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Florida Zoning Appeals Law: Miami-Dade County Special Exception Denial Quashed .

In the recent decision of Publix Supermarkets, Inc., v. Miami-Dade County, Case No. 17-082 AP, the 11th Judicial Circuit Court in and for Miami-Dade County held: (i) the applicant successfully carried its burden in a quasi-judicial hearing before the zoning appeals board of Miami-Dade County (the "County"); and, (ii) that the opposition failed to establish the required "competent, substantial evidence" to deny the application. Thus, the circuit court granted the applicant's Petition for Writ of Certiorari, quashed the resolution that denied the application, and remanded the case to the zoning appeals board.

Publix Supermarkets, Inc., ("Publix") applied for a special exception to permit a liquor store less than 1,500 feet from an existing liquor store pursuant to Section 33-311(A)(3) of the Miami-Dade County Code of Ordinances (the "Code") and a non-use variance to permit alcohol sales on Sundays pursuant to Section 33-311(A)(4)(b) of the Code.

Importantly, the County staff recommended approval of the special exception and the non-use variance with conditions limiting alcohol sales to certain hours and requiring that Publix obtain a certificate of use.

At the public hearing, both the attorney for and owner of T-Rexx Liquor Store ("T-Rexx"), a competing liquor store, spoke against the application. The attorney submitted a petition signed by 705 individuals opposing the application and argued that if the application was approved, T-Rexx's business would be damaged and likely close.

On appeal, the circuit court was charged with determining: (1) whether procedural due process was provided; (2) whether the essential requirements of law were observed; and, (3) whether the administrative findings and judgments were supported by competent substantial evidence, in accordance with *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624 (Fla. 1982); *Florida Power & Light Co. v. City of Dania*, 761 So. 2d 1089 (Fla. 2000).

Publix argued that once it successfully demonstrated compliance with Code requirements, the burden then shifted to require T-Rexx "to present competent, substantial evidence that the criteria were not actually met or that the proposed liquor store was actually adverse to public interests."

In reaching its decision, the circuit court turned to *Jesus Fellowship, Inc. v. Miami-Dade County*, 752 So. 2d 708, (Fla. 3d DCA 2000), in which the Third District Court of Appeal held:

"An applicant seeking special exceptions and unusual uses need only demonstrate to the decision-making body that its proposal is consistent with the county's land use plan; that the uses are specifically authorized as special exceptions and unusual uses in the applicable zoning district; and that the requests meet with the applicable zoning code standards of review. If this is accomplished, then the application must be granted unless the opposition carries its burden, which is to demonstrate that the applicant's requests do not meet the standards and are in fact adverse to the public interest."

Ultimately, the circuit court determined that the submittal of a petition in opposition to the project and the project's potential negative impact on a competing business in the neighborhood were not sufficient to establish the standard of substantial competent evidence required to defeat the application. Accordingly, the court granted Publix's Petition for Writ of Certiorari, quashed the resolution denying Publix's application, and remanded the matter to the zoning appeals board.

As this case demonstrates, applicants should be apprised of their rights and what burden they must carry when seeking a special exception or unusual use, or any other relief, at a public hearing. It is critical to recognize that for special exceptions and unusual uses, once the applicant meets its burden of proof, that burden then shifts to the opposition to demonstrate that the applicant's requests do not meet the standards and are in fact adverse to the public interest. This case provides another example of the need to seek redress from the court to overturn an improper municipal ruling that impinges private property rights.

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