

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

APPELLATE DIVISION (CIVIL): "AY"  
CASE NO.: 50-2012-CA-011704-XXXXMB

EQUESTRIAN SPORT  
PRODUCTIONS, LLC, et al.,

Petitioner(s),

v.

THE VILLAGE OF WELLINGTON,

Respondent.

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Opinion filed: **JUL 15 2013**

Appeal from the Village of Wellington acting in its  
quasi-judicial capacity.

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PER CURIAM.

This petition for certiorari arises from Respondent the Village of Wellington's denial of  
an extension of time for real estate developer and Petitioner Equestrian Sport Productions, LLC

(the “Developer”) to comply with certain real property platting requirements. The Village had previously issued a resolution in February of 2012 permitting the Developer to develop a parcel of real property (the “Property”), provided that the Developer fulfilled certain platting conditions by April 1, 2012 (the “Platting Requirement”). The Developer delivered a substantial amount of the paperwork necessary to comply with the Platting Requirement<sup>1</sup> to the Village in early March of 2012. The Developer asserts that further action on its behalf to comply with the Platting Requirement was necessarily delayed and contingent upon the Village’s review of its paperwork submission. Soon after the Developer’s submission, however, an event occurred in the Village of Wellington critical to this petition.

On March 13, 2012, the Village of Wellington held an election. Problems with election ballots resulted in both litigation and uncertainty as to which individuals had been victorious. Ultimately, three new council members were seated at the end of March who the Developer asserts campaigned in opposition to the Developer’s plans for the Property. The Developer further asserts that because of the election and problems caused by the election, the Village’s processing of the Developer’s paperwork submission in early March was sufficiently delayed so as to cause the Developer to fail to make the Platting Requirement deadline of April 1, 2012. For its part, the Village contends that the election had little to no impact on its operations and that the Developer was at fault for any delays that caused it to fail to make the Platting Requirement deadline. In any event, after the newly elected council (the “Village Council”) sat in April of 2012, the Developer was notified that it had failed to comply with a prior resolution of the Village and, as a result, a status review hearing would be held to determine whether the Developer would receive an extension of time to comply with the Platting Requirement.

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<sup>1</sup> The parties dispute the sufficiency of the Developer’s submission in early March.

At the hearing, the newly elected council denied the Developer an extension of time to fulfill the Platting Requirement and revoked its earlier resolution in favor of the Developer. The Village Council's decision was based primarily upon the Developer's failure to make the April 1, 2012 deadline and the Developer's failure to request additional time to fulfill the Platting Requirement. The Developer thereafter filed the instant Petition for Certiorari with this Court wherein it asserted, *inter alia*, that the status review hearing and resolution of the Village denying it an extension (1) violated the Developer's due process rights and (2) failed to comply with the Wellington Unified Land Development Code of 2012 (the "Municipal Code"). The Developer further argued that the Village Council should have been (3) equitably estopped from denying the Developer an extension of time to fulfill the Platting Requirement. Accordingly, we address each of the Developer's arguments in turn.

**1. Whether the Status Review Hearing Violated the Developer's Due Process Rights.**

The Developer argues that it was deprived of procedural due process because the status review hearing was not a fair and impartial forum. "Although the concepts of due process in an administrative proceeding are less stringent than in a judicial proceeding, they nonetheless apply." *A.J. v. State*, 630 So. 2d 1187, 1189 (Fla. 2d DCA 1994). Decisions of a local government board, sitting in its quasi-judicial capacity, may be reviewed by this Court to ensure the parties were afforded procedural due process. *See City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982). "[A]n impartial decision-maker is a basic component of minimum due process in an administrative proceeding." *Charlotte Cnty. v. IMC-Phosphates Co.*, 824 So. 2d 298, 300-01 (Fla. 1st DCA 2002) (citing *Cherry Commc'ns, Inc. v. Deason*, 652 So. 2d 803, 804-05 (Fla. 1995)). The Developer asserts that the campaign promises of the three newly elected council members in support of terminating development of the Property, coupled with

statements made by the council members at the status review hearing, establishes that the Developer was deprived of an impartial decision maker in a quasi-judicial proceeding.

Although the Developer did not raise its due process argument in the proceeding below, the right to an impartial forum is a fundamental right that may be raised for the first time on appeal. See *Verizon Bus. Network Servs., Inc. v. Dep't of Corrections*, 988 So. 2d 1148, 1150-51 (Fla. 1st DCA 2008) (citing *Sparks v. State*, 740 So. 2d 33, 36 (Fla. 1st DCA 1999)). A paucity of case law exists, however, that considers whether campaign promises are relevant to impartiality concerns for municipal officials who act in a quasi-judicial capacity. Compare *Izaak Walton League of America v. Monroe Cnty.*, 448 So. 2d 1170, 1172 (Fla. 3d DCA 1984) ("Although [another case found prior statements inapplicable to disqualification], we think that the present situation even more obviously requires that holding. While [another case] involved what was at least arguably a quasi-judicial question, that of determining the validity of charges against a city employee, this case concerns the supremely legislative function of zoning."), and *City of Opa Locka v. State*, 257 So. 2d 100 (Fla. 3d DCA 1972), with *Verizon Bus. Network Servs.*, 988 So. 2d at 1151, and *Charlotte Cnty. v. IMC-Phosphates Co.*, 824 So. 2d 298 (Fla. 1st DCA 2002), and *Seminole Entm't v. City of Casselberry*, 811 So. 2d 693, 697 (Fla. 5th DCA 2001) (granting an injunction because a quasi-judicial decision contained "bias so pervasive as to have rendered the proceedings violative of the basic fairness component of due process").

Even if we were to conclude that campaign promises by municipal officers are relevant to impartiality concerns in quasi-judicial proceedings, the record on appeal is poorly developed with respect to the council members' campaign positions. In the absence of clear evidence of preexisting bias by Village Council members, we are forced to weigh the impartiality of the Village Council through their statements at the status review hearing. Although we are

concerned by statements made by Village Council members during the status review hearing that do seem to indicate they possessed certain preexisting opinions, we cannot conclude that these statements, without more, warrant quashing the decision below on due process grounds.

**2. Whether the Status Review Hearing and the Village Council Resolution Violated the Municipal Code that Governed the Hearing and the Village Council.**

The Village Council's written resolution denying the Developer an extension of time to comply with the Platting Requirement essentially contained two reasons for denying the extension. First, the Developer failed to timely comply with the Platting Requirement. Second, the Developer failed to formally request an extension of time to comply with the Platting Requirement. With respect to the first asserted reason, any justification based upon these grounds is self-fulfilling; status review hearings are only initiated under Municipal Code Rule 5.9.3 if a property owner has failed to timely comply with an imposed condition. With respect to the second asserted reason of the Village Council, failure to request an extension of time to comply, such a basis was arguably a valid ground for the Village Council's decision.

Decisions of a local government board, sitting in its quasi-judicial capacity, may be reviewed by this Court to determine whether the decision observed the essential requirements of the law. *Deerfield Beach*, 419 So. 2d at 626. The Developer asserts that the Village Council could only base its decision upon certain factors enumerated in Municipal Code Rule 5.9.3.D.2, all of which appear to favor the Developer, and that the Village did not base its decision upon the mandatory factors. The Developer asserts that the Village Council's consideration is limited to the factors in Rule 5.9.3.D.2 by referencing a second rule, Rule 5.9.3.E.1, which reads: "The Village Council . . . *shall consider* the factors enumerated in subsection 5.9.3.D.2, above, and the recommendation of the department." (emphasis added). The Developer's reading of Rule 5.9.3.E.1 is a strained interpretation of the text. Rule 5.9.3.E.1 does not state the basis for the

Village Council's decision shall be *limited* to Rule 5.9.3.D.2. Another Municipal Code Rule, Rule 5.9.1.C, states that review is intended to be "flexible enough to accommodate unforeseen circumstances" and that "the review procedure created in this section establishes a flexible system for administration review." As a final point, the factors for consideration listed in Municipal Code Rule 5.9.3.D.2 include consideration of "efforts to comply with [requirements]" that could encompass efforts by an applicant to request an extension of time to comply with imposed conditions.

We are troubled by the Village Council's almost cavalier disregard of the vast majority of factors contained in Municipal Code Rule 5.9.3.D.2 that favored granting the Developer an extension of time to comply with the Platting Requirement. Nonetheless, this Court's review of the Village Council's decision is limited in scope and focuses on whether the Village Council's decision was supported by law. There is no evidence in the record that the Village Council refused to consider the criteria they were required to consider until the Municipal Code. Instead, the criteria the Village Council was required to consider was encapsulated and summarized in a report by Village of Wellington staff. The record does indicate the Village Council either read the report or was made aware of its contents.

Compared to the large number of factors that appear to favor granting the Developer an extension of time, the Village Council's decision rested upon the slimmest of margins. The Municipal Code does grant, however, considerable discretion and flexibility to the Village Council. In this respect, the Developer's argument is somewhat self-defeating. On the one hand, the Developer argues that its failure to make the Platting Requirement deadline was not dispositive and that the Village Council *had the discretion* to grant an extension of time. On the other hand, the Developer argues that the Council *did not have discretion* to deny the extension

and was required to grant an extension because of the lack of factors in favor of denial. After reviewing the Municipal Code, we find that the Council's decision was not constrained to the criteria of Municipal Code Rule 5.9.3.D.2 and, alternatively, we find that the basis for Village Council's decision with respect to the Developer's failure to apply for an extension of time was a valid ground for denial under Rule 5.9.3.D.2.<sup>2</sup> Although the Village Council's decision comes dangerously close to violating established law, we cannot conclude that the Council's decision was outside the boundaries of their discretion.

**3. Whether the Village of Wellington Should be Equitably Estopped from Denying the Developer an Extension of Time to Comply with the Platting Requirement.**

The Developer argues that the Village should be equitably estopped from denying the Developer an extension of time to comply with the Platting Requirement because the Village's own actions caused the Developer to miss the Platting Requirement deadline. Equitable estoppel may only be applied against a government entity, however, in exceptional circumstances. *See North American Co. v. Green*, 120 So. 2d 603, 610 (Fla. 1960); *Dolphin Outdoor Adver. v. Dep't of Transp.*, 582 So. 2d 709, 710 (Fla. 1st DCA 1991). To establish equitable estoppel the Developer must show a representation as to a material fact, a contrary later-asserted position as to that material fact, reliance upon the representation, and a change in position detrimental to the Developer caused by the representation and the Developer's reliance thereon. *See Dolphin*, 582 So. 2d at 710.

The principle basis upon which the Developer asserts a material fact was relied upon and qualifies as an "exceptional circumstance" is the Village attorney's oral representation that the Developer would be granted an extension to comply with the Platting Requirement. The Village attorney, however, has contested the veracity of the Developer's assertion.

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<sup>2</sup> The Developer asserts it made no formal request for an extension of time because of an oral promise by the Village attorney that an extension would be forthcoming. The Village attorney denies any such promise was made.

Although the facts of this case do raise equitable estoppel concerns, as it appears the Village of Wellington was at least partially responsible for the ultimate failure of the Developer to satisfy the Platting Requirement, the record on appeal does not contain sufficient facts to clearly establish a promise upon which the Developer relied and which otherwise satisfies all of the elements of equitable estoppel. Because equitable estoppel may only be applied against a governmental entity under exceptional circumstances, we therefore must conclude that the Developer has not made a sufficient showing that satisfies the high standard necessary for application of equitable estoppel against the Village of Wellington.

For all of the aforementioned reasons, it is with reluctance that we must **DENY** the Developer's Petition for Writ of Certiorari.

Cox, J. Marx, Sasser, JJ., concur.