

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

REMINGTON ROAD, LLC,

Petitioner,

v.

TOWN OF OAKLAND, FLORIDA,

Respondent.

CASE NO.: 2011-CA-13356-O

WRIT NO.: 11-88

Petition for Writ of Certiorari from the
Decision of the Town Commission
for the Town of Oakland, Florida.

Rebecca E. Rhoden, Esquire, for Petitioner.

Wade C. Vose, Esquire, for Respondent.

Before WHITEHEAD, ARNOLD, HIGBEE, JJ.

PER CURIAM.

FINAL ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner, Remington Road, LLC (“Remington”), seeks issuance of a writ of certiorari to quash the decision of the Town Commission for the Town of Oakland, Florida (“Oakland”) rendered on September 14, 2011 pertaining to real property owned by Remington. 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

This action pertains to real property owned by Remington located on West Colonial Drive, State Road 50 ("SR 50"), in Oakland, Florida. Specifically, the property consists of two lots known as lots 5 and 6 of Remington Square ("Property"), a portion of which is located on the corner of SR 50 and Remington Road that is also a state road. Remington entered into a contract for the purchase and sale of said Property to RaceTrac. Allegedly, RaceTrac entered into the contract with the intent to build a RaceTrac gasoline station with a market on the Property. The Property was previously platted as a part of a larger subdivision containing numerous commercial lots to be in compliance with Oakland's comprehensive plan, subdivision regulations, zoning ordinances, and Gateway Corridor Overlay District.

On August 3, 2011, Remington filed two applications with Oakland for amendments to the plat of Remington Square to allow for: 1) a right turn in access from SR 50 into the Property; 2) a right turn in and right turn out access into the Property from Remington Road; and 3) a larger cross access easement within two lots of the subdivision.

The requested amendments were considered by Oakland's Development Review Committee ("DRC") at a meeting held on July 22, 2011 and by Oakland's Town's Planning and Zoning Board ("P & Z") at a meeting on August 16, 2011. In addition, Oakland's staff prepared a report on the subject. Also, on August 11, 2011 and August 12, 2011, the Florida Department of Transportation ("FDOT") sent Remington two Proposed State Highway Access Connection Notices of Intent to Issue Permit ("First and Second Conditional NOIs") requiring that specific conditions be met before a permit would actually be granted for access to SR 50 and Remington

Road. Among the conditions was the requirement that local government development approval or a development order be obtained as to the sites served by the connection.

On September 13, 2011, Oakland's Commission held a meeting to consider Remington's application for the amendments. At the Oakland Commission meeting, Remington argued that Oakland lacked the legal authority to deny access to state roads because only the FDOT could regulate such access. Remington also claimed that only the FDOT could consider safety issues related to state road access and claimed that the FDOT's issuance of the Notice of Intent to Issue Permit for state road access was conclusive proof that access was safe.

After review of the recommendations of Oakland's Planning Director, Roland D. Magyar along with the staff report, the recommendations of both the DRC and the P & Z, and Remington's argument and presentation of testimony and documents, the Oakland Commission made findings of fact and conclusions relating to the amendments. The following day, Oakland's Planner sent Remington an Approval with Conditions letter which set forth the detailed findings of fact and conclusions of the Oakland Commission which granted in part and denied in part Remington's requests.

Arguments

In the Petition, Remington argues that: 1) Oakland failed to observe the essential requirements of law in its denial of the requested access connections; 2) Oakland's decision with respect to the vehicular access connections was not supported by competent substantial evidence; 3) Oakland's denial of the enlargement of the cross-access easement was not supported by competent substantial evidence; and 4) Oakland is equitably estopped from restricting access to

the Property as it failed to object to the FDOT's approval of the requested access connections; therefore, the denial of such access violated Remington's right to due process.

Conversely, Oakland argues that: 1) The record reveals that Oakland did not depart from the essential requirements of law; 2) The record contains competent substantial evidence to support Oakland's decisions; and 3) Oakland argues that it is not equitably estopped from restricting access to the Property because the NOI's were not actual permits, but instead, required prior approval from Oakland; therefore, the Oakland Commission had nothing to appeal as there would be nothing for it to contest with the FDOT; further, Remington did not appeal the FDOT's conditions that required Oakland's permission for issuance.

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); *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

Argument I - Oakland failed to observe the essential requirements of law in its denial of the requested access connections:

Remington first argues that the Oakland Commission departed from the essential requirements of the law in restricting access to state roads from the Property. Remington bases this argument on the premise that the FDOT has exclusive jurisdiction concerning access points from state roads to property located within Oakland. Therefore, Remington concludes that Oakland did not have the authority to not approve the access requests. In support of this argument, Remington cites sections 335.182, 334.044, and 334.035, Florida Statutes, that address the FDOT's powers and duties and purpose of the transportation code stating that the FDOT has the authority to regulate use and access within the right-of-way within its jurisdiction.

The FDOT's First Conditional NOI included seventeen special conditions and four standard conditions that Remington was required to meet before the permit would be issued. Part 2, entitled "Notice of Intent to Issue Permit" of the First Conditional NOI specifically states:

IMPORTANT

This notice of intent to issue a permit does NOT constitute Department permit issuance. The permit will be issued after the permittee shows proof that a valid local government development approval or development order has been given to the sites served by the connection and special provisions of the approval consistent with the permit applications and conditions previously noted.

In addition, under Part 3 of the First Conditional NOI entitled “Conditions” states in part:

Conditions to be met before Permit will be issued:

Standard:

1. Development approval from the appropriate local government consistent with the Notice of Intent to Permit.

The Second Conditional NOI also included eight special conditions and four standard conditions that Remington was required to meet before the permit would be issued. This second notice included the same conditions stated above requiring that Remington must seek and obtain local government development approval or a development order before a permit would be issued.

Remington’s argument that the FDOT’s jurisdiction is exclusive concerning access points from state roads to property in Oakland lacks merits as follows: From the plain meaning of the applicable statutes, including the statutes cited by Remington, there is nothing therein providing that the FDOT’s jurisdiction is exclusive. Instead, several applicable statutes provide for cooperation between the State and local governments such as section 334.044, (22) Florida Statutes, that addresses the FDOT’s general powers and duties and includes a provision for cooperation and assistance with local governments. Also, section 166.021, Florida Statutes, provides home rule powers for municipalities. Lastly, section 163.3161, Florida Statutes, addresses the purpose of the Community Planning Act which includes utilizing and strengthening local government’s role in the establishment and implementation of comprehensive planning; providing local governments with the ability to encourage the most appropriate use of land, water, and resources consistent with the public interest; encouraging and ensuring cooperation between and among municipalities and counties; and coordinating planning and

development activities of units of local government with the planning activities of regional agencies and state government in accord with applicable provisions of law.

The standard condition in the NOIs, that prior local governmental approval be obtained before the issuance of an access permit to a state road, follows Rule 14-96.007(5)(c)1. of the Florida Administrative Code and is consistent with the cooperation and home rule provisions in the statutes. Further, as Oakland correctly points out in its Response:

The purposes of the FDOT and municipalities like Oakland, are only co-extensive in limited subject matters. Local governments have a more detailed understanding of the land use issues specific to its community. It is municipalities that make decisions about local land use, platting, planning, and other municipal functions. Municipalities must respect the rights of the FDOT to limit access to state roads within municipal boundaries. There is no question that access cannot be granted to a state road without the permission of the FDOT. However, it is equally clear that it is not the FDOT that makes other decisions that are purely municipal in nature, such as land use and platting decisions, even if those decisions implicate state road access (if approved by the FDOT). It is true that a property owner cannot gain access to a state road without the approval of the FDOT. But, in addition, when a municipality is exercising its home rule powers by making land development decisions, there is no compulsion that such land development decisions will result in a property owner having the right to directly access a state highway. It is up to the municipality to determine whether such access (if approved by the FDOT) is, or is not, appropriate under the particular development plan involved. This dual requirement for approval of the local government and the FDOT is reflected in the specific conditions in the NOIs issued by the FDOT, requiring a land owner to also get local governmental approval before the FDOT will actually issue a permit.

Accordingly, from the plain meaning of the applicable statutes and the administrative rule addressing the conditions in the FDOT's NOIs, the condition that prior local government development approval or a development order be obtained, notwithstanding the FDOT's preliminary approval, required that Remington obtain Oakland's approval of the access requests. Further, a municipality's interpretation and application of applicable statutes, code ordinances,

and other applicable regulations is entitled to great deference by the reviewing court and the court will not depart from the contemporaneous construction of such statutes and codes unless the construction is clearly erroneous. *See Verizon Florida, Inc. v. Jacobs*, 810 So. 2d 906, 908 (Fla. 2002).

Arguments II and III – Oakland’s decisions with respect to the vehicular access connections and denial of the enlargement of the cross-access easement were not supported by competent substantial evidence:

Next, Remington argues that Oakland’s decisions with respect to the vehicular access connections and denial of the enlargement of the cross-access easement were not supported by competent substantial evidence. Upon considering the testimony, other evidence, and arguments from counsel at the September 13, 2011 hearing, the Oakland Commission made the following findings of fact and conclusions as follows:

1. The Town has provided reasonable access to the State Highway System using sound traffic management through its powers to regulate land development.
2. Access to individual lots has been enhanced by allowing several additional access points from external and internal roadways.
3. Economic viability has been enhanced by allowing additional external and internal roadway access.
4. The applicant did not provide evidence to warrant changes to the approved preliminary site plan for SR 50 access, enlarging the cross access easement or for a right-out on Remington Rd.
5. The proposed changes would create unsafe traffic patterns both internal and external to the site.
6. The right-in only from Remington Road will not create safety concerns or illogical traffic movements.

7. Allow the combination of lots 5 and 6 into one lot 5, and renumber the remaining lots as appropriate.
8. Deny SR 50 access to lot 4 or any other frontage lot.
9. Deny the cross access easement enlargement and maintain the existing cross access easement a minimum of 20 ft. into lot 5.
10. Allow access from Remington Road, but limit to a right-in only. Design and location of the right-in on Remington Road must be approved by the Town DRC and the appropriate entity right-of-way utilization permit obtained. The right-in driveway shall be constructed after a site plan is approved for lot 5.
11. Move original lots 5/6 shared access east approximately 87 ft. east.
12. Allow additional joint access point for the lots 4/5 from the internal road system to be located at time of site plan approval.
13. Widen lots 6/7 cross access easement from 20 ft. to variable easement of 40 ft. to 50 ft.
14. Allow new driveway entrance to lot 6.
15. All other original PSP approvals shall remain in effect.
16. No site plan review applications will be accepted until the Remington Square final plat approval is obtained by the owner.

From review of the transcripts from the DRC and P & Z meetings and the Commission hearing, the Commission's decision was supported by competent substantial evidence including the DRC's and P & Z's detailed findings and recommendations, the September 13, 2011 staff report, and the testimony from Oakland's staff planner, Roland Magyar. The recommendations took into account several issues including Oakland's comprehensive plan policies, the Gateway Corridor Overlay District requirements, traffic patterns and safety, development goals, applicable ordinances and regulations, other similarly situated properties nearby, conflict points, the three access points that Remington currently had, and the prior subdivision approval based on internal

and common access. Further, the Oakland Commission was in the best position to weigh the evidence presented from Oakland and Remington. *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957) (holding certiorari review by the appellate court does not include re-weighing or evaluating the evidence presented before the tribunal or agency whose order is under examination); *Dusseau v. Metropolitan Dade County Bd. of County Commissioners*, 794 So. 2d 1270, 1275-1276 (Fla. 2001) (holding that the competent substantial evidence standard cannot be used by a reviewing court as a mechanism for exerting covert control over the policy determinations and factual findings of the local agency; rather, this standard requires the reviewing court to defer to the agency's superior technical expertise and special vantage point in such matters).

Argument IV- Oakland is equitably estopped from restricting access to the property as it failed to object to the FDOT's approval of the requested access connections; therefore, the denial of such access violated Remington's right to due process:

Remington argues that Oakland is equitably estopped from restricting direct access to state roads from the Property because the Commission did not appeal the Conditional NOI's. This Court concurs with Oakland in its Response that this argument lacks merit because the Conditional NOIs were not actual permits, but instead, required prior approval from Oakland before issuance. Therefore, the Commission had nothing to appeal because there was nothing for it to contest with the FDOT. Further, Remington did not appeal the FDOT's conditions that required Oakland's permission for issuance.

Conclusion

Based on the foregoing, this Court finds: 1) Due process was accorded to Remington throughout the application and hearing process; 2) The essential requirements of law were followed by Oakland; and 3) The decision by Oakland was supported by competent substantial evidence.

Therefore, it is hereby **ORDERED AND ADJUDGED** that Petitioner, Remington Road, LLC's Petition for Writ of Certiorari is **DENIED**.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 4th day of April, 2013.

/S/ _____
REGINALD K. WHITEHEAD
Circuit Court Judge

/S/ _____
C. JEFFREY ARNOLD
Circuit Court Judge

/S/ _____
HEATHER L. HIGBEE
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to: **Rebecca E. Rhoden, Esquire and Michael V. Elsberry, Esquire**, Lownes, Drosdick, Doster, Kantor & Reed, P.A., 450 S. Orange Avenue, Suite 800, Orlando, Florida 32801; **Wade C. Vose, Esquire, Gretchen R. H. Vose, Esquire, and Philip S. Kaprow, Esquire**, Vose Law Firm, LLP, 324 W. Morse Blvd., Winter Park, Florida 32789; and **J. Edwin Mills, Esquire, Town Attorney**, Town of Oakland, Florida, Post Office Box 98, Oakland, Florida 34760 on this 5th day of April, 2013.

/S/ _____
Judicial Assistant