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

ST. PETERSBURG PRESERVATION, INC.
d/b/a PRESERVE THE 'BURG,
Petitioner,

Case No.: 18-000062AP-88A
UCN: 522018AP000062XXXXCI

v.

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

WILLIAM L. HERRMANN, et al.,
Petitioners,

v.

Case No.: 18-000057AP-88A
UCN: 522018AP000057XXXXCI

CITY OF ST. PETERSBURG, FLORIDA, et al.,
Respondents.
_____/

RICHARD CANDELORA,
Petitioner,

v.

Case No.: 18-000058AP-88A
UCN: 522018AP000058XXXXCI

CITY OF ST. PETERSBURG, FLORIDA,
Respondent.

CONSOLIDATED

_____/

Opinion Filed _____

Petitions for Writ of Certiorari from
a Resolution of the City Council for
the City of St. Petersburg, Florida

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Ralf Brookes, Esq., Attorney for Petitioners William L. Hermann, et al.
Richard W. Candelora, Pro se Petitioner

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PER CURIAM.

Petitioners challenge a resolution adopted by the City Council of the City of St. Petersburg ("City"), upholding the Development Review Commission's ("DRC") denial of an appeal of a streamline approval of a site plan. Upon review of the briefs, the appendices, and the applicable case law, this Court dispensed with oral argument pursuant to Florida Rule of Appellate Procedure 9.320. The Petitions are denied.

STATEMENT OF FACTS

In 2017, an application was submitted to the City of St. Petersburg for a 23-story, 29-unit development called Bezu at the corner of Fourth Avenue North and First Street (a 0.23 acre property). After a public hearing, the DRC voted unanimously to deny it. The Applicant appealed to the City Council, but the decision was upheld. A second application was submitted in March 2018, requesting approval of a 19-story, 20-unit development, which was reviewed under a "streamline" process. This allowed City staff to approve the application without a hearing, and required anyone opposed to file an appeal. Petitioners appealed to the DRC, but the appeal was denied. Petitioners challenged the denial in a hearing before the City Council, which voted 4 to 4 to grant the appeal. However, a supermajority is needed to overturn a decision of the DRC, so the DRC's denial of the appeal stood. Petitioners then filed the instant Petitions 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).

ANALYSIS

Petitioners raise various arguments alleging the City violated their due process rights and departed from the essential requirements of law.

Due Process

Petitioners insist their due process rights were violated for several reasons. First, Petitioners allege that the City Council needed to issue findings of fact and conclusions of law showing the majority of City Council members found each applicable standard was met. This argument is without merit. *See Alachua Land Inv'rs, LLC v. City of Gainesville*, 15 So. 3d 782 (Fla. 1st DCA 2009) (opining that "[a] circuit court, conducting certiorari review of a local government's quasi-judicial decision on a development application, may uphold the decision even in the absence of supportive factual findings, so long as the court can locate competent substantial evidence consistent with the decision"); *Bd. of County Comm'rs of Brevard County v. Snyder*, 627 So. 2d 469, 476 (Fla.1993) ("While they may be useful, the board will not be required to make findings of fact.").

Next, Petitioners assert their due process rights were violated because of time limits imposed at the hearing. Petitioners cite *Hernandez-Canton v. Miami City Com'n*, 971 So. 2d 829, 832 (Fla. 3d DCA 2007), which held that eight minutes per side was too short where there were nine criteria, some with subdivisions, and "[t]he City Commission was asked to make a total of twenty-five findings." Petitioners assert the instant case is

analogous as it involves sixteen criteria “and a number of legal issues as to how to apply those criteria.” Respondents correctly assert that the Third District Court of Appeal limited its holding to the circumstances of that case. Moreover, in the instant case, Petitioners received twenty minutes total.

Petitioners also argue their rights were violated because the City and the Applicant received twice as much time as Petitioners to speak at the appeal hearing. Both Appellants each received ten minutes for an opening presentation, five minutes for cross-examination, and five minutes for closing. However, the City and the Applicant each received twenty minutes for the opening presentation, ten minutes for cross-examination, and ten minutes for closing. Respondents argue that this is proper given that the City and that Applicant had to respond to both of the Appellants’ presentations. Petitioners assert these errors are compounded by the fact that the burden was on them at the hearing, which made them require more time. Petitioners contend they were denied due process by being forced to “shoulder the burden of proof and by the . . . exclusion of the public’s relevant evidence.” The only discernable argument Petitioners make about “evidence” excluded is that the “Chairman twice directed members of the public not to repeat what others had said.”

The “core” of due process is the right to notice and an opportunity to be heard. *Carillon Cmty. Residential v. Seminole County*, 45 So. 3d 7, 9 (Fla. 5th DCA 2010). Although “[p]rocedural due process requires both fair notice and a real opportunity to be heard ‘at a meaningful time and in a meaningful manner,’ . . . [t]he specific parameters of the notice and opportunity to be heard . . . are not evaluated by fixed rules of law, but rather by the requirements of the particular proceeding.” *Massey v. Charlotte County*, 842

So. 2d 142, 146 (Fla. 2d DCA 2003) (internal citations omitted). "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 heard." *Seiden v. Adams*, 150 So. 3d 1215, 1219 (Fla. 4th DCA 2014) (internal citations omitted). "The extent of procedural due process afforded to a party in a quasi-judicial hearing is not as great as that afforded to a party in a full judicial hearing." *Carillon Cmty. Residential*, 45 So. 3d at 10. Due process is a flexible concept and requires only that the proceeding be "essentially fair." *Id.* We find that Petitioners were provided notice and an opportunity to be heard at an essentially fair proceeding; therefore, Petitioners' due process rights were not violated.

Finally, Petitioners assert the public was denied procedural due process by the procedure employed to reach the decision that the current project and earlier project are not "substantially similar." Code section 16.70.010.8(A) provides that if an application is denied, "the same or a substantially similar application shall not be accepted by the POD within 18 months . . . unless the applicant demonstrates that there has been a substantial change of conditions or character of the surrounding land area or the land in question." "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 administrative 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 an executive decision 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). 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.

Essential Requirements of Law

Petitioners maintain the City departed from the essential requirements of law in a myriad of ways related to the City's interpretation and application of the Code. Upon certiorari review, "[f]ailure 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)). Therefore, the Court will find that there has been a departure from the essential requirements of law only when there is "an inherent illegality or irregularity, an abuse of . . . power, [or] act of . . . tyranny perpetrated with disregard of procedural requirements, resulting in a gross miscarriage of justice." *Jones v. State*, 477 So. 2d 566, 569 (Fla. 1985) (Boyd, C.J., concurring specially). This Court has carefully considered all of the arguments, and we find that Petitioners have failed to show that the City departed from the essential requirements of the law such that it amounts to "a violation of a clearly established principle of law resulting in a miscarriage of justice." *See Combs v. State*, 436 So. 2d 93, 96 (Fla. 1983).

CONCLUSION

Because the City did not violate Petitioners' due process rights or depart from the essential requirements of law, the Petitions for Writ of Certiorari are denied.

DONE AND ORDERED in Chambers in Clearwater, Pinellas County, Florida, this 17th day of April, 2020.

TRUE COPY

Original Order entered on April 17, 2020, by Circuit Judges Jack R. St. Arnold, Patricia A. Muscarella, and Keith Meyer.

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