IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

In the Interest of:

Miami-Dade County,
Petitioner

v.

City of Miami,
Respondent

_____/

APPELLATE DIVISION

Case Number: 18-000032-AP-01

FILED FOR RECORD
2018 DEC -3 AM 10: 39
CLERK OF COURTS
DADE COUNTY, FLA.
CIVIL #92
TANYA D. BENNETT

Before SCOTT BERNSTEIN, ROSA FIGAROLA and RAMIRO ARECES.

PER CURIAM.

This is an appeal from proceedings stemming from plans to renovate the Coconut Grove Playhouse which opened as a silent movie theater in 1927. The Playhouse was designed by the critically important architectural firm of Kiehnel & Elliott. The dramatic entrance portal and the front of the building are considered to exemplify the Mediterranean Revival style of architecture deemed a prominent feature of Miami's architectural history.

The interior of the Playhouse was substantially renovated in 1955 by noted Florida architect Alfred Browning Parker. Extensive additional interior renovations were completed during the ensuing years giving rise to conflicting views as to whether the interior of the building maintains the architectural integrity of either Kiehnel or Browning Parker. Despite best efforts, the Playhouse fell victim to financial difficulties and eventually became the property of the State of Florida.

In 2005, the Playhouse was designated a local historic site by the City of Miami's Historical and Environment Preservation Board (herein referred to as Historical Board). Although the Designation Report establishing the site as historic

was expansive in its recognition of the Playhouse's significance to the City of Miami, it found that only the south and east facades of the building remained architecturally significant. The Historical Board's Designation Report did not include the building's interior. The absence of the building's interior in the Designation Report removes renovations to the interior of the building from the Historical Board's purview.

In 2013, the State entered into a lease agreement with Miami-Dade County and Florida International University to renovate the Playhouse. The County, FIU, and the GableStage theater company adopted a business plan to develop a regional theater on the property. The business plan was approved by the Board of County Commissioners and an architectural firm was selected to develop the plan after a public bidding process.

The County sought a Certificate of Appropriateness from the City's Historical and Environment Preservation Board after completing plans for renovation of the Playhouse. A Certificate of Appropriateness is required before undertaking renovations within a designated historic site. City of Miami Code Section 23-5 (2005) requires that the Historical Board evaluate whether the proposed alterations "adversely affect the historic architectural or aesthetic character of the subject structure or the relationship and congruity between the subject structure and surroundings..." before issuing a Certificate of Appropriateness.

The Historical Board held a public hearing in which experts and members of the public with differing opinions regarding the appropriateness of the plan were heard. Included in the debate were discussions regarding the extent to which the building's interior maintained the integrity of either Kiehnel's or Browning Parker's designs given the extent of renovations completed during the Playhouse's history. One of the Historical Board members ultimately motioned the Board to deny the County's application and, given the nature of the debate, suggested that the Board

explore revisiting the Designation Report's exclusion of the interior of the building from the Report. The motion was not supported by any of the other Board members.

The existing plan was adopted by the remaining members of the Board and a Certificate of Appropriateness was granted. The plan approved by the Historical Board restores the front of the building that is deemed historically significant in the Designation Report and replaces the existing auditorium with a new 300 seat theater that incorporates historic elements of the existing playhouse.

Grove residents filed a timely appeal of the Board's approval with the City of Miami Commission. The County objected arguing that the residents filing the appeal did not have standing and did not meet the definition of an "aggrieved party". Neither the City nor any other entity filed an appeal of the Historical Board's decision to issue a Certificate of Appropriateness.

City of Miami Code Section 23-4 (c) (7) provides that "any aggrieved party" may appeal decisions of the Board to the City Commission. The Code does not define the term "aggrieved party." The City overruled the County's objection and granted the Residents standing to appeal. In so doing, the City acknowledged it had previously opined that an "aggrieved party" for standing in zoning matters was a resident that lived within 500 feet of the property. Although the residents lodging the appeal did not fall within this category, the City concluded they nevertheless had standing because the Playhouse was a facility they could elect to attend, they lived close to the Playhouse, they wanted the Playhouse preserved, and the Playhouse was deemed important to the community.

The appeal was heard before the Commission. Varying opinions regarding the plan were once again addressed. The discussions once again included comments regarding preserving the interior of the building which was not included in the Historical Board's Designation Report. At the end of the hearing, the City Commission granted in part and denied in part the appeal.

Unlike the plan approved by the Historical Board through the issuance of the Certificate of Appropriateness, the City Commission made substantial changes to the plan: the Commission required that the entire Playhouse structure, rather than merely the front facade be preserved; the Commission required that various specific fixtures of the interior of the building be preserved in their location; and the Commission required that, contingent upon an additional 20 million dollars being pledged within 100 days, the auditorium have no less than 600 seats rather than the 300 seats envisioned by the plan. The Court finds that these changes represent a substantial change from the plan approved by the Historical Board prior to the appeal.

The County seeks certiorari review of the City Commission's decision reversing in part the issuance of the Certificate of Appropriateness. The County maintains that the City's decision departs from the essential requirements of law, violates due process, and is not supported by substantial competent evidence. The Residents were permitted to file an appellate brief regarding their standing to appeal the Board's issuance of a Certificate of Appropriateness to the City Commission.

The Court's review on a writ of certiorari is limited to determining whether procedural due process was accorded; whether the essential requirements of the law were observed; and whether the administrative findings and judgment are supported by competent substantial evidence. *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982); *see also Metro Dade Cty. v. Blumenthal*, 675 So. 2d 598, 601 (Fla. 3d DCA 1995).

The County argues that the City departed from the essential requirements of law by granting residents standing to appeal the preservation board's decision to grant the Certificate of Appropriateness law because it is at odds with governing case law, particularly *Chabau v. Dade County*, 385 So. 2d 129 (Fla. 3d DCA 1980). The Court agrees.

An appellate court may not find a departure from the essential requirements of the law when it merely disagrees with the lower tribunal's interpretation of a general principle of law. *Ivey v. Allstate Ins. Co.*, 774 So. 2d 679, 682-83 (Fla. 2000). Instead, there must be a specific legal precedent that directly addresses the issue decided below:

> the departure from the essential requirement of the law necessary for the issuance of a writ of certiorari is something more than a simple legal error. A district court should exercise its discretion to grant certiorari review *only* when there has been a violation of a clearly established principle of law resulting in a miscarriage of justice.

Allstate Ins. Co. v. Kaklamanos, 843 So. 2d 885, 889 (Fla. 2003); *see also Nadar v. DHSMV*, 87 So. 3d 712 (Fla. 2012) *quoting Kaklamanos*, 843 So. 2d at 890. The error must be "'sufficiently egregious or fundamental to fall within the limited scope' of certiorari jurisdiction.'" *Nader*, 87 So. 3d at 723 (quoting *Kaklamanos*, 843 So. 2d at 890).

The Grove residents appealed the Historical Board's decision to issue a Certificate of Appropriateness as "aggrieved parties". The term is not defined in the Code. The City asserts that its determination to include the Grove residents within the City's definition of aggrieved party was not a departure from the essential requirements of law because local governments are charged with the interpretation and enforcement of their codes and their interpretations are entitled to judicial deference if they are within the range of possible permissible interpretations. Although the City correctly articulates the general principle that courts are to afford an agency difference regarding interpretation of their own ordinances when the agency is responsible for the administration of that ordinance, *See Shamrock-Shamrock, Inc. v. City of Daytona Beach*, 169 So. 3d 1253, 1256 (Fla. 5th DCA 2015); *Las Olas Tower Co. v. City of Fort Lauderdale*, 742 So. 2d 308, 312 (Fla. 4th DCA 1999), this generalized principle is not thwart controlling caselaw.

In *Chabau v. Miami Dade County*, 385 So. 2d 129 (Fla. 3d DCA 1980), the Third District overruled the County's determination that an entity had standing to appeal a zoning board's decision as an "aggrieved party." The Court ruled that absent a definition of the term "aggrieved party" in the County's code to the contrary, the definition of an "aggrieved party" to appeal a decision of the zoning board was governed by imposing the requirement for standing found in case law. In other words, a party must have suffered some special injury to have standing. *Chabau*, 385 So. 2d at 130.

Like the County Code in *Chabau*, the City Code in this case fails to define the term "aggrieved party". *Chabau* is binding case law from the Third District Court of Appeal establishing that unless the term "aggrieved party" is defined by a local governmental entity's code, the governmental entity must utilize the special-injury standard when determining standing before it rather than making its own interpretation of what constitutes an aggrieved party. *See also F&R Builders, Inc., v. Durant*, 290 So. 2d 784 (Fla. 3d DCA 1980). Therefore, the parties in this case were required to establish more than a generalized interest. *Renard v. Dade Cnty.*, 261 So. 2d 832, 837 (Fla. 1972) (standing requires "a definite interest exceeding the general interest in community good shared in common with all citizen"); *O'Connell v. Florida Dept. of Cmty. Affairs*, 874 So. 2d 673, 675 (Fla. 4th DVA 2004) ("a mere interest in a problem, no matter how longstanding the interest" is insufficient to render an appealing party "adversely affected or aggrieved"); *Pichette v. City of N. Miami*, 642 So. 2d 1165, 1166 (Fla. 3d DCA 1994) (appellant, who did not live adjacent to rezoned parcel, lacked standing because "there is no genuine issue raised by this record that [they] would be affected by noise, traffic impact, land value diminution, or in any other respect" by the rezoning).

The residents in this case did not meet the special-injury standard for designation as "aggrieved parties". Observing the essential requirements of the law

requires applying the correct law in proper fashion. *See Haines city Cmty Dev. v.* Heggs, 658 So. 2d 523, 530 (Fla. 1995). The City's failure to apply *Chabau* was a failure to follow established precedent and a departure from the essential requirements of the law sufficiently egregious or fundamental to result in a miscarriage of justice warranting issuance of certiorari.

The Court declines an invitation to distinguish the Third's decision in *Chabau* on the basis that the instant case addresses historical preservation, not zoning. The issue was not raised below and no authority is relied upon to make the distinction. The argument that standing is conferred by application of Section 163.3215 Fla.Stat.(2017) is also not persuasive as the expanded definition of "aggrieved party" in section 163.3215 only applies to actions brought pursuant to that statute.

Significant conditions were imposed upon the plan that had previously been approved by the Historical Board dramatically changing the plan: the shell of the building was required to be preserved; specific fixtures in the interior of the building were required be preserved in their current location; and the size the Playhouse was required to seat 600 rather than 300, contingent upon the pledging of an addental 20 million dollars within 20 days.

Moreover, the County was not afforded procedural due process. Due process is satisfied if the parties are afforded notice of the relevant hearing and an opportunity to be heard during that proceeding. Adequate notice requires that the scope of the hearing be properly identified. Therefore, granting relief "which is not sought by the notice of hearing or which expands the scope of a hearing and decides matters not noticed for hearing, violates due process." *Connell v. Capital City Partners, LLC.* 932 So. 2d 442, 444 (Fla. 3d DCA 2006). Consideration of preservation of the interior of the building was outside the purview of the appeal and expanded the scope of the hearing without proper notice.

The 2005 Designation Report did not include the interior of the building. The City previously acknowledged that preservation of the interior of the building was thus not within the purview of the Historical Board. A motion to deny the plans in order revisit excluding the building's interior from the Designation Report was rejected by the Historical Board. The Certificate was thus issued with the express acknowledgment by all parties that exclusion of the building's interior precluded consideration of the interior as a basis for issuing a Certificate of Appropriateness. The appeal was clearly governed by the existing designations. The City exceeded the scope of the hearing by including the interior of the building in its decision to grant the appeal thereby violating the County's procedural due process.

Having found that the City departed from the essential requirements of law by granting standing and that issuance of a writ of certiorari is warranted in this case, the Court declines to rule on any further issues raised.

REVERSED and REMANDED with instructions that the decision of the Miami City Commission denying the Certificate of Appropriateness be quashed.

SCOTT BERNSTEIN ROSA FIGAROLA RAMIRO ARECES

Circuit Court Judge

Copies provided to parties