

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

WATERVIEW TOWERS CONDOMINIUM
ASSOCIATION, INC., a Florida not-for-profit
corporation; and JOHN W. GILDEA
and GERALD WALDMAN, individually;
Petitioners,

APPELLATE DIVISION (CIVIL): AY
CASE NO: 2014CA011943

v.

CITY OF WEST PALM BEACH,
a Florida municipal corporation, and
PALM HARBOR HOTEL, LLC,
Respondents.

Opinion filed: **OCT - 9 2015**

Petition for Writ of Certiorari from City Commission of the City of West Palm Beach

For Petitioners:

John R. Eubanks, Jr., Esq.
605 N. Olive Avenue, Second Floor
West Palm Beach, FL 33401
jeubanks@blesmlaw.com
mrodriguez@blesmlaw.com

For Respondent City of West Palm Beach:

Christopher Van Hall, Esq.
401 Clematis Street
P.O. Box 3366
West Palm Beach, FL 33402
cvanhall@wpb.org

For Respondent Palm Harbor Hotel, LLC:

Joseph Ianno, Jr., Esq.
525 Okeechobee Boulevard, Suite 1200
West Palm Beach, FL 33401
jianno@cfjblaw.com
jmeehan@cfjblaw.com
wpbecf@cfdom.net

PER CURIAM.

Petitioners Waterview Towers Condominium Association, Inc. ("Association") together with residents John W. Gildea and Gerald Waldman ("Petitioners") seek first-tier certiorari review of an ordinance passed by Respondent City of West Palm Beach ("City") approving the

zoning change application (“Ordinance”) as well as a resolution approving the application (“Resolution,” together with Ordinance, “Development Orders”) submitted by Respondent Palm Harbor Hotel, LLC (“Developer”) to construct a multi-story hotel on a parcel located along the downtown waterfront (“Project”).¹ The Petitioners raise various grounds arguing the Development Orders should be quashed. One of those is that they were not afforded procedural due process in the quasi-judicial proceedings at which the Development Orders were approved by the City. For the reasons explained below, we agree and conclude that the City departed from the essential requirements of the law by denying the Petitioners procedural due process by depriving them a meaningful opportunity to more fully participate in the approval process of the Development Orders. Accordingly, we grant the instant Petition. Because we conclude certiorari relief is appropriate on due process grounds, we do not reach the Petitioners’ other claims raised.

Background

Nature and Relationship of the Parties. In order to properly address the issue presented, it is necessary to discuss in limited detail the history and nature of the relationship between the parties. Indeed, an examination of the history of the development of the parcel at issue reveals the extent to which Petitioners had a property interest in the land. The City owns the entire parcel. In 1968, it leased the parcel to West Palm Beach Marina, Inc. (“WPBM”) for a term of ninety-nine years. This lease was amended in 1979, at which time multiple ordinances and amendments passed since the original lease was signed were consolidated into a single, amended lease (“Amended Lease”). WPBM assigned its interest in the property to Leisure Resorts, Inc. (“LRI”). LRI in turn assigned its interest in the parcel to the Developer. The Amended Lease essentially allows for the tract to be divided into two separate portions for development by LRI:

¹ We previously granted Petitioners leave to intervene as parties in the instant proceeding.

one for condominium and the other for commercial use. The commercial portion of the property was itself further divided into two sub-parcels, one of which remains occupied by WPBM. The other sub-parcel is currently vacant. It is this vacant parcel which forms the subject of the instant litigation. The Amended Lease also contains certain provisions regarding the development of this vacant sub-parcel, including, *inter alia*, size and height restrictions. As a result of the Amended Lease and subsequent official acts, WPBM, the Developer, and Petitioners essentially are "co-lessees" of the entire parcel. WPBM and the Developer lease the two sub-parcel commercial tracts while the Petitioners lease the condominium tract.²

The Application for Re-Zoning and Project Approval. The Developer applied to the City on November 20, 2013 for rezoning of the sub-parcel to allow for the development of the Project. The Developer submitted its planned project to the City's Planning Board, which considered the project and the applicable rezoning, ultimately approving the request with waivers of certain ordinances on February 19, 2014. The Planning Board's decision and

² That Petitioners are "lessees" of the condominium tract is evidenced by the Amended Lease. Article XXXVI of the Amended Lease governs "Condominium Provisions," which were to become effective upon "Submission," at which time the provisions would supplement the lease and would control the lease to the extent any of the terms conflicted. "Submission" is defined as the recordation of a "Declaration" to the Palm Beach County Official Records. A "Declaration" is defined as "the document by which Lessee's interest in the Leasehold Premises and improvements, now or hereafter created thereon, are submitted to condominium ownership by the Developer'" "Developer" is defined as Leisure Resorts, Inc. ("LRI") and its successors and assigns. "Lessee" was defined as follows:

[I]n the first instance, [WPBM]; and in the second instance upon WPBM's assignment of the Lease to LRI, 'Lessee' means LRI; and finally, after Submission and upon assignment of the first Unit, '*Lessee' means the Unit Owners.*

(emphasis added). Petitioners are "Unit Owners," as defined under the terms of the Amended Lease, as they own a part of the condominium property subject to exclusive ownership. On August 13, 1981, the Declaration of Waterview Towers was recorded after the property had been assigned to LRI. Therefore, under the terms of the Amended Lease, Petitioners are "lessees."

recommendation was set for a first reading and vote by the City Commission at a duly noticed public meeting on April 28, 2014.

Claiming that the Project raised several legal and practical concerns as it relates to its owners and residents, the Association sent the City a petition seeking to intervene and participate as a party to the Project's application and approval process. According to the Petitioners, party standing was necessary to allow the Association sufficient opportunity and time to present its opposition to the Project as well as to be able to cross examine City staff members and witnesses involved in the Project's application at the Commission meetings prior to the Commission voting on the application. Petitioners further argue they oppose the Project, claiming it is illegal and contrary to certain lease documents.³ Petitioners also submitted a memoranda of law in opposition to the project's development to the City prior to its consideration of the Planning Board's decision. Without party status, Petitioners, like other members of the public, would be limited to three (3) minutes each solely to present their comments, whether for or against the Project, to the full Commission. The Petitioners' request to intervene as parties was apparently denied.

Commission Meetings. At the April 28 meeting, over thirty (30) members of the Association as well as the public individually addressed the Commission. Each participant was limited to three minutes to present their concerns to the Commission.⁴ Following this, the City approved the Developer's project by a vote of five to zero. The matter was scheduled for a second reading and vote at second public meeting of the City Commission on September 2, 2014. During that meeting, a second presentation was made regarding proposed changes made

³ The Court notes Petitioners have filed a separate declaratory action in Circuit Court seeking to assert their rights under the terms of the lease. The Court notes any issues in that action were not relevant to this Opinion save to note the special relationship Petitioners share with the land.

⁴ Petitioners were not permitted to cede or yield their three-minute allotment to counsel for Waterview Towers to speak on their behalf.

to the hotel's design in an attempt to better satisfy concerns raised by the City Commission at the April 28 hearing. Once again, the Petitioners were denied the opportunity to participate as a party at this meeting. Rather, similar to the April 28 meeting, they along with other members of the public were limited to the three-minute presentation. The Petitioners were permitted to submit a memorandum of law as well as several photographs of the property in advance of the two meetings. However, at neither meeting were the Petitioners permitted to cross examine the City staff members involved in the application process as well as other witnesses presented by the Developer in support of the Project regarding the adverse impact the Project may have on their property rights. The City Commission once again voted to approve the Development Orders by a vote of four to one. After approval, the City issued Ordinance No. 4510-14 and Resolution No. 71-14 allowing for construction of the project.

Standard of Review

On certiorari review of an administrative action, this Court asks only "(1) whether procedural due process is accorded, (2) whether the essential requirements of the law have been observed, and (3) whether the administrative findings and judgment are supported by substantial evidence." *Miami-Dade Cnty. v. Omnipoint Holdings, Inc.*, 863 So. 2d 195, 199 (Fla. 2003).

Analysis and Legal Conclusions

Petitioners raise various arguments in support of their claim they were denied procedural due process in the approval process of the Development Orders by the City.⁵ One of those is that by limiting their participation to a three-minute presentation, the City improperly denied them a

⁵ Petitioners assert two additional arguments in support of their claim that they were denied procedural due process. First, they argue the City violated due process by failing to follow the City's Zoning Code when approving Developer's application. Also, they claim that they were denied due process by the City's failure to include certain language in its resolution approving the Developer's plans. We find that neither of these claims impinges upon the Petitioners' procedural due process rights to notice and a hearing. Accordingly, to the extent Petitioners argue these claims are violations of procedural due process, they are denied.

meaningful opportunity to more fully participate at both the April 28 and September 2 Commission meetings. As a result, Petitioners argue they were denied procedural due process. On a petition for certiorari challenging the due process afforded at administrative proceedings below, a reviewing court is limited to considering whether the petitioner was afforded procedural due process. *Omnipoint Holdings*, 863 So. 2d at 199. "Procedural due process requires both fair notice and a real opportunity to be heard at a meaningful time and in a meaningful manner." *Massey v. Charlotte Cnty.*, 842 So. 2d 142, 146 (Fla. 2d DCA 2003).

As the Fifth District Court of Appeal has discussed, due process analysis requires a flexible, holistic approach:

Due process is a flexible concept and requires only that the proceeding be essentially fair. The extent of procedural due process protection varies with the character of the interest and nature of the proceeding involved. There is, therefore, no single unchanging test which may be applied to determine whether the requirements of procedural due process have been met. Courts instead consider the facts of the particular case to determine whether the parties have been accorded that which the state and federal constitutions demand. . . .

The extent of procedural due process afforded to a party in a quasi-judicial hearing is not as great as that afforded to a party in a full judicial hearing. Consequently, such hearings are not controlled by strict rules of evidence and procedure.

Nevertheless, a party to a quasi-judicial hearing, by virtue of its direct interest that will be affected by official action, must be able to present evidence, cross-examine witnesses, and be informed of all the facts upon which the commission acts.

Carillon Cnty. Residential v. Seminole Cnty., 45 So. 3d 7, 9-10 (Fla. 5th DCA 2010) (internal citations and quotations omitted); *see also*, *Jennings v. Dade Cnty.*, 589 So. 2d 1337, 1341 (Fla. 3d DCA 1991) ("In quasi-judicial zoning proceedings, the *parties* must be able to present evidence, cross-examine witnesses, and be informed of all the facts upon which the commission acts." (emphasis added)).

We must first decide whether the Petitioners should have been afforded party status in this quasi-judicial zoning proceeding, or whether they are merely “participants,” as Respondents contend, in turn giving them more limited rights at a public hearing no different from any member of the public. If they should be regarded as “parties,” we must next decide whether they were afforded minimum procedural due process during those proceedings. No authority has been cited to us defining a “party” in a such a proceeding. When determining whether a complainant is a “party,” a court must “decide whether the complaining party has been deprived of a constitutionally protected liberty or property interest.” *Carillon Cmty.*, 45 So.3d at 9 (quoting *Econ. Dev. Corp. of Dade Cnty., Inc. v. Stierheim*, 782 F. 2d 952, 953-54 (11th Cir. 1986)). Generally, mere “interested part[ies]” or concerned “adjoining landowner[s]” lack sufficient interests to be considered a “party” at a quasi-judicial zoning proceeding. *Id.* at 11. Both the Developer, as the Project’s applicant, along with the City, as the governmental agency tasked with zoning, clearly have sufficient interests which necessarily affords them party status. *Id.*

We conclude that the Petitioners likewise should have been permitted to participate as “parties” to the quasi-judicial zoning proceeding below as a result of their property interest in the parcel, including the vacant sub-parcel. Indeed, contrary to the Respondent’s argument, Petitioners here are more than mere “adjoining landowners” or “interested participants.” Instead, they have an active property interest in the parcel of land which is the result of their status as co-lessees, along with the Developer, as set forth in the Amended Lease and subsequent official acts by the City as owner of the land. See *Mullis v. Div. of Admin.*, 390 So. 2d 473, 474 (Fla. 5th DCA 1980) (noting “a leasehold interest is property in the constitutional sense”). Also, in its Petition for Party Standing, the Association argued that its owners, as co-lessees, also stand as

“aggrieved parties,” claiming that the use and enjoyment of their interest in the property would be directly affected by the Project on sub-parcel, “including, but not limited to, life-safety, density, intensity, massing, view, noise, valuation of property, and the shared use of the common elements.” Thus, the interest they claim extends beyond their status as co-lessees. In light of the unique circumstances in this case, including the relationship between the Petitioners and Developer as co-lessees, together with the Petitioners’ claim of the adverse impact the Project would have on their property interests, we conclude that the Petitioners should be afforded party status in the quasi-judicial proceedings.

Developer, citing to *Carillon Community*, 45 So. 3d at 11, argues even if Petitioners have lease rights in the parcel they have no right to present evidence or cross-examine witnesses simply because they were neither the “applicant” nor “governmental agency” involved in the application for re-zoning and Project approval. We reject this argument since under *Carillon Community* there is “no single unchanging test which may be applied to determine whether the requirements of procedural due process have been met,” and we must “consider the facts of the particular case to determine whether the parties have been accorded that which the state and federal constitutions demand.” *Id.*

Having determined that the Petitioners should have been allowed to participate as parties, Petitioners have a due process right to participate more fully and in a meaningful way in the quasi-judicial proceedings, including the right to present evidence and cross-examining witnesses. *Carillon Cmty.*, 45 So. 3d at 11; *Jennings*, 589 So. 2d at 1341. Their right to be heard, however, was limited to the three-minute window to speak before the commission given to any concerned member of the public. In addition, Petitioners’ attempts to cede or yield their time to the individual unit owners’ attorney to allow for more time were unsuccessful. We find

this process afforded to the Petitioners was insufficient and thus procedural due process requires that they be given the opportunity to present evidence and cross-examine witnesses in support of the Project before the vote by the City Commission.

Accordingly, the Petition for Writ of Certiorari is GRANTED and the Development Orders are QUASHED.

FEUER, BONAVIDA, and KROLL, JJ., concur.