

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING, AND IF FILED, DETERMINED
IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
APPELLATE DIVISION

MICHAEL PRESTON,
Petitioner,

v.

Ref. No. 18-000014AP-88B
UCN: 522018AP000014XXXXCI

GULFVIEW LODGING, LLP,
COMMUNITY DEVELOPMENT BOARD,
and CITY OF CLEARWATER,
Respondents.

ORDER AND OPINION

Petitioner challenges the final order of the Hearing Officer affirming the City of Clearwater Community Development Board's ("CDB") decision, which approved an 88-room hotel development on Clearwater Beach. Petitioner maintains that he was denied procedural due process and the final order departed from the essential requirements of law and was not supported by competent substantial evidence. Upon review of the briefs, the record on appeal, and the applicable case law, this Court dispensed with oral argument pursuant to Florida Rule of Appellate Procedure 9.320. For the reasons set forth below, the Petition for Writ of Certiorari is denied.

Facts and Procedural History

Petitioner owns property located in the City of Clearwater. Respondent Gulfview Lodging, LLP ("Gulfview") owns two parcels of property located within 200 feet of Petitioner's property. Gulfview submitted an application to the City of Clearwater to build a proposed 88-room hotel. The application sought to develop three parcels of property in total, two owned by Gulfview and a portion (approximately 2195 square feet) of the City's right-of-way. On October

17, 2017, the CDB conducted a hearing concerning the application. The notice of hearing identified only Gulfview's parcels as the properties at issue, but not the right-of-way. Petitioner received notice and was granted party status based on his proximity to the proposed development. At that hearing, Petitioner argued that his due process rights had been violated because the notice made no mention of the right-of-way. The CDB approved Gulfview's application and granted Gulfview a Development Order. Petitioner appealed the decision to a Hearing Officer pursuant to the City of Clearwater Community Development Code ("Code") §§ 4-501 and 4-502. The Hearing Officer upheld the decision of the CDB. Petitioner then filed the instant Petition for Writ of Certiorari.

Standard of Review

The circuit court reviews a quasi-judicial decision of a local government for three elements: (1) whether the local government provided due process, (2) whether the local government followed the essential requirements of law, and (3) whether the local government's decision was supported by competent substantial evidence. *Town of Longboat Key v. Islandside Prop. Owners Coal., LLC*, 95 So. 3d 1037, 1039 (Fla. 2d DCA 2012).¹

Discussion

Notice

Petitioner contends that he was denied procedural due process before the CDB because he did not receive adequate notice and a meaningful opportunity to be heard. Moreover, he maintains the Hearing Officer departed from the essential requirements of law by finding that he was provided with sufficient notice. "Generally, due process requirements are met in a quasi-judicial proceeding if the parties are provided notice of the hearing and an opportunity to be

¹ Respondents assert that review of the final order should be akin to second-tier certiorari because Petitioner essentially received first-tier review through the Hearing Officer. Once a local agency has ruled on a quasi-judicial matter, however, a party may seek first-tier certiorari review in the court system as a matter of right. *See Florida Power & Light Co. v. City of Dania*, 761 So. 2d 1089, 1092 (Fla. 2000).

heard.” *Seiden v. Adams*, 150 So. 3d 1215, 1219 (Fla. 4th DCA 2014) (internal citations omitted). “Failure to observe the essential requirements of law means . . . the commission of an error so fundamental in character as to fatally infect the judgment and render it void.” *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 527 (Fla. 1995) (quoting *State v. Smith*, 118 So. 2d 792, 795 (Fla. 1st DCA 1960)). Here, Petitioner asserts that for the notice to have been sufficient, it needed to notify him that a third parcel of land, the right-of-way, was included in the development proposal.

Code § 4-206(C)(1) states in pertinent part that “[a]ll notices of public hearings shall include . . . a summary of the proposal under consideration [and] the address of the property.”² As no address was available for the right-of-way parcel, Petitioner maintains the notice provided by the City should have given a legal description of the property or included the right-of-way in the summary section describing what is being proposed.

“[A] court interpreting local ordinances must first look to the plain and ordinary meaning of the words in the ordinance. If the plain and ordinary meaning is clear, then ‘other rules of construction and interpretation are unnecessary and unwarranted.’” *Town of Longboat Key*, 95 So. 3d at 1041 (quoting *Rinker Materials Corp. v. City of N. Miami*, 286 So. 2d 552, 554 (Fla. 1973)). The Code requires that the notice provide “[t]he address of the property.” § 4-206(C)(1)(c), Code. Address is defined as “[t]he place where mail or other communication is sent.” *Black’s Law Dictionary* (10th ed. 2014). By contrast, a legal description is defined as “[a] formal description of real property, including a description of any part subject to an easement or reservation, complete enough that a particular piece of land can be located and identified.” *Id.* If

² The statute includes the further phrase, “and a locational map geographically portraying the location of the property (if required by Florida Statute).” However, this locational map requirement only applies where a proposed ordinance “changes the actual list of permitted, conditional, or prohibited uses within a zoning category, or changes the actual zoning map designation of a parcel or parcels of land involving 10 contiguous acres or more.” § 166.041(3)(c)2.b., Fla. Stat.

the City intended for the Code to require a legal description to be provided in circumstances where the address is not available, it would have included such a requirement. Furthermore, the Code does not set forth any requirements for the summary section. Because the right-of-way has no address and the Code does not specify what the summary must include, the Hearing Officer did not depart from the essential requirements of law by holding that the notice was sufficient.

In addition, the Hearing Officer held that Petitioner waived his right to assert a defect in the notice because he had actual notice, attended the CDB hearing, was granted party status, and had the opportunity to present his objections. “Although strict compliance with statutory notice requirements is mandatory, a contesting party’s right to assert a defect in such notice may be waived if the party appeared at the hearing and was able to fully and adequately present his or her objections.” *City of Jacksonville v. Huffman*, 764 So. 2d 695, 696–97 (Fla. 1st DCA 2000). Petitioner’s attorney admitted to attending a City Council meeting several months before the CDB hearing, during which the development and the vacation of the right-of-way were discussed. Accordingly, competent substantial evidence supports the Hearing Officer’s finding of waiver. *See Schumacher v. Town of Jupiter*, 643 So. 2d 8, 9 (Fla. 4th DCA 1994) (affirming a finding of waiver where the “appellant, through counsel, had substantial and continuous knowledge of the pending proceedings and did appear at the final hearing on the proposed ordinance and express his objections”).

Maximum density

Petitioner also contends the Hearing Officer's affirmance violated the essential requirements of law because the CDB’s decision was not expressly conditioned upon vacation of the right-of-way, even though without that area the project would exceed maximum density

limits.³ However, the Development Order specifically notes that “the South Gulfview Boulevard right-of-way...would need to be vacated by the City.” The Staff Report reflects the same (“the proposed number of units (88) is dependent on the vacation of...the... right-of-way”), as did the testimony of the City’s Senior Planner.

The CDB did not need to condition its approval of the development on vacation of the right-of-way. Indeed, the Code presupposes possible revisions to approved developments by explicitly providing for “[c]hanges to Level Two development approvals,” such as the one at issue here. § 4-406, Code (discussing minor revisions and “[o]ther revisions”). The parties disagree over whether such a change would be a minor revision, but either way the issue of vacating the right-of-way does not invalidate the Development Order. Accordingly, the Hearing Officer did not violate the essential requirements of law in affirming the CBD’s decision to approve the development.

Beach by Design

“Beach by Design” is a set of “specific development standards and design guidelines for areas of Clearwater Beach that are in addition to and supplement the [Code].” Petitioner asserts that the Hearing Officer’s decision concerning Beach by Design criteria is not supported by competent substantial evidence. The Hearing Officer found that Petitioner “did not present any evidence” to the CDB that the criteria had not been met. In contrast, the Staff Report concluded that the project was consistent with Beach by Design, as did testimony of the City’s Senior Planner and a land use planner. In determining if competent substantial evidence exists, this Court may only decide “whether the record contains the necessary quantum of evidence.” *Lee Cnty. v. Sunbelt Equities, II, Ltd. P’ship*, 619 So. 2d 996, 1003 (Fla. 2d DCA 1993). A court “is not permitted to go farther and reweigh that evidence . . . or to substitute its judgment about what

³ It would provide for 88 rooms when only 80 are permitted on property of its size minus the right-of-way.

should be done.” *Id.*; *Dusseau v. Metro. Dade Cnty. Bd. of Cnty. Com'rs*, 794 So. 2d 1270, 1276 (Fla. 2001) (“As long as the record contains competent substantial evidence to support the agency's decision, the decision is presumed lawful and the court's job is ended.”). Accordingly, the Hearing Officer’s decision that the Development Order complies with Beach by Design is supported by competent substantial evidence.

Conclusion

Because Petitioner’s due process rights were not violated and the Hearing Officer’s final order did not depart from the essential requirements of law and was supported by competent substantial evidence, it is

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

DONE AND ORDERED in Chambers at St. Petersburg, Pinellas County, Florida, on this ____ day of _____, 2018.

Original Order entered on November 1, 2018, by Circuit Judges Jack Day, Pamela A.M. Campbell, and Amy M. Williams.

Copies furnished to:

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