IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

CITY WALK – URBAN MISSION INC.,

Petitioner,

v.

Case No.: 2022 AP 1

CITY OF TALLAHASSEE,
TALLAHASSEE-LEON COUNTY
PLANNING COMMISSION,

Respondents.

_____/

ORDER QUASHING THE COMMISSION'S DECISION AND REMANDING TO THE COMMISION FOR A DECISION CONSISTANT WITH THE LAW

THIS CAUSE is before this Court upon Petitioner's, City Walk – Urban Mission Inc.'s ("City Walk") Petition for Mandamus and Alternative Writ of Certiorari to the City of Tallahassee and the Tallahassee-Leon County Planning Commission, ("the Petition"), filed February 27, 2022. It consists of several claims which shall be explained below.

Introduction: Facts and Procedure

1. The factual and procedural history of this case is long and complex and is fully described in the record. However, for the sake of clarity, this Court shall provide a summary. City Walk operates a church and residential religious mission ("the Shelter"). Pet's Appx., Vol. II, CW-13, at 288-310. Towards the end of 2020, during the COVID pandemic, representatives of the City of Tallahassee ("the City") encouraged City Walk's mission and operation of the Shelter. Pet's Appx., Vol. III, Hearing Transcript ("HT"), Vol. II at 1723; HT. Vol. II at 1654-56. City representatives even suggested there would be public funds available for City Walk's Shelter and encouraged them to apply for those benefits. Pet's Appx., Vol. III, HT. Vol. II at1655-56. The City donated supplies as well. Pet's Appx., HT. Vol. II at 1630, 1641, 1656, 1666, 1747. City Walk, with strong encouragement from the City, opened the Shelter at the end of November 2020 as what City Walk describes as a "low-barrier" shelter. Pet's Appx., Vol. III,

HT. Vol. II at 1746; HT. Vol. II at 1652-57, 1663-1665, 1670, 1723. The Shelter's operations put stress on the local transportation infrastructure and caused an increase in loitering, panhandling, nuisance complaints, and littering in the area. Pet's Appx., Vol III, HT, Vol. I at 1415, 1419-20, 1452-54; HT, Vol. III at 1858, 1962, 1967; HT, Vol. IV at 2120, 2149. The City's relations with City Walk and the Shelter quickly soured. Pet's Appx., Vol. III, HT, Vol. IV at 2103. The City gave City Walk notice that it was in violation of the Tallahassee Land Development Code and requested voluntary compliance. Resp. at 3. In response, City Walk filed for a permit to operate a transitional residential facility ("TRF"). Id.

2. City Walk applied for the TRF permit to operate at the Mahan location on February 3, 2021. The City's Staff Reports found that City Walk's Application met all the required criteria except that:

1) The use created a private nuisance;
2) City Walk's plan for external security was not sufficient; and
3) The use of the property as a homeless shelter changed the character of the community.

Section 10-417, Tall. Land Dev. Code; Pet's Appx., Vol. II, CW-2, Planning Dept. Staff Report, at 130-131, 131-135.

3. On March 8, 2021, the five-member City of Tallahassee Development Review Committee ("DRC") met and conducted a public hearing concerning the City Walk application. Pet's Appx., Vol. II, CW-16, DRC Site Plan Denial Letter, at 315. The DRC found that the proposed shelter did not meet the conditions set out in section 10-417 of the Tallahassee Land Development Code. Specifically, the DRC found (a) the shelter would unreasonably adversely impact the residential properties and businesses in the area, (b) that as proposed, the shelter would not provide adequate supervision and security, and (c) that the shelter would constitute a private nuisance. Pet's Appx., Vol. III, HT, at 2219. City Walk filed a petition for quasi-judicial

proceedings pursuant to section 9-155(1) of the Tallahassee Land Development Code. The case was referred to the State of Florida, Division of Administrative Hearings (styled as City Walk – Urban Mission Inc v. City of Tallahassee, DOAH Case No: 21-1262) and was assigned to a DOAH administrative law judge for fact-finding and a recommended order. A two day evidentiary hearing was held on August 9 and 10, 2021. The administrative law judge issued a recommended order dated November 21, 2021, approving City Walk's application. Pet's Appx. Vol. I, Recommended order of ALJ, at 10-50. The Tallahassee-Leon County Planning Commission ("the Commission") held a public hearing on the recommended order on January 12, 2022. The Commission voted 3-2 to deny the City Walk application to operate the Shelter. The Commission order was issued on January 27, 2022. Pet's Appx., Vol. I, Final Order of Planning Commission, at 8-9.

Introduction: The Legal Claims

4. City Walk seeks a writ of mandamus compelling Respondents to "render a written Final Order which conforms in all respects to the vote taken at the public hearing." Pet. at 25, §V. Should this Court find City Walk is not entitled to the issuance of a writ of mandamus, City Walk seeks review of the Commission's action via a writ of certiorari and a finding that the Commission violated its right to due process and departed from the essential requirements of the law when it rendered its Final Order on January 27, 2022. Pet. at 30, §VIII. As relief, City Walk asks this Court to quash the Commission's Final Order and "remand the matter to the Planning Commission for entry of an order consistent with the law and the record…" Pet. at 46, §IX. Finally, City Walk argues that the City's denial of their application violates the federal Religious Land Use and Institutionalized Persons Act ("RLUIPA") and its Florida counterpart, the Religious Freedom Restoration Act ("RFRA") in that it substantially burdens City Walk's exercise of religion, fails to meet strict scrutiny, and is not the least restrictive means to further the City's interest. Pet. at 46-65, §§ X-XII.

5. In response, the City argues that the ALJ's findings were contrary to the weight of the evidence, that the ALJ utilized the wrong standard regarding the burden of proof, and that therefore the Commission properly rejected the ALJ's recommendations and denied City Walk's application. Resp. at 5, § II; Resp. at 17, §.C; Resp. at 28-33, §E-F; Resp. at 37-38, §H. The City further argues that City Walk is collaterally estopped from re-litigating their RLUIPA and RFRA claims, and even if this were not so, City Walk cannot demonstrate that the City's requirement of a permit to operate their homeless shelter is a substantial burden. Resp. at 39 – 51, §§VII – IX.

6. In reply, City Walk avers that the ALJ's findings were supported by competent substantial evidence, and that the Commission's disagreement with those findings based on a re-weighing of the evidence by the Commission was improper; and that the City's approval and encouragement of a higher-risk use of the property, followed by a subsequent denial of their application for a lower-risk use of the property, constitutes a substantial burden on its exercise of religion; and finally, that the City fails to show a compelling interest in support of the denial of the site plan. Reply at 2-13, §II – VI.

Review Pursuant to a Writ Mandamus

7. Mandamus is an extraordinary remedy available only upon a showing that the plaintiff has no other adequate remedy. Orange County v. Quadrangle Development Co., 780 So. 2d 994, 996 (Fla. 5th DCA 2001). To bar mandamus, the other remedy must be generally adequate but also specific and appropriate to the circumstances of the particular case. State ex rel. Goethe v. Parks, 179 So. 780 (Fla. 1938). In other words, to be adequate, the other remedy must be clear, complete, sufficiently speedy to prevent material injury, and must effectively afford relief upon the very subject matter involved and enforce the right or performance of the duty in question. Bishop v. Chillingworth, 154 So. 254 (Fla. 1934); Rebholz v. Floyd, 327 So. 2d 806 (Fla. 2d DCA 1976). Furthermore, mandamus is not available to seek review of a matter

that could be reviewed by a writ of certiorari. Anoll v. Pmerance, 363 So. 2d 329 (Fla. 1978).

8. Here, the essence of City Walk's mandamus claim is that the Commission's final order failed to "conform in all respects to the vote taken at the public hearing." Pet. at 25, §V; see also Pet. at 28 (seeking a writ of mandamus to compel the Commission to issue a decision consistent with its vote pursuant to Article IX, §10(g), Bylaws of the Tallahassee-Leon County Planning Commission ("Bylaws")). In seeking mandamus relief, City Walk is attempting to compel the Commission to follow its own rules. Waters v. Inch, 266 So. 3d 1216, 1217 (Fla. 1st DCA 2019). However, a writ of certiorari, which requires the agency under review to follow the essential requirements of the law, is an adequate method by which to resolve City Walk's claims. Therefore, since City Walk has other adequate remedies, mandamus will not lie, and its claim for a writ of mandamus is hereby denied.

Review Pursuant to a Writ of Certiorari

9. The Tallahassee-Leon County Planning Commission is the final decision-maker at the administrative level on City Walk's Type B Site Plan application. §2-138, Tall. Land Dev. Code. The ALJ was the finder of fact, charged with assessing the credibility of witnesses, weighing the evidence, and then applying the law to those determinations of fact. Section 2-138(j), Tall. Land. Dev. Code. Despite being the final decision-maker, the Commission is limited in its ability to change findings of fact and conclusions of law made by the ALJ. §2-138(n), Tall. Land Dev. Code. The Commission's decisions are subject to review by this Court via a writ of certiorari. §2-138(o) Tall. Land Dev. Code. 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 administrative findings and judgment are supported by competent, substantial evidence. Miami-Dade County v. Omnipoint Holdings, Inc., 863 So. 2d 195, 199 (Fla. 2003).

10. First, this Court must review the claims that the Commission violated City Walk's right to due process. A quasi-judicial proceeding generally meets basic due process requirements if the parties are provided notice and given an opportunity to be heard, including the ability to present evidence, cross-examine witnesses, and be informed of all the facts upon which the commission acts. Bush v. City of Mexico Beach, 71 So. 3d 147, 149-50 (Fla. 1st DCA 2011). The appendices in this case are extensive, but there is nothing in the record which supports City Walk's due process claims. Rather, the record clearly shows the contrary. City Walk actively participated in the ALJ's hearing on the matter, presented evidence, questioned and cross-examined witnesses, and were well aware of the facts upon which the Commission's determination was made. See Pet's Appx., Vol. II, City Walk Exhibits Introduced at Evidentiary Hearing Before ALJ, 9-323; Id. Vol III-IV. Other than making conclusory allegations, City Walk provides no evidence which would suggest they were excluded from the evidentiary hearings, not given proper notice, not allowed to present or cross-examine witnesses, or unaware of the facts the Commission based its determination upon. Therefore, City Walk's claims alleging due process violations are denied.

11. Next, this Court must consider whether the essential requirements of law were observed by the Commission in rendering its decision. A failure to observe the essential requirements of the law means that there has been "'an inherent illegality or irregularity, an abuse of judicial power, an act of judicial tyranny perpetrated with disregard of procedural requirements, resulting in a gross miscarriage of justice.'" Haines City Community Development v. Heggs, 658 So. 2d 523, 527 (Fla. 1995), quoting Jones v. State, 477 So. 2d 566, 569 (Fla. 1985) (Boyd, C.J., concurring specially). This failure can also be the result of an act of gross incompetence in applying the incorrect law. See, e.g., Progressive Express Insurance Co. v. Devitis, 924 So. 3d 878 (Fla. 4th DCA 2006).

12. To make any determination regarding whether the Commission followed the

essential requirements of the law, this Court must also establish what is required, by law, of the Commission in this instance. When presented with an ALJ's recommended order:

> The planning commission shall adopt the recommended order, adopt the recommended order with changes, or direct staff to prepare a revised order...**The planning commission shall not change any findings of fact reached by the administrative law judge unless after review of the entire record, the planning commission finds there is no competent substantial evidence to support the administrative law judge's findings. The planning commission may change conclusions of law if it is found that the administrative law judge did not apply the correct law.** If the planning commission directs staff to prepare a revised order, the revised order shall be submitted to the planning commissioners. The chair shall sign the order.

Section 2-138(n), Tall. Land Dev. Code; see also Art. IX, § 10(g), Bylaws (incorporating the same restrictions) (emphasis added).

13. The Commission rejected the ALJ's recommended order based on what they described as a "misapplication of the law and fact." Pet's Appx., Vol. I, Final Order of Planning Commission, at 8. The Commission argues that the ALJ's consideration of the Shelter's effect on the surrounding community during the Shelter's operation as a "low barrier" shelter and a "transitional residential facility", as well as the ALJ's demarcation of time, was a misapplication of the law. Pet's Appx., Vol. I, City of Tallahassee Exceptions to Recommended Order, at 55-60. The Commission also argued that the rules and conditions proposed by the ALJ to prevent future problems in the vicinity once the Shelter resumed its activities were "illusory" and "invalid." Id. at 67-72. The ultimate concern of the Commission was that the ALJ ignored the evidence showing that the Shelter had been a nuisance, and instead relied upon these improper considerations in determining whether the Shelter would cause or create a private nuisance in the future. Id. at 55-56.

14. The Commission seeks to change these alleged errors by categorizing them as improper applications of the law pursuant to section 2-138(n) of the Tallahassee Land

Development Code. However, this categorization is incorrect. These findings by the ALJ are findings of fact[1] to support his determination that City Walk's application met the minimum criteria of section 10-417(f) of the Tallahassee Land Development Code. Furthermore, neither the Commission nor the City point to any law which should be applied or followed when determining what constitutes a future private nuisance as contemplated by the code in section 10-147(f) Tallahassee Land Development Code. Nor do the Code or the Bylaws provide any standard for determining what constitutes a future private nuisance. The Growth Management Department, when reviewing City Walk's application, stated that:

> "staff has[sic] used a general definition of private nuisance as the use of one owner's land in a way that harms another owner's land or use or enjoyment of the land. Such nuisances arise from uses of property that are unwarrantable, unreasonable, or unlawful and that annoy, inconvenience, or harm another person in the reasonable enjoyment of such other person's property."

Pet's Appx., Vol. II, CW-1 Growth Management Staff Report, at 100. The DRC used the same definition, except they added that "[a] private nuisance affects the individual or a limited number of individuals." Pet's Appx., Vol. II, CW-2, Planning Department Staff Report, at 131. This definition is similar to the common law definition of private nuisance. Under the common law, the determination of private nuisance rests upon "reasonableness of the use, 'as such use affects the public and private rights of others' and 'must of necessity be determined from the facts and circumstances of the particular cases as they arise.'" Saadeh v. Stanton Rowing Foundation, Inc., 912 So. 2d 28, 32 (Fla. 1st DCA 2005).

15. These standards are never mentioned by Respondents, nor do they make any

[1] A finding of fact is "a determination…of a fact supported by the evidence in the record…" Finding of fact, Black's Law Dictionary (11th ed. 2019). In other words, "'[f]indings of facts' are determinations, reached by natural reasoning, of whether evidence shows that something occurred or existed." 75B Am. Jur. 2d Trial § 1587. Findings of fact are determinations made by the finder of fact after they have judged the credibility and weight to be given the evidence presented. Stinson v. Winn, 938 So. 2d 554, 555 (Fla. 1st DCA 2006) (stating that "credibility of the witnesses is as matter that is within the province of the administrative law judge, as is the weight to be given the evidence.").

argument, other than conclusory allegations, that the ALJ failed to follow these standards. Rather, the Commission simply disagreed with the ALJ's findings of fact, the way in which he weighed the evidence, and the inferences he made from the evidence. The Commission believed the ALJ gave too much weight to City Walk's evidence that the issues the Shelter had previously were abating. In its Response, the City, on behalf of the Commission, stated that "the evidence and testimony presented at the DOAH evidentiary hearing was **overwhelmingly** that the City Walk operations has constituted a nuisance with unreasonable adverse impacts to the surrounding area." Response at 17. (emphasis added). In the City's Exceptions to the Recommended Order, which the Commission adopted, the City found that the ALJ "attempted to mitigate the negative effects of the Shelter operations…" Pet's Appx., Vol. I, City of Tallahassee Exceptions to Recommended Order at 56. This reweighing of the evidence and redetermination of the facts was beyond the scope of the powers given to the Commission by the Code. Rather, when presented with a finding of fact that it disagrees with, the Commission may only revise the finding if it makes a determination that there was no competent substantial evidence to support the ALJ's findings. §2-138(n), Tall. Land Dev. Code; see also Art. IX, § 10(g), Bylaws (incorporating the same restrictions).

16. A determination of whether the ALJ's findings were supported by competent substantial evidence only involves a review of the record for evidence that supports the ALJ's decisions. See Broward County v. G.B.V. Intern, Ltd., 787 So. 2d 838, n.25 (Fla. 2001) (citing Haines City Community Dev. v. Heggs, 658 So. 2d 523, 530 (Fla. 1995); Educ. Dev. Center, Inc. v. City of West Palm Beach Zoning Bd. of Appeals, 541 So. 2d 106, 108 (Fla. 1989)). Whether competent substantial evidence exists in the record to rebut or oppose the ALJ's decision is irrelevant and beyond this standard's inquiry. Dusseau v. Metro. Dade County Board of County Commissioners, 794 So. 2d 1270 (Fla. 2001). This standard does not refer to "the quality, character, convincing power, or the weight of the evidence presented…" Scholastic Book Fairs,

Inc. Great American Division v. Unemployment Appeals Commission, 671 So. 2d 287, 289 n.3 (Fla. 5th DCA 1996). As summarized in Scholastic Book Fairs:

> "'Competency of evidence' refers to its admissibility under legal rules of evidence. 'Substantial' requires that there be some (more than a mere iota or scintilla), real, material, pertinent, and relevant evidence (as distinguished from ethereal, metaphysical, speculative or merely theoretical evidence or hypothetical possibilities) having definite probative value (that is, 'tending to prove') as to each essential element..."

Id. at 289 n.3. In reviewing a finding of fact using the competent substantial evidence standard, the Commission may not take new evidence, re-weigh the evidence in the record, draw different inferences from the record, re-evaluate witnesses' credibility, or otherwise substitute its factual determination for that of the ALJ. City of Hialeah Gardens v. Miami-Dade Charter Foundation, Inc., 857 So. 2d 202, 205 (Fla. 3d DCA 2003); City of Fort Lauderdale v. Multidyne Medical Waste Management, Inc., 567 So. 2d 955, 958 (Fla. 4th DCA 1990). Even if only one witness supports the quasi-judicial decision, despite eight witnesses supporting the contrary, *some* evidence exists in support of the decision, and the standard is satisfied. Lantz v. Smith, 106 So. 3d 518 (Fla. 1st DCA 2013). This standard of review is not a factual inquiry, but a legal one – i.e. is the quasi-judicial decision supported by *any* evidence in the record. Lee County v. Sunbelt Equities, II, Ltd. Partnership, 619 So. 2d 996 (Fla. 2d DCA 1993).

17. The Commission, rather than limiting its attempt to change the ALJ's findings of fact to the standard it is bound by in the Code, attempted to make its own findings of fact based on a reweighing of the evidence. Where the ALJ found that the Shelter's change in operation from what it described as a "low barrier" shelter to a "transitional residential facility" was an important distinction, the Commission found it was improper and immaterial. Where the ALJ found that the rules and conditions offered by City Walk at the hearing were important to a determination as to whether the Shelter would create or cause a future private nuisance, the

Commission found them illegitimate and ineffectual. This evidence, which tends to oppose or rebut the ALJ's findings, is irrelevant to the Commission's determination. See Dusseau v. Metro. Dade County Board of County Commissioners, 794 So. 2d 1270 (Fla. 2001). Evidence that the Commission could not successfully reweigh was simply ignored.[2] While the Commission may change the ALJ's findings of fact, it may only do so in the manner prescribed by the Code – upon a finding that there was no competent substantial evidence to support the ALJ's findings. Rather than undertake this limited determination[3], the Commission focused on evidence that opposed the ALJ's findings, and reweighed the evidence and made new inferences and findings of fact based on the evidence presented.

18. The Commission also argues that the ALJ applied the wrong evidentiary standard. Pet's Appx., Vol. I, City of Tallahassee Exceptions to Recommended Order at 72-73. While technically correct, this argument fails. The ALJ used the "preponderance of the evidence" standard when making his final determination. A "preponderance of the evidence standard" is a higher standard than the "competent substantial evidence" standard required by Art. IX, §5(a), Bylaws, and thus the ALJ's misapplication was harmless. Branham v. TMG Staffing Services, 994 So. 2d 1172, 1173 (Fla. 1st DCA 2008) (finding that "even if the JCC applied the incorrect standard in evaluating he evidence…it was harmless…the competent substantial evidence

[2] Such as the ALJ's findings that there was no evidence to support that City Walk was to blame for Christopher Halligan's death; that problems associated with homelessness in the area had significantly decreased; that the data from the Tallahassee Police Department was inconclusive in regards as to whether the crime rate was worsening or whether the change in the crime rate had anything to do with the Shelter; and that it was unjustified, based on the area's history with homelessness, to assume that the problems currently being caused by homeless people in the area were caused by City Walk residents. Pet's Appx., Vol. 1, Recommended Order of ALJ, at 32, 39, 31-42, 43-44.

[3] The Commission argues that the distinction between pre- and post-February 2021 operations of the Shelter in determining that the proposed use of the Shelter would not create or cause a private nuisance was "an erroneous application of the law and unsupported by any competent substantial evidence in the record." Pet'r's Appx., Vol. I, City Walk Exceptions to Recommended Order, at 66. This conflates and misconstrues the Code's standard for overturning a finding of fact and overturning a conclusion of law. Nevertheless, the argument is without merit. The ALJ's distinction between pre- and post-February 2021 operations of the Shelter was, in fact, supported by some evidence in the record, most notably by the fact that the change in operations seemed to have caused an abatement of problems associated with homelessness. Pet's Appx., Vol. 1, Recommended Order of ALJ, at 39, 31-42, 43-44.

standard is a lesser standard than the preponderance of the evidence standard.") (citations omitted).

19. Therefore, for the foregoing reasons, this Court finds that the Commission failed to adhere to the essential requirements of the law, specifically Section 2-138(n), Tall. Land. Dev. Code and Art. IX, § 10(g), Bylaws, when it reweighed the evidence and substituted its own findings of fact for that of the ALJ's, without a proper determination of whether there was competent substantial evidence to support the ALJ's findings. Accordingly, it is hereby **ORDERED** and **ADJUDGED** that the Commission's decision is hereby **QUASHED**. Since this Court has granted the relief requested by Petitioner via certiorari, this Court makes no determination regarding Petitioner's RLUIPA and RFRA claims. This case is hereby **REMANDED** to the Commission for reconsideration consistent with the requirements of section 2-138(n), Tallahassee Land Development Code and Article IX, § 10(g) of the Bylaws.

DONE and **ORDERED** this September 7, 2022.

ANGELA C. DEMPSEY
Circuit Judge

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