

**NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED,  
DETERMINED.**

**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
APPELLATE DIVISION**

**NEW PLAZA OF ST. PETE, INC.,  
Petitioner,**

**Case No.:15-000041AP-88A  
UCN: 522015AP000041XXXXCV**

**v.**

**CITY OF ST. PETERSBURG, FLORIDA,  
NUISANCE ABATEMENT BOARD,  
Respondent.**

\_\_\_\_\_ /

Opinion Filed \_\_\_\_\_

Petition for Writ of Certiorari  
from decision of Nuisance  
Abatement Board  
St. Petersburg, Florida

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**PER CURIAM.**

New Plaza of St. Pete, Inc. seeks certiorari review of the "Amended Findings of Fact, Conclusions of Law, and Order Assessing Fines and Costs for Recurring Nuisance" of the City of St. Petersburg, Nuisance Abatement Board entered against New Plaza of St. Pete, Inc. and Cactus Charlies, Inc., on June 26, 2015. We deny the petition.

**Statement of Facts**

New Plaza of St. Pete, Inc. is the owner of the real property and commercial buildings located at 400 34th Street North, St. Petersburg, Florida. There are two

buildings located on the real property, one encompasses the New Plaza Motel ("Motel") and one encompasses the Cactus Charlie's Lounge ("Bar"). Hereinafter collectively referred to as "the Premises."

On June 20, 2013, a complaint was filed by the St. Petersburg Nuisance Abatement Board ("Board") in City of St. Petersburg v. New Plaza of St. Pete, Inc., Nuisance Abatement Board Case No. 2013-03, for abatement of a nuisance at the Premises as defined by St. Petersburg City Code, Section 19-41 and as authorized by section 893.138(11), Florida Statutes (2012-2013). On July 9, 2013, New Plaza of St. Pete, Inc. as the owner of the Premises entered into a Stipulation and Agreement in the case and acknowledged that the information contained in the complaint was true and correct and the conduct described therein constituted a nuisance.

On March 4, 2015, in City of St. Petersburg v. New Plaza of St. Pete, Inc., Nuisance Abatement Board Case No. 2015-01, an amended complaint was filed for abatement of a nuisance at the Premises as defined by St. Petersburg City Code, Section 19-41 and as authorized by section 893.138(11), Florida Statutes (2014). After hearings, the Board entered the "Findings of Fact, Conclusions of Law, and Order Assessing Fines and/or Costs" on April 15, 2015, nunc pro tunc to April 8, 2015 (hereinafter the "April 15, 2015, order"). The Board found the City had established that six instances of illegal conduct had been committed between August 12, 2014, and September 18, 2014. The April 15, 2015, order directed New Plaza of St. Pete, Inc. and Cactus Charlies, Inc. to fulfill seventeen conditions to remedy the nuisance existing on the Premises.

New Plaza of St. Pete, Inc. filed a petition for writ of certiorari from the April 15, 2015, order. This Court denied the petition and upheld the Board's order. New Plaza of St. Pete, Inc. v. City of St. Petersburg, Case No. 15-000036AP-88A, FLWSUPP 2310NEW (Fla. 6th Cir. App. Feb. 10, 2016)(hereinafter "New Plaza of St. Pete I"). New Plaza of St. Pete, Inc. did not appeal this decision to the Second District Court of Appeal.

On June 4, 2015, in City of St. Petersburg v. New Plaza of St. Pete, Inc., Nuisance Abatement Board Case No. 2015-01, a "Complaint for Recurring Public

Nuisance Conduct" was filed by the City.<sup>1</sup> On June 17, 2015, a hearing was conducted on the Complaint.<sup>2</sup> On June 18, 2015, the Board entered the "Findings of Fact, Conclusions of Law, and Order Assessing Fines and Costs for Recurring Nuisance." On June 23, 2015, New Plaza of St. Pete, Inc. filed a "Motion to Stay Order Pending Appeal and Motion for Rehearing."

On June 24, 2015, a hearing was conducted on New Plaza of St. Pete, Inc.'s motion. As a result of the hearing, on June 26, 2015, the Board entered the "Amended Findings of Fact, Conclusions of Law, and Order Assessing Fines and Costs for Recurring Nuisance" (hereinafter the "June 26, 2015, amended order"). The Board reserved ruling on the motion to stay the order pending appeal. This petition followed.

### **Standard of Review**

Under section 162.11, Florida Statutes (2015), an appeal of a code enforcement board's order to the circuit court "shall not be a hearing de novo but shall be limited to appellate review of the record created before the enforcement board." Sarasota County v. Bow Point on Gulf Condo. Developers, LLC, 974 So. 2d 431, 433 n.3 (Fla. 2d DCA 2007). When the circuit court in its appellate capacity reviews local governmental administrative action, there is a three-part standard of review: (1) whether procedural due process was accorded; (2) whether the administrative agency's findings and judgment are supported by competent, substantial evidence; and (3) whether the essential requirements of law have been observed. Lee County v. Sunbelt Equities, II, Ltd. P'ship, 619 So. 2d 996, 1003 (Fla. 2d DCA 1993). The circuit court is not entitled to make separate findings of fact or to reweigh the evidence. Haines City Cmty. Dev. v. Heggs, 658 So. 2d 523, 529 (Fla. 1995).

### **Analysis**

#### **Procedural Due Process**

New Plaza of St. Pete, Inc. does not allege that there has been a due process violation.

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<sup>1</sup> On this same date a "Motion to Determine Compliance" also was filed by the City. The ruling on this motion is not the subject of this petition and shall not be discussed.

<sup>2</sup> Cactus Charlies, Inc. was a Respondent to the "Complaint for Recurring Public Nuisance Conduct;" however, it did not make an appearance before the Board at the June 17, 2015, or the June 24, 2015, hearings.

### **Competent, Substantial Evidence**

New Plaza of St. Pete, Inc. asserts that the administrative findings of the Board are not supported by competent, substantial evidence.

(A) New Plaza of St. Pete, Inc. argues that the only illegal drug activity alleged in the Amended Complaint that resulted in the April 15, 2015, order and the only illegal drug activity alleged in the Complaint for Recurring Public Nuisance Conduct that resulted in the June 26, 2015, amended order was that initiated by the City of St. Petersburg Police Department. New Plaza of St. Pete, Inc. reasons that because the City was the sole instigator of the drug activity, the City should not be permitted to create a nuisance on the Premises and then penalize New Plaza of St. Pete, Inc. as the property owner and landlord.

(B) New Plaza of St. Pete, Inc. argues that the City failed to prove that the operation of the Motel constitutes a continuing nuisance. In support of this argument New Plaza of St. Pete, Inc. notes that in the original June 20, 2013, complaint and in the amended March 4, 2015, complaint that resulted in the April 15, 2015, order, "all of the drug activity alleged by the City was in or initiated in Cactus Charlies, the bar next to the [Motel]." Purportedly, only when the City filed the Complaint for Recurring Nuisance did the City allege instances of illegal drug activity occurring in the Motel. Additionally, it is asserted that the City allegedly failed to provide any competent, substantial evidence that the alleged illegal drug activity was inextricably intertwined with the operations of the Motel.

### **Discussion**

This Court will not discuss the merits of the Board's April 15, 2015, order as this Court denied the petition for writ of certiorari directed to that order in New Plaza of St. Pete I. There was no appeal from our decision and that matter is final.

However, as noted in our prior opinion, New Plaza of St. Pete, Inc. is the owner of the real property and commercial buildings where the Motel and Bar operate. The entire area that encompasses the Premises is under the control of New Plaza of St. Pete, Inc. See New Plaza of St. Pete I.

St. Petersburg City Code, Section 19-41(a) sets out definitions. It states in part: "Recurring public nuisance conduct means any single or multiple instance of the

conduct described in subsection (e)<sup>3</sup> of this section occurring during the effective term of an order entered by the board." There is no requirement under City Code, Section 19-41(a) that to have a recurring public nuisance the illegal activity need be inextricably intertwined with the operation of the business on the premises.

The City's Complaint for Recurring Public Nuisance Conduct sets out instances of alleged illegal drug activities on the Premises between April 28, 2015, and May 6, 2015. In the June 26, 2015, amended order, the Board found that the testimony presented at the June 17, 2015, hearing established by clear and convincing evidence that five instances of illegal conduct as stated in paragraphs one through five of the Complaint for Recurring Public Nuisance Conduct had occurred. At the time of these events the Board retained jurisdiction over the Premises pursuant to the order entered April 15, 2015, nunc pro tunc to April 8, 2015.

This Court has reviewed the evidence and concludes that competent, substantial evidence supports the Board's findings and conclusion that there was recurring public nuisance conduct on the Premises as there is clear and convincing evidence of violations of City Code Section 19-41(e)(1), (3), on the Premises within a six-month period, during the term of the April 15, 2015, order and before April 7, 2016. (App. p. 260-62, 294-97, 264-66, 312-16, 267-68); § 162.07(3), Fla. Stat. (2013); Bellsouth Advert. & Pub. Corp. v. Unemployment Appeals Comm'n, 654 So. 2d 292, 294 (Fla. 5th DCA 1995).

### **Essential Requirements of Law**

(1) New Plaza of St. Pete, Inc. asserts that the remedial measures are not specially tailored to the objectionable conduct and unnecessarily infringe on the conduct of a lawful enterprise, the Motel.

New Plaza of St. Pete, Inc. argues that "almost all" of the drug activity outlined in the complaints filed in 2013 and 2014 "occurred exclusively in or was initiated in [the

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<sup>3</sup> St. Petersburg City Code, Section 19-41 states in part:

(e) The board shall hear complaints alleging that any place or premises constitutes a public nuisance, and may find said place or premises, or any part thereof, to be a public nuisance, upon clear and convincing evidence that said place or premises has been used:

(1) On one occasion as the site of the unlawful possession of a controlled substance, where such possession constitutes a felony, and that has been previously used on more than one occasion, all within a six-month period, as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;

(3) On more than two occasions within a six-month period, as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance

Bar], not the [Motel]; however, a majority of the remedial measures previously imposed by the Board are against [the Motel] and now require Closure of [the Motel]." It is alleged that the closure and restrictions on the Motel is not a remedy specifically tailored to abate the objectionable conduct. It is suggested that the appropriate injunction would have been to close the Bar, the source of the alleged nuisance activity, as the closure of the Motel is too extreme of a remedy.

As discussed above, this Court denied the petition for writ of certiorari directed to the April 15, 2015, order. The finding that the nuisance activities on the Premises did not occur only at the Bar was upheld. The June 26, 2015, amended order states in part:

[T]he Board finds that due to the property's record of extensive nuisance drug activity, and the failure of the City's multiple and consistent efforts over the years to abate the nuisance, the property is incapable of being operated lawfully as a motel, a bar, or an establishment engaged in the sale of liquor.

13. Closure of the property for the following uses for the remainder of the Board's jurisdiction is necessary in order to abate the nuisance drug activity on the premises: operation of a motel, operation of a bar, the sale of liquor.

14. The property may be used for any lawful purpose other than operation of a motel, operation of a bar, or the sale of liquor until the parties come before the Board for a future hearing to consider specific proposed alternative interim uses for the premises that will not impede the termination of the public nuisance.

The June 26, 2016, amended order did not completely close the use of the Premises, but only prohibited the operation of a bar, the sale of alcohol, and the operation of a motel.

This Court concludes that the Board did not depart from the essential requirements of law as the remedial measures are specially tailored to the objectionable conduct. The restrictions do not unnecessarily infringe on the conduct of any other type of lawful enterprise on the Premises, other than a bar, the sale of alcohol, or for operation of a motel.

(2) New Plaza of St. Pete, Inc. asserts that the remedial measures imposed by the Board are so restrictive that they constitute a compensable taking under the Fifth Amendment to the United States Constitution. In support of its argument, New Plaza of St. Pete, Inc. cites to City of St. Petersburg v. Bowen, 675 So. 2d 626 (Fla. 2d DCA 1996); and cites to Keshbro v. City of Miami, 801 So. 2d 864 (Fla. 2001).

Both Bowen and Keshbro involve inverse condemnation actions brought by the owners of buildings. The Bowen and Keshbro cases do not involve petitions for writ of certiorari challenging findings that the premises constitute a nuisance. These cases involve independent actions for damages.

In the present case, New Plaza of St. Pete, Inc. has not filed an action for inverse condemnation and this issue is not properly raised in a petition for writ of certiorari challenging an order from a municipal Nuisance Abatement Board.

### **Conclusion**

This Court concludes that procedural due process was accorded; the Board's June 26, 2015, amended order is supported by competent, substantial evidence; the essential requirements of law have been observed; and remedial measures were properly imposed. The Petition for Writ of Certiorari is denied.

**DONE AND ORDERED** in Chambers in Clearwater, Pinellas County, Florida, this 2 day of June, 2016.

Original Order entered on June 2, 2016, by Circuit Judges Linda R. Allan, Jack R. St. Arnold, and Patricia Muscarella.

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