

Petition for Writ of Certiorari to Review Quasi-Judicial Action of Agencies, Boards and Commissions of Local Government: ADMINISTRATIVE. Petitioner was afforded due process and failed to demonstrate the challenged order is not supported by substantial, competent evidence. *Ronald Howarth v. City of New Port Richey*, No. 15-CA-3987-WS (Fla. 6th Cir. App. Ct. May 25, 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**

RONALD HOWARTH,
Petitioner,

UCN: 512015CA003987CAAXWS

v.

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

_____ /

Petition for Writ of Certiorari,

Thomas P. Altman, Esq.,
for Petitioner,

Joseph Poblick, Esq.
for Respondent.

ORDER AND OPINION

Petitioner was afforded due process and failed to demonstrate a departure from essential requirements of law in this matter. The challenged order is supported by substantial, competent evidence. The Petition is denied.

STATEMENT OF THE CASE AND FACTS

Petitioner is the owner of real property which was the subject of condemnation proceedings before the New Port Richey City Council. The property sustained extensive fire damage on or about October 2, 2015, which resulted in the property being declared an immediate health and safety hazard. Petitioner was informed by letter dated October 29, 2015, that the property had been found to be unsafe and advising Petitioner that a hearing would be held to determine the condition of the structure. On November 2, 2015, a notice of condemnation was issued for the property. A hearing was held

December 1, 2015, at which the City Council heard testimony and considered evidence from Petitioner and the City's Building Department regarding the condition of the property. Petitioner presented evidence at the hearing including pictures of the property. At the hearing, city officials testified as to the extensive damage to the property rendering it unsafe. The City Council approved a Resolution requiring the abatement of the nuisance, condemning the property and authorizing its 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. 2d DCA 2006).

LAW AND ANALYSIS

Petitioner alleges the evidence is insufficient to support a finding that the property was damaged beyond fifty percent of its value. Petitioner alleges the only evidence to support this finding is testimony by a city official. The Resolution states that the structure constitutes a serious fire and health hazard to the City, and that the property is condemned and uninhabitable, lacks electricity, that raw sewage is emitted from lack of maintenance of sewer lines, and that the property has exposed insulation and electric wiring.

Petitioner alleges the notice of hearing was insufficient, and that the Council did not properly consider Petitioner's evidence prior to rendering a decision. Petitioner contends he had taken steps to correct the condition and presented photographic evidence demonstrating such, but that the Council did not properly consider whether the repairs had alleviated the unsafe condition. Petitioner contends there is insufficient evidence regarding the extent of damage to the property, the nature of the safety risk, whether the safety risk was cured by the repairs, and whether the property could reasonably be repaired within the guidelines.

Respondent contends there is competent, substantial evidence to support the challenged order. Respondent further contends that Petitioner presented this Court with an inadequate record for review. This Court issued an order directing Petitioner to supplement the record to include the full transcript of proceedings, as well as all materials necessary to an understanding of the issues. Petitioner responded by supplementing the record to include the transcript, as well as the notice of the condemnation hearing and the photographs presented by Petitioner at the December 1 hearing. However, Petitioner did not provide the Court with a complete record, which would include evidence presented by the City at the hearing below. Petitioner has the burden of demonstrating the challenged order is not supported by competent, substantial evidence, and has the burden of providing the Court with a complete record that includes all evidence considered by the Council in the proceedings below. See *Ben-Hain v. Tacher*, 418 So. 2d 1107, 1108 (Fla. 3d DCA 1982).

Respondent contends the testimony of City staff as to the unsafe condition of the structure at the hearing below is sufficient to uphold the order. Respondent contends that Petitioner's reliance on the "fifty percent rule" is not relevant to the proceedings, and that there is no requirement in the New Port Richey Municipal Code that the City Council consider this rule during condemnation proceedings. 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).

Procedural due process requires a person be provided notice and a meaningful opportunity to be heard before a deprivation occurs. See *Dep't of Law Enforcement v. Real Property*, 588 So. 2d 957, 960 (Fla. 1991). Petitioner was afforded adequate due process in this case, and has not demonstrated a departure from essential requirements of law. Petitioner has further failed to demonstrate the challenged order is not supported by substantial, competent evidence. The Petition is denied.

CONCLUSION

Petitioner was afforded adequate due process in the proceedings below. Petitioner failed to demonstrate a departure from essential requirements of law, or that the challenged order is not supported by substantial, competent evidence. The Petition is therefore 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 25th day of May, 2016.

Original order entered on May 25, 2016, by Circuit Judges Susan Barthle, Kimberly Campbell and Daniel D. Diskey.