Petition for Writ of Certiorari to Review Quasi-Judicial Action of Agencies, Boards and Commissions of Local Government: ADMINISTRATIVE – Public Nuisance — The record contains competent, substantial evidence to support the magistrate's order, and no departure from essential requirements of law occurred in this matter. Petition denied. *Dineshbhai Patel and Kailasben Patel v. City of New Port Richey*, No. 15-CA-0263-WS (Fla. 6th Cir. App. Ct. October 23, 2015).

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR PASCO COUNTY
APPELLATE DIVISION

DINESHBHAI PATEL and
KAILASBEN PATEL,
Petitioners, **UCN: 512015CA000263CAAXWS**

v.

CITY OF NEW PORT RICHEY,
Respondent.
_____/

Petition for Writ of Certiorari,

Satyen Gandhi, Esq.
for Petitioner,

Nicole Nate, Esq.
for Respondent.

ORDER AND OPINION

The Court finds no departure from essential requirements of law occurred in this matter, and that the challenged order is supported by competent, substantial evidence. The Petition is hereby DENIED.

STATEMENT OF THE CASE AND FACTS

Petitioners are the owners of a Travel Inn. In 2014, Respondent brought an action against Petitioners for violation of New Port Richey City Code Ordinance § 14-27(1). After a hearing, a magistrate found Petitioners in violation of the ordinance and required Petitioners to submit an action plan to eliminate nuisance activities on the property, which plan was submitted and approved. The plan included installation of a

security system to include surveillance cameras, a new screening process for guests of the property, and the posting of a sign on the premises reading “Drug Free Motel,” and stating that unlawful activities are not permitted, and anyone found committing unlawful activities will be reported to the police department.

On December 3, 2014, Respondent filed a motion to enforce the March 4, 2014, order adopting the action plan, alleging Petitioners were not in compliance and that the property had been the location of multiple occurrences of subsequent nuisance activity. After a hearing, the magistrate issued an Order finding the property to be a chronic public nuisance, imposing a fine of $2,500, and ordering temporary closure of Petitioners’ business until the parties agreed upon an action plan to remedy the nuisance and approval of the plan by the magistrate. Pursuant to the Order all guests were to be vacated from the Inn by January 30, and Petitioners allege the Inn has remained closed since that time. Petitioners now seek review of the Order in this Court.

STANDARD OF REVIEW

This Court reviews the challenged action to determine 1) whether the parties were afforded adequate due process; 2) whether there was a departure from essential requirements of law; and, 3) whether the order is supported by competent, substantial evidence. *See Florida Power & Light Co. v. City of Dania*, 761 So. 2d 1089, 1092 (Fla. 2000); *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624 (Fla. 1982); *Powell v. City of Sarasota*, 953 So. 2d 5, 6 (Fla. 2 DCA 2006).

LAW AND ANALYSIS

Petitioners maintain the findings of fact are based on violations insufficient to find a chronic public nuisance pursuant to § 14-27 of the New Port Richey City Code of Ordinances. The Order found the property to have been the site of violations enumerated in § 14-27 on more than two occasions, and further cites non-compliance with the previously agreed upon Action Plan as a basis for the violation. The Order references five incidents which constitute violations enumerated in § 14-27: robbery on June 9, 2014; possession of cocaine on September 2, 2014; battery on September 28, 2014; battery on November 23, 2014; and, robbery on December 28, 2014. Petitioners

dispute the magistrate's factual findings, alleging the September 2 and September 28 incidents did not occur on Petitioners' property, and therefore the finding that the Inn was the site of more than two violations enumerated in § 14-27 within a six month period is not supported by competent evidence. Petitioners allege the police reports demonstrate these incidents did not occur at the Inn, but rather, in the nearby area, although the Inn is listed as the location of the incidents on the police reports.

Petitioners acknowledge two incidents in violation of § 14-27 did occur on the premises within a six-month period. However, the ordinance requires that more than two incidents occur within a six-month period. Petitioners contend it was error for the magistrate to rely on the compliance-check, which found the premises not to be in compliance with the action plan imposed by previous order. Therefore the evidence does not support a finding of more than two violations within a six month period and the order should be quashed. Petitioners further contend the property was in compliance with the action plan.

Respondent alleges the order is supported by competent, substantial evidence. The magistrate had jurisdiction over the property for one year after it was declared a chronic public nuisance in January, 2014, and had the authority to order action to abate the nuisance. The Inn was found to be a chronic, public nuisance January 29, 2014, by final order which was not appealed. An order was entered establishing an action plan to abate the nuisance on March 4, 2014. Once a property has been declared a public nuisance, a magistrate may enter an order immediately prohibiting: 1) the maintaining of the nuisance; 2) operating or maintaining the place or premises, including closure of the place or premises; or 3) the conduct, operation, or maintenance of any business or activity on the premises which is conducive to such nuisance. New Port Richey City Code of Ordinances, § 14-28(b). The magistrate had authority to enforce the order for one year from the date of the order, and to require the property owners to revise the action plan in the event nuisance activity re-occurs. *Id.* § 14-31(b)(1), (c). The hearing was held on the motion to enforce on January 14, 2015, within one year of continuing jurisdiction.

"Counties and municipalities are authorized by statute to create administrative boards to abate public nuisances occasioned by illegal drugs, prostitution, and other criminal activity." *Powell*, 953 So. 2d at 7. The magistrate has discretion to consider the circumstances in each case and to manage the progress of the case. *See Lucaya Beach Hotel Corp. v. MLT Mgmt. Corp.*, 898 So. 2d 1118, 1120 (Fla. 4th DCA 2005). The proceedings below are ongoing and involve the public interest in abating ongoing criminal activity on the property. The evidence supports the finding that Petitioners were in violation of the previous action plan. Violation of the action plan is itself a violation of the city ordinance. *See id.* § 14-31(b)(1) ("Failure to implement the action plan in the time period determined by the magistrate is a violation of this division"). Petitioner's failure to fully implement the action plan may itself constitute a violation of the code.

Petitioners have the burden of demonstrating the order is not supported by competent, substantial evidence. *See Haines Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995). This Court may not rely on conclusory statements or on facts not supported by the record on appeal, or substitute its decision for that of the magistrate on factual issues. *See Halikman v. Halikman*, 43 So. 3d 913 (Fla. 5th DCA 2010). The evidence is sufficient to support the magistrate's order, and no departure from essential requirements of law occurred in this matter. The Petition is hereby DENIED.

CONCLUSION

The record demonstrates competent, substantial evidence to support the challenged order. The Petition is denied.

It is ORDERED AND ADJUDGED that the Petition for Writ of Certiorari is DENIED.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida this 23rd day of October, 2015.

Original order entered on October 23, 2015, by Circuit Judges Daniel D. Diskey, Linda Babb and Shawn Crane.