

IN THE CIRCUIT COURT FOR THE  
NINETEENTH JUDICIAL CIRCUIT IN AND  
FOR INDIAN RIVER COUNTY, FLORIDA.  
**APPELLATE DIVISION**

Circuit Case No. 19-AP-142  
Petition for Writ of Certiorari

PELICAN ISLAND AUDUBON  
SOCIETY, GRAHAM COX,  
AND DONNA HALLERAN,

Petitioners,  
v.

Not final until time expires for filing motion  
for rehearing, and if filed, disposed of.

CITY OF SEBASTIAN,

Respondent.

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Decision filed June 30, 2020.

Petition for writ of certiorari to the Sebastian City Council.

George Glenn, Jr., Vero Beach, for petitioners.

Laura Wendell, Weiss Serota Helfman Cole & Bierman, P.L., Fort Lauderdale, for respondent.

PER CURIAM.

This case involves the Sebastian City Council’s (“City Council”) ordinance for voluntary annexation of 1,118 acres of privately owned land. The Petitioners, landowners within the city limits, seek this court’s review under §171.081(1), Fla. Stat. (2019). We find that the Petitioners have standing to bring this action. *See Matlacha Civic Association, Inc. v. City of Cape Coral*, 273 So. 3d 243, 246 (Fla. 2d DCA 2019) (citing *City of Tampa v. Hillsborough County*, 504 So.2d 10, 11 (Fla. 2d DCA 1986)).

During this first tier review, the circuit court must determine whether procedural due process was accorded, whether the essential requirements of the law have been observed, and whether the administrative findings and judgment are supported by competent substantial evidence. *County of Volusia v. City of Deltona*, 925 So. 2d 340, 343 (Fla. 5th DCA 2006) (citing

*Broward County v. G.B.V. Intern., Ltd.*, 787 So. 2d 838, 843 (Fla. 2001). The reviewing court cannot reweigh evidence or substitute its view for that of the agency. *Id.*

We agree with the Petitioners' sole argument that the City Council departed from the essential requirements of law by failing to provide an accurate map of the land to be annexed in the public notice, as required by statute. §171.044(2), Fla. Stat. (2019) states:

...The description **shall include a map clearly showing the area** and a statement that the complete legal description by metes and bounds and the ordinance can be obtained from the office of the city clerk.

(Emphasis added). The Florida Supreme Court has stated that the word "shall" is mandatory in nature. *Wheaton v. Wheaton*, 261 So. 3d 1236, 1243 (Fla. 2019). The City Council concedes that the public notice map was missing a five acre parcel, but it argues that the flaw is de minimus. The complete map was attached to the ordinance. We find that the City Council was required to include a complete map in the public notice showing the area to be annexed in its entirety, and the five acre missing parcel was not de minimus. Therefore, the petition for writ of certiorari is granted, and the City Council's ordinance is quashed.

We grant the Petitioners' motion for appellate attorney's fees. §171.081, Fla. Stat. (2019). Determination of amount will be determined by Judge Jeffrey Hendriks.

The Petitioners' motion for appellate costs is not properly before this court, so it is denied without prejudice to be refiled in the lower tribunal. *See Arthur v. Arthur*, 54 So. 3d 454, 460 (Fla. 2010). If the motion to tax appellate costs is timely filed in the lower tribunal, appellate costs must be taxed in favor of the party who prevailed in the appeal. *Perez v. Fay*, 198 So. 3d 681, 683 (Fla. 2d DCA 2015) (citing Fla. R. App. P. 9.400(a)).

*The petition for writ of certiorari is granted, and the City Council's ordinance is quashed.*

HEISEY, MEADOWS, JJ., and HENDRIKS, Acting Circuit Judge, concur.

Copies of above decision  
were furnished to the attorneys/parties  
of record on the same date  
the decision was filed.