

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

APPELLATE DIVISION (CIVIL): AY
CASE NO.: 502019CA004116XXXXMB

2600 N OCEAN, LLC,
Petitioner,

v.

CITY OF BOCA RATON,
Respondent.

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Opinion filed: September 16, 2020

Petition for Writ of Certiorari from the City of Boca Raton City Council.

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PER CURIAM.

Petitioner, 2600 N Ocean, LLC, seeks certiorari review of the City of Boca Raton City Council's (the "City Council") final order denying Petitioner's variance application. Petitioner contends that the City Council was not an impartial tribunal. We agree and grant the Petition for Writ of Certiorari.

Petitioner owns undeveloped, oceanfront land east of the coastal construction control line in the City of Boca Raton (the "City"). By ordinance, the City prohibits the construction of any structure eastward of the coastal construction control line without a variance. As Petitioner wished to build a residential duplex on its property, it sought a variance with the City. After the City

analyzed Petitioner's project, city staff recommended denying Petitioner's variance application. The application then proceeded to a hearing in front of the City Council, which was comprised of the mayor and four other councilmembers.

Before its presentation at the hearing, Petitioner moved to disqualify the mayor and two councilmembers, alleging their bias against oceanfront construction. As grounds for its motion, Petitioner pointed out that on an earlier occasion, the mayor created a campaign video in which he promised city residents that he would not approve of any oceanfront construction "based on the environmental evidence that exists." Additionally, while Petitioner's variance application was pending review, the other two councilmembers responded to correspondence from residents about Petitioner's application. One councilmember responded, "I want to reassure you that I have no intention of granting any variances seaward of the Coastal Construction Control Line." The other councilmember wrote, "I promise you I am not in favor of building on this sensitive precious land and will do all I can to prevent this from happening." The mayor and the two councilmembers declined to disqualify themselves, and the City Council ultimately denied Petitioner's variance application.

Although the due process afforded to a party in a quasi-judicial hearing is not the same as that which is afforded to a party in a full judicial hearing, an impartial decision-maker remains a basic component of minimum due process in a quasi-judicial hearing. *See, Jennings v. Dade Cnty.*, 589 So. 2d 1337, 1340 (Fla. 3d DCA 1991); *Charlotte Cnty. v. IMC-Phosphates Co.*, 824 So. 2d 298, 300–01 (Fla. 1st DCA 2002). As many quasi-judicial officers are politically elected, political bias and adverse political philosophies are inevitable and do not in and of themselves render the decision-maker impartial. *Seminole Entm't v. City of Casselberry*, 811 So. 2d 693, 696 (Fla. 5th DCA 2001). Nonetheless, a quasi-judicial officer "should be judicial in attitude and demeanor and

free from prejudgment and from zeal for or against the [applicant].” *Id.* (emphasis added) (quoting 9 McQuillin Municipal Corporations, § 26.89 (3rd Ed.)). Accordingly, although each of the councilmembers were allowed to have and express political views on the wider issue of oceanfront construction, the councilmembers were not permitted to prejudge the narrow issue of Petitioner’s application.

In this case, it is hard to imagine that the two councilmembers who commented on Petitioner’s application were free from prejudgment with respect to Petitioner. Unlike the mayor’s general political stance made in a campaign video, the two councilmembers specifically addressed Petitioner’s application and promised that they had “no intention of granting [the application]” and “[would] do all I can to prevent this from happening.” This was more than mere political bias or an adverse political philosophy—it was express prejudgment of Petitioner’s application. Thus, the councilmembers were not impartial. We, therefore, **GRANT** the Petition for Writ of Certiorari and **QUASH** the City Council’s decision. Petitioner is entitled to a new hearing without the participation of the two councilmembers.

GOODMAN, J. KEYSER, and CURLEY, JJ. concur.