

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

RONALD CARTAS,

Petitioner,

v.

ORANGE COUNTY, FLORIDA,

Respondent.

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CASE NO.: 2013-CA-010717-O

WRIT NO.: 13-72

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

Thomas B. Luka, Esquire, for Petitioner.

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

Before WOOTEN, HIGBEE, and H. RODRIGUEZ, JJ.

PER CURIAM.

**FINAL ORDER DENYING THIRD AMENDED PETITION  
FOR WRIT OF CERTIORARI**

Petitioner, Ronald Cartas (“Cartas”), seeks issuance of a writ of certiorari to quash the Decision of the Board of County Commissioners for Orange County, Florida (“BOCC”) rendered on July 16, 2013 pertaining to real property owned by Cartas. 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*

Cartas currently owns real property located on Madison Avenue in Bithlo, Orange County, Florida. The property was and is currently zoned RT-2 (a residential single-family and mobile home zoning district). Back in 1978, the previous owner of the subject property acquired from Orange County a non-conforming use exemption that allowed for keeping and selling certain animals; buying, selling, and repair of tractors, automobiles, and other machinery; keeping of feed, equipment, fence posts, and wire tools; saddle and harness repair; wagon manufacturing; doctoring dogs; selling vegetables and smoked mullet and meat; and use as a salvage yard. Thereafter, Cartas purchased the subject property and operated a salvage yard and auto parts business.

On December 14, 2012, Mitch Gordon (“Gordon”), the County Zoning Manager, sent Cartas an initial letter with documents informing Cartas that Orange County had received inquiries from several citizens about whether the nonconforming use that had been granted to the property in 1978 had been abandoned, and that, for the reasons set forth in his letter, it appeared to him that the use had been abandoned between 2005 and 2010. Gordon’s letter cited section 38-51 of the Orange County Code that requires that any nonconforming use that has been discontinued for 180 days or more, shall thereafter not be used except in compliance with the regulations of the zoning district in which it is located. In response, Cartas claimed that he did not abandon the non-conforming use i.e. the operation of the salvage yard and auto parts business.

On March 22, 2013, Gordon sent Cartas’ attorney, a non-conforming use determination that all nonconforming uses on the property had been abandoned. The determination incorporated Gordon’s December 14, 2012 letter and attachments, and noted that he had met

with Gordon's attorney on January 14, 2013, and at that time afforded him additional time to research and submit any additional information to support Cartas' claim that the nonconforming use had not been abandoned. In making his determination, Gordon referenced aerial photographs from 2008 through 2010 indicating that the nonconforming use had ceased, with activity not recommencing until 2011 or 2012; records showing that from at least 2005, no occupational licenses (also known as business tax receipts) were active for the subject property and were acquired after the fact on January 28, 2013; and several statements and affidavits of neighboring property owners that the use had been abandoned.

Cartas appealed Gordon's determination to the Board of Zoning Adjustment ("BZA") pursuant to Section 38-55 and Section 30-43(1) of the Orange County Code. On June 6, 2013, the BZA upheld Gordon's determination after conducting a hearing on the appeal and concluded that no new evidence was introduced by Cartas to overturn the determination. Thereafter, Cartas appealed the BZA decision to the BOCC. On July 16, 2013, a de novo hearing was held before the BOCC that included evidence and testimony from all parties and the public. At the conclusion of the hearing, the BOCC unanimously voted to deny Cartas' appeal and entered its oral decision in writing August 1, 2013 that Cartas now appeals.

### ***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, 1092 (Fla. 2000) citing *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982). Also, under section 162.11, Florida Statutes, a circuit

court reviewing a final administrative order cannot engage in de novo review and must limit its review to the record created before the enforcement board.

### *Arguments*

In his Third Amended Petition, Cartas argues that the BOCC ignored competent and compelling evidence that the non-conforming use of the land had not been abandoned for 180 days. Conversely, Orange County argues: 1) The BOCC afforded Cartas procedural due process; 2) The BOCC did not depart from the essential requirements of the law as set forth in the Orange County Code and applicable case law; and 3) The BOCC's decision to reject Cartas' appeal of the Zoning Manager's decision is supported by competent substantial evidence.

### *Analysis*

The crux of this case involves whether competent substantial evidence existed in support of the BOCC's decision finding that Cartas abandoned the nonconforming use of his property per section 38-51 of the Orange County Code that states:

When a nonconforming use of land, a building or a structure has been discontinued for one hundred eighty (180) days or more, the land, building or structure shall thereafter not be used except in compliance with the regulations of the district in which it is located. However, for a commercial or industrial building or structure or use only, upon application the nonconforming use may be extended up to an additional ninety (90) days subject to approval by the zoning manager. The applicant for the extension shall submit documentation to the zoning manager which clearly demonstrates that the nonconforming commercial or industrial building or structure has been actively marketed for the nonconforming use or has been undergoing repairs during the majority of the above-referenced 180-day period.

At the hearing before the BOCC, Gordon testified and provided a PowerPoint presentation that included color zoning maps and aerial photos of the subject property for 2006 through 2012. Gordon pointed out that the photos taken from 2008 through 2010 showed no discernible salvage yard activity. Also submitted in the record was the County staff's memo to

the BOCC dated June 26, 2013 and the Zoning Division's report. Gordon discussed the zoning requirements and records as to the history of the nonconforming use of the salvage yard that pertained to tract/lot 136 of Cartas' property. Gordon also discussed the events and correspondence arising from the concerns from the County Code Enforcement Division and some of the residents about the status of the nonconforming use of the salvage yard. Gordon stated that he preliminarily found that for five or six years there were no active business/occupational licenses on the property for that nonconforming use. He reiterated that he met with Cartas' attorney on December 14, 2012, and told him to provide him with everything and anything he had in support of the nonconforming use. Gordon also stated that he went back and forth over the course of about two or three months trying to get information from Cartas' team, but he did not receive anything of note for the years that they did not have business licenses. Gordon then stated that on January 28, 2013, Cartas retroactively purchased business licenses for those years and submitted them to his office and also on that same day, Cartas went to the Orange County Property Appraiser and had tracts/lots 93 and 136 combined into one parcel under tract/lot 136.

Next at the hearing, Cartas' attorney, Thomas Luka, spoke. He argued that Cartas' business was ongoing since at least 2005 and that Cartas had brought all the business/occupational licenses up to date. He stated that not renewing those licenses from 2005 to 2012 was a mistake on Cartas' part and was not voluntary and thus, there had not been any showing that Cartas had voluntarily abandoned the nonconforming use for 180 days or more. He then concluded that Gordon's determination should be overturned. Mayor Jacobs commented in disagreement as to the argument that Cartas' neglect in timely renewing the licenses was involuntary.

Following his attorney's presentation, Cartas testified. Commissioner Ted Edwards asked Cartas why the photos that Gordon introduced for 2008 through 2010 showed nothing happening on the property and showed that there were no automobiles on the property. Cartas replied that the business never ceased and there were always automobiles there. Commissioner Edwards reiterated that the photos indicated to the contrary.

Next, several residents and other persons testified, summarized as follows: Resident, Patricia Fischer testified and introduced photos. She informed the BOCC that she has lived behind Cartas' property since 1973. She further testified that in the years from 2008 to 2010, Cartas' property was quiet as there was no movement, or people on it, but thereafter all of a sudden there was commotion on the property with the sounds of beeping and cars crushing.

Resident, William Acevedo, testified that since 2002 he has lived on Madison Avenue on the corner lot next to Cartas' property. He testified that after complaining to the BOCC about Cartas extending lot 136 to include lot 93, he knew that Cartas and his father Lou moved away from the property out of Florida. Thus, he stated that it was no mistake that the business was closed and abandoned. He further testified that there was a big red sign that stated closed for business and that a person who lived on the property and who helped Cartas with mechanics was fired.

Next, Billy Mendenhall testified that he has lived in the vicinity on Belvedere Road since 1974 and drives by Cartas' property often to visit a friend. He stated that in 2008 there was a gate put up in front of the salvage yard that stated it was closed. He also stated that the business was closed until 2010.

Linda Butler testified that she resides on Belvedere Road which is in the back of the salvage yard. Twice she stated that Cartas was not there until 2010. She also presented photos

showing that when she purchased her property, there were woods and trees behind her property, but now the natural habitat where the salvage yard is located had been cleared by Cartas. Evelyn Cherry another resident on Madison Avenue expressed her concerns about contamination from Cartas' property.

Yolanda Mamlouk testified that she and her husband purchased the business from Cartas in 2010 and that they have a lease to purchase the property. Her husband, Khaldoun Mamlouk, affirmed that he and his wife purchased the business from Cartas in 2010 and stated that the salvage business was never closed.

Cartas' father, Lou Cartas, testified that the salvage yard business did not close down. Instead, he stated that Cartas was working in the shop and wasn't doing the volume of work that he was doing before.

Other persons who spoke in favor of Cartas were: James Grissom, a tow truck driver for a repossession company, who testified that the salvage yard was there from 2010 and that Cartas' business was good for the community; Xenia Grillo who currently works at the property testified that she became aware of the salvage yard business back in 2009; Roland Webb, who ran a towing company, and Harvey Clark who used to work with Lou Cartas at an another salvage yard, spoke in favor of Cartas.

At the conclusion of the hearing, Commissioner Edwards made a motion to deny the appeal, consistent with the BZA's recommendation, emphasizing that the neighbors have consistently taken the position that the business was not there during the subject time period. He added that although there was conflicting testimony, the evidence does support the Zoning Manager's determination.

Commissioner Brummer, who seconded the motion, remarked that if Cartas had in fact been in business during those years in question, he should have submitted copies of annual sales tax registration certificates with the Department of Revenue and copies of sales tax records. Furthermore, Commissioner Brummer added that Cartas should have submitted federal tax returns to the IRS each year. He concluded that the evidence showed that the nonconforming use was abandoned and was not a continuous use.

This Court finds that from review of the record evidence and testimony presented at the hearing before the BOCC as summarized above, specifically the testimony and evidence provided by County Zoning Manager, Gordon, and several residents (Patricia Fischer, William Acevedo, Billy Mendenhall, and Linda Butler), provided competent substantial evidence in support of the BOCC's decision finding that the nonconforming use of the salvage yard had been abandoned per section 38-51 of the Orange County Code. Further, the BOCC's interpretation, application, and enforcement of its own code should be given great deference by this Court. *See Verizon Florida, Inc. v. Jacobs*, 810 So. 2d 906, 908 (Fla. 2002).

Lastly, the BOCC as the finder of fact was responsible for weighing the evidence, including the credibility and demeanor of witnesses and competent substantial evidence existed in support of its findings and decision. Thus, this Court cannot go further to reweigh evidence and make findings of fact. *See City of Deland v. Benline Process Color Company, Inc.*, 493 So. 2d 26, 28 (Fla. 5th DCA 1986) (holding that the circuit court acting in its appellate capacity departed from the essential requirements of law when it reevaluated the credibility of evidence and reweighed conflicting evidence that was before the code enforcement board). "As long as the record contains competent substantial evidence to support the agency's decision, the decision



is presumed lawful and the court's job is ended." *Dusseau v. Metropolitan Dade County Board of County Commissioners*, 794 So. 2d 1270, 1276 (Fla. 2001).

In conclusion, this Court finds that Cartas was provided due process and the BOCC's findings and decision did not depart from the essential requirements of the law and were supported by competent substantial evidence.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that Petitioner, Ronald Cartas' Third Amended Petition for Writ of Certiorari is **DENIED**.

**DONE AND ORDERED** in Chambers at Orlando, Orange County, Florida, this 29th day of August, 2014.

/S/  
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**WAYNE C. WOOTEN**  
**Presiding Circuit Judge**

HIGBEE and H. RODRIGUEZ, JJ., concur.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Order has been furnished to: **Thomas B. Luka, Esquire**, Adams & Luka, P.A., 390 N. Orange Avenue, Suite 1840, 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 29th day of August, 2014.

/S/  
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Judicial Assistant