

**Petition for Writ of Certiorari to Review Quasi-Judicial Action of Agencies, Boards and Commissions of Local Government: ADMINISTRATIVE.** Petitioner was afforded adequate procedural due process throughout the proceedings held before the Board and the challenged order is supported by competent, substantial evidence. The Petition is denied. *Harvey Schonbrun v. Board of County Commissioners of Pasco County*, No. 15-CA-3947-ES (Fla. 6th Cir. App. Ct. May 20, 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**

**HARVEY SCHONBRUN, trustee of the  
HARVEY SCHONBRUN TRUST,  
Petitioner,**

**UCN: 512015CA003947CAAXES**

**v.**

**BOARD OF COUNTY COMMISSIONERS  
OF PASCO COUNTY,  
Respondent.**

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Petition for Writ of Certiorari,

Harvey Schonbrun,  
Pro Se,

Kristi Sims, Esq.  
for Respondent.

**ORDER**

Petitioner was afforded adequate procedural due process throughout the proceedings held before the Board. The challenged order is supported by competent, substantial evidence. The Petition is denied.

**STATEMENT OF THE CASE AND FACTS**

Petitioner is the trustee of a trust which owns the subject property, which is an uninhabited one family site built home. The home was ordered demolished by Pasco County by the posting of orders to demolish on the property on September 18, 2011, January 5, 2012, and March 21, 2012. Petitioner appealed the order to the Pasco County Board of County Commissioners, which upheld the order to demolish on April 23, 2013. The Board's findings of fact included:

The structure is so unsanitary or so utterly fails to provide the amenities essential to decent living that it is manifestly unfit for human habitation or is likely to cause sickness or disease so as to work injury to life, health, or safety of the general public or occupant. Amenities essential to decent living include, but are not limited to, the availability of potable water, at least one working toilet, and protection from exposure to the elements.

House is partially torn down, some electric has been stripped, along with plumbing; wood shows extreme termite damage. Windows in attic are open to the outside. Where partial house was torn down are to existing house is open. Top of septic tank is open and exposed.

Petitioner was given the opportunity to repair the structure and the order to demolish was stayed, subject to certain conditions requiring Petitioner obtain all required building permits for reconstruction and restoration by June 23, 2013, and complete all reconstruction and repair by December 23, 2013. The order further provided that the failure to comply with any of these conditions “may result in an immediate and automatic revocation of the Stay of Order to Demolish,” and that should the Board determine the owner has failed to comply with the conditions, the Board may revoke the stay and proceed with demolition pursuant to § 79-8 of the Pasco County Code of Ordinances, as if the stay had never been granted, and that “upon revocation of a Stay of Order to Demolish, the County may issue immediate notice to its demolition contractor to clear the structure without further notice to the petitioner.”

The Board subsequently found Petitioner failed to observe the conditions of the stay, failed to restore and repair the structure, and that the structure was a public nuisance, and revoked the stay of demolition on August 18, 2015.<sup>1</sup> The order found that the structure was inspected on March 15, 2013, and the building official found the conditions of the structure to be as described in the inspection report of August 15, 2011, describing the conditions supporting the initial order to demolish, and found the structure to be unsecured and showing signs of severe vandalism and decay. The Board found that no permits had been obtained to repair the structure, and that the

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<sup>1</sup> Petitioner did not seek review of the order until November 3, 2015. However, Petitioner alleges he did not receive notice of the order until he received a letter from the County informing him of the revocation of the stay, dated October 8, 2015, which Petitioner alleges was the first time he was provided notice of the August 18, 2015, order.

structure continued to be a public nuisance and met the criteria for demolition. Petitioner now challenges the Board's August 18, 2015, order.

### **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 that after the stay of the order to demolish was obtained Petitioner commenced repairing the property, but that he was denied the required permits by the County which prevented Petitioner from completing the repairs.<sup>2</sup> Petitioner alleges he did not receive notice of the meeting held before the Board on August 18, 2015, during which the decision to revoke the stay was reached, and this amounted to a denial of due process.

Petitioner further contends the Board's decision is not supported by competent, substantial evidence. Petitioner contends the Board's order contains conclusory allegations and is devoid of reference to any testimony or evidence, and that because Petitioner was not present at the hearing Petitioner is unaware of whether any testimony or evidence was presented. Petitioner does not contest the fact that Petitioner was present at the April 23, 2013, hearing before the Board, at which the structure was found to meet the criteria for demolition based on the condition of the structure and based on the evidence presented at that hearing, which Petitioner has not challenged. The Board's April 23, 2013, order found the structure met the criteria for demolition, but ordered a stay of demolition to provide Petitioner the opportunity to repair the structure. The Board's August 18, 2015, order relies on evidence presented at the hearing, as well

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<sup>2</sup> Petitioner relies on an affidavit submitted by a contractor as evidence that the permits were denied. The affidavit is not properly a part of this Court's record on review.

as findings from the April 23, 2013, order upholding the order to demolish but imposing a stay of that order.

Respondent contends it provided Petitioner with notice of the hearing by sending Petitioner a memorandum which Respondent alleges was sent to the Board by the building official who recommended the stay of demolition be revoked. The subject line of the memorandum states:

SUBJECT: Appeal of Order to Final Demolish  
Owner: Harvey Schonbrun, Trustee; Address: 38827 Coit Road, Dade  
City, FL 33523-9720; Parcel ID No. 23-23-21-0020-00100-0020  
BCC: 8/18/15; 10:00 a.m.; NPR

Petitioner failed to appear at the meeting, where the Board considered the matter and entered the order revoking the stay. Respondent contends that Petitioner was provided notice of the hearing and that Petitioner was afforded adequate due process by the hearing held April 23, 2013, after which the stay was entered. The stay was entered on the condition that Petitioner obtain the necessary permits within the stated time periods and repair the structure. The order imposing the stay provided that if Petitioner failed to meet these conditions, the Board could revoke the stay and proceed to demolition without further notice to Petitioner.

Petitioner was mailed a copy of the building official's memorandum twenty-eight days prior to the hearing, which also included updated photos of the structure and a recommended order revoking the stay. The memorandum states that "a completed application has never been submitted by the applicant; and therefore, the applicant has never received a permit to reconstruct the residence in the timeframes noted." The memorandum recommends that based on the failure to comply with the conditions of the stay, the Board revoke the stay of the order to demolish and order the structure be demolished within 45 days, and requests that the Board authorize the chairman's signature on the proposed order attached to the memorandum. Based on the record before the Court, Petitioner has failed to demonstrate that due process was not afforded in this matter.

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). Evidence contrary to the Board's decision should not be considered by the Court. *Id.* at 1275-76. The decision to uphold the order to demolish and revoke the prior stay is supported by evidence in the record that Petitioner had not met the conditions of the stay, and that the structure continues to be a nuisance and continues to meet the criteria for demolition. The Board's decision is supported by competent, substantial evidence.

### **CONCLUSION**

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

It is hereby ORDERED that the Petition is DENIED.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida this 20th day of May, 2016.

Original order entered on May 20, 2016, by Circuit Judges Kimberly Campbell, Shawn Crane and Daniel D. Diskey.