

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED

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

SINATH LEY,  
Appellant,

REF: 19-000019AP-88A  
UCN: 522019AP000019XXXXCI

-vs-

CITY OF ST. PETERSBURG,  
Appellee.

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KEN BUNKER  
CLERK OF CIRCUIT COURT

**ORDER AND OPINION**

Appellant challenges the Findings of Fact, Conclusions of Law and Final Order Conditionally Approving Demolition rendered February 15, 2019 by Hearing Officer Timothy P. Driscoll. For the reasons set forth below, the Final Order Conditionally Approving Demolition is affirmed.

**Facts and Procedural History**

Appellant owns residential property at 2230 Kingston Street South, St. Petersburg, FL. The property is currently uninhabited and there is no evidence that the subject property is Appellant's homestead. On December 1, 2017, prior to Appellant's ownership of the property, a demolition of the property at 2230 Kingston Street South, St. Petersburg, FL was initiated by the City's Codes Compliance Assistance Department. On December 5, 2017, notices of demolition violation conditions were mailed to the property owners listed in Pinellas County Property Appraiser's Records. The owners requested an extension of time to comply with the demolition violation conditions, which was granted by the City. On August 7, 2018 a new Demolition Violation Notice

was sent to Appellant, as she was the current owner of said property. The Demolition Violation Notice listed the City Code that was in violation and directed Appellant that “Permits to rehabilitate or to demolish the structure(s) must be obtained by September 14, 2018.” There is nothing in the record to show Appellant sought any permits. On November 30, 2018, Donald Tyre, the City Building Official, inspected the property and recommended the demolition process proceed. On December 27, 2018 a Notice of Condemnation/Order to Demolish was issued and mailed to Appellant. The Notice and Order were published in the Tampa Bay Times. The Notice and Order were also posted on the subject property. Appellant filed a Demolition Appeal Application on January 16, 2019. The Demolition Appeal Hearing was scheduled for February 13, 2019 with notice to Appellant.

Appellant was not present at the hearing. Appellant’s daughter, Sodeth “Ellen” Ngov, appeared on Appellant’s behalf with counsel, Shawn Yesner. Following a hearing and after taking testimony and evidence from the parties, the hearing officer upheld the Notice of Condemnation/Order to Demolish but allowed the owner thirty (30) days to provide an Elevation Certificate for the City to review and for Appellant to enter into a stipulated agreement with the city to rehabilitate the subject property. Appellant has not provided an elevation certificate to the City nor suitable plans for entry into a stipulated agreement with the City. Appellant filed a Notice of Administrative Appeal on March 14, 2019. In addition to the appeal of the hearing officer’s Findings of Fact, Conclusions of Law and Final Order Conditionally Approving Demolition, Appellant added a “Motion to permit structural rehabilitation to take place so City can have more tax revenue.”

Appellee seeks a dismissal of Appellant’s Appeal positing that Appellant has failed to state a cause of action, that the brief submitted by Appellant does not comply with the Rules of Appellate

Procedure as the brief consists of a recitation of statements and questions to the Court which contain no citation to the record or to the law and the relief requested is for a roofing permit.

Appellee's Motion to Dismiss argues the appeal should be dismissed on procedural grounds as Appellant's Initial Brief fails to comply with the Florida Rules of Appellate Procedure. Appellant has not complied with the Rules, however, a pro se litigant is afforded some leniency. The Appellee's Motion to Dismiss is granted on procedural grounds. The Court also addresses the substantive issues raised in Appellee's Motion to Dismiss, which the Court interprets as a Reply Brief.

### **Standards of Review**

The standard of review for reviewing local government actions is three pronged: whether due process afforded, whether the administrative body applied the correct law and whether the findings are supported by competent substantial evidence. *Lee County v. Sunbelt Equities, II, Limited Partnership*, 619 So.2d 996, 1003 (Fla. 2d DCA 1993). The circuit court's review is limited in nature and deference is awarded to the local decision-making agency. See *Broward County v. G. B. V. International*, 787 So. 2d 838 (Fla. 1991).

Appellant's request for a roofing permit is reviewed as a request for a writ of mandamus compelling the City's Building Department to issue a roofing permit. A writ of mandamus is a command from an appellate court to a lesser tribunal, public officer, public or private corporation or other governmental agency requiring the party to whom it is directed to perform a required ministerial act.

### **Discussion**

In its inartfully drafted initial brief, Appellant lists several arguments challenging the findings and order of the hearing officer issued March 14, 2019. We affirm in all respects and

write only to address the most coherently presented issues; namely that the appeal process on February 13, 2019 did not comply with due process and Appellant's request for a roofing permit. Much of Appellant's brief consists of questions to the Court and statements that Appellee refuses to allow Appellant to fix the problems with the subject property.

Appellant argues that the hearing held on February 13, 2019 "did not fully disclosed all plans presented wrongfully omitted that out of evidence even though that was submitted. Errors and misdirections at the hearing about survey order."

"Procedural due process requires notice and an opportunity to be heard before any governmental deprivation of a property interest. *Bailey v. City of Pinellas Park*, 147 F. App'x 932, 935 (11th Cir. 2005). In the case at bar, Appellee provided Appellant with Notices of Violation which allowed Appellant time to correct the deficiencies at the property. At the February 13, 2019 hearing, the hearing officer heard testimony and was presented evidence of the unfit and/or unsafe condition of the structure in support of the Notice of Condemnation/Order to Demolish. Appellant was provided an opportunity to present testimony and evidence in support of her appeal of the Notice of Condemnation/Order to Demolish. Appellant's daughter presented an engineer's inspection report and schematic plans as well as a contractor's time and cost estimate and evidence of funding. The hearing officer found the evidence insufficient to reverse the Notice of Condemnation/Order to Demolish, but allowed Appellant thirty days (30) from the date of the order to provide to the Building Official an elevation certificate showing the structure on the property is above the base floodplain with an additional two (2) foot of freeboard. Upon compliance with the elevation certificate, Appellant could enter into a stipulation agreement with the City to rehabilitate the structure. Procedural due process requires the opportunity for the hearing to occur before the deprivation of the property interest. Appellant was afforded procedural

due process as she had notice of the violations, notice of the hearing and the opportunity to present testimony and evidence at the hearing.

There was no evidence the hearing officer departed from the essential requirements of law. Departure from the essential requirements of law has been defined as “something far beyond legal error. It means an inherent illegality or irregularity, an abuse of judicial power, an act of judicial tyranny perpetuated with disregard of procedural requirements resulting in a gross miscarriage of justice.” *Haines City Community Development v. Heggs*, 658 So. Ed 523 (Fla. 1995); See also *City of Miami v. Cube* 3585, 285 So. 3d 324 (Fla. 3D 2019). The hearing officer is to conduct a hearing in compliance with the City Code. Section 8-27 (d) provides that during the administrative appeal the City has to burden of proof, by a preponderance of evidence, to show that a structure is unfit or unsafe as defined in the code. The hearing officer is to affirm, modify or reverse the findings that the structure is unfit or unsafe. The hearing officer received testimony and evidence and made a recommendation for a conditional demolition and allowed Appellant time to correct the code violations. There is nothing in the record that Appellant has provided an elevation certificate or complied with the other findings of the hearing officer. The hearing officer followed the requirements of the city building code.

The final prong of first tier certiorari review is whether the lower tribunal relied upon competent substantial evidence in making its decision. The hearing officer heard testimony of the City Building Official, City Building Demolition Coordinator and City Consulting Engineer as well as Appellant’s daughter, in addition to documentary evidence. There is nothing in the record to find the hearing officer did not base his findings and order on competent substantial evidence.

Appellant states in the brief “case plans for repair should be allowed and permitted because property repair cost below guidelines requirement of the 50 percent FEMA rule.” At the February

13, 2019 hearing, Appellant presented an engineers inspection report and schematic plans which the hearing officer found to be insufficient for rehabilitation of the said property. Appellant was directed to provide an elevation certificate showing the structure on the property is above the base floodplain with an additional two feet of free board. Appellant failed to obtain the elevation certificate and has not entered into a stipulation agreement with the City for the rehabilitation of the structure. Appellant wants this Court to “make a decision and allow me to my work to fix and live in my home.” Appellant is requesting this Court direct the City Building Official to issue permits to allow her to correct the code violations. The City of St. Petersburg has a building code that incorporates the Florida Building Code. The Building Official is permitted by the Chapter 8 of the City’s Building Code to declare a building unfit or unsafe for its intended purpose, to condemn a building and to order the demolition of a building or issue a permit to allow for the rehabilitation of a structure. The issuance of a permit is not a mandatory, non-discretionary action by the Building Official. As such, a discretionary act is not subject to the issuance of a writ of mandamus. *Stranahan House, Inc. v. City of Ft. Lauderdale*, 927 So. 2d 1068 (Fla. 4th DCA 2006). This Court is without authority to direct the Building Official to issue any permits for the rehabilitation of the structure.

### **Conclusion**

The Findings of Fact, Conclusions of Law, and Final Order Conditionally Approving Demolition did not depart from the essential requirements of law; there was no due process violation.

Accordingly, it is

ORDERED AND ADJUDGED that the Findings of Fact, Conclusions of Law, and Final

Order Conditionally Approving Demolition is upheld. It is further

ORDERED AND AJDUGED that Appellant's Appeal is denied.

DONE AND ORDERED in Chambers a Clearwater, Pinellas County, Florida this

18 day of February, 2020.

Original Order entered on February 18, 2020, by Circuit Judges Jack R. St. Arnold, Patricia Muscarella, and Keith Meyer.

Copies furnished to:

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