IN THE THIRTEENTH JUDICIAL CIRCUIT FOR THE STATE OF FLORIDA
CIVIL DIVISION

MICHAEL J. MCNABB,

Petitioner,

vs.

CITY OF TAMPA, CITY COUNCIL
and GHASSAN MANSOUR,

Respondents.
_____/

Cir. Ct. Case No.: 22-CA-8307
Division: D
Lower Tribunal No.: REZ 22-23

ORDER DENYING PETITION FOR WRIT OF CERTIORARI

This matter is before the Court on Petitioner Michael McNabb's petition for writ of certiorari (Doc. 6), filed on June 9, 2022, seeking review of a Respondent Tampa City Council's decision to rezone Respondent Ghassan Mansour's real property. The rezoning effectively allows the placement of single-family homes on each of two 55-ft. lots on what was a single lot previously zoned RS-75 comprised of 110 feet of street frontage and a single residence. The Court has reviewed the petition, response, and appendices. Intervenor Ghassan Mansour did not file a response, and Petitioner did not file a reply. Petitioner asks the Court to quash Respondent Tampa City Council's rezoning determination for several reasons. The only ground that merits discussion, however, is Petitioner's allegation that City Council departed from the essential requirements of law because it based its decision on properties within a "block face," a term that does not appear in the City's land development code. Although Petitioner is correct that the term "block face" is not a listed factor in the code for consideration of the rezoning application, the Court determines that the City did not depart from the essential requirements of law because, although section 27-11, Tampa, Fla. Code, establishes minimum lot requirements which exceed the dimensions of the newly created lot, the code's section 27-136 provides staff and Council flexibility to effect development that recognizes an area's changing needs and development patterns. This allows for development that would otherwise not be allowed in a particular zoning classification. §27-136, Tampa, Fla. Code.

BACKGROUND

The case arises from the City Council of Tampa's September 1, 2022 decision to rezone property located at 4111 West San Carlos Street, Tampa, Florida ("the Property") from Residential Single-Family-75 ("RS-75") to Planned Development ("PD") Residential Single-Family Attached, as requested by the owner of the property, Ghassan Mansour. The Property is located at the northeast intersection of South Cameron Avenue and West San Carlos Street in Tampa, Florida. The Property has 110 feet of frontage on South Cameron Avenue and 139 feet of frontage on West San Carlos Street.

The Tampa Comprehensive Plan designates the future use of the Property as Residential-6, which is classified for use as low-density residential development with a minimum lot size of 7,260 square feet and 75 feet of street frontage. The Property was zoned RS-75 prior to September 1, 2022. The properties surrounding the Property are also primarily zoned RS-75. Historically, the property was two platted lots measuring 55 x 139 feet and was zoned accordingly. Under the current zoning, a property zoned as RS-75 is required to have at least 75 feet of street frontage. Of the 214 lots in the area around the Property, 151, or 70 percent, of the lots have a width greater than 75 feet and 63 lots representing 30 percent of the lots have been developed with a width equal to or less than 74.999 feet. Additionally, of the seven lots on South Cameron Avenue near the Property, three, or 43 percent, of the lots have been developed with a width equal to or less than 74.99 feet.

On May 3, 2022, Mr. Mansour petitioned the City Council of Tampa to rezone his property from RS-75 to Planned Development so to allow the splitting of the Property back in to the two 55' x 139' lots. The City Council of Tampa held public hearings on Mr. Mansour's petition on June 9, 2022, July 14, 2022, August 14, 2022, and September 1, 2022. Petitioner Michael J. McNabb, who resides within 250 feet of the Property, appeared at the hearings and objected to the rezoning. The City Council of Tampa ultimately granted Mr. Mansour's application on September 1, 2022, after much debate. City Council's September 1, 2022 rezoning decision, allows the Property to be split in to two 55' x 139' lots of 7,645 square feet each, for development of two single-family homes.

ANALYSIS

Standard of Review

The circuit reviews petitions for writ of certiorari directed to the review of quasi-judicial rezoning decisions to determine whether: (1) The local government afforded due process; (2) the local government observed the essential requirements of law; and (3) the local government's decision is supported by competent and substantial evidence. *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982). In determining evidentiary support for an administrative decision, courts are not permitted to reweigh the evidence; they may determine only the sufficiency of evidence. *Broward Cnty. v G.B.V. Intern., Ltd.,* 787 So. 2d 838, 845 (Fla. 2001).

Due Process

When a neighboring property owner seeks to challenge a rezoning petition, the requirements of due process are met if the neighbor was afforded notice and a meaningful opportunity to be heard. *Keys Citizens for Responsible Gov't, Inc. v. Fla. Keys Aqueduct Auth*., 795 So.2d 940, 948 (Fla. 2001) (internal citations omitted). Petitioner received the necessary due process in the underlying proceeding.

Essential Requirements of Law

Like the applicant for the rezoning, Petitioner, a neighboring property owner, is entitled under Florida law to have the correct law applied to his challenge to the rezoning. *See Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995) (concluding that "'applied the correct law' is synonymous with 'observing the essential requirements of law.'"). Application of the wrong law is reversible error. *See Bd. of Cnty. Com'rs of Clay Cnty. v. Qualls*, 772 So. 2d 544, 546 (Fla. 1st DCA 2000), *as amended* (Dec. 6, 2000) (granting writ and quashing order after lower court failed to apply correct law).

Petitioner asserts that the Tampa City Council decision departed from the essential requirements of law on several grounds. First, he contends that the determination failed to give effect to the criteria set forth in section 27-80, Tampa, Fla. Code, particularly regarding demonstrating hardship on the property owner's part. Section 27-80, which applies to requests for *variances*, and requires that a property owner demonstrate hardship such that a departure from strict application of the code is warranted, is not applicable to this rezoning dispute. Thus, there was no departure from the essential requirements of law on this ground.

Petitioner also contends that in evaluating development patterns in the vicinity of the subject property, staff considered "block face" to establish a development pattern that would support the rezoning. Petitioner contends, correctly, that "block face" appears nowhere in the code. Petitioner adds that under section 27-11, Tampa, Fla. Code, "no division of an existing zoning lot or lot of record may occur that is a configuration which is inconsistent with existing lot development pattern in a radius of 1320 feet." Petitioner contends that when viewed as required under section 27-11, far fewer lots are less than 60 feet wide, such that the subject rezoning is incompatible with existing development. Although Petitioner makes a valid point, he overlooks the code's section 27-136, which gives the city flexibility to adjust to changing needs and promote redevelopment. Section 27-136 contains no rigid patterns for staff to follow; among other things, it requires that staff evaluate the impact of the proposed development on…surrounding uses and zoning patterns…and the surrounding neighborhood." §27-136(3)a., Tampa, Fla. Code. Because Petitioner has not adequately shown that City Council applied the incorrect law, the court is constrained to conclude that there was no departure from the essential requirements of law. *Cf*. *Manatee Cnty. v. City of Bradenton*, 828 So. 2d 1083, 1084 (Fla. 2d DCA 2002).

Competent Substantial Evidence

Under Florida law, "[a]s long as the record contains competent substantial evidence to support the agency's decision, the decision is presumed lawful" and, as a result, the reviewing court must deny the petitioning party's request to quash the underling decision. *Dusseau v. Metro. Dade Cnty. Bd. of Cnty. Com'rs*, 794 So. 2d 1270, 1276 (Fla. 2001). Staff reports, the application, maps, diagrams, correspondence, and testimony constitute record evidence for City Council to consider in making its decision. Governing bodies are often presented with two alternatives, either of which is defensible given the applicable law and the available evidence. If the decision made is supported by

competent, substantial evidence, it must be affirmed. *Bd. of Cnty. Comm'rs of Brevard Cnty. v. Snyder,* 627 So. 2d 469, 474 (Fla. 1993).

Petitioner contends that remarks made by several city councilmembers did not rise to the level of competent, substantial evidence necessary to approve the rezoning. Petitioner is again correct that remarks made by a councilmember explaining his vote was not competent, substantial evidence; he simply explained his reasoning in selecting one of two alternatives, which is City Council's decision to make if the evidence supports it. *See City of Ft. Lauderdale v. Multidyne Medical Waste Management, Inc*., 567 So.2d 955, 957–58 (Fla. 4th DCA 1990). Here, a cautious and careful review of the record reveals that there is adequate evidence supporting the City Council of Tampa's decision. A member of the planning commission testified from its report that its staff found the proposed development to be consistent with the comprehensive plan. Similarly, a staff member of the city's Land Development Coordination Department testified before City Council that he found the rezoning application to be consistent with the comprehensive plan. Attention was given to architectural details to ensure aesthetic compatibility with the surrounding neighborhood. Although there may have been some adjustment made to the development pattern used by staff in an effort support the request, it bears noting that the request restores the configuration to the original two lots. Moreover, City Council's numerous hearings and votes, along with the vigorous debate on the proposal, further support the conclusion that the underlying decision here was not arrived at lightly. Although the court is not unsympathetic to Petitioner's view, and even though a prior council denied a similar rezoning in 2012,[1] the standard of review requires a party challenging the rezoning to show that the decision was not supported at all. *Dusseau,* 794 So. 2d at 1276. This Court cannot determine whether the agency's decision is the best decision or the or a wise decision. *Id.* Where Petitioner has not met his burden to establish that City Council's underlying decision was not supported by competent substantial evidence, this Court must affirm the decision.

It is therefore ORDERED that the Petition for Writ of Certiorari is DENIED on the date imprinted with the Judge's signature.

Electronically Conformed 5/2/2023
Emily A. Peacock

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Emily Peacock, CIRCUIT JUDGE

COPIES TO:
Counsel of Record and Michael J. McNabb, 2404 S. Clark Ave., Tampa, FL 33629

[1] City Council is not bound by a prior decision of the same governing body, particularly one made over 10 years earlier and related to a different parcel.