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

APPELLATE DIVISION (CIVIL): AY
CASE NO.: 502014CA008953XXXXMB

PALM BEACH POLO HOLDINGS, INC.,
Appellant,

v.

VILLAGE OF WELLINGTON,
Appellee.
_____/

Opinion filed: JUN 18 2015

Appeal from the "Order Finding Violation(s)" and "Order Imposing Penalty/Lien"
Village of Wellington Code Enforcement Special Magistrate Rafael Suarez-Rivas

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PER CURIAM.

Appellant Palm Beach Polo Holdings, Inc., ("Polo Holdings") is the owner of a tract of land within the Palm Beach Polo and Country Club in the Village of Wellington ("the Village"), which is the Appellee here. This is an appeal of the Village's "Order Finding Violation(s)" and corresponding "Order Imposing Penalty/Lien" issued by Special Magistrate Rafael Suarez-Rivas on June 19, 2014.

We have jurisdiction to review the decision of the Special Magistrate. § 162.11, Fla. Stat. (2014); Fla. R. App. P. 9.030(c). The standard of review we must apply when evaluating the Special Magistrate's administrative findings is limited to three considerations: (1) whether the Special Magistrate afforded Polo Holdings procedural due process; (2) whether the Special Magistrate observed the essential requirements of law; and (3) whether the Special Magistrate's findings and judgment are supported by competent substantial evidence. *Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982).

Polo Holdings raises four issues on appeal. We find the first three, which concern whether Polo Holdings committed a violation of section 7.4.9 of the Village's Unified Land Development Code, to be without merit. We therefore affirm the Special Magistrate's finding that Polo Holdings committed a violation. Still, we conclude the fourth issue, regarding the finding that Polo Holdings committed five total violations, warrants reversal for the reasons provided below.

Polo Holdings' fourth issue on appeal is that there is not competent substantial evidence to support the Special Magistrate's finding that Polo Holdings committed five violations of section 7.4.9 of the Village's Unified Land Development Code. Section 7.4.9.B provides that it is a violation of the section to alter native upland vegetation without first obtaining written

approval of the Village, absent an express exemption. The section further provides that a minimum violation of the section is the unauthorized alteration or removal of up to 1,500 square feet of native upland vegetation. The section also provides that the unauthorized alteration of each additional 1,500 square feet, or portion thereof, of native upland vegetation constitutes a separate violation.

At the Code Enforcement Hearing, the Village's Code Compliance Officer Nick Navarro testified that, while the Village had "engineers here that could testify probably more accurately to that," it was his "impression" that "up to 7,500 square feet potentially have been altered." He also testified that the Village's "Engineer estimates that approximately 7,500 square feet of native upland and vegetation or wetlands were altered which, basically, creates five violations." No further testimony or evidence was offered on the total area altered.

The Special Magistrate concluded that there were five violations of section 7.5.9. In reaching his conclusion, he commented that he "did not hear any kind of dispositive evidence as to the amount of the square feet." He nevertheless found that there was a "good faith statement of what it was believed to be."

"Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred." *NITV, L.L.C. v. Baker*, 61 So. 3d 1249, 1251 (Fla. 4th DCA 2011) (internal quotation marks and citation omitted). "Although the terms 'substantial evidence' or 'competent substantial evidence' have been variously defined, past judicial interpretation indicates that an order which bases an essential finding or conclusion solely on unreliable evidence should be held insufficient." *Florida Rate Conference v. Florida R. R. & Pub. Utilities Comm'n*, 108 So. 2d 601, 607 (Fla. 1959). "[E]vidence to be substantial must possess something of substantial and relevant consequence

and must not consist of vague, uncertain, or irrelevant matter not carrying the quality of proof or having fitness to induce conviction." *Id.* (citation omitted). "Surmise, conjecture or speculation have been held not to be substantial evidence." *Id.* (citation omitted). In sum, "Florida courts have long recognized that verdicts or findings must be based on something more than mere probabilities, guesses, whims, or caprices, but rather on evidence in the record that supports a reasonable foundation for the conclusion reached." *Dep't of Highway Safety & Motor Vehicles v. Trimble*, 821 So. 2d 1084, 1087 (Fla. 1st DCA 2002).

Here, the Special Magistrate acknowledged that he "did not hear any kind of dispositive evidence" and instead only heard a "good faith statement" of what the total amount of land altered was "believed" to be. Indeed, Code Officer Navarro offered no definitive testimony regarding the total number of square feet at issue, stating that it was only his "impression" that "up to 7,500 square feet potentially have been altered." According to Navarro, the Village Engineer could likewise only "estimate[]" the "approximate[]" amount of land that had been altered. Further, there was no explanation by Navarro about what efforts he or the Village Engineer had undertaken (if any) to determine how much total square footage was altered that would serve to underpin their estimates. Absent some such explanation, the mere fact that Code Officer Navarro had visited the site several times does not offer any support for his speculation about the total square footage. In short, Navarro's testimony offered nothing more than conjecture or guesses as to the total square footage at issue. It therefore could not constitute competent substantial evidence to support the Special Magistrate's finding that Polo Holdings committed five total violations.

In its Answer Brief, the Village makes a vague reference to documentary evidence in the record as if to suggest that such evidence somehow amplified the uncertain testimony from Code

Officer Navarro. The Village is conspicuously silent about *how* such evidence would actually aid in the determination, however, and none of the documentary evidence in the record offers any clarification about the total area altered. To that end, the Village did not even point to any other evidence during the hearing as demonstrating the total area altered.

The Village also points out that Polo Holdings did not object to or otherwise challenge Officer Navarro's testimony, nor did it offer any evidence that a lower total square footage was altered. But the issue before the Court is whether there is competent substantial evidence to support the Special Magistrate's finding. Whether the evidence was rebutted in any manner is irrelevant to whether the evidence that was before the Special Magistrate was sufficiently substantial. As explained above, we have concluded that it was not.

Accordingly, the "Order Finding Violation(s)" and "Order Imposing Penalty/Lien" are **AFFIRMED** with respect to the Special Magistrate's finding that Polo Holdings committed a single violation of section 7.4.9 of the Village's Unified Land Development Code, and are **REVERSED** with respect to the Special Magistrate's finding that Polo Holdings committed an additional four violations.

BLANC, HAFELE, and TICKTIN, JJ. concur.