

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

ELIZABETH SCHUH, as Personal Representative
of Daniel Schuh, Deceased, et al.,
Petitioners,

v.

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

Ref. No. 19-000046AP-88B
UCN: 522019AP000046XXXXCI

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ORDER AND OPINION

Petitioners challenge an ordinance adopted by the City of St. Petersburg's City Council, which designated the Driftwood neighborhood as a local historic district. While Petitioners raise several challenges to the City's adoption of the ordinance, we find merit in only one. Because the City departed from the essential requirements of law by violating its Code of Ordinances ("Code"), the Petition for Writ of Certiorari is granted.

Facts and Procedural History

In early 2017, Respondent Laurie MacDonald and other residents met with City staff about designating the Driftwood neighborhood as a local historic district. All citizen-initiated applications are required to go through a balloting process before the application is deemed complete and is scheduled for a public hearing before the Community Planning and Preservation Commission ("CPPC"). The CPPC makes a recommendation to approve or deny the application and the matter is scheduled for a City Council public hearing. The resulting decision of the City Council is then memorialized by an ordinance of the City.

According to the City, the initial boundaries of the proposed historic district included the "Gandy House," one of the oldest structures in the City. However, it was sold and demolished in

early 2018, shortly after the initial ballots were sent out. Because of this, the applicants requested to downsize the proposed district to exclude that property and a few others. As a result, a second set of ballots was sent out in case anyone was voting to approve the historic district only in an attempt to save the Gandy House. The proposed district required 25 votes in support, and the City asserted that 29 votes were received in favor of the designation. The application was therefore certified complete and a hearing was held before the CPPC, which voted unanimously to recommend approval. On March 7, 2019, the City Council held a public hearing, where Petitioners raised the issue of the ballots lacking the date stamp required by City Code. The historic-district designation was approved in a 6 to 2 vote. However, City staff investigated the ballot issue and moved for a rehearing. On May 16, 2019, a rehearing was held where the City presented evidence of a metadata date stamp. The City Council voted 5 to 2 to approve the historic-district designation. Petitioners then filed the instant Petition for Writ of Certiorari.

Discussion

Petitioners maintain the City violated the essential requirements of law by approving the historic-district designation without the required evidence that a sufficient number of supporting votes were returned by the deadline. The City Code requires “[e]vidence of the support of the historic district from the owners of 50 percent plus one tax parcel.” § 16.30.070.2.5(B)(2)(a), Code. The Code states that “only City issued ballots that . . . have been physically received by the POD within 60 days of the date of mailing *and have been date stamped by the City*, shall be counted.” § 16.30.070.2.5(B)(2)(a)(2), Code (emphasis added). A City staff member testified that “[t]ypically when a ballot is received by our office, the ballot is stamped . . . [a]nd then the ballot information is registered on a log sheet, and this checkmark in the top corner represents that the information has been logged in on the log sheet.” However, it is undisputed that out of the 29

ballots in favor of the designation, seven did not have a physical date stamp. Because 25 votes were needed to approve the designation, the application would have been denied if the non-stamped ballots were not counted.

Petitioners contend the ballots must have a physical date stamp, but the City maintains that while the receipt of the ballots must be physical, the manner of date stamp is unspecified and open to interpretation. At the rehearing, the City produced the “log sheet,” a Microsoft Excel sheet, which shows the support/nonsupport votes and has a metadata date stamp indicating the date it was last modified on. The City contends this is a sufficient date stamp.¹ In response, Petitioners argue the metadata only shows when the data was entered into the log, not when the ballots were received, which is what the Code requires.

Florida courts have long held that an ordinance must be given its plain and obvious meaning. *See Town of Longboat Key v. Islandside Prop. Owners Coal., LLC*, 95 So. 3d 1037, 1041 (Fla. 2d DCA 2012). “If the plain and ordinary meaning is clear, then ‘other rules of construction and interpretation are unnecessary and unwarranted.’” *Id.* (quoting *Rinker Materials Corp. v. City of North Miami*, 286 So.2d 552, 554 (Fla.1973)). Here, the ordinance states “only City issued ballots that . . . have been date stamped by the City, shall be counted.” § 16.30.070.2.5(B)(2)(a)(2), Code. Under a plain language analysis, the ballot itself must have the date stamp. *See Hous. Opportunities Project v. SPV Realty, LLC*, 212 So. 3d 419, 420-21 (Fla. 3d DCA 2016) (citation omitted) (“If the statute is plain and unambiguous and admits of but one meaning, the courts in construing it will not be justified in departing from the plain and natural language employed by the Legislature.”).

¹ The City also had several of the residents testify that they supported the designation and that they physically delivered the ballot to the City prior to the date shown on the metadata date stamp.

Moreover, case law indicates that when a term in an ordinance lacks a definition, a court “utilize[s] the proper rules of statutory construction [by] turning to the dictionary meaning to find the plain and ordinary meaning of undefined terms.” *Town of Longboat Key*, 95 So. 3d at 1041. Here, Black’s Law Dictionary defines date stamp as “[a] device used for printing the date on documents [or] . . . [t]he mark that such a device makes.” (11th ed. 2019). Accordingly, the City departed from the essential requirements of the law because the Code requires both a date stamp be used and that each ballot be stamped. *See Ocean’s Edge Dev. Corp. v. Town of Juno Beach*, 430 So. 2d 472, 474 (Fla. 4th DCA 1983) (citing *Rinker Materials Corp.*, 286 So. 2d at 554)) (opining that “property owners are entitled to rely upon the clear and unequivocal language of municipal ordinances”); *Carroll v. City of Miami Beach*, 198 So. 2d 643, 645 (Fla. 3d DCA 1967) (“[T]he City is bound by the express terms of its own ordinance. . . . If the City desires a different meaning for its ordinance in the future, it may amend, modify, or change the same by legislative process.”).

Conclusion

Because the City departed from the essential requirements of law, it is

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

DONE AND ORDERED in Chambers at St. Petersburg, Pinellas County, Florida, on this
____ day of _____, 2020.

Original Order entered on March 16, 2020, by Circuit Judges Pamela A. M. Campbell, Thomas M. Ramsberger, and Amy M. Williams.

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