that it is physically inaccessible and serves no recreational use in its current state. Ex. P-61.

11. Section 28-1556(3) of the City Code of Ordinances prohibits construction seaward (east) of the CCCL without a variance. Ex. P-132, Section 28-1556(3), City Code of Ordinances [DE 167-13].

12. Section 28-1556(4) of the City Code of Ordinances establishes the following criteria to obtain a City CCCL variance:

- (a) Special and unique conditions exist which are peculiar to the applicant’s case and which are

not generally applicable to the property located in the zoning district;

- (b) The special and unique conditions are not directly attributable to the actions of the applicant;
- (c) The literal interpretation of this chapter, as applied to the applicant, would deprive the applicant of rights commonly enjoyed by the owners of other property in the zoning district;
- (d) The variance granted is the minimum variance necessary for the applicant to make reasonable use of the property;
- (e) Granting the variance is not detrimental to the public welfare, or injurious to the property or improvements in the zoning district or neighborhood involved; and
- (f) Granting the variance is not contrary to the objectives of the comprehensive plan of the City.

Ex. P-49, Section 28-127(3), City Code of Ordinances [DE 156-7 at 1397-1399]; Ex. P-132, Section 28-1556(4), City Code of Ordinances [DE 167-13].

13. In considering a variance application, the City Council must consider:

- (a) The recommendation of the City Manager.
- (b) The comments of interested parties in the general public.
- (c) The engineering data submitted by the applicant.
- (d) All other relevant data.

Ex. P-132, Section 28-1556(4), City Code of Ordinances [DE 167-13].

II. Plaintiff's Applications to Develop the Parcel for a Single-Family Dwelling

14. In 2011, Plaintiff filed an application with the City for authorization to develop a single-family detached home on the Parcel (the "Project"). *See* Tr. Mar. 20, 2023 at 5:19-21; 66:5-12; Ex. P-61.

15. Plaintiff initially sought two variances: (1) a lot width variance; and (2) a setback variance. *See* Tr. Mar. 20, 2023 at 16:13-17:4; 67:2-8.

16. However, the Project application required three variances: (1) a lot width variance; (2) a setback variance; and (3) a CCCL Variance. *See* Tr. Mar. 20, 2023 at 16:13-17:4; 67:2-8; Exs. P-11 [DE 155-2]; P-15 [DE 155-5].

17. Thus, on November 8, 2011, the City informed Plaintiff that because the Parcel lies seaward of the Coastal Construction Control Line ("CCCL") established by the FDEP, an additional application for a variance to build seaward of the CCCL was required. *See* Tr. Mar. 20, 2023 at 16:13-17:4.

18. Between July 2013 and January 2015, Plaintiff engaged in an extensive series of back-and-forth negotiations and correspondences with the City. During the period, the City required additional submissions of architectural, surveying, and engineering documents, environmental reports and assessments, and additional payments for review of these documents by external consultants. *See* Tr. Mar. 20, 2023 at 17:8-20:10; 40:3-42:14.

19. On April 27, 2015, Plaintiff paid an application fee of \$3,095 to the City and submitted its Second Lot Width and Front Yard Setback Application for the Project. *See* Tr. Mar. 21, 2023 at 214:24-215:8.

20. The matter was placed on the August 13, 2015 agenda for the City's Zoning Board of Adjustment ("ZBOA"). The ZBOA is a sub-entity of the City created to review applications for rezoning, variances, waivers, comp plan amendments, abandonments, *inter alia*, and to make quasi-judicial determinations on those applications. The ZBOA has authority to approve, approve with conditions, or to deny the applications it reviews. *Id.*; *see also* Ex. P-18, P-19 [DE 155-8, -9].

21. On December 18, 2015, the City Council reversed two prior ZBOA's denials of Plaintiff's lot-width and setback variance applications. Plaintiff revised the Project plans to move the Project outside of the setback area, eliminating any front yard encroachment. Plaintiff withdrew the front setback variance application rendered moot by the revised plans. The City Council found that Plaintiff had satisfied the variance criteria required under the Code and granted Plaintiff's lot width variance, subject to the conditions outlined in Resolution 155-2015. *See* Tr Mar. 20, 2023 at 48:7-49:7; 82:4-9; Ex. P-11 [DE 151-2].

III. City's Efforts to Obtain Parcel During Pendency of Applications

22. In the days preceding the City's hearing on Plaintiff's applications for the lot and width setback variance, then City Mayor, Susan Haynie expressed the view that buildable lots which are seaward of the CCCL—such as Plaintiff's and at least two others—should be acquired by the Greater Boca Raton Beach and Park District ("District"). She sent a letter, dated December 16, 2015, to the District requesting that the District identify "all privately owned vacant buildable

oceanfront properties in the City and evaluate possible acquisition of these properties by the District for preservation and public use.” Ex. P-29

23. Soon after the December 18, 2015 lot and width setback variance hearing, more dissenting residents of the City contacted their elected officials on the Council to demand reconsideration of the variance approval in objection to Plaintiff building a single-family home on the Parcel. *See* Tr. Mar. 22, 2023 at 5:2-5; 23:2-9; 179:12-180:11; Ex. P-145 [DE 168-5].

24. Subsequently, the City explored the feasibility of acquiring Plaintiff’s property using various means, including through eminent domain. The City asked the District to consider acquiring Plaintiff’s property via eminent domain. *See* Tr. Mar. 20, 2023 at 132:21-134:19; *see also* Exs. P-29 [DE 155-15], P-30 [DE 156-1], P-31 [DE 156-2], P-32 [DE 156-3], P-41 [DE 156-5], P-136 [DE 167-17], and P-137 [DE 167-18].

25. At the District’s public meeting, held on December 21, 2015, City residents urged the District to acquire Plaintiff’s parcel. Mr. Koski, the District’s then Executive Director, advised the District’s Board to authorize him to determine whether there was consensus from the City Council to acquire beachfront properties, to identify the properties to be acquired, to calculate the expense of acquisition, and to determine the level of funding assistance to be provided by the City in the acquisition of these properties. *See* Tr. Mar. 21, 2023, at 159:5-13; 163:6-23 and 169:4-170:1; *see also* Exs. P-29 [DE 155-15], P-30 [DE 156-1].

26. In 2019, and again while Plaintiff’s applications were pending, it became evident that there were discussions with Compson Group—a local development company—that resulted in a proposal to the

City for a “property swap” whereby the development company would purchase Plaintiff’s property and then deliver it to the City in return for the City providing the development company another piece of property to develop. *See* Tr. Mar. 20, 2023 at 103:11-109:24; *see also* Ex. P–41 [DE 156-5].

27. Later, Mayor Scott Singer advised Mr. Koski that the City was no longer interested in the District exploring acquisition of the Parcel by eminent domain. *See* Tr. Mar. 21, 2023 at 160:12-161:10; 163:6-23.

IV. FDEP’s Approval of Plaintiff’s CCCL Permit Application

28. On February 15, 2016, while pursuing its application with the City, Plaintiff applied to FDEP for a permit to construct a single-family home seaward of the CCCL. *See* Tr. Mar. 21, 2023 at 103:8-12; *see also* Ex. P–61.

29. Plaintiff, the FDEP and the Florida Fish and Wildlife Conservation Commission (“FWC”) held multiple meetings, discussions, and exchanged documents in review of Plaintiff’s application. *See* Tr. Mar. 21, 2023 at 103:13-105:7.

30. On October 12, 2016, FDEP issued Permit Number PB-1196 (the “Permit”), which permitted construction of a single-family detached dwelling on the Parcel seaward of the CCCL, concluding that:

After considering the merits of the proposal and any written objections from affected persons, the Department finds that upon compliance with the permit conditions, the activities indicated in the project description of this permit are of such a nature that they will result in no

significant adverse impacts to the beach/dune areas or to adjacent properties; that the work is not expected to adversely impact nesting sea turtles, their hatchlings, or their habitat; that the work is expendable in nature and/or is appropriately designed in accordance with Section 62B-33.005, Florida Administrative Code.

See Ex. P-13.

V. Pre-Quasi-Judicial Hearing Statements and Undisclosed *Ex Parte* Communications by City Council Members Demonstrating Bias

31. As early as December 9, 2015, and thereafter, future members of the ZBOA and the City Council publicly announced their intention to vote to deny Plaintiff's CCCL Variance Application that was not heard until July 23, 2019. See Tr. Mar. 22, 2023 at 105:19-106:25; see also Exs. P-144 [DE 168-4], P-145 [DE 168-5].

32. Mayor Scott Singer, who was running for reelection in 2018, produced an election campaign video of him standing in front of Plaintiff's property and advising the public that he would not vote in favor of granting the CCCL variance. See Tr. Mar. 21, 2023 at 37:16-39:9 and 49:21-50:13; Ex. P-66 [DE 166-3].

33. On May 18, 2018, Council Member Andrea O'Rourke responded to citizen inquiries regarding the Parcel by writing, "[a]s an elected official, I can promise you I will do everything within my power to prevent building on these beachfront properties." See Exs. P-148 [DE 168-8], P-149 [DE 168-9].

34. Years prior, even before she was elected to the City Council, Council Member O'Rourke had signed a petition as a private City resident, opposing any

development of the Property. *See* Tr. Mar. 22, 2023 at 179:12-180:11.

35. On May 31, 2018, Council Member Monica Mayotte responded to another citizen inquiry regarding the Parcel by writing, “I want to reassure you that I have no intention of granting any variances seaward of the Coastal Construction Control Line as defined by the State of Florida.” *See* Ex. P-153 [DE 168-13].

36. In August 2018, Mayor Scott Singer sent campaign letters to City residents stating that “[b]ased on the potential impact on our dunes and sea life (including turtles), I will NOT support granting a variance that would be needed to allow the coastal construction for this lot and the proposed home there. My policy has been and still is to protect our beaches and green space.” *See* Ex. P-134 [DE 167-15].

37. Mayor Singer made these public statements with full knowledge that the Parcel had already been granted a Permit to build seaward of the CCCL by FDEP in 2016. *See* Tr. Mar. 21, 2023 at 39:22-40:3.

38. These *ex parte* communications made by Council Members Singer, Mayotte and O’Rourke were not disclosed prior to, or at, the July 23, 2019 quasi-judicial hearing. *See* Tr. Mar. 24, 2023 at 35:11-39:15; 106:2-107:23.

39. Other *ex parte* communications include undisclosed communications between Council Members and ZBOA and other advisory board members, including Jessica Gray. *Id.* at 106:6-24 and 107:24-108:10.

40. Undisclosed communications also took place between Council Members O’Rourke and Mayotte

regarding their efforts to oppose the Plaintiff's CCCL Variance Application. *Id.*

41. The City failed to disclose other *ex parte* communications between Deputy Mayor Jeremy Scott Rogers and private residents who opposed Plaintiff's development project, including Jessica Gray, who was also a member of the Environmental Advisory Board ("EAB"). *See* Tr. Mar. 21, 2023 at 4:1-22; *see* Ex. P-143; Tr. Mar. 24, 2023 at 7:19-8:15; 36:9-24 and 41:11-16.

VI. Final Hearings on Plaintiff's Fourth CCCL Variance Application

42. On April 10, 2019, after a quasi-judicial hearing, the City's EAB voted 5-0 to recommend denial of the CCCL Variance Application. In support of its decision, the EAB relied heavily upon the September 8, 2018 report of Michael Jenkins, P.E. *See* Exs. P-50, P-140 [DE 168-1].

43. Thereafter, Plaintiff requested a final hearing on its CCCL Variance Application before the City Council. *See* Exs. P-124, P-125.

44. By correspondence to the City dated July 22, 2019, Plaintiff requested that, based on their prior public statements opposing the Project, Council Members Mayor Scott Singer, Andrea O'Rourke, and Monica Mayotte recuse themselves from considering Plaintiff's application, which was to be brought before the City Council for a vote the following day. Plaintiff communicated that these Council Members had prejudged the issue of Plaintiff's application and therefore could not render an unbiased decision. The City denied Plaintiff's request. *See* Exs. P-15, P-17, P-84 [DE 166-7], P-129 [DE 167-10].

45. Mayor Singer testified that he did not recuse himself from the July 23, 2019 hearing, despite the fact that he had issued campaign letters, had undisclosed *ex parte* communications with various City residents, and recorded a campaign video in 2018 stating that he would not support a variance nor allow any development on Plaintiff's property. *See* Tr. Mar. 21, 2023 at 37:16–39:9 and 49:21–50:13; *see also* Exs. P–66 [DE 166-3], P–134 [DE 167-15].

46. Mayor Singer also testified that, although he agreed that a fair and impartial hearing means that a Council member could not pre-judge an issue prior to the hearing, he nevertheless believed that “fair and impartial are ambiguous terms.” His bias was clear. Despite being an attorney, defining the term “fair” proved difficult. *Id.* at 69:9–71:12; *see also* Tr. Mar. 24, 2023 at 105:12-16.

47. However, when asked what “evidence” he was relying upon when he made that statement, given that neither of the City's environmental experts had yet rendered their final report, Mayor Singer testified that he had had “oral conversations” with the City Manager, Lief Ahnell. Tr. Mar. 21, 2023 at 43:13-46:7.

48. City staff, in adopting the report of environmental construction engineering consultant, Michael Jenkins, Ph.D., opined that, if constructed seaward of the CCCL, the Project would have substantial negative environmental impacts, including negative impacts on endangered sea turtles and destruction of native vegetation, the dune ecosystem and critical habitat. *See* Ex. P–61.

49. Celora Jackson, the Environmental Administrator with the Coastal Construction Control Line Program with the FDEP, testified that “every project

has adverse impacts without question.” See Tr. Mar. 21, 2023 at 132:4-13.

50. On July 23, 2019, the City Council held its quasi-judicial hearing on Plaintiff’s CCCL Variance Application, where Brandon Schaad, Development Services Director, recommended denial. See Exs. P-124 [DE 167-5], P-125 [DE 167-6], P-126 [DE 167-7].

51. Without asking a single question of any of the witnesses who testified on behalf of Plaintiff in support of its application, after an application process spanning approximately eight years, the Council Members voted 5-0 to deny Plaintiff’s CCCL Variance Application on grounds that the Project did not meet all of the required CCCL variance criteria. See Exs. P-15 [DE 155-5], P-17 [DE 155-7].

52. No Council Members made any findings of fact on the record as to which of the six (6) criteria for a variance Plaintiff failed to satisfy. See Exs. P-15, P-17, P-129 [DE 167-10].

53. At trial, Council Member O’Rourke feigned ignorance of her multiple communications with individuals who opposed the Plaintiff’s CCCL Variance Application. Although not the subject of this litigation, the Court notes that her conduct potentially violated not only the City’s codes, but the Sunshine Law as well. See Tr. Mar. 24, 2023 at 106:2-107:9.

54. The Court finds that Council Member O’Rourke is not a credible witness. *Id.*

55. Likewise, Council Member Mayotte also demonstrated complete bias from the start. Despite testifying that she was a rule follower, she failed to follow the rules outlined in the City Code and other guidelines for the conduct of City officials. She feigned ignorance until her *ex parte* communications with

Council Members and others were explored on direct examination. *Id.* at 107:24-108:7.

56. On cross-examination, the Mayor and Council Members gave planned speeches on Plaintiff's ability to build a smaller home on the Property. The Court finds that the Mayor and Council Members were merely pandering to the Court and that their testimony did not represent the positions they sincerely held or believed during the hearing on Plaintiff's CCCL Variance Application. *See id.* at 108:15-23.

57. The actions and conduct of Mayor Singer, Council Member Mayotte and Council Member O'Rourke, as well as the conduct of the City Manager, Deputy City Manager, Development Services Director, and many other employees of the City who were involved with this CCCL Variance Application were so tainted with bias that there was no building that could have been built on this property by Plaintiff, regardless of whether the building met the "minimum requirements" for a CCCL variance. *Id.* at 108:8-18, 110:11-19.

58. The facts further reflect that the acts of institutional bias of the aforesaid City Council Members and employees of the City confirmed that there was an intentional violation of Plaintiff's constitutionally protected due process rights, both during the application process and at the quasi-judicial hearings before the ZBOA and City Council. *Id.* at 110:11-19.

59. It is evident that Plaintiff was never going to get a fair hearing based on the conduct of Council Members Mayor Scott Singer, Andrea O'Rourke, and Monica Mayotte. *Id.* at 108:8-10.

60. The Court finds that the aforementioned conduct during the July 23, 2019 hearing on the Plaintiff's CCCL Variance Application was not fair and impartial, as objectivity was required for a quasi-judicial hearing, pursuant to Plaintiff's constitutional rights to due process and the City's own Code. *See* Tr. Mar. 24, 2023 at 110:11-15.

VII. Remaining Beneficial Uses of the Parcel

61. Despite the denial of the application for a CCCL variance, the City does not dispute that Plaintiff has a right to build a single-family home on the Parcel, subject to satisfying the CCCL variance criteria (which satisfaction would be determined based on a future application considered at a subsequent hearing held in conformity with this Court's ruling). Ex. P-159 [DE 169-4], Schaad Dep. at 221:21-222:21, 224:21-225:9.

62. The development pattern in this portion of the City—the Redhammer Subdivision—reflects that parcels on the west side of State Road A1A are typically improved with a habitable structure, and the corresponding, beachfront parcel is preserved for the west side's private use, such as a private beach or the improvement of the east parcel with an amenity. *Id.* at 10:23-13:25, 59:25-60:21.

63. Plaintiff continues to have the right to improve the Parcel with a qualifying single-family home and/or a beach amenity subject to satisfying the CCCL variance criteria. *Id.* at 223:23-225:13.

CONCLUSIONS OF LAW

I. THE COURT FINDS IN FAVOR OF THE CITY ON PLAINTIFF'S INVERSE CONDEMNATION CLAIMS (COUNTS I, II, III, AND IV(A)).

Based on the evidence presented and an analysis of the law, the Court finds in favor of the City on Plaintiff's takings claims, Counts I, II, III, and IV(A). The Takings Clause of the Fifth Amendment of the United States Constitution states that private property shall not "be taken for public use, without just compensation." U.S. Const. amend. V. This curtailment of government power equally applies to the States and, thus, local governments through the Fourteenth Amendment. *Murr v. Wisconsin*, 137 S. Ct. 1933, 1942 (2017). The Takings Clause of the Florida Constitution is identical to the clause within the United States Constitution. *Persaud Props. FL Invs., LLC v. Town of Fort Myers Beach*, No. 2:21-cv-384-JLB-NPM, 2022 WL 888919, at *4 (M.D. Fla. Mar. 25, 2022) (noting the Takings Clause of both constitutions can be analyzed together, citing *Highlands-In-The-Woods, LLC v. Polk Cty.*, 217 So. 3d 1175, 1180 (Fla. 2d DCA 2017)). Accordingly, the Court addresses the federal and Florida inverse condemnation claims asserted in Counts I, II, III and IV(A) together.

As a result of the City's denial of the CCCL Variance Application, Plaintiff asserted total, regulatory takings claims under the Takings Clause of the Fifth Amendment of the United States Constitution (Counts I and III) and Article X, Section 6 of the Florida Constitution (Count II), and also sought declaratory relief reflecting such takings claims (Count IV(A)). The sole question for the Court in

adjudicating Counts I, II, III, and IV(A) is whether the City, by denying Plaintiff's application, has affected a total taking under the Takings Clause of the Fifth Amendment of the United States Constitution and Article X, Section 6 of the Florida Constitution.³ See DE 30.

A "total taking" of property occurs "where [a] regulation denies all economically beneficial or productive use of land." *Lucas v. S. Carolina Coastal Council*, 505 U.S. 1003, 1015 (1992). "Anything less than a 'complete elimination of value,' or a 'total loss,'" is not a "total taking." *Tahoe-Sierra Preserve Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 330 (2002) (citing *Lucas*, 505 U.S. at 1019-20, n.8). For example, "[a] taking does not occur when the regulation prevents a property from achieving its maximum economic potential, because 'an otherwise valid exercise of the police power is not a taking simply because the regulation deprives the owner of the most beneficial use of his or her property.'" *Wise v. City of Lauderhill*, No. 15-60686-CIV, 2016 WL 3747605, at *7 (S.D. Fla. July 13, 2016) (citing *Rymer v. Douglas Cnty.*, 764 F.2d 796, 801 (11th Cir. 1985); *Nasser v. City of Homewood*, 671 F.2d 432, 438 (11th Cir. 1982) (stating that a "severe decrease" in a property's value also does not "measure[] up to an unlawful taking")). The Supreme Court recognizes

³ The Court applies Fifth Amendment takings law to both the federal and state claims, because "Florida follows federal takings law[.]" *Chmielewski v. City of St. Pete Beach*, 890 F.3d 942, 949 (11th Cir. 2018) (citing *St. Johns River Water Mgmt. Dist. v. Koontz*, 77 So. 3d 1220, 1226 (Fla. 2011) (holding that the takings clause of the Fifth Amendment and the takings clause of the Florida Constitution are interpreted coextensively), *rev'd on other grounds*, 570 U.S. 595 (2013)).

that it is only in the “extraordinary circumstance when *no* productive or economically beneficial use of land is permitted[]” that a total taking has occurred.⁴ *Lucas*, 505 U.S. at 1017 (emphasis in original).

The Court finds as a matter of law that the City did not effect a total, regulatory taking by denying Plaintiff’s CCCL Variance Application on July 23, 2019.⁵ The evidence does not reflect that the Parcel has been deprived of all productive or economically beneficial use.

The City recognizes that the Parcel is capable of being developed with a single-family residence. Plaintiff may apply for a CCCL variance to build a smaller, more contextually sensitive residence that satisfies the CCCL variance criteria. The fact that the City did not approve the CCCL Variance Application

⁴ The takings analysis, moreover, focuses “exclusively on the severity of the government intrusion and not the *purpose* of that intrusion.” *S. Grande View Dev. Co., Inc. v. City of Alabaster, Ala.*, 1 F.4th 1299, 1311 (11th Cir. 2021) (emphasis added) (citing *Lingle v. Chevron USA Inc.*, 544 U.S. 528, 542-43 (2005)). “*Lingle* changed the type of inquiry permitted in a just compensation claim, and abrogated our earlier precedent permitting an inquiry into the rationale behind the regulation.” *Id.*; *Lingle*, 544 U.S. at 542-43 (stating an inquiry [into the purpose of regulation] is logically prior to and distinct from the question [of] whether a regulation effects a taking, for the Takings Clause presupposes that the government has acted in pursuit of a valid public purpose.”). Accordingly, evidence regarding the sufficiency of the City staff’s review and analysis of the project; adequacy of the hearing; the alleged biases or motivations behind the City Council’s denial of the CCCL Variance Application; or the amount of costs or delays incurred in the application process are *not* relevant to the total takings analysis.

⁵ The Court expresses no opinion on the constitutionality of the City’s CCCL regulations and variance criteria, which are not at issue here.

for this particular Project does not amount to a taking. Again, “[n]either deprivation of the most beneficial use of the land, nor a severe decrease in the value of the property measures up to an unlawful taking.” *Nasser*, 671 F.2d at 438. Like in *McNulty v. Town of Indialantic*, where the property owner could not state a takings claim as a matter of law based on the denial of his CCCL Variance Application to build a habitable structure on his beachfront property, Plaintiff’s use of the Parcel is “only limited by what [it] may build there.” 727 F. Supp. 604, 611 (M.D. Fla. 1989). Accordingly, the Court finds that the City has not deprived Plaintiff of *all* potential economic or beneficial use of the Parcel.

Additionally, the Court finds that Plaintiff maintains the right to exclude others from its Parcel, preserving the beach and the ocean view for its own enjoyment. “This right of exclusion has been recognized by the Court as ‘one of the most essential sticks in the bundle of rights that are commonly characterized as property.’” *McNulty*, 727 F. Supp. at 611 (quoting *Nollan v. California Coastal Com’n*, 483 U.S. 825, 831 (1987)). There is no evidence in the record that Plaintiff cannot utilize the Parcel “as is”—a private beach—for its own private enjoyment. *See McNulty*, 727 F. Supp. at 611.

Based on the evidence presented at trial, Plaintiff has failed to prove that its Parcel was “taken” within the meaning of the Fifth Amendment of the United States Constitution or Article X, Section 6 of the Florida Constitution, such that “*no* productive or economically beneficial use of the [Parcel] is permitted.” *Lucas*, 505 U.S. at 1017 (emphasis in original). In light of the foregoing, the Court finds that the City’s denial of Plaintiff’s CCCL Variance

Application did not constitute a total, regulatory taking under the Takings Clause of the Fifth Amendment of the United States Constitution and Article X, Section 6 of the Florida Constitution. Accordingly, the Court will enter final judgment in favor of the City and against Plaintiff on Counts I, II, III, and IV(A).

II. THE COURT FINDS PLAINTIFF IS ENTITLED TO DECLARATORY JUDGMENT ON COUNT IV(C), (E), (G) and (H).

Plaintiff asserts a declaratory judgment claim, pursuant to 28 U.S.C. § 2201, in Count IV. Specifically, Plaintiff asks the Court to: (A) declare that the City has taken Plaintiff's Property without just compensation in violation of the takings clause of the Fifth and Fourteenth Amendments to the U.S. Constitution, 42 U.S.C. § 1983, and Article X, Section 6 of the Florida Constitution; (B) declare that the City, in its review of its CCCL Ordinance and broader denial of any reasonable and economic use of the Parcel, has violated Plaintiff's due process rights in violation of the taking and due process clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution and 42 U.S.C. § 1983; (C) declare the rights and obligations between the City and Plaintiff for the R-3-F Zoning District as it relates to the Parcel; (D) declare that the City's CCCL Ordinance (Section 28-1556) cannot be applied to the Parcel as a result of the City's actions in improperly taking the Parcel; (E) declare that Council Members Andrea O'Rourke, Scott Singer, and Monica Mayotte cannot legally vote on Plaintiff's CCCL Variance Application to the City due to their obvious bias and therefore must recuse themselves; (F) in the event that the Council Members

abstain, declare that the applications must be approved because the City does not have a quorum on this matter; (G) award attorney's fees, costs and expenses under 42 U.S.C. § 1988; and (H) grant any other relief as the Court deems just and proper.

In sub-paragraphs (B) and (D), Plaintiff seeks declarations that the City violated Plaintiff's due process rights when the City denied Plaintiff all economic and beneficial use of the Property and when the City effected a taking. Because, as explained above, the Court did not find that the City's denial of Plaintiff's CCCL variance application amounted to a total taking, the Court could not find that the City denied all economic and beneficial uses of the property. The issues raised in Count IV, paragraphs (B) and (D) are mooted by the Court's ruling, in Counts I, II, III, and IV(A) above, that the City's denial of Plaintiff's CCCL Variance Application did not constitute a total, regulatory taking under the Takings Clause of the Fifth Amendment of the United States Constitution and Article X, Section 6 of the Florida Constitution.

In sub-paragraph (F), Plaintiff seeks the Court's declaration that its application to the City for a CCCL variance must be approved because if the three Council Members abstain from voting on the application, the City will not have the required quorum. Plaintiff neither cites to legal authority in its pleadings for default grant of a variance on these or other grounds, nor was the issue raised or elucidated during the trial held from March 20 through March 24, 2023. Thus, the Court denies Plaintiff's request for a declaration that its CCCL variance application must be approved. Accordingly, the Court will only address Plaintiff's

declaratory judgment claim in respect of paragraphs (C), (E), (F), (G), and (H).

A. Declaration of Plaintiff's Rights As They Relate To The Property

The Court, having heard the evidence and testimony presented at trial, and as detailed above, declares that Plaintiff has the right to build a single-family, detached dwelling in the district zoned R-3-F, subject to satisfying the City's CCCL variance criteria.

B. The Conduct of City's Council Members Mayotte, O'Rourke, and Mayor Singer Violated Plaintiff's Due Process Rights.

Florida courts have generally classified land-use planning and development decisions as quasi-judicial, including the granting or denying of variance requests. *See Grace v. Town of Palm Beach*, 656 So. 2d 945, 946 (Fla. 4th DCA 1995); *see also City of Atlantic Beach v. Wolfson*, 118 So. 3d 993 (Fla. 1st DCA 2013); *Dibbs v. Hillsborough Cnty., Fla.*, 67 F. Supp. 3d 1340, 1353 (M.D. Fla. 2014), *aff'd*, 625 F. App'x 515 (11th Cir. 2015); *McKinney v. Pate*, 20 F.3d 1550, 1561 (11th Cir. 1994). Moreover, Section 2-80 of the City of Boca Raton's Municipal Ordinances ("City Code") defines the City Commission as a quasi-judicial body. Sections 2-82(a)(5) of the City Code specifies that quasi-judicial matters include "variances from the application of the land development code."

Quasi-judicial decisions are judicial inquiries that investigate, declare, and enforce rights and liabilities based on specific facts and existing laws. *Lee County v. Sunbelt Equities, II, Ltd. P'ship*, 619 So. 2d 996 (Fla. 2d DCA 1993). These decisions tend to directly affect a more limited number of people than legislative

decisions. *Park of Comm. Assocs v. City of Delray Beach*, 636 So. 2d 12 (Fla. 1994). Quasi-judicial decisions are reached only after affording due process. *See De Groot v. Sheffield*, 95 So. 2d 912 (Fla. 1957). In other words, decisions are quasi-judicial in nature when they are made after providing notice, a meaningful opportunity to be heard, and then neutrally applying pre-existing legal standards to the evidence presented, instead of the whims and promises of politics. *Neapolitan Enters., LLC v. City of Naples*, 185 So. 3d 585 (Fla. 2d DCA 2016) (emphasis added).

Due Process demands impartiality on the part of those who function in judicial or quasi-judicial capacities. *Schweiker v. McClure*, 456 U.S. 188, 195 (1982) (citing *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242-243, and n.2, (1980)). A presumption of honesty and integrity exists in those who serve as adjudicators for administrative agencies. *Id.* at 195-96; *Wood v. Berryhill*, 6:15-CV-1487-ORL-DNF, 2017 WL 4161665, at *8 (M.D. Fla. Sept. 20, 2017) (citing *Withrow v. Larkin*, 421 U.S. 35, 47 (1975)). While the quality of due process required in a quasi-judicial hearing is not the same as that to which a party to a full judicial hearing is entitled, certain standards of basic fairness must be adhered to in order to afford due process. *Hadley v. Dep't of Admin.*, 411 So. 2d 184 (Fla. 1982). As such, a quasi-judicial decision is not conclusive if minimal standards of due process are denied. *See Morgan v. United States*, 298 U.S. 468, 480-81 (1936) (“The ‘hearing’ is designed to afford the safeguard that the one who decides shall be bound in good conscience to consider the evidence, to be guided by that alone, and to reach his conclusion uninfluenced by extraneous considerations which, in other fields, might have play in determining purely executive action. The

'hearing' is the hearing of evidence and argument. If the one who determines the facts which underlie the order has not considered evidence or argument, it is manifest that the hearing has not been given.").

Based on the evidence presented and an analysis of the law, the Court finds in favor of Plaintiff on certain of its declaratory relief claims. Having heard the evidence and testimony presented at trial, the Court finds that Council Members O'Rourke and Mayotte and Mayor Singer were biased. The actions and conduct of Mayor Singer, Council Member Mayotte and Council Member O'Rourke, and other employees of the City who were involved with this CCCL Variance Application, were so tainted with bias that, even if the building met the "minimum requirements" for a CCCL variance, no variance would have been granted. The Council Members stated repeatedly and over time to different constituents that they had no intention of voting yes on Plaintiff's CCCL Variance Application.

The facts further reflect that the acts of institutional bias of the aforesaid City Council Members and employees of the City confirmed that there was an intentional violation of Plaintiff's constitutionally protected due process rights, both during the application process and at the quasi-judicial hearings before the ZBOA and City Council. Despite the Council Members' testimony at trial that they relied on staff reports and expert analyses in these reports, the conduct of Council Members Mayor Scott Singer, Andrea O'Rourke, and Monica Mayotte and their testimony at trial reveal that Plaintiff was never going to get a fair hearing. The Court therefore finds that the aforementioned conduct during the July 23, 2019 hearing on the Plaintiff's CCCL Variance Application was not fair and impartial, as the three Council

members lacked the objectivity required by adjudicators in a quasi-judicial hearing, in violation of Plaintiff's due process rights under the Fifth and Fourteenth Amendments to the U.S. Constitution and 42 U.S.C. § 1983.

Based on the evidence presented at trial, Plaintiff has proven that the City Council's quasi-judicial hearing on Plaintiff's application for a CCCL variance was tainted by the failure of Council Members Mayotte, O'Rourke, and Mayor Singer's refusal to recuse themselves from voting on the CCCL variance application. In light of the foregoing, the Court finds that whereas the City's denial of Plaintiff's CCCL Variance Application did not constitute a total, regulatory taking under the Takings Clause of the Fifth Amendment of the United States Constitution and Article X, Section 6 of the Florida Constitution, the explicit bias of the three Council Members against any development on the Parcel tainted the vote on Plaintiff's variance application. Accordingly, the Court will enter judgment in favor of the Plaintiff against Defendant on Count IV(C), (E), (G), and (H).

The Court further declares that should Plaintiff choose to renew its application for a CCCL variance with respect to the Property, Council Members Mayor Scott Singer, Andrea O'Rourke and Monica Mayotte shall recuse themselves from the proceeding. The City shall ensure that its review, analysis, and/or processing of Plaintiff's CCCL Application shall be sanitized such that anyone who previously reviewed, analyzed, or evaluated Plaintiff's prior application shall recuse themselves from any future proceedings, as the Court finds that they too were tainted, directly or indirectly.

C. Award of Attorney's Fees, Costs and Expenses under 42 U.S.C. § 1988

In certain civil rights actions, including those brought under 42 U.S.C. § 1983, the court, “in its discretion, may allow the prevailing party reasonable attorney’s fees as part of the costs.” *Hensley v. Eckerhart*, 461 U.S. 424, 426 (1983). “[A] plaintiff ‘prevails’ when actual relief on the merits of his claim materially alters the legal relationship between the parties by modifying the defendant’s behavior in a way that directly benefits the plaintiff.” *Farrar v. Hobby*, 506 U.S. 103, 111-12 (1992); *accord Dillard v. City of Greensboro*, 213 F.3d 1347, 1353-54 (11th Cir. 2000).

“Unless a federal statute, these rules, or a court order provides otherwise, costs—other than attorney’s fees—should be allowed to the prevailing party.” Fed. R. Civ. P. 54(d)(1). The Eleventh Circuit has held that Rule 54(d) “creates a presumption in favor of awarding costs to the prevailing party” which the non-prevailing party must overcome. *Manor Healthcare Corp. v. Lomelo*, 929 F.2d 633, 639 (11th Cir. 1991).

The Court finds as a matter of law that Plaintiff is a prevailing party under Count IV(C), (E), (G), and (H) and is therefore entitled to an award of its reasonable attorney’s fees, costs and expenses incurred in the handling of Count IV(C), (E), (G), and (H), pursuant to 42 U.S.C. § 1988 and Federal Rule of Civil Procedure 54(d)(1). *See Cty. of Volusia v. W.R. Pickens*, 435 So. 2d 247 (Fla 5th DCA 1983). The Court further reserves jurisdiction to enforce the final Judgment and for proceedings to determine the amount of Plaintiff’s award of fees and costs.

III. CONCLUSION

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED AND ADJUDGED** as follows:

1. Defendant, City of Boca Raton, is entitled to judgment in its favor and against Plaintiff, Natural Lands, LLC, on Counts I, II, III, and IV(A) of the Amended Complaint.

2. Plaintiff, Natural Lands, LLC, is entitled to judgment in its favor and against Defendant, City of Boca Raton, on Count IV(C), (E), (G), and (H) of the Amended Complaint, as set forth herein.

3. Plaintiff, Natural Lands, LLC, is entitled to an award of attorney's fees, costs and expenses incurred in connection with Count IV(C), (E), (G), and (H) only of the Amended Complaint, as set forth herein, pursuant to 42 U.S.C. § 1988. The allowable costs and fees will not be assessed for work done prior to the filing of this action and will not include any costs associated with the permitting process. The parties shall file their motions for attorney's fees and costs by **March 22, 2024**.

4. The Court reserves jurisdiction to address the issues of attorneys' fees and costs.

5. Final Judgment will be entered by separate order, in accordance with Rule 58, Federal Rule of Civil Procedure.

DONE AND ORDERED in Chambers in Broward, Florida, this 7th day of March 2024.

/s/ Rodney Smith

RODNEY SMITH

UNITED STATES DISTRICT JUDGE

cc: Counsel of Record

Filed March 20, 2025

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 19-81407-CIV-SMITH**

NATURAL LANDS, LLC,
Plaintiff,

vs.

CITY OF BOCA RATON,
Defendant.

_____ /

OMNIBUS ORDER

This matter is before the Court on Defendant, City of Boca Raton’s (“Defendant”) Motion for an Order Suspending or Modifying the Injunction while Appeal is Pending [DE 230], Plaintiff’s, Natural Lands, LLC, Motion to Compel Compliance with the Court’s Findings of Fact and Conclusions of Law and Final Judgment [DE 234], and Plaintiff’s Amended Motion to Compel Compliance with the Court’s Findings of Fact and Conclusions of Law and Final Judgment [DE 235] (“Motions”). For the reasons that follow, Defendant’s Motion is granted, and Plaintiff’s Motions are denied as Moot.

On March 7th, 2024, following a week-long bench trial, the Court issued its Findings of Fact and Conclusions of Law [DE 211]. The Court’s Findings of Fact and Conclusions of Law state, in pertinent part:

The Court further declares that should Plaintiff choose to renew its application for a CCCL variance with respect to the Property, ***Council Members Mayor Scott Singer, Andrea O’Rourke and Monica Mayotte shall recuse***

themselves from the proceeding. The City shall ensure that its review, analysis, and/or processing of ***Plaintiff's CCCL Application shall be sanitized such that anyone who previously reviewed, analyzed, or evaluated Plaintiff's prior application*** shall recuse themselves from any future proceedings, as the Court finds that they too were tainted, directly or indirectly.

Thereafter, on April 21, 2023, the Defendant filed its Notice of Appeal to the Eleventh Circuit Court of Appeals [DE 181]. The appeal, which is still pending, challenges all aspects of the judgment entered in favor of Plaintiff, including the injunction described above. On December 17, 2024, Plaintiff, through its counsel, advised Defendant that it “will be ready to submit its modified home in January.” (See Exhibit Attached to (DE 230-1.)) Defendant filed its pending Motion, thereafter, on December 20th, 2024, arguing that requiring it to process a renewed CCCL application for a variance at this time would render its appeal moot without a stay and in the alternative, requested that the Court modify its injunction to identify the individuals who are deemed to have “reviewed, analyzed, or evaluated” Plaintiff’s prior application. (DE 230, at 2-3.) In its response to Defendant’s Motion, Plaintiff conceded that although the injunction bars Council Members O’Rourke, and Mayotte, and Mayor Singer, as well as those “who previously reviewed, analyzed, or evaluated Plaintiff’s prior application” from reviewing Plaintiff’s impending CCCL application, other qualified City staff and personnel may still do so. (DE 231, at 4.) Nonetheless, both Parties agree that none of Defendant’s staff and personnel are currently qualified to do so. (*Id.*) Notwithstanding, Plaintiff

filed a Motion to Compel Compliance with the Court's Findings of Fact and Conclusions of Law and Final Judgment.

“The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.” *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982). However, the divestment is not absolute. Federal Rule of Civil Procedure 62(c) permits the district court to “suspend, modify, restore, or grant an injunction” while an appeal to the injunction is pending. *Wright v. Sumter Cnty. Bd. of Elections & Registration*, No. 1:14-CV-42 (WLS), 2018 WL 7366461, at *2 (M.D. Ga. June 21, 2018). “Courts have interpreted Rule 62(c) to allow a district court to modify an injunction that has been appealed only to the extent necessary to maintain the status quo, and the modification cannot be such that it moots the appeal and divests the appellate court of jurisdiction.” *Fed. Trade Comm’n v. Vylah Tec LLC*, No. 217CV228FTM99MRM, 2017 WL 10844699, at *2 (M.D. Fla. Oct. 27, 2017); see *Coastal Corp. v. Texas E. Corp.*, 869 F.2d 817, 819 (5th Cir. 1989) (“Several circuits have held, or at least strongly implied, that the district court may not alter the injunction once an appeal has been filed except to maintain the status quo of the parties pending the appeal.”). “The appellate court is entitled to review a fixed, rather than a mobile, record. Additional findings that move the target are disfavored.” *Fed. Trade Comm’n v. Enforma Nat. Prod., Inc.*, 362 F.3d 1204, 1216 n.11 (9th Cir. 2004).

Against this law, the Court will not foreclose Plaintiff's ability to resubmit a new CCCL application. Accordingly, it is

ORDERED that:

- 1) Defendant's Motion for an Order Suspending or Modifying the Injunction while Appeal is Pending **[DE 230]** is **GRANTED**.
- 2) Plaintiff's Motion to Compel Compliance with the Court's Findings of Fact and Conclusions of Law and Final Judgment **[DE 234]** is denied as **MOOT**.
- 3) Plaintiff's Amended Motion to Compel Compliance with the Court's Findings of Fact and Conclusions of Law and Final Judgment **[DE 235]** is denied as **MOOT**.
- 4) The Court clarifies the following:
 - a. Council Members Mayor Scott Singer, Andrea O'Rourke and Monica Mayotte shall recuse themselves from the proceedings of Plaintiff's renewed CCCL application for a variance.
 - b. Defendant must conduct and document an analysis ensuring that all remaining voters of Plaintiff's renewed CCCL application for a variance are impartial or have otherwise been recused.
 - c. Defendant shall maintain a list of all voting participants at any proceedings on Plaintiff's renewed CCCL application for a variance.
 - d. Plaintiff may object to, and seek sanctions for non-compliance with, the Court's Findings of Fact to the voting participants on

Plaintiff's renewed CCCL application for a variance on the grounds that the voting participant had previously reviewed, analyzed, or evaluated Plaintiff's previous application but must outline how/why they are tainted.

DONE AND ORDERED in Fort Lauderdale, Florida, this 20th day of March, 2025.

/s/ Rodney Smith

RODNEY SMITH

UNITED STATES DISTRICT JUDGE

cc: counsel of record

Filed March 22, 2024

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 19-81407-CIV-SMITH**

NATURAL LANDS, LLC,
Plaintiff,

v.

CITY OF BOCA RATON, *et al.*,
Defendants.

FINAL JUDGMENT

Pursuant to the Court's Findings of Fact and Conclusions of Law [DE 211], it is **ORDERED** that:

1. Judgment is entered in favor of Defendant, City of Boca Raton, and against Plaintiff, Natural Lands, LLC, on Counts I, II, III, and IV(A) of the Amended Complaint. Counts I, II, III, and IV(A) are dismissed on the merits.
2. Judgment is entered in favor of Plaintiff, Natural Lands, LLC, and against Defendant, City of Boca Raton, on Count IV(C), (E), (G), and (H) of the Amended Complaint. It is hereby **DECLARED** that: (i) Plaintiff has the right to build a single-family, detached dwelling in the district zoned R-3-F, subject to satisfying the City's CCCL variance criteria; and (ii) Council Members Mayor Scott Singer, Andrea O'Rourke, and Monica Mayotte shall recuse themselves from any evaluation, review, consideration, or vote on any future application

Plaintiff makes for a CCCL variance with respect to the Property.

3. Plaintiff, Natural Lands, LLC, is entitled to an award of attorney's fees, costs and expenses incurred in connection with Count IV(C), (E), (G), and (H) of the Amended Complaint, as set forth herein, pursuant to 42 U.S.C. § 1988. The allowable costs and fees will not be assessed for work done prior to the filing of this action and will not include any costs associated with the permitting process. The parties shall file their motions for attorney's fees and costs by **May 21, 2024**.

DONE AND ORDERED in Fort Lauderdale, Florida, this 22nd day of March, 2024.

/s/ Rodney Smith

RODNEY SMITH

UNITED STATES DISTRICT JUDGE

cc: counsel of record