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

CEDAR STREET CROSSINGS, LLC,

Appellant,

REF: 20-000035AP-88A
UCN: 522020AP000035XXXXCI

-vs-

CITY OF SAFETY HARBOR, FLORIDA

Appellee.

_____/

Appeal of Final Administrative Order
of the City of Safety Harbor Code
Enforcement Board

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Attorney for Appellant

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Attorneys for Appellee

PER CURIAM

Appellant, Cedar Street Crossings, Inc., appeals a final administrative order of the City of Safety Harbor Code Enforcement Board rendered August 6, 2020. We affirm.

STATEMENT OF FACTS

Appellant, Cedar Street Crossing, LLC, owns a vacant lot in Safety Harbor, Florida located at 1885 Cedar Street (the "Property"). Appellant leased the property to a metal fabricating business that is utilizing the property to retrofit shipping containers to be recycled into modular homes. In early 2020, the City became aware that shipping containers were being stored on the Property. The City investigated, providing due notice to Appellant and providing time for Appellant to come into compliance. On June 15, 2020, the City of Safety Harbor issued a notice of code enforcement violation of the Land Development Code § 55.01(A), which provides: "Shipping containers, truck beds or other vehicle or body parts, or similar equipment shall not be used for storage in and District, nor shall they be stored on any property unless located in an approved impound yard." The Property is not an approved impound yard.

On July 29, 2020 the case was brought before the Code Enforcement Board for a quasi-judicial hearing. At the hearing, the City presented testimony and evidence regarding the existence of the violations through Mr. Bushee, a City of Safety Harbor Code Enforcement Officer. Appellant presented testimony and evidence through the testimony of Mr. Blanchard, an attorney representing the tenant of the property and Mr. Brewer, a City of

Safety Harbor Economic Development Liaison. By a vote of four to three, the Code Enforcement Board found Appellant in violation of § 55.01(A) of the Land Development Code. Appellant seeks review of the Board's decision.

STANDARD OF REVIEW

When the circuit court in its appellate capacity reviews a final order of local governmental administrative action, "three questions are asked: whether due process was afforded, whether the administrative body applied the correct law, and whether its findings are supported by competent substantial evidence." *Lee County v. Sunbelt Equities, II, Ltd. P'ship,* 619 So. 2d 996, 1003 (Fla. 2d DCA 1993). This is not a *de novo* review. § 162.11 Florida Statutes, 2020.

Competent substantial evidence "involves a purely legal question: whether the record contains the necessary quantum of evidence." *Id.* This Court sitting in its appellate capacity is not permitted to reweigh the evidence or to substitute its judgment for that of the Code Enforcement Board. *See City of Deland v. Benline Process Color Co., Inc.,* 493 So. 2d 26, 28 (Fla. 5th DCA 1986). Code enforcement board proceedings are quasi-judicial and result in an administrative order of the City. *Verdi v. Metro Dade Cty*., 684 So. 2d 870, 873 (Fla 3d DCA 1996).

Appellant argues that the standard of review for this Court is *de novo*. §162.11, Fla. Stat. states that the appeal shall not be a hearing *de novo* but shall be limited to appellate review of the record created before the enforcement board. Appellant relies on *City of Miami v. Nationstar Mortg., LLC,* 206 So. 3d 52 (Fla. 3d DCA 2015) an unpublished decision which is not applicable to the standard of review under §162.11 Fla. Stat. 2020.

DISCUSSION

"A local government's quasi-judicial decision must be upheld if there is ***any*** competent, substantial evidence support it." *Orange Cty. V. Butler*, 877 So. 2d 810.813 (Fla. 5th DCA 2004) (original emphasis). "Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred . . . the evidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept is as adequate to support the conclusions reached. To this extent, the "substantial" evidence should also be "competent". *De Groot v. Sheffeld*, 95 So. 2d 912, 916 (Fla. 1957). Competent, substantial evidence can include the factual testimony of lay witnesses and the opinion testimony of those with relevant specialized training (i.e. experts). See *City of Hialeah Gardens v. Miami-Dade Charter Found., Inc.*, 857 So. 2d 202, 204-206 (Fla. 3d DCA 2003).

At the hearing, the City presented the sworn testimony of Mr. Bushee as well as photographs of the shipping containers on the Property. Mr. Bushee testified that he is "state-certified in the fundamentals of code enforcement, administrative aspects of code enforcement and the legal aspects of code enforcement." Mr. Bushee testified that the shipping containers on the Property had holes cut in them and that they could not be used for storage or shipping containers in their present condition. Mr. Bushed also stated that the units could be repaired to that they could again be used for storage containers.

Appellant presented the testimony of Mr. Richard Blanchard. Mr. Blanchard is an attorney representing the tenant of the property and testified about the process of repurposing the shipping containers into modular homes. Mr. Blanchard testified that once the retrofit or repurposing began, the shipping containers could never again be used as shipping or storage containers. Appellant's second witness was Mr. Brewer, a City of Safety Harbor Economic Development liaison. Mr. Brewer also testified on the repurposing of the shipping containers.

Appellant argues the Final Administrative Order ("Order") should be reversed as Appellant presented competent, substantial evidence that it was not in violation of § 55.01(A) because the shipping containers were intended

to be repurposed for building material for modular homes. Appellant is in essence asking the Court to reweigh the testimony and evidence submitted to the Board and to substitute its judgment for that of the Board. The Florida Supreme Court has found that it is improper for a circuit court to substitute its judgment for that of the administrative board as to the relative weight of conflicting evidence. *Dusseau v. Metro Dade Cty. Bd. Of Comm'rs*, 794 So. 2d 1270 (Fla. 2001). Appellant also argues that the testimony of Mr. Bushee is not substantial, competent evidence as Mr. Bushee is not a "shipping container expert". As stated in *City of Hialeah-Gardens*, "[c]ompetent, substantial evidence can include the factual testimony of lay witnesses and the opinion testimony of those with relevant specialized training (i.e. experts). *City of Hialeah Gardens*, 857 So. 2d at 204-206. Where there is a conflict in the testimony and evidence presented to the Board, again, this Court cannot re-weigh the evidence or substitute its judgment for the Board in weighing the credibility of the witnesses. See City of *Deland v. Benline Process Color Co., Inc*. 493 So.2d 26 (Fla. 5th DCA 1986).

Appellant states that the by the plain meaning of § 55.01(A) "the Code was enacted to prevent shipping containers (and other similar items) from being used for outdoor storage or from being 'stored' on the property." As the shipping containers on the property were not being used for outdoor

storage or being “stored” on the property, Appellant cannot be in violation of the code. “When language of the statute is clear and unambiguous and conveys a clear definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.” *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984). “Courts generally may not insert words or phrases in municipal ordinances in order to express intentions which do not appear, unless it is clear that the omission was inadvertent.” *Rinker Materials Corp v. City of North Miami,* 286 So. 2d 552, 553 (Fla. 1973). The Land Development Code § 55.01(A) clearly states that “shipping containers shall not be used for storage in any District, nor shall they be stored on any property unless located in an approved impound yard.” The Property is not an approved impound yard. Section 55.01 (A) contains no language incorporating an intended time minimum or requirement that the shipping containers be functional. It contains no exception for shipping containers eventually to be used as construction materials.

Appellant argues that the Board focused wrongly on how the public perceives what was contained on the property, rather than on the purpose of the code in relation to the actual activities occurring on the property. Appellant falls far short of a legally sufficient demonstration of error. “The

required ‘departure from the essential requirements of law’; means something far beyond legal error.” *Haines City Cnty. Dev. V. Heggs*, 658 So. 2d 523, 527 (Fla. 1995) (citing *Jones v State*, 477 So. 2d 566, 569 (Fla. 1985). “It means an inherent illegality or irregularity, an abuse of judicial power, an act of judicial tyranny perpetrated with disregard of procedural requirements, resulting in a gross miscarriage of justice. . . to correct essential illegality but not legal error.” Id. Appellant has not shown a departure from the essential requirements of law.

Appellant’s last argument is that if the Board’s determination of the code violation is upheld, would make it impossible for Appellant to conduct business, and cause Appellant and its tenant harm, as the tenant would be forced to move out of the City of Safety Harbor. The Board is “to provide an equitable, expeditious, effective, and inexpensive method of enforcing any codes and ordinances in force in counties and municipalities.” § 162.02 Fla. Stat. 2020. The Board does not have the authority to re-write the Land Development Code. See *Miami-Dade Cty. V. Omnipoint Holdings, Inc*., 863 So. 2d 375, 377 (Fla. 3d DCA 2003). “[Q]uasi-judicial boards do not have the power to ignore, invalidate or declare unenforceable the legislated criteria they utilize in making their quails-judicial determinations.” *Omnipoint Holdings*, 863 So. 2d at 377

Appellant was afforded notice and an opportunity to be heard. A review of the record demonstrates that competent substantial evidence supports the Board's decision that Appellant was in violation of the city ordinance as the Property is not an impound yard and shipping containers were being stored there. The Board complied with the requirements of § 162, part I, Fla. Stat. 2020.

CONCLUSION

Based upon the facts set forth above, the order of the City of Safety Harbor Code Enforcement Board is affirmed

DONE AND ORDERED in Chambers in Clearwater, Pinellas County, Florida, this 22nd day of April, 2022.

TRUE COPY

Original Order entered on April 22, 2022, by Circuit Judges Sherwood Coleman, Keith Meyer, and Patricia A. Muscarella.

Copies furnished to:

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