

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**

WILLIAM COBB, et al.,
Petitioners,

v.

CITY OF ST. PETERSBURG, et al.,
Respondents.

Ref. No. 18-000067AP-88B
UCN: 522018AP000067XXXXCI

_____/

ORDER AND OPINION

Petitioners challenge a resolution adopted by the City of St. Petersburg's City Council, which failed to grant an appeal of the City's Community Planning and Preservation Commission's approval of an application for a certificate of appropriateness. For the reasons set forth below, the Petition for Writ of Certiorari is denied.

Facts and Procedural History

In early 2018, Respondent Richard McGinnis submitted an application for a certificate of appropriateness ("COA") for the construction of a new single-family home within "the 18th Avenue Northeast local historic district" of the City of St. Petersburg ("City"). The application was unanimously denied by the City's Community Planning and Preservation Commission ("CPPC") after a public hearing. In March 2018, Respondent McGinnis submitted a second application, which was accepted by the City and then approved in a 6-1 vote by the CPPC after another public hearing. Petitioners, neighboring homeowners, appealed the approval to the City Council. On August 23, 2018, the City Council conducted a public hearing on the appeal. A motion to grant the appeal passed by a vote of 4-3, but a supermajority vote was required to overturn the CPPC's approval of the application. Petitioners 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).

Discussion

Petitioners maintain that they were denied procedural due process and the City departed from the essential requirements of law by accepting a second COA application that Petitioners allege was substantially similar to the first application. Section 16.70.010.8(A) of the City's Code of Ordinances ("Code") states that a successive application shall not be accepted by the POD within 18 months of the denial of a previous application if the new application is "the same or substantially similar" to the old one. The POD is "the person officially designated by the Mayor to perform the duties described in that portion of the Code." § 1.2, Code.

"As a rule, only quasi-judicial actions [of local government agencies] are reviewable via certiorari." *Broward County v. G.B.V. Int'l, Ltd.*, 787 So. 2d 838, 843 (Fla. 2001). "A decision is . . . quasi-judicial, as distinguished from executive, when notice and hearing are required and the judgment of the . . . agency is contingent on the showing made at the hearing." *City of St. Pete Beach v. Sowa*, 4 So. 3d 1245, 1247 (Fla. 2d DCA 2009) (citation omitted). Certiorari review of a legislative or executive decision of an agency is inappropriate because, "[a]s a practical matter, when an executive makes a decision without conducting a hearing, there is nothing for the circuit court to review." *Id.* (quoting *Pleasures II Adult Video, Inc. v. City of Sarasota*, 833 So.2d 185, 189 (Fla. 2d DCA 2002)). "When an administrative official or agency acts in an executive or legislative capacity, the proper method of attack on the official's or agency's action is a suit in

circuit court for declaratory or injunctive relief on grounds that the action taken is arbitrary, capricious, confiscatory, or violative of constitutional guarantees.” *Id.* (internal quotations and citation omitted).

Under the Code, the POD decides whether to accept an application and neither the CPPC nor the City Council can reconsider the acceptance of a second application or its similarity to the previous application. § 16.70.010.8(D), Code (stating that “[a] decision by the POD to accept an application is not appealable”); *see also Gulf & E. Dev. Corp. v. City of Fort Lauderdale*, 354 So. 2d 57, 61 (Fla. 1978) (opining that a city is “bound by the procedural requirements imposed by its . . . ordinances”). Therefore, although Petitioners are technically challenging the quasi-judicial ruling of the City Council that failed to grant their appeal, which is appropriate in a petition for writ of certiorari, their substantive arguments concern the decision to accept the second application. Because there was no hearing on the decision to accept the second application, it was an executive decision; therefore, this Court is without jurisdiction to review it. Although we are troubled by the inability of Petitioners to challenge the determination that the second application was not substantially similar, we are constrained to deny the Petition.

Conclusion

Because Petitioners’ only issues radiate from an executive decision of the City, 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 _____, 2019.

Original Order entered on September 23, 2019, by Circuit Judges Pamela A.M. Campbell, Thomas M. Ramsberger, and Amy M. Williams.

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