

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT,
IN AND FOR MANATEE COUNTY, FLORIDA

MICHAEL CONWAY,

Petitioner,

v.

CASE NO. 2003-CA-003866

MANATEE COUNTY, a political
Subdivision of the State of Florida and
the MANATEE COUNTY HISTORIC
PRESERVATION BOARD, a Board
appointed by the Manatee County
Commission,

Respondent.

Received By
Manatee County Attorney's
Office

Date 10-19-04

Time 3:00 pm

Rec'd By Mail

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ORDER DENYING PETITION FOR WRIT OF CERTIORARI

THIS CAUSE came before the Court on the Petition for Writ of Certiorari ("Petition"), the Response and the Reply. Pursuant to Fla. R. App. P. 9.030(c)(3) and Fla. R. App. P. 9.100(c)(2), Petitioner, Michael Conway ("Petitioner"), has requested this Court review the June 16, 2003 decision of the Respondent, the Manatee County Historic Preservation Board ("Board"), denying Petitioner's application for a Certificate of Appropriateness ("Certificate") for the construction of a 6-foot wide, 400-foot long dock on and adjacent to Petitioner's property. The dock proposed by Petitioner is located within a Historic Vista Protection Area, as designated by Section 720.2.1(1) of the Manatee County Land Development Code ("LDC").

Upon review of the Petitioner's Petition in the above-styled matter, this Court issued a Show Cause Order on September 23, 2003. On November 4, 2003, the Respondent filed a response, and on December 15, 2003, the Petitioner submitted his reply. This Court granted Petitioner's Request for Oral Argument and heard arguments of

counsel on September 29, 2004. Upon due consideration of the same and being otherwise fully advised in the premises, the Court finds that the requested relief must be **DENIED** for reasons set forth below.

Issues

The Court finds that the Petitioner has raised two issues in the Petition. The first issue is whether the Board observed the essential requirements of law by complying with the LDC when it reviewed and ultimately denied the Petitioner's request for a Certificate. The second issue is whether the Board's denial of Petitioner's application for a Certificate to build the dock is supported in the record by competent substantial evidence.

Standard and Scope of Review

A circuit court uses a three-part standard of review to examine an administrative agency decision and determines: (1) whether procedural due process has been accorded; (2) whether the essential requirements of law have been observed; and (3) whether the administrative findings and judgment are supported by competent substantial evidence. *See City of Deerfield Beach v. Vaillant*, 419 So. 2d 624 (Fla. 1982). In certiorari review, a circuit court is prohibited from weighing or reweighing the evidence and commits reversible error by substituting its judgment for that of the administrative board. *See Haines City Community Development v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995).

Essential Requirements of Law

The first issue raised by Petitioner is whether the Board observed the essential requirements of law when it reviewed Petitioner's application for a Certificate. Petitioner argues that the Board departed from the essential requirements of the law when it considered factors outside of those set forth in Section 720 of the LDC. Specifically, Petitioner alleges that the Board also considered such factors as: the likelihood of viewshed

alteration by a potential act of nature, inadequate manatee protection, archeological significance of the site, and the property owner's right to have a dock on his property. Petitioner claims these matters were outside of the scope of the Board's review and, therefore, erroneous justifications for the Board's denial of the Certificate.

Upon review of the record, including the transcript from the Petitioner's April 21, 2003 and June 16, 2003 meetings before the Board, this Court finds that the Board did not depart from the essential requirements of the law when it made its conclusion to deny Petitioner's application for a Certificate. The visual impact assessment in Section 720 comprises only a portion of the overall guidelines for the Board to utilize prior to issuing a Certificate. Moreover, the LDC specifies that Section 720 visual impact guidelines are *additional* criteria particular to a Historic Vista Protection Area and are not the only standards to be used by the Board in its review.

Pursuant to Sections 306.2, 514 and 720.3 of the LDC, the Board must review and approve an application for a Certificate as a prerequisite to the Petitioner's construction of a dock on his property, which is located in a Historic Vista Protection Area, adjacent to the DeSoto National Memorial Park. The LDC sets forth guidelines, both general and specific, that the Board must utilize in its review. Section 514.3.2.1 of the LDC provides the following General Criteria for Granting Certificates of Appropriateness:

Section 514.3.2.1 In approving or denying applications for Certificates of Appropriateness for alterations, new construction, demolition or relocation, the Historic Preservation Board shall use the following general guidelines: (1) The effect of the proposed work on the Historical and Archaeological Overlay District or historic landmark upon which such work is to be done; (2) The relationship between such work and other structures in the landmark Historical and Archaeological Overlay District or on the historic landmark; (3) The extent to which the historic, architectural, or archaeological significance, architectural style, design, arrangement, texture, materials and color of the historic landmark or Historical and Archaeological Overlay District will be affected; (4)

Whether the denial of a Certificate of Appropriateness would deprive the property owner of reasonable beneficial use of his property; (5) Whether the plans may be reasonably carried out by the applicant.

The Board further applied Section 514.3.2.3(1) to Petitioner's application for "New Construction." This Section provides, "The height of the proposed building or structure shall be visually compatible with adjacent buildings and structures." Finally, Section 514.3.2 directs the Board to Section 720 for the following additional guidelines for properties located within a Historic Vista Protection Area:

Section 720.3.1 All projects located in historic viewsheds shall be reviewed for visual impacts. This review will include but will not be limited to:

1. Height
2. Waterfront structures (length, location and height)
3. Location
4. Design
5. Scale
6. Color
7. Historic Compatibility

The record demonstrates that the Board observed the essential requirements of the law when it utilized the guidelines of the LDC to deny the Petitioner's application. The transcript of the proceedings before the Board reveals that while numerous ancillary issues (i.e., manatee protection, dock rights) arose in the course of the Board's discussion, the Board denied the Petitioner's application based on the proposed dock's level of visibility from the DeSoto Memorial,¹ the potential for historic view obstruction by boats at the dock,² the unique viewshed problem posed by Petitioner's proposed dock due to its angle,³ and the potential for archeological, architectural and historic impact on the site.⁴

¹ See LDC, § 514.3.2.3(1); § 720.3.1

² See LDC, § 514.3.2.1; § 514.3.2.3(1); § 720.3.1

³ See LDC, § 514.3.2.3(1); § 720.3.1

⁴ See LDC, § 514.3.2.1

Competent and Substantial Evidence

The second issue raised by the Petitioner is whether there is competent substantial evidence to support the Board's denial of Petitioner's application for a Certificate.

With respect to this third prong of certiorari review, if the evidence in support of the administrative agency's decision is both competent and substantial, the circuit court must uphold the decision; if a court finds the evidence is not competent and substantial, the administrative decision must be quashed. *See City of Sarasota v. Pleasures II Adult Video, Inc.*, 799 So. 2d 325 (Fla. 2d DCA 2001); *Hollywood Firemen's Pension Fund v. Terlizzese*, 538 So. 2d 934 (Fla. 4th DCA 1989). The Florida Supreme Court has determined that "the evidence relied upon to sustain the ultimate finding [of the administrative body] should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957).⁵

In first-tier certiorari review, the circuit court is required to make a determination as to whether the evidence *in support of the administrative body's decision* is competent and substantial, notwithstanding the introduction of competing evidence. *See Broward County v. G.B.V. International, Ltd.*, 787 So. 2d 838, n.25 (Fla. 2001)(finding County staff recommendation for approval of plat is not dispositive; proper first-tier certiorari review is whether County Commission had competent and substantial evidence to deny plat application); *See also Dusseau v. Metropolitan Dade County Board of County*

⁵ Detailed findings of fact assist this Court in determining whether or not the facts found by the Board constitute lawful grounds for its decision and whether the evidence relied upon by the Board supports its finding. "Without [detailed findings], the reviewing court would be compelled to grope in the dark and to resort to guess-work as to what facts the Board had found to be true and what facts alleged were not found to be true." *Laney v. Holbrook*, 8 So. 2d 465, 468 (Fla. 1942); *See also Broward County v. G.B.V. International, Ltd.*, 787 So. 2d 838 (Fla. 2001); *Redner v. City of Tampa*, 827 So. 2d 1056 (Fla. 2d DCA 2002); and *Lee County v. Sunbelt Equities, II Limited Partnership*, 619 So. 2d 996 (Fla. 2d DCA 1993).

Commissioners, 794 So 2d 1270, 1275 (Fla. 2001); *Florida Power & Light Company v. City of Dania*, 761 So. 2d 1089, 1094 (Fla. 2000). Once a court finds competent and substantial evidence exists to support the administrative ruling, the inquiry need not proceed any further. A court enters into the impermissible trap of reweighing the evidence when it reviews the record for consideration of the opposing party's rebuttal evidence. *Id.*; *See also City of Sarasota*, 799 So. 2d at 327-28; *Department of Highway Safety and Motor Vehicles v. Smith*, 687 So. 2d 30 (Fla. 1st DCA 1997).

This Court finds that competent and substantial evidence exists to support the decision of the Board to deny Petitioner's application for a Certificate. The Board met with the Petitioner on two occasions, April 21, 2003 and June 16, 2003, to take testimony and evidence regarding Petitioner's application. The Board heard testimony from the Petitioner, Petitioner's representatives, County staff, and local residents; in addition, the Board considered evidence including Petitioner's application, Staff reports, aerial maps, diagrams, photographs, and related correspondence.

The record shows that the Board heard testimony from Troy Salisbury, Planning Department representative, regarding the potential impact on the viewshed created by the length of the dock and the boats parked at the dock. In his testimony, Mr. Salisbury stated that, as compared to the other docks in the vicinity approved in 1998 and 2000 by the Board, the Petitioner's dock is the "most visible dock from the DeSoto Monument due to its proximity." (04/21/03, Tr. at 7-8). Mr. Salisbury provided additional testimony stating, "[A] major component of the adjacent existing dock that obstructs the view of the monument property is not the dock but the boats themselves because of their mass and height." (04/21/03, Tr. at 8).

In addition to testimony by Mr. Salisbury, the Board received into evidence the Staff Reports dated April 21, 2003 and June 16, 2003 recommending approval of Petitioner's application, with stipulations. This conclusion, however, is not dispositive. See *Broward County v. G.B.V. International, Ltd.*, 787 So. 2d 838. The portion of the report addressing the guidelines for new construction indicates that Petitioner's application failed to meet the requisite guidelines for new construction pursuant to Section 514.3.2.3(1) of the LDC.

In conclusion, this Court finds that the Board observed the essential requirements of law and that the Board's denial of Petitioner's application for a Certificate is supported by competent substantial evidence.

It is therefore,

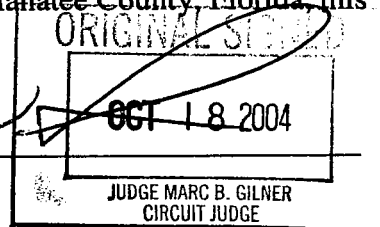
ORDERED AND ADJUDGED that the Petition for Writ of Certiorari is **DENIED**.

DONE AND ORDERED in Chambers at Bradenton, Manatee County, Florida, this

18 day of October, 2004.

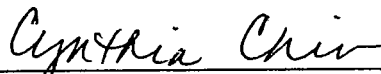


Marc B. Gilner,
Circuit Judge



Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the above order has been furnished to: **James Harrison, Esq.**, Post Office Box 9320, Bradenton, Florida 34206; **Harry Haskins, Esq.**, SunTrust Building, 34200 S. Tamiami Trail, Suite 201, Sarasota, Florida 34239; **James A. Minix**, Senior Assistant County Attorney, Post Office Box 1000, Bradenton, Florida 34206-1000; **Manatee County Board of Commissioners**, Post Office Box 1000, Bradenton, Florida 34206-1000 this 19 day of October, 2004.



JUDICIAL ASSISTANT