

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA**

**SUE CROSBY and BLOODHOUND
AMMUNITION, LLC,**

**CASE NO.: 2011-CA-11005-O
WRIT NO.: 11-70**

Petitioners,

v.

ORANGE COUNTY, FLORIDA,

Respondent.

Petition for Writ of Certiorari from the
Decision of the Orange County Board of
County Commissioners.

Karen Z. Consalo, Esquire, for Petitioners.

Joel D. Prinsell, Deputy County Attorney, for Respondent.

Before O’KANE, WHITEHEAD, ARNOLD, JJ.

PER CURIAM.

FINAL ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioners, Sue Crosby and Bloodhound Ammunition, LLC, (“Crosby”), seek issuance of a writ of certiorari to quash the Orange County Board of County Commissioners’ (“BCC”) approval to uphold the Zoning Manager’s denial of Crosby’s application for a Home Occupation license as defined in Section 38-1 of the Orange County Code. This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(3). We dispense with oral argument pursuant to Florida Rule of Appellate Procedure 9.320.

Summary of Facts and Procedural History

As gathered from the record, this action arose from BCC's denial of Crosby's appeal from a decision by the Zoning Manager, Mitch Gordon ("Gordon") that Crosby's proposed sale of firearms and ammunition manufacturing business at her single family residence in an R-1A zoned district in the unincorporated area of Orange County was not a "home occupation," as defined by Section 38-1 of the Orange County Code. After reviewing the information provided by Crosby concerning the nature of the home operation (currently a hobby), the Zoning Manager determined that her proposed business did not fall within the definition of a "home occupation."

The matter then proceeded to a public hearing on June 13, 2011 before the Orange County Board of Zoning Adjustment ("BZA"), an advisory body to the BCC. At the BZA hearing, Crosby's counsel presented argument and Crosby testified and showed a video of her home operation. Zoning Manager staff also testified. After considering the evidence and testimony, the BZA voted unanimously to recommend to the BCC that it deny Crosby's appeal. With respect to the manufacture of ammunition, the BZA found that Crosby was using mechanical equipment not "normally used for purely domestic or household purposes," contrary to the definition of "home occupation" in Section 38-1 of the Orange County Code.

On August 2, 2011, the BCC held a de novo public hearing for the purpose of reviewing Crosby's appeal from the BZA's recommendation to uphold the Zoning Manager's decision. The Zoning Manager, Gordon, testified, made a PowerPoint presentation, and answered questions from the BCC regarding the nature of Crosby's operation and his decision. Crosby also testified and her counsel presented argument. In addition, Crosby narrated the same video of her home operation that she had presented to the BZA. In

addressing Crosby's proposal to sell firearms from her home, Gordon testified that the definition of a "home occupation" in Section 38-1 provides that "only such commodities as are made on the premises may be sold on the premises." Therefore, he explained that because the firearms that would be sold from the Crosby's premises would not be made there, such sales would not fall within the definition of a "home occupation."

Gordon also testified that Crosby's two ammunition presses, otherwise known as reloading equipment, did not fall within the definition of a "home occupation" because the equipment is mechanical equipment that is not "normally used for purely domestic or household purposes," per Section 38-1. He also showed the BCC photos of ammunition presses and reloading equipment similar to Crosby's. Crosby testified that "Maybe reloading equipment is not normal, everyday household equipment for everyone. It is for us." She also stated "A hundred years ago, yes, reloading equipment was normal." Also, Gordon pointed out to the BCC that the Orange County Code provides for the sale and manufacture of firearms and ammunition in all commercial and industrial zoned districts. At the conclusion of the hearing, the BCC voted unanimously to uphold the Zoning Manager's decision.

Arguments

Crosby argues that: 1) The BCC failed to afford due process by treating this site-specific and quasi-judicial land use application as a new legislative rule of countywide applicability; 2) The BCC failed to base its decision on competent substantial evidence, but instead its decision was based on subjective opinion; and 3) The BCC departed from the essential requirements of the law by not complying with its own County Code or with section 790.33, Florida Statutes, in reaching its denial of the Home Occupation use.

Conversely, Orange, Florida argues that: (1) Crosby was afforded procedural due process; (2) The BCC observed the essential requirements of the law; and (3) The BCC's decision was supported by competent substantial evidence.

Standard of Review

Where a party is entitled to seek review in the circuit court from a quasi-judicial decision of local government, the circuit court is limited in its review to determining: (1) whether due process of law was accorded; (2) whether the essential requirements of law were observed; and (3) whether the decision is supported by competent substantial evidence.

Florida Power & Light Co. v. City of Dania, 761 So. 2d 1089 (Fla. 2000); *Haines City Community Development v. Heggs*, 658 So. 2d 523 (Fla. 1995); and *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624 (Fla. 1982). The burden is on the petitioner to show that a challenged decision of local government is illegal. *Phil's Yellow Taxi Cab Co. of Miami Springs v. Carter*, 134 So. 2d 230, 232 (Fla. 1961). In order to constitute a departure from the essential requirements of law, there must be a violation of a clearly established principle of law resulting in a miscarriage of justice. *Combs v. State*, 436 So. 2d 93, 96 (Fla. 1983).

Discussion

Due Process

First, this Court reviews whether Crosby was provided due process. From review of the record including the transcript from the hearing before the BCC on August 2, 2011, it is clear that Crosby was provided ample notice and the opportunity to be heard on the decisions she challenged throughout the appeal process with the Zoning Manger, BZA, and the BCC.

Jennings v. Dade County and Schatzman, 589 So. 2d 1337, 1340-41 (Fla. 3d DCA 1991).

Crosby specifically argues that she was denied due process because the BCC treated this site-

specific and quasi-judicial land use application as a new legislative rule of countywide applicability. Crosby's argument is based on the Zoning Manager, Gordon's comments at the BCC hearing that a decision by the BCC as to whether Crosby's home business constitutes a "home occupation" might set a "precedent" for other similar cases. Upon review of the hearing transcript, this Court finds that the BCC's action and decision did not include enacting changes to the existing Orange County Code and Gordon's comments were only to inform the BCC that if it decided that Crosby's home business was a "home occupation," then it might set a precedent for any future cases where someone else sought approval for the same home business.

Essential Requirements of Law

Section 38-1 of the Orange County Code reads as follows:

Home occupation shall mean any use conducted entirely within a dwelling or accessory building and carried on by an occupant thereof, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof, provided that all of the following conditions are met:

Only such commodities as are made on the premises may be sold on the premises. However, all such sales of home occupation work or products shall be conducted within a building and there shall be no outdoor display of merchandise or products, nor shall there be any display visible from the outside of the building. No person shall be engaged in any such home occupation other than two (2) members of the immediate family residing on the premises. **No mechanical equipment shall be used or stored on the premises in connection with the home occupation, except such that is normally used for purely domestic or household purposes.** Not over twenty-five (25) percent of the floor area of any one (1) story shall be used for home occupation purposes. Fabrication of articles such as commonly classified under the terms "arts and handicrafts" may be deemed a home occupation, subject to the other terms and conditions of this definition. **Home occupations shall not be construed to include uses such as barber shops, beauty parlors, plant nurseries, tearooms, food processing, restaurants, sale of antiques, commercial kennels, real estate offices, or insurance offices.**

(Emphasis added.)

This Court finds that the BCC did not depart from the essential requirements of law in applying Section 38-1 in the instant case when it found that Crosby's home business did not fall within the meaning of the definition of a "home occupation" because it did not meet "all" the criteria of a "home occupation". It was reasonable for the BCC to conclude that the criteria that was not met was: (1) The equipment that Crosby uses and stores in her home for the manufacture of ammunition was mechanical equipment that was not the type of equipment normally used for purely domestic or household purposes and (2) Crosby's business also involved the sale of firearms that she does not manufacture in her home.

Crosby also argues that the provision in the last sentence of Section 38-1 does not list her proposed business among the businesses that shall not be construed as home occupations. Therefore, she concludes that her business should not be precluded from consideration as a home occupation. This Court finds that this provision is not an exhaustive list of prohibited businesses as it includes the language "such as" before the language listing the businesses. *Foley v. Orange County*, 17 Fla. L. Weekly Supp. 69a (Fla. 9th Cir. Ct. Oct. 21, 2009), *cert. denied without opinion* (Fla. 5th DCA Case No. 5D09-4195 Aug. 16, 2010) (holding that the argument that the last sentence of Section 38-1 was an exhaustive list lacked merit). Further, the BCC's interpretation and application of its own code is entitled to great deference by the reviewing court and the court will not depart from the contemporaneous construction of the code unless the construction is clearly erroneous. *Verizon Florida, Inc. v. Jacobs*, 810 So. 2d 906, 908 (Fla. 2002).

Crosby also argues that the BCC's decision was discriminatory against firearms and ammunition businesses in direct conflict with section 790.33, Florida Statutes. Section 790.33 that does not prohibit zoning ordinances that encompass firearms and ammunition

businesses along with all other businesses, but it does prohibit zoning ordinances that are designed to discriminate against firearms and ammunition businesses. To address this argument, this Court would be required to review Section 38-1 of the Orange County Code, including the existing definition of a “home occupation” to determine whether the ordinance violates section 790.33, Florida Statutes, or constitutional rights. A petition seeking certiorari review is not the proper procedural vehicle to challenge the constitutionality of a statute or ordinance. *Miami-Dade County v. Omnipoint Holdings, Inc.*, 863 So.2d 195, 199 (Fla. 2003). Therefore, certiorari review is not the proper forum to address this argument that is more appropriate in a de novo court proceeding for declaratory relief.¹

Competent Substantial Evidence

From review of the record including the transcript from the BCC hearing, there was competent substantial testimony and evidence presented to the BCC to establish that Crosby’s business was not a “home occupation,” as defined by Section 38-1 including the testimony of the Zoning Manager Gordon that included a detailed PowerPoint presentation and the video presented by Crosby showing the mechanical equipment she uses to make the ammunition.

Conclusion

Based on the foregoing, this Court finds that: (1) Due process was accorded to Crosby throughout the hearing process and in compliance with the governing Orange County Code provisions; (2) The essential requirements of law were followed by the BCC including adherence to the governing Code provisions; and (3) The decision by the BCC was supported

¹ In Crosby’s initial Petition, she also included a complaint for declaratory judgment. Accordingly, on September 28, 2011, this Court dismissed the complaint for declaratory judgment and directed Crosby to file an amended petition for writ of certiorari. Per this Court’s Order, Crosby filed her Amended Petition and simultaneously filed a companion de novo lawsuit in the Circuit Civil Division seeking declaratory and injunctive relief, styled *Sue Crosby and Bloodhound Ammunition, LLC, v. Orange County Government*, Case No. 2011-CA- 13306.

by competent substantial evidence, including the testimony and documentation provided at the hearing.

Therefore, it is hereby **ORDERED AND ADJUDGED** that Petitioners, Sue Crosby's and Bloodhound Ammunition, LLC's Petition for Writ of Certiorari is **DENIED**.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 18th day of September, 2012.

/S/

JULIE H. O'KANE
Circuit Court Judge

/S/

REGINALD K. WHITEHEAD
Circuit Court Judge

/S/

JEFFERY C. ARNOLD
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to: **Karen Z. Consalo, Esquire**, 836 Highland Avenue, Orlando, Florida 32801 and **Joel D. Prinsell, Deputy County Attorney**, Orange County Attorney's Office, Post Office Box 1393, Orlando, Florida 32802-1393 on this 18th day of September, 2012.

/S/

Judicial Assistant