

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

APPELLATE DIVISION (CIVIL): AY
CASE NO: 502016CA005162XXXXMB

RG TOWERS, LLC,
Petitioner,

v.

TOWN OF LAKE PARK, FLORIDA,
Respondent.

Opinion filed: MAR 23 2017

Petition for Writ of Certiorari from Town of Lake Park's Final Order denying Application for Site Plan Approval

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Petitioner RG Towers, LLC ("RG Towers") is seeking certiorari review of the Town of Lake Park ("Lake Park") Town Commission's final order denying RG Tower's Application for Site Plan Approval, contending that Lake Park's Town Commission ("Town Commission") denied it procedural due process, departed from the essential requirements of the law, and that the final order was not supported by competent, substantial evidence. We agree that the Lake Park Town Commission did not afford RG Towers procedural due process, and thus grant the Petition and remand this matter back to the Lake Park Town Commission. We decline to address RG Towers'

remaining arguments.

RG Towers is a company that designs, constructs, and leases telecommunications towers to national telecommunications providers. RG Towers located a “dead zone” in Lake Park and found real property in the Lake Park Marina (“the property”) that would be suitable to construct a tower. As required by Chapter 74 of Lake Park’s Code of Ordinances, RG Towers submitted an “Application for Site Plan Review or Amendment” (hereinafter, the “Application”) to Lake Park on February 10, 2015. On March 21, 2016, the Town Commission held a quasi-judicial public hearing to consider the Application, and on the same day entered a Final Order denying the Application.

In its Petition, RG Towers argues that the Town Commission deprived RG Towers of procedural due process in denying its Application for Site Plan Approval. In particular, RG Towers contends that Town Commission permitted a party intervenor to submit evidence on the morning of the hearing without providing RG Towers the opportunity to properly review the materials, prepare rebuttal testimony, have its engineer present at the hearing, or to cross-examine the alleged expert witness that prepared the evidence. RG Towers further states that this report was submitted past the deadline set for document submission under Lake Park’s Code section 2-2.

On a petition for certiorari challenging the due process of 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). In quasi-judicial proceedings involving issues such as zoning and planning, “the parties must be able to present evidence, cross-examine witnesses, and be informed of all the facts upon which the commission acts.” *Jennings*

v. Dade Cnty., 589 So. 2d 1337, 1341 (Fla. 3d DCA 1991). This precedent has also been codified into Lake Park's Code of Ordinances, particularly section 2-2, which governs the procedure of quasi-judicial hearings. Section 2-2 states in relevant part that "[t]he petitioner, the town staff, and any party intervenor shall be given the opportunity to present evidence, bring forth witnesses and ask questions of, or cross examine any other part or party intervenor's witnesses." Lake Park, Fla., Code § 2-2(d)(2) (2002). The Code further provides:

[I]ntervenorers may submit any relevant written materials which contribute to the explanation of the intervening party's position for incorporation into the record. The intervening party shall have provided these materials to the town at least seven business days in advance of the hearing. At the discretion of the town commission or board, materials submitted less than seven business days, or on the day/evening of the hearing, may be good cause for a continuance.

Lake Park, Fla., Code § 2-2(d)(4)e (2016).

Given the nature and complexity of the evidence submitted by the intervenor on the morning of the hearing, we find that RG Towers was not provided fair notice of the documents and arguments presented by the party intervenor. Because of the lack of fair notice, RG Towers was not given the opportunity to properly respond and rebut to such evidence and the Town Commission's questions that resulted therefrom. Because the record reflects that the Town Commission appeared to be very concerned about the party intervenor's presence and likely based its decision in part upon such evidence, we find that RG Towers was deprived of procedural due process. Accordingly, we GRANT the Petition for Writ of Certiorari and QUASH the order denying RG Tower's Application for Site Plan Approval. We REMAND the case back to Lake Park's Town Commission to afford procedural due process to RG Towers.

GILLEN, ROWE, and HAFELE, JJ. concur.

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