

IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA  
CIRCUIT CIVIL CASE NO. **07-000043-AP-88B**  
UCN #522007AP000043XXXXCV

**SUNSET BAY PROPERTIES, LLC**

Petitioner

vs.

**CITY OF TREASURE ISLAND, FLORIDA,**  
**a municipal corporation,**

Respondent.

KEN BURKE, CLERK OF COURT  
PINELLAS COUNTY FLORIDA  
INST# 2008238346 08/29/2008 at 11:44 AM  
OFF REC BK: 16363 PG: 1488-1490  
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KEN BURKE  
CLERK OF COURT

**ORDER GRANTING PETITION FOR WRIT OF CERTIORARI**

THIS CAUSE came before the Court on the Petition for Review of Quasi-Judicial Action of a Board, Agency or Commission of Local Government, the Respondent's Response thereto, the Petitioner's Reply to Respondent's Response, Petitioner's Supplement to Petition for Review, Respondent's Opposition to Supplemental Petition, and Petitioner's Reply to Respondent's Opposition. Upon consideration of the briefs, the record, and being otherwise fully advised, the Court finds that the Petition must be granted as set forth below.

The Petitioner seeks review of the Denial by the Respondent's Planning and Zoning Board of Petitioner's Special Exception application at a hearing held on July 19, 2007. In its Request before the Board, Petitioner sought permit approval for the reconstruction and expansion of a dock located adjacent to its Condo-Hotel property, including 13 boat slips for use by the unit owners.

The applicable standard of review is whether the Petitioner was afforded procedural due process, whether the essential requirements of law were observed, and

whether the Board's findings and judgment are supported by competent substantial evidence. See Vichich v. Department of Highway Safety and Motor Vehicles, 799 So.2d 1069, 1073 ( Fla. 2d DCA 2001).

The record consists primarily of the Respondent City's staff report recommending approval of the Petitioner's application and the transcript of the proceedings before the Board, at the conclusion of which a majority voted to deny the application. From the outset of its entry into the special exception process, the Petitioner maintained that it was not necessary to apply for a special exception based upon the designated zoning of the property and the nature of the proposed use. In the face of the Respondent's continued insistence that such an application was required, the Petitioner proceeded on that course of action. The frustration of the Petitioner's representatives is palpable when one reads the transcript, as it reflects that the major part of the Board's discussion centered upon the issue of whether the Petitioner was even required to seek a special exception for its dock, and the repeated suggestion on Respondent's behalf that it was not.

It was not specifically asserted by the Petitioner that the Board's action deprived it of due process, and neither does this Court find that the circumstance noted above rises to that level. The Board's staff report found that the Petitioner's application favorably met all the criteria for granting of the special exception set out in the Respondent City's Code of Ordinances, Section 68-481, and thus recommended approval. The transcript of the subject hearing does not reflect, however, that the Board was presented with any competent, substantial evidence that Petitioner's application failed to meet any of those criteria. Further, there is no indication from the transcript,

that any Board member made any finding of such deficiency as a basis for the denial of the application. To that extent, the Board's action did not follow the essential requirements of law. Therefore, it is,

ORDERED AND ADJUDGED that the Petition for Writ of Certiorari is granted and the Respondent's Denial of the Petitioner's Special Exception is quashed and vacated, and this cause is remanded to the Respondent's Board for further proceedings consistent with this Order.

DONE AND ORDERED in Chambers, at St. Petersburg, Pinellas County, Florida this 26 day of August, 2008.

Original opinion entered by Circuit Judges J. Thomas McGrady, Peter Ramsberger, & Amy M. Williams

Copies furnished to:

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