IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR THE STATE OF FLORIDA
GENERAL CIVIL DIVISION

YBOR PROPERTIES, LLC,
Petitioner,
v.
CITY OF TAMPA,
JOSEPH CALDWELL,
Respondents.
_____/

CASE NO.: 23-CA-014869

DIVISION: K

ORDER DENYING PETITION FOR WRIT OF CERTIORARI

This case is before the court on Petitioner Ybor Properties, LLC's petition for writ of certiorari filed August 28, 2023, seeking review of the Tampa City Council's denial of its "opt-out request" to rezone or redesignate a property located at 1916 and 1918 East Fifth Avenue. The petition alleges the City violated Ybor Properties' right to due process because the Zoning Administrator issued a second decision before the window to appeal the first decision expired. The petition alleges the City departed from the essential requirements of the law by overturning the hearing officer's findings of fact without remanding to the hearing officer a second time. Because the City afforded Ybor Properties adequate notice and an opportunity to be heard, as required by longstanding policy, the City did not abridge Ybor Properties' right to due process. Because the City Council applied the correct law when making its final determination, the City did not depart from the essential requirements of the law. The petition must be denied.

Jurisdiction

This Court has jurisdiction to review the City Council's quasi-judicial determination in this case. The determination was quasi-judicial because it applied the existing code to one specific property. Fla. Const. art. I, § 21; *Bd. of Cnty. Comm'rs of Brevard Cnty. v. Snyder*, 627 So. 2d 469, 474 (Fla. 1993) (finding a municipal body's quasi-judicial decision is reviewable by petition for writ of certiorari in the circuit court and "it is the character of the hearing that determines whether or not board action is legislative or quasi-judicial"); Rules 9.100(c)(2) and 9.030(c)(3) of the Florida Rules of Appellate Procedure. *See also Kahana v. City of Tampa*, 683 So. 2d 618, 620 (Fla. 2d DCA 1996) ("The test is whether the city council's decision on the petition formulates a 'general rule of policy' and, thus, will affect many people, or whether it merely applies an existing general rule of policy to a specific parcel."); *G-W Dev. Corp. v. Vill. of N. Palm Beach Zoning Bd. of Adjustment*, 317 So. 2d 828, 831 (Fla. 4th DCA 1975) (stating "the Florida Constitution has always vested common law certiorari jurisdiction in the circuit courts"); *City of St. Petersburg v. Cardinal Indus. Dev. Corp.*, 493

So. 2d 535, 537 (Fla. 2d DCA 1986) (finding certiorari review by the circuit court is the correct avenue to seek review of a denial of an application by a city council); *City of Melbourne v. Hess Realty Corp.*, 575 So. 2d 774, 775 (Fla. 5th DCA 1991); *Cherokee Crushed Stone, Inc. v. City of Miramar*, 421 So. 2d 684, 685 (Fla. 4th DCA 1982).

Facts and Procedural History

On May 26, 2021, Ybor Properties submitted an "Application for Written Determination—Formal Decision" (Application) seeking a determination that its property located at 1916 and 1918 East 5th Avenue in Tampa (Property) was governed by YC-6 zoning, allowing the Property to be used as a parking lot. On August 17, 2021, the City's Zoning Administrator denied the Application (Formal Decision I) finding the Property was subject to YC-7 zoning, which does not allow parking. Ybor Properties, having failed to include any direct supporting evidence in its application, attempted to cure this defect by notifying the Zoning Administrator of a letter that was referenced in the Application but not included or attached. Ybor Properties claims it sent this letter to the City "opting out" of rezoning on March 8, 2000, and again in April 2021. In its application, an agent for Ybor Properties stated:

> [P]er my conversation with Gloria Moreda and her meeting and request to Steve Michelini, our consultant, regarding the proposed zoning and land use changes, she confirmed that we could 'opt out' of the zoning change from YC-6 to YC-7 and to send her a letter requesting the City of Tampa not to change the current land use or zoning for the Property and any others in the district. This was submitted to her on March 8, 2000, as described in the attached letters. We were unaware the City of Tampa decided to proceed with the rezoning of the Property in 2000, even though we complied with Gloria's request. The City did grant our requests for the other properties not to change the current land use or zoning from YC-6 to YC-7 for several other 717 Parking properties in the Ybor district . . . and we are unsure why the City of Tampa didn't grant us the same request on the Property, which we believe was rezoned in error as all of our other properties and parking lots were granted to stay at the YC-6 zoning. It seems like either the letter from the Property received by Gloria was either misplaced or inadvertently ignored but based on all the other approvals, her intent was to exempt the Property just like she did for all the other properties we submitted letters.

Appx. at 19–20. In Formal Decision I, the Zoning Administrator stated:

> The first argument, that the property should not have been rezoned is based on correspondence between 717 Parking and Gloria Moreda, now retired, regarding other properties owned by the applicant. Copies of the correspondence for the other properties was submitted by the applicant, but nothing specific to this property. There is insufficient direct evidence in the record to support the claim that these properties were to be excluded from the change in the land use and zoning designation.

Appx. at 54. Formal Decision I also advises if Ybor Properties "disagree[s] with any findings stated in this determination letter, [it] may file a petition for review, pursuant to Section 27-61(d): The petitioner shall file a petition for review of a decision and any required documents, no later than 5:00 pm on the fourteenth calendar day, after the date the written decision was rendered." Appx. at 55. Ybor Properties did not file a petition for review of the first determination, but instead contacted the Zoning Administrator regarding the alleged correspondence from 2000. The Zoning Administrator subsequently issued a second determination (Formal Decision II), effectively overturning the first.

On September 13, 2021, Respondent Joseph Caldwell filed a petition as an aggrieved resident seeking review of Formal Decision II, arguing the Zoning Administrator lacked legal authority to overturn his own decision or to unilaterally rezone a property. Mr. Caldwell also disputed the validity of Ybor Properties' evidence. A hearing officer reviewed Mr. Caldwell's petition in May 2022 and recommended Mr. Caldwell's petition be denied, effectively upholding Formal Decision II. In October 2022, the City Council held a public hearing to consider Mr. Caldwell's petition and the hearing officer's determination. The City Council remanded the matter back to the hearing officer to sort out the facts surrounding Ybor Properties' evidence and its communications with the Zoning Administrator about its application. In January 2023, the hearing officer conducted an additional hearing and found Mr. Caldwell had not met his burden of proving either Ybor Properties' evidence or Formal Decision II were faulty. In June 2023, the City Council held a three-hour hearing, including oral argument, after which it issued a final decision granting Mr. Caldwell's petition, finding the hearing officer erred as a matter of law.

Analysis

When the certiorari jurisdiction of the circuit court is invoked to review a quasi-judicial zoning decision, the "court functions as an appellate court and . . . is not entitled to reweigh the evidence or substitute its judgment for that of the [deciding body]." *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995). Under first-tier certiorari review of quasi-judicial rezoning decisions, this court is strictly limited to considering whether: (1) the City afforded Ybor Properties due process; (2) the City observed the essential requirements of law;

and (3) the decision is supported by competent and substantial evidence. *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982).

Essential Requirements of the Law

Ybor Properties argues the City departed from the essential requirements of City Code, § 27-61 (j)(1)(e)(iii) when the City Council did not remand the matter a second time. "A departure from the essential requirements of the law is more than simple legal error; rather, it is a 'violation of a clearly established principle of law resulting in a miscarriage of justice.'" *One W. Bank, F.S.B. v. Bauer*, 159 So. 3d 843, 844 (Fla. 2d DCA 2014) (quoting *Fassy v. Crowley,* 884 So. 2d 359, 364 (Fla. 2d DCA 2004)). The Florida Supreme Court has ruled "that 'applied the correct law' is synonymous with 'observing the essential requirements of law.'" *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995).

It is undisputed Ybor Properties filed multiple applications for similarly situated properties accompanied by copies of communications addressed to Gloria Moreda and dated some-time in 2000. Ybor Properties states it emailed a copy of the Letter to the City in April 2021, prior to filing the Application at issue, and claims it did not need to include the letter in the Application because the letter should have been on file with the City. At no point in the proceedings has this communication from April 2021 been produced; the hearing officer acknowledged the existence of the April 2021 communication based solely on hearsay evidence. City Council may reject the hearing officer's recommended order as a matter of law if the findings are not made in accordance with the City code. City Code § 27-61 (j)(1)(c)(iv) ("Hearsay evidence may be admitted, but shall not form the sole basis for the hearing officer's recommended order."). The Code permits the City to determine that a recommended final order is not based upon competent, substantial evidence. The City "*may* remand the matter back to the hearing officer," but it is not required to. City Code § 27-61 (j)(1)(e)(iii) (emphasis added).

Ybor Properties further asserts "the substitute 'conclusions of law' simply cannot exist with the entirety of the factual findings contained in the Second Recommended Order and ignored by the Revised Order," because the City Council acknowledged the Letter was not in the City's records prior to 2021. Pet. at 21. Assuming the City Council was bound by the hearing officer's finding, despite it being based solely on hearsay, this acknowledgement would not be improper. The hearing officer's second recommended order states the Zoning Administrator: "corrected his testimony; he confirmed he received a copy of the Opt-Out Letter via email directly from Mr. Accardi in April of 2021, and the legal department did not provide him a copy. . . . Mr. Cotton updated the database for FDN 21-125 to include the Opt-Out letter for the Property . . . ." Appx. at 422. City Council's acknowledgement does not conflict with the hearing officer's findings.

The City Council based its decision on the fact the Zoning Administrator denied Ybor Properties' application and did not have the authority to issue a

contradictory decision, either based on a reminder email or spontaneously of his own accord. It is undisputed Ybor Properties did not attach a copy of the Letter to its application. The Zoning Administrator denied the application in Formal Decision I because there was no direct evidence to support approval, either attached to the application or in the public record. Appx. at 54. Ybor Properties did not use the appeal process described in Formal Decision I. Neither Ybor Properties, nor any other party or witness, has cited an authority that would explicitly allow Formal Decision I to be reversed by any mechanism other than an appeal as described in the determination letter.

Ybor Properties argues the Zoning Administrator has the inherent authority "to correct mistakes brought about by inadvertence or clerical error." Pet. at 30 (citing *Taylor v. Dep't of Professional Regulation*, 520 So. 2d 557 (Fla. 1988)). Ybor Properties argues the Zoning Administrator's denial of its application was based on a clerical error because the City should have already been in possession of the Letter in 2021. This argument is also without merit. Ybor Properties' application notified the Zoning Administrator it believed the Letter should be, or have been, on file somewhere with the City. Appx. at 20. The Zoning Administrator addressed this assertion in Formal Decision I, stating "[c]opies of the correspondence for the other properties was submitted by the applicant, but nothing specific to this property. There is insufficient direct evidence in the record to support the claim that these properties were to be excluded from the change in the land use and zoning designation." Appx. at 53. The Zoning Administrator "reviewed the information submitted, the available public records as described in this letter, as well as that information received by our office during the Open Records Period." Appx. at 52. Assuming reminder emails are permitted as part of the application process, and this court does not find that they are, the reminder email described in this case amounts to a request for rehearing or reconsideration. The court in *Taylor* expressly stated the "case [did] not involve a petition for rehearing or reconsideration, situations in which a party is seeking to change the administrative decision." *Taylor v. Dep't of Professional Regulation*, 520 So. 2d at 559. This court finds the Zoning Administrator lacked the authority to rescind Formal Decision I and issue Formal Decision II in this case, either of his own volition or after being prompted by Ybor Properties via email.[1] *See* Tampa City code §§ 27-52 & 27-61 (describing the Zoning Administrator's powers and the exclusive procedure for reviewing the Zoning Administrator's determinations).

Had Ybor Properties pursued the appropriate avenue for challenging Formal Decision I, Ybor Properties would have borne the burden of proof. Per the City Code, an appeal is based on the underlying application, not the petition. 27-61 (j)(2)(c) (stating "[t]he petition at the hearing before city council shall be on the same application presented at the hearing(s) before the lower board"). *See also*

[1] The court declines to rule on the Zoning Administrator's authority to issue a second formal decision that does not change the ultimate determination.

Fla. Const. art. V, § 21 ("In interpreting a state statute or rule, a state court or an officer hearing an administrative action pursuant to general law may not defer to an administrative agency's interpretation of such statute or rule, and must instead interpret such statute or rule de novo."). Instead, because Ybor Properties attempted to use an unauthorized backdoor to challenge Formal Decision I, the hearing officer presided over a petition from an aggrieved resident, seemingly shifting the burden of proof. Mr. Caldwell challenged Formal Decision II, but it was Ybor Properties' application under scrutiny. Ybor Properties should have borne the burden of proof based on the city code requirements.

Due Process

Ybor Properties argues it "had no opportunity to seek review of [Formal Decision I] before the decision was rescinded." Pet. at 30. Under Florida law, "[a] quasi-judicial hearing generally meets basic due process requirements if the parties are provided notice of the hearing and an opportunity to be heard." *Jennings v. Dade Cnty.*, 589 So. 2d 1337, 1340 (Fla. 3d DCA 1991). The petition states "[p]ursuant to City Code Section 27-61(d), Ybor Properties had fourteen calendar days from issuance of the August 17, 2021, letter to file a petition for review." Pet. at 30. Formal Decision I included sufficient notice of Ybor Properties' opportunity to file a petition for review. Ybor Properties chose to send an email to the Zoning Administrator, effectively requesting reconsideration, despite being on notice that filing a petition for review was the proper and established avenue for challenging the decision. If the court were to assume the Zoning Administrator issued Formal Decision II totally unprompted (and the decision somehow precluded Ybor Properties from filing a petition for review, despite Formal Decision II's inclusion of an identical notice), it is wholly undisputed he did so on the thirteenth day of the fourteen-day window. To say then that Ybor Properties had "no opportunity to seek review," is at best a mischaracterization. Ybor Properties' argument ultimately fails because it chose to ignore the notice provided and instead pursued an unauthorized avenue for redress.

Conclusion

Considering the facts of the case as a whole, the Property was zoned YC-7 when Ybor Properties submitted its application for determination of legal non-conforming status in 2021. Ybor Properties "checked with the zoning department and found out the City of Tampa updated the current zoning of the Property from YC-6 to YC-7." Appx. at 19. Ybor Properties insists now that the property *should* have always been zoned YC-6 and *should* be entitled to legal non-conforming status. This argument is entirely based on an unwritten policy allegedly created unilaterally by one City employee who has since retired, with no evidence that this policy was meant to apply to the Property specifically. Appx. at 20 ("It seems like either the letter from the Property received by Gloria was either misplaced or inadvertently ignored but based on all the other approvals, her intent was to exempt the Property just like she did for all the other properties we submitted letters."). This court cannot and will not issue orders based on nebulous,

unwritten policies established in the record solely by hearsay testimony describing a decades-old recollection from a layperson with an interest in the outcome because such testimony, on its own, does not constitute competent, substantial evidence, nor is it permitted to form the sole basis of the hearing officer's findings. City Code § 27-61 (j)(1)(c)(iv).

Ybor Properties' production of a copy of a letter allegedly sent *to* Ms. Moreda does nothing to prove, disprove, or explain the City's decision to rezone the property in 2000. Not only has Ybor Properties provided no evidence of Ms. Moreda's intent, other than the hearsay testimony of its own agents, it has cited no statute, code, or other legal authority that would have allowed Ms. Moreda to unilaterally exempt the Property in the first place. *But see* Tampa City Code § 27-53(c)(2) ("The zoning administrator is not permitted to make changes to this chapter or to vary the terms of this chapter in carrying out their duties, except as specifically set forth in this chapter").

Because the City Council applied the correct law and based its rejection of the hearing officer's findings on the City Code, the City Council abided by the essential requirements of the law. Because the City provided adequate notice of Ybor Properties' right to appeal the Zoning Administrator's decisions through a petition to the City Council, and Ybor Properties chose to pursue another avenue to have the decision reviewed, Ybor Properties' right to due process was not abridged. Ybor Properties' petition is DENIED.

ORDERED in chambers on May 14, 2025.

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Judge Christine Marlewski

CHRISTINE A. MARLEWSKI, Circuit Court Judge

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