
Competent Substantial Evidence Hypothetical

The following is a fictitious hypothetical land use situation used to explore the application of a possible definition of competent substantial evidence, created in the article *What is Competent Substantial Evidence*, which says competent substantial evidence is real, fact based, reliable evidence that tends to prove the points that must be proven and a reasonable mind would accept it as enough to support the argued for conclusion. Any similarity to an actual situation is purely coincidental.

**Hypothetical:**

John Smith applied for a special exception for a "blue padool" use (no, I don't know what that is either; just some type of use) in the town of Compsubland, Florida. The Compsubland standards for a blue padool special exception (with no comments on whether they are legally sufficient standards or not) are:

1) The use must not create noise above certain set noise standards;
2) The use must have direct access to a collector or arterial street;
3) The use must be aesthetically compatible with the adjacent uses.

The Compsubland Land Development Code defines "aesthetically compatible" as "having the same or similar appearance as surrounding uses," does not define "collector street" or "arterial street," but does lay out noise standards.

In John Smith's application, he addresses the standards by stating: "The noise will not be a problem because I will be using the same building design I have used in another site in Judicialville that meets all of the applicable noise levels. The blue padool will have direct access to First Street, which is a major street; the local Metropolitan Planning Organization classifies it as a collector road. The use will be compatible with the adjacent uses because it is a fun, family-friendly use that everyone will enjoy going to."

At the hearing for the special exception, the staff provided a written recommendation that said: "Recommend approval, based on the application packet." The applicant restated what was in the application packet. Two people spoke in opposition.

Jane Doe, a nursery-school teacher who lives adjacent to the subject property, said that she objected because the proposed blue padool would be too noisy. "I went to Judicialville to look at Mr. Smith's blue padool there and talked with the neighbors and the Judicialville staff. They told me that there were lots of noise problems. The staff showed me a report - I have copies of it I am submitting into the record - of repeated noise measurements at that blue padool that showed that it exceeded Judicialville's noise requirements. And I have copies of Judicialville's noise requirements and they show that Judicialville allows more noise than Compsubland does. So if this is the exact same blue padool and it can't meet Judicialville's more relaxed standards, how

can it be expected to meet Compsubland's standards? Plus the building is really ugly. It may be designed to look like a house in our neighborhood and be the same size and shape as most of the houses, but I think it is really ugly. For those reasons, I think it should be denied."

Bob Roe, a civil engineer, testified on behalf of the residential property owners behind the proposed property. Mr. Roe stated "After talking to my clients and looking at the application file, it is my professional opinion that this use will create a major drainage problem that will flood my client's property. For that reason, my client wants the request denied."

Now, you are the decision-maker. What of that testimony was competent substantial evidence?

First, did Mr. Smith meet his burden of proving, by competent substantial evidence that he met the applicable standards?

As to the noise standard, he said he was using the same building that already meets noise standards. That is fact based evidence, based on a real situation, that applies directly to the standard, and that, taken on face value, would tend to prove and be a reasonable inference that the new use would meet the noise requirements. Given that it is based on his personal experience it could, on its face, be considered reliable.

As to the access to an arterial or collector street, Mr. Smith testified that the property had access to First Street, a major street that the MPO classified as a collector street. The first part (about having access to First Street) is relevant and, if true, would tend to prove that the standard is met, but, as Mr. Smith has not indicated any expertise in title matters or engineering and has no confirmation from such an expert to put in the record, the evidence cannot be relied upon. Even if the property has frontage on First Street, his statement does not prove that he has the right to access First Street from the property. The second part, about the street being a collector street, similarly, is apparently relevant and, on its face, is more than conjecture and would reasonably tend to prove that First Street is the requisite type of street. But, without verification from the MPO as to the classification of the street, that statement is hearsay, which, without more, is not legally sufficient to use as the sole basis of proof of that point. Additionally, there is no evidence from someone with the expertise to establish the fact that an MPO classified collector road equals a collector road under the Compsubland standard. This might not be an unreasonable conclusion to draw, but there is no evidence to actually advance that conclusion.

As to the statement that the use will be compatible with the adjacent uses because it is a fun, family-friendly use that everyone will enjoy going to, this is fairly clearly not competent substantial evidence. Whether everyone will love going there is not relevant to whether the use is aesthetically compatible, as defined by the LDRs. Even if it was, it is unverified (or verifiable) conjecture that it would be unreasonable to see as being enough to meet the burden of proof of compliance with the standard.


So, Mr. Smith probably did not meet his burden of proof in the application or in the hearing. The staff report doesn't provide any evidence, just a conclusory statement. This brings us to the statements of the opposition.

Jane Doe's testimony about the noise standards was arguably competent substantial evidence. Although it is hard to prove a fact about something that doesn't yet exist, Mr. Smith set up the opportunity for Ms. Doe's evidence by saying the proposed building would be the same as the existing blue padool in another jurisdiction. Ms. Doe's testimony that that same building has been verified as not meeting the less stringent standards of the other jurisdiction, as supported by copies of the noise measurement reports and the other jurisdiction's standards, was evidence, although perhaps not in a form required for admission in court, reasonably credible from those with actual experience, relevant to the standard and advances the point that the use would not meet the noise standards. It also effectively weakened the credibility of Mr. Smith, who had claimed the other blue padool met all the applicable noise standards, but that is a weighing point, not a question of whether the evidence is competent substantial evidence or not.

As to Ms. Doe's testimony on the aesthetic compatibility, the testimony was probably not competent substantial evidence. The statement is a conclusory statement that, in her opinion, the building is ugly. Although she might rise to the level of being able to offer an expert opinion on what is aesthetically pleasing in her neighborhood, that is not what the standard requires. The fact to be proven is whether the proposed use is "aesthetically compatible," which is defined as "having the same or similar appearance as surrounding uses." By testifying that the use will look like a house in the neighborhood and be of the same size and shape as houses, such as those surrounding the proposed use, Ms. Doe actually presented, albeit unverified, possibly competent and substantial, evidence that the use does meet the aesthetic compatibility standard.

Mr. Roe's testimony should not be considered competent substantial evidence. Although, as a civil engineer, he may be qualified to give his expert opinion on whether a flooding problem could be created and even though preventing flooding is within a local government's police powers, addressing or preventing flooding is not a listed standard that must be met for a blue padool special exception. Therefore, his testimony does not go toward proving a standard that must be met (is irrelevant).