

Petition for Writ of Certiorari to Review Quasi-Judicial Action of Agencies, Boards and Commissions of Local Government: ADMINISTRATIVE. Petitioner was afforded adequate due process in the proceedings before the City Council, and the order of demolition is supported by competent, substantial evidence. Petition denied. *Ashley Lynn Ford v. City of New Port Richey*, No. 15-CA-0635-WS (Fla. 6th Cir. App. Ct. January 4, 2016).

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**

ASHLEY LYNN FORD,
Petitioner,

UCN: 512015CA000635CAAXWS

v.

**CITY OF NEW PORT RICHEY,
FLORIDA,**
Respondent.

_____/

Petition for Writ of Certiorari,

Ashley Ford,
Pro Se,

Knute J. Nathe, Esq.
for Respondent.

ORDER AND OPINION

Petitioner was afforded adequate due process and no departure from essential requirements of law occurred in this matter. The challenged order is supported by competent, substantial evidence. The Petition is hereby denied.

STATEMENT OF THE CASE AND FACTS

Petitioner seeks review of an order to demolish Petitioner's trailer home. Two hearings were held in the matter, at which evidence was presented that the trailer qualified for demolition as a slum or blighted structure pursuant to three provisions of the City Code,¹ including evidence of damage to the exterior porch, holes in the floor

¹ The three criteria cited by the building official were: 1) the structure is so unsanitary or fails to provide amenities essential to decent living, including availability of potent water, a working toilet, and protection from exposure to the elements, such that it is unfit for human habitation, or likely to cause sickness or disease, to cause injury to the life, health or safety of the general public or occupant; 2) there is a serious and substantial falling away, hanging loose, or loosening of siding, block, brick, or other building material creating a hazard for occupants or the public;

and ceiling of the trailer, lack of running water or a working toilet, and that the water meter had been removed and electricity turned off. The City Council found the structure qualified for demolition. Petitioner now seeks review of the order of demolition.

STANDARD OF REVIEW

This Court may review quasi-judicial action by an administrative board 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 board's decision 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).²

LAW AND ANALYSIS

Petitioner alleges the demolition was ordered in error because Respondent would not provide Petitioner with a report detailing specifically what conditions qualified the structure for demolition, and that Respondent failed to issue the necessary permits for Petitioner to make the needed repairs. Petitioner alleges the evidence was insufficient to support an order for demolition. Petitioner contends that she submitted the necessary engineering report to address the structural integrity of the home and a contractor proposal with the cost of needed repairs, and that Respondent failed to properly consider this evidence when making its decision. Petitioner contends that updated photos were submitted but not adequately considered, and that these photos showed the structure of the home did not warrant demolition, and that the photos relied on by Respondent were outdated. Petitioner further alleges that improvements were made to the property to bring it into compliance with the City Code, including removing debris from the exterior of the property and removal of a deteriorated screened in porch.

and 3) the structural parts have become so dilapidated, decayed or deteriorated, or there is an unusual sagging or leaning out of the building caused by deterioration of the structure, that the structure is manifestly unsafe.

² Petitioner initially filed a petition seeking injunctive relief from the order of demolition. However, because the challenged action by the City Council is quasi-judicial, "it was reviewable only by petition for writ of certiorari, and not by a complaint for declaratory and injunctive relief," as was initially sought by Petitioner. *City of Ft. Pierce v. Dickerson*, 588 So. 2d 1080, 1082 (Fla. 4th DCA 1991) ("a decision is quasi-judicial when notice and a hearing is required and the decision is contingent on a showing made at a hearing").

Petitioner contends that two of the three criteria on which Respondent found the structure eligible for demolition were based on the porch, which was removed by Petitioner, and therefore these are not adequate grounds to demolish. Petitioner acknowledges that pursuant to the City Code, the City need only find one of the criteria to support an order to demolish. Petitioner contends it was error to rely on the fact that the home did not have a functioning toilet as grounds for the order to demolish, when the City refused to issue Petitioner the necessary permit to make this repair.

Respondent alleges the order is supported by competent, substantial evidence. On July 31, 2014, Code Enforcement Officer Liz Nichols responded to a complaint from a citizen regarding the maintenance of Petitioner's trailer. Officer Nichols photographed the trailer and emailed photographs to the City's building department depicting severe damage to the exterior porch and holes in the floor and ceiling. A City building official then inspected the trailer and issued and posted a Notice of Unsafe Structure on the trailer. On October 13, 2014, a building inspector re-inspected the residence and found it met three criteria for demolition, and again posted a Notice of Unsafe Structure on the trailer. On October 27, 2014, the owner of the trailer executed a quit-claim deed transferring ownership of the trailer to Petitioner. On November 14, 2015, a building official issued a Notice to Demolish Slum or Blighted Structure, and issued an Order to Demolish Slum or Blighted Structure. Petitioner filed a Notice of Appeal to the City Council on November 17, 2014, and a hearing was held on January 6, 2015.

Respondent contends there is sufficient evidence to uphold the findings of the City Council. At the January 6, hearing, the City Council heard arguments from both parties, and the appeal was then tabled until February 3, to allow City staff access to the residence to determine the present condition of the structure. The City attorney advised Petitioner that a complete list of work to be done, plus costs and a timetable for repairs would need to be provided. See NPR City Code § 6-190(a). City officials unsuccessfully attempted several times to schedule an inspection of the trailer.

On February 3, 2015, the Council reconvened to consider the appeal. The building official's findings were again submitted, as well as argument that Petitioner's evidence did not address all of the blight issues associated with the structure. Testimony was presented that several calls attempting to schedule an inspection of the

structure had not been returned; rather, that Petitioner's father had spoken to the City Manager on January 22, 2015, and informed her that he would not allow City officials into the residence. Respondent contends Petitioner did not provide an adequate timeline of repairs for bringing the residence into compliance. Petitioner did present photographs of the residence's present interior, however, the photographs showed holes in the ceiling of the structure with exposed insulation, as well as damaged flooring. Evidence was also introduced that the water meter was removed in October, 2014, and the electricity was turned off, and that there was damage to the underside of the trailer. After the conclusion of the hearing the Council voted unanimously to uphold the demolition order. This Court may not reweigh the evidence on appeal, but can only determine whether the order is supported by competent, substantial evidence. See *Dussea v. Metro. Dade Cty. Bd. of Cty. Comm'rs*, 794 So. 2d 1270, 1274 (Fla. 2001).

Respondent further states there is no requirement that a building official issue a building permit. Petitioner has not submitted evidence of applications for any permits prior to the February 3, hearing, other than the permit to demolish the porch. And, the challenged action before this Court is not the denial of any permits, but the demolition order. Respondent contends Petitioner was afforded due process, the order is supported by competent, substantial evidence, and that Petitioner has not demonstrated a departure from essential requirements of law. Petitioner was provided with notice multiple times by mail, publication, and by physical posting of notice on the trailer, that the structure was in violation of the City Code. Petitioner received notice through publication and physical posting that the structure qualified for demolition as a slum or blighted structure. Petitioner was afforded the opportunity to appear before the Council and present argument and evidence at two hearings. Although Petitioner has a significant interest in the ownership of the trailer home, the Court must also consider the government interest in protecting Petitioner and the public by eliminating a structure that is a danger to the public due to the state of disrepair and unsafe nature of the structure. See *Massey v. Charlotte Cty.*, 842 So. 2d 142, 146 (Fla. 2d DCA 2003).

Respondent followed the procedure required by the City Code, which requires a building inspector physically inspect the property for any criteria which qualify the structure as a slum or blighted structure. See NPR City Code § 6-185. If the official finds

one or more criteria present, the owner must be notified that the structure meets criteria for demolition, including a description of how the structure meets such criteria and references to specific code violations and building standards. See *id.* § 6-187(a). Respondent met these requirements and complied with the appeal process established by the City Code. See *id.* § 6-190(a). Petitioner has failed to demonstrate any departure from essential requirements of law, which requires demonstration of “an inherent illegality or irregularity, and abuse of judicial power,” that is “perpetrated with disregard of procedural requirements, resulting in a gross miscarriage of justice.” *Haines City Cmty. v. Heggs*, 658 So. 2d 523, 527 (Fla. 1995). The record contains competent, substantial evidence to support the challenged order. The Petition is denied.

CONCLUSION

The challenged order is supported by competent, substantial evidence, did not amount to a departure from essential requirements of law, and Petitioner was afforded adequate due process in this case. The Petition is denied.

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

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida this 4th day of January, 2016.

Original order entered on January 4, 2016, by Circuit Judges Linda Babb, Shawn Crane and Daniel D. Diskey.