

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

APPELLATE DIVISION (CIVIL): AY
CASE NO.: 2015-CA-007340

CITY OF PALM BEACH
GARDENS, FLORIDA, a
Florida Municipal Corporation
organized and existing under the
laws of the State of Florida,
Petitioner,

v.

PALM BEACH COUNTY,
FLORIDA, a Political
subdivision of the State of Florida,
Respondent.

Opinion filed:

MAR 18 2016

Petition for Writ of Certiorari from the Palm Beach County Board of County Commissioners.

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PER CURIAM.

In this Petition for Writ of Certiorari ("Petition") the City of Palm Beach Gardens (the "City") seeks review of Palm Beach County's (the "County"), through both its Zoning Commission ("ZC") and its Board of County Commissioners ("BCC"), approval of a combined

application for rezoning and certain variances filed by PGA Partners 100 LLC (“Applicant”). The City raises three issues in support of its petition: (1) the ZC’s approval of the variances departed from the essential requirements of the law because the approval was conditioned on the rezoning application being approved by the BCC; (2) the ZC’s approval was not supported by competent, substantial evidence because at the time the variances were approved the property had not yet been rezoned; and (3) the ZC and BCC denied the City procedural due process by providing inadequate notices and limiting the City’s speaking time. Because this Court finds that this Petition is primarily an untimely challenge to the ZC’s actions, it is dismissed. To the extent this Petition raises any other issues, it is denied.

BACKGROUND

Applicant purchased property located at the corner of PGA Boulevard and Ellison Wilson Road and sought to rezone it from multifamily residential and multiple use planned development to planned unit development; Applicant also sought three variances relating to setbacks and buffers. The ZC held a public meeting on May 7, 2015, to discuss the variances and the potential rezoning. This meeting was noticed in the Palm Beach Post. The agenda for the meeting indicated that the ZC would be deliberating on whether to adopt a resolution approving the variances and on whether to recommend approval of the rezoning.¹ At the meeting the principal planner for the City voiced opposition to the project. At the conclusion of the meeting the ZC approved the variances and recommended approval of the rezoning. The resolution approving

¹ Under the Palm Beach County Unified Land Development Code (“ULDC”), the ZC has the exclusive power to “review, hear, consider, and approve, approve with conditions, or deny . . . Type II variance applications.” ULDC Art. 2.G.3.L.2.c. All of the variances requested by Applicant were Type II variances. *See* ULDC Art. 2.B.2.G. The ZC does not have the ability to approve rezoning requests; it may only recommend that the BCC approve such requests. ULDC Art. 2.G.3.L.2.g.

the variances stated that it “shall only become effective upon the adoption of a resolution approving [the rezoning] by the [BCC].” That resolution was signed and filed with the Clerk of the ZC on May 7, 2015.

On May 28, 2015, the BCC held a public meeting to discuss the rezoning. That meeting was also noticed in the Palm Beach Post. At the meeting three representatives from the City voiced opposition to the rezoning: the fire marshal, the director of planning and zoning, and the city attorney. A fourth representative from the City, the principal planner, was present and invited to speak but declined. After hearing from the Applicant, the representatives from the City, and staff, the BCC approved the rezoning. The resolution approving the rezoning was signed and filed with the Clerk of the BCC on June 1, 2015. On June 29, 2015, the City filed the presently pending Petition challenging, primarily, the granting of the variances.

STANDARD OF REVIEW

Generally, on certiorari review 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 findings and decision are supported by competent, substantial evidence. *Miami-Dade Cnty. v. Omnipoint Holdings, Inc.*, 863 So. 2d 195, 199 (Fla. 2003).

LEGAL ANALYSIS AND RULING

The granting of a variance is a quasi-judicial decision. *Jennings v. Dade Cnty.*, 589 So. 2d 1337, 1343 (Fla. 3d DCA 1991). A “[r]eview of quasi-judicial decisions of any administrative body, agency, board, or commission not subject to the Administrative Procedure Act shall be commenced by filing a petition for certiorari in accordance with rules 9.100(b) and (c).” Fla. R. App. P. 9.190(b)(3). Florida Rule of Appellate Procedure 9.100(c)(2) states that

“[a] petition to review quasi-judicial action of agencies, boards, and commissions of local government . . . shall be filed within 30 days of rendition of the order to be reviewed.” “An order is rendered when a signed, written order is filed with the clerk of the lower tribunal.” Fla. R. App. P. 9.020(i). The time for filing an appeal or a petition for writ of certiorari begins to run on the day the order is rendered, not on any future effective date provided for in the order itself. *See, e.g., Salinger v. Salinger*, 100 So. 2d 393, 393-94 (Fla. 1958); *Brenner v. Gelernter*, 90 So. 2d 306, 308 (Fla. 1956). The thirty day time limit to file a petition for writ of certiorari is jurisdictional. *Serifsoy v. City of Lake Worth*, 789 So. 2d 1173, 1174 (Fla. 4th DCA 2001). When a petition for writ of certiorari is filed outside of the thirty day time limit, it should be dismissed without reaching the merits. *Hofer v. Gil De Rubio*, 409 So. 2d 527, 528 (Fla. 5th DCA 1982).

Here, any challenge to the actions of the ZC is untimely. The resolution approving the variances was rendered on May 7, 2015—the day it was signed by a representative of the ZC and filed with the Clerk of the ZC. If the City wished to challenge any aspect of the ZC’s decision, it was required to file its petition within thirty days of May 7, 2015. The instant Petition was filed June 29, 2015—outside the thirty day time limit. Therefore, to the extent this Petition attempts to challenge the May 7, 2015, approval of the variances it is dismissed.

The City contends this Petition is a timely challenge to the ZC’s May 7, 2015, action. Essentially, it argues that because the approval of the variances was contingent on the BCC approving the rezoning, the May 7, 2015, resolution of the ZC was a non-final order that could not have been reviewed via a petition for writ of certiorari. The City contends that the May 7, 2015, resolution became final only when the rezoning was approved by the BCC and thus the

instant Petition is timely to challenge the May 7, 2015, actions of the ZC. In support, the City points to case law indicating that only final orders may be appealed, except in limited circumstances that do not apply to these facts. What the City fails to recognize is that the bulk of the cases it relies on are direct appeals of trial court orders authorized under Florida Rule of Appellate Procedure 9.030(b)(1)(A).² That rule specifically requires that the order to be reviewed either be a final order or an enumerated non-final order. Fla. R. App. P. 9.030(b)(1). In contrast, Rule 9.190(b)(3), the subsection under which this action arises, allows for “review of quasi-judicial *decisions* . . . by filing a petition for certiorari in accordance with rules 9.100(b) and (c).” (emphasis added). Rule 9.100(c)(2) allows a petition for certiorari “to review quasi-judicial *actions* of agencies, boards, and commission of local government.” (emphasis added). It states that such a petition must be filed within thirty days of “rendition of the *order*.” (emphasis added). None of these provisions require that the quasi-judicial “decision,” “action,” or “order” of the agency, board, or commission of local government be final.

In sum, if the City wished to challenge the actions of the ZC, it needed to file a petition for writ of certiorari within thirty days of the date the order was rendered. The order was rendered the date it was signed and filed with the clerk, May 7, 2015, not any future effective date. The City thus had thirty days from May 7, 2015, to file a petition challenging the actions of the ZC. It filed the instant Petition on June 29, 2015—outside of the thirty day time limit. Thus to reiterate, to the extent this Petition challenges any actions of the ZC, it is dismissed. To the extent the Petition raises any other issues, it is denied. Accordingly, the Petition for Writ of

² One case the City relies on is an appeal of final administrative action as defined by the Administrative Procedure Act brought under Florida Rule of Appellate Procedure 9.190(b)(1). Rule 9.190(b)(1) only authorizes a review of “final agency action.” This action is brought under Rule 9.190(b)(3) which allows for reviews of “quasi-judicial decisions” of entities not covered by the Administrative Procedure Act.

Certiorari is **DISMISSED IN PART** and **DENIED IN PART**.

OFTEDAL, SASSER, and CARACUZZO, JJ. concur.