

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

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

RONALD HOWARTH,
Appellant,

v.

Case No.: 2022-CA-000943-ES

CITY OF NEW PORT RICHEY,
Appellee.

Appeal from Final Administrative Order

Charles D. Radeline, Esquire
Attorney for Appellant

Timothy P. Driscoll, Esquire
Attorney for Appellee

ORDER AND OPINION

Ronald Howarth was not afforded due process during his administrative appeal before the City of New Port Richey City Council. The decision of the City Council to uphold the Order to Demolish Slum or Blighted Structure is reversed and this matter remanded for action consistent with this Order and Opinion.

STANDARD OF REVIEW

The circuit court, sitting in its appellate capacity, must determine whether: (1) the tribunal afforded the parties due process of law; (2) the order meets the essential requirements of law; and, (3) the order is supported by competent and substantial evidence. *See Haines City v. Heggs*, 658 So.2d 523 (Fla. 1995).

FILED FOR RECORD
PASCO COUNTY, FLORIDA
22 DEC 20 AM 9:41
Mimi A. [unclear]
Clerk & Computer
Pasco County, Florida

BACKGROUND FACTS

On December 15, 2021, NPR issued an Order to Demolish Slum or Blighted Structure (“Order to Demolish”), and accompanying Notice to Owner/Interested Parties (“Notice”), informing Howarth that the structure, located at 6602 Candice Lane, New Port Richey, met criteria for demolition. The structure, which is a single-wide mobile/manufactured home with 700 sq. ft. of living space, along with an attached shed that was used for human occupancy (collectively “structure”), was cited for demolition due to the following code violations:

1. Section 6-185(4) – The condition of the structure, or a portion thereof, poses an immediate threat to life or property by fire or other causes;
2. Section 6-185(6) – There is a serious and substantial falling away, hanging loose, or loosening of the siding, block, brick, or other building material creating a hazard for occupants or the public; and,
3. Section 6-185(7) – The structural parts have become so dilapidated, decayed, or deteriorated, or there is an unusual sagging or leaning out of plumb of the building or any part thereof caused by deterioration or over-stressing of the structure of structural parts, that the structure is manifestly unsafe.

Howarth timely appealed the Order to Demolish. On March 15, 2022, Howarth’s appeal came before NPR’s City Council. As set forth in its letter, dated March 21, 2022, NPR denied the appeal¹ and ordered Howarth to complete demolition and site cleaning by April 21, 2022, or NPR would complete this action without further notice, and place a lien on the property. Howarth timely sought review before this Court.²

¹ In denying Howarth’s appeal, the letter simply states, “[a]fter considering all facts and testimonials material to the appeal, City Council denied the appeal.”

² Howarth should have filed a Petition for Writ of Certiorari, not a Notice of Appeal. *See, e.g., Miami-Dade County v. City of Miami*, 315 So.3d 115, 119 (Fla. 3d DCA 2020) (explaining that quasi-judicial decisions of municipal agencies, boards, and commissions are reviewable by petitions for writ of certiorari to the appellate division of the circuit court) (citing *Teston v. City of Tampa*, 143 So.2d 473, 476 (Fla. 1962)). The Court will treat the Notice of Appeal, and Appellant’s Initial Brief, as a Petition for Writ of Certiorari. *See R.S. Johnson v. Citizens State Bank*, 537 So.2d 96, 97 (Fla. 1989) (finding that “[t]here is no question that an appellate court has jurisdiction to review a cause even though the form of appellate relief is mischaracterized”).

PROCEEDINGS BEFORE THE CITY COUNCIL

The record shows that the administrative appeal began before the City Council³ with a summary of the code violations presented by the City Manager, Debbie Manns, along with pictures of the structure taken in November 2021. The violations included: deteriorated entry door frame to mobile home; unpermitted secondary entrance to the mobile home; the falling away of siding; unpermitted windows; plumbing violations; electrical code violations; and multiple violations as to the shed, to include an unpermitted kitchen, bathroom, and roof.⁴

Ms. Manns then explained that the City Council had three options to consider: (1) that the structure does not meet criteria for demolition; (2) that the structure cannot be demolished within the time limits specified by the order; or, (3) that the structure can be reconstructed or restored, along with supporting documentation and a timetable for obtaining permits and implementing the proposed improvements. Ms. Manns stated that this was the second City Council appellate hearing regarding Howarth's property, with the first appellate hearing continued to provide Howarth the opportunity to present his PowerPoint which required NPR to ensure that the PowerPoint was "clean" before presenting it on NPR's computer system.⁵

Howarth then testified⁶ and proffered evidence to the City Council.⁷ Howarth presented his PowerPoint, which included pictures taken at the time the Order to Demolish and Notice were

³ The three City Council members present were Peter Altman, Matt Murphy, and Mike Peters.

⁴ The City obtained an Inspection Warrant, on November 22, 2021, to enter the property, Pasco County Case Number 2021-MO-000172-WS.

⁵ The record is silent as to when this first appellate hearing was held. A transcript of this hearing was not filed, such that the Court concludes no action was taken except to continue the hearing.

⁶ This term is being used loosely as none of the witnesses were sworn.

⁷ It's unclear what documents the City Council actually received and reviewed, as no documents were marked as exhibits or otherwise stamped as being accepted by the City Council.

posted, and also presented pictures of work and improvements undertaken.⁸ Howarth testified that he employed a state-certified inspector, who completed a four-point inspection, and presented the City Council with a letter, dated 02/28/2022, from Robert T. Haug, P.E.⁹ Howarth testified that he had violations over the years but they had all been corrected.

During the course of his presentation, Howarth asked the City Council if it would motion and rule that the structure does not meet criteria for demolition based on his “state-certified inspection.” The Mayor¹⁰ informed Howarth that the City Council would make a decision after he was finished with his presentation. Howarth continued with his presentation and requested that the City Council put a proposed plan together of what action needed to be taken to avoid demolition, stating he didn’t know what exactly was needed to bring the structure into compliance. The Mayor asked Howarth if there was “anything else?” and Howarth continued with his presentation. The Mayor again asked Howarth if there was “anything else?” at which point Howarth called John Lennon.

Mr. Lennon testified that he is a certified general contractor and went over what improvements he believed were needed, emphasizing that the structure did not meet criteria for demolition. Mr. Lennon testified that he met with the “head of the building department” on-site to discuss what improvements were needed and “about possibly doing this with an engineer.” In response to the Mayor asking again, “anything else?,” Mr. Lennon concluded his testimony. Howarth then said “thank you” and the Mayor responded, “thank you, Mr. Howarth,” indicating that Howarth’s presentation had concluded.

⁸ The record reflects that the primary improvements were installing a new electrical box and painting the structure.

⁹ Despite being titled “Engineers Affidavit,” the document is not notarized or verified.

¹⁰ City Mayor Rob Marlowe.

The Mayor then opened up the hearing to members of the general public. Having no response, the Mayor brought the matter back to the City Council and Mr. Driscoll. Mr. Driscoll called David Gilson, NPR's Building Official, who testified that Howarth's "Engineers Affidavit" was a four-point inspection used in insurance and did not address defects to the structure, nor the electrical and plumbing issues. Mr. Gilson testified that the structure had been modified, without permits, to include the addition of a door and multiple window A/C units put into the side of the structure. Howarth did obtain a permit to install the new electrical panel.

Mr. Driscoll then concluded his presentation. However, after questions and statements from the City Council to Mr. Gilson, Mr. Driscoll requested if he could "ask one more question," to which the Mayor responded, "Certainly." Mr. Driscoll then made several statements and asked two questions of Mr. Gilson. Howarth then requested if he may ask a question of Mr. Gilson, which the Mayor denied. Howarth then asked, "May I ask that you review the affidavit?" to which there was no response. Mr. Peters, council member, moved to deny the appeal, to which Mr. Altman seconded stating, "long overdue."¹¹ Howarth then stated, "I have something else I would like to present," to which the Mayor responded, "that portion is closed, sir."

The Mayor then made his own closing statement, to wit: "And I cannot believe that we are faced with another one of these that is being rented out to people that's just not fit for human habitation. And it's sad that it has come to this." Howarth countered, "You folks have not reviewed the documents that I have put in there. . . I think you should at least review the documents." The Mayor responded, "Sir, you are out of order. I will have you removed if you keep interrupting."

¹¹ The transcript reflects that Mr. Altman presented his own research on the property's land value, stating that the structure had "zero value." Howarth did not raise this as an issue on appeal. *See, e.g., Miami-Dade County v. City of Miami*, 315 So.3d 115, 126 (Fla. 3d DCA 2020)(explaining that an impartial decision-maker is a basic constituent of due process and administrative officers cannot base their decision on their own information).

Council member, Mr. Murphy, seconded the motion (for a second time) and all voted in favor of denying Howarth's appeal. The hearing was concluded.

LAW AND ANALYSIS

The sole issue is whether NPR denied Howarth due process when it did not permit him to present evidence, cross-examine witnesses, and make a closing statement. There is no dispute that the hearing before the City Council was quasi-judicial in nature, thus not controlled by strict rules of evidence and procedure. *See Carillon Community Residential v. Seminole County*, 45 So.3d 7, 10 (Fla. 5th DCA 2010)(*citations omitted*); *see also, Jennings v. Dade County*, 589 So.2d 1337, 1340 (Fla. 3d DCA 1991)(*citations omitted*). However, as cited by NPR in its Answer Brief, in a quasi-judicial proceeding, a party must be able to present evidence, cross-examine witnesses, and be informed of all the facts upon which the administrative agency acts. *See Jennings*, 589 So. 2d at 1340.

As explained by the Second District Court of Appeal in *Vollmer v. Key Development Properties*, 966 So.2d 1022, 1027 (Fla. 2d DCA 2007):

The right to be heard at an evidentiary hearing includes more than simply being allowed to be present and to speak. Instead, the right to be heard includes the right to "introduce evidence at a meaningful time and in a meaningful manner." It also includes the opportunity to cross-examine witnesses and to be heard on questions of law. The violation of a litigant's due process right to be heard requires reversal.

See also, Carillon Community Residential, 45 So.3d at 10; *Jennings*, 589 So.2d at 1340; *Baron v. Baron*, 941 So.2d 1233, 1236 (Fla. 2d DCA 2006)(finding that the right to be heard includes the opportunity to cross-examine witnesses and to be heard on questions of law); *Bush v. City of Mexico Beach*, 71 So.3d 147, 149-50 (Fla. 1st DCA 2011)(same); *Brinkley v. County of Flagler*, 769 So.2d 468, 472 (Fla. 5th DCA 2000)(same).

While it's not clear if the City Council considered the documents that Howarth presented, there is no dispute that Howarth was not afforded the opportunity to cross-examine NPR's building official, David Gilson, and was not allowed to make a closing statement. NPR's assertion that Mr. Gilson was speaking to the City Council in an advisory capacity is not supported by the record. Indeed, Mr. Gilson answered several questions from Mr. Driscoll, which included testimony about Howarth's four-point inspection, and then answered questions from the City Council, followed by the Mayor refusing to allow Howarth to ask Mr. Gilson a single question. The Mayor then refused to allow Howarth a closing statement, while making his own closing statement.

CONCLUSION

NPR failed to afford Howarth due process during the administrative proceedings below. This Court, sitting in its appellate capacity, must confine its decision to the issues raised in the parties' briefs. *See Rosier v. State*, 276 So.3d 403, 406 (Fla. 1st DCA 2019)(*citations omitted*). Hence, the decision of the City Council to uphold the Order to Demolish must be reversed and this matter remanded for action consistent with this Order and Opinion. In remanding this matter, the Court suggests that the Mayor, or his designee, provide guidance at the outset of the hearing as to the manner in which the hearing will proceed, which may have averted some of the due process issues raised in this appeal. It may also be prudent to swear in all witnesses testifying before the City Council and to mark all exhibits considered by the City Council, to ensure a proper record is created for the purposes of appeal and/or further proceedings.

WHEREFORE, it is hereby, **ORDERED AND ADJUDGED** that the City Council decision to uphold the Order to Demolish is REVERSED and this matter is remanded for action consistent with this Order and Opinion.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida on this ____ of _____, 2022.

Original Order entered on December 19, 2022, by Circuit Judges Kimberly Byrd, Kimberly Campbell, and Daniel Diskey.

Copies to:

Charles D. Radeline, Esquire
3060 Alt. 19 North, Ste. B-2
Palm Harbor, FL 34683

Timothy P. Driscoll, Esquire
146 Second St. N., Ste. 310
St. Petersburg, FL 33701