

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

PAUL RAMPELL and RITA RAMPELL,
Petitioners,

APPELLATE DIVISION (CIVIL): AY
CASE NO: 2014-CA-013648

v.

TOWN OF PALM BEACH and
WILLIAM O. COOLEY,
Respondents.

Opinion filed: **OCT - 9 2015**

Petition for Writ of Certiorari from the Town of Palm Beach Town Council.

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PER CURIAM.

Petitioners, Paul and Rita Rampell, filed a Petition for Writ of Certiorari seeking review of an appeal decided by the Town of Palm Beach Town Council, in which the Town Council

reversed Architectural Commission (“ARCOM”) decision B-098-2014. ARCOM approved the Rampells’ application to build a new home in Palm Beach. After ARCOM issued its decision, Respondent William O. Cooley appealed to the Town Council. The Town Council held a public hearing on the matter, in which Petitioners and Cooley participated, and ultimately voted to reverse ARCOM’s decision. The Rampells timely filed a Petition for Writ of Certiorari. The Court finds that the Town Council departed from the essential requirements of law by applying an incorrect standard of review. Therefore, the Court grants the Rampells’ Petition for Writ of Certiorari.

This Court has jurisdiction to conduct first-tier certiorari review of the Town Council’s decision. Fla. R. App. P. 9.100(f) and 9.190(b)(3); *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995). The standard of review this Court must apply when evaluating the Town Council’s decision is limited to three considerations: (1) whether the Town Council afforded the Rampells procedural due process; (2) whether the Town Council observed the essential requirements of law; and (3) whether the Town Council’s findings and judgment are supported by competent, substantial evidence. *Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982).

The Rampells raise several arguments in the Petition for Writ of Certiorari. However, the Court finds merit only in the Rampells’ claim that the Town Council departed from the essential requirements of law by applying a *de novo* standard of review as opposed to a first-tier certiorari standard of review. The Court agrees with the Rampells.

The Town of Palm Beach Code of Ordinances sets forth the procedures governing the Town Council’s review of an ARCOM decision. § 18-177, Palm Beach Code. The Code states that appeals filed pursuant to this section “shall be based on the record of the proceedings below

and shall not be presented de novo.” *Id.* At the start of the Town Council hearing on the ARCOM decision, Town Attorney John Randolph explained that the Council would apply a first-tier certiorari standard of review. Randolph stated that:

First, as you are aware, the appeal is based on the record made before the architectural commission and shall not be presented de nova [sic], that means no new evidence shall be presented.

...

In considering the appeal, you should follow the same rule as followed by the Circuit Court in considering such appeals, often heard as petitions for writ of certiorari. The Court considers whether due process has been afforded; whether there's been a violation in the application of the law and whether there's competent [substantial] evidence to support the decision made below. In other words, is there competent substantial evidence in the record in which the architectural commission based its decision, because you're looking at the record and the evidence presented therein?

The Court—this is important—the Court does not substitute its opinion for the decision made below nor should you.

...

There's no issue here relative to due process. The issue therefore here is whether the correct law was applied and whether there was competent substantial evidence to allow the architectural commission to decide as it did.

The plain language of the section 18-177 of the Code—as thoroughly explained by the Town Attorney—requires the Town Council to apply a first-tier certiorari standard of review to appeals of ARCOM decisions. Accordingly, the Town Council departed from the essential requirements of law by applying a *de novo* standard of review.

During the “executive” portion of the Town Council hearing, the record reflects that there was confusion among the councilors as to the appropriate standard of review. It appears that only two councilors—Councilors Pucillo and Kleid—applied the correct standard of review,

while the other three councilors reviewed ARCOM's decision *de novo*. Accordingly, a majority of the Town Council did not apply the appropriate standard of review.¹

The Town alleges that nothing in the Code requires the Town Council to adhere to a first-tier certiorari standard of review and that such appeals "are often conducted as a 'hybrid' type of proceeding where the governing body reviews the record of the proceedings before the lower tribunal and also allows additional evidence to be presented at the same proceeding."² The Town relies on *Taxi USA of Palm Beach v. City of Boca Raton*, in which a taxi company sought second-tier certiorari review on grounds that the Boca Raton City Council employed a hybrid appeal process in reviewing a hearing officer's decision. 162 So. 3d 119 (Fla. 4th DCA 2014). The Fourth District Court of Appeal denied the petition, noting that the city code did not "contemplate a conventional or strict appellate standard when a challenge to the hearing officer's

¹ The transcript of the Town Council hearing also indicates that the Town Council considered new information that was not presented to ARCOM. The Rampells sent the members of the Town Council a packet of information regarding the appeal in which some of the materials were not presented to ARCOM. Cooley attempted to admit this packet as "part of the record," to which the Rampells' counsel objected. Ultimately, a councilmember ruled that the packet would be part of the record. Other arguably new evidence was presented to the Town Council, including (1) that a home similar in style to the Rampells' proposed home is under construction five doors down from the subject property, (2) a photograph of a pergola on a neighboring property, and (3) a quote from the Palm Beach Daily News, read aloud by Cooley, in which an ARCOM commissioner commented on the potential that too much non-traditional architecture could destroy the traditional Palm Beach "brand."

² To the extent that the Town argues that the Town Council was required to consider new evidence at the hearing, the Court finds that the Town Council has misinterpreted the case law. The Town relies on *Jennings v. Dade County*, in which the Third District Court of Appeal stated that in "quasi-judicial zoning proceedings, the parties must be able to present evidence, cross-examine witnesses, and be informed of all the facts upon which the commission acts." 589 So. 2d 1337, 1340 (Fla. 3d DCA 1991). The parties to an ARCOM proceeding are entitled to present evidence, cross-examine witnesses, and be informed of all the facts upon which the commission acts. However, the Code of Ordinances provides that *appeals* shall not be presented *de novo*. Therefore, in accordance with section 18-177, parties to an ARCOM proceeding are not entitled to another opportunity to present new evidence on appeal.

determination is sought in the City Council.”³ *Id.* at 124. *Taxi USA* is distinguishable from the instant case because, here, the Code contemplates a strict appellate standard and expressly provides that appeals are to be based on the record of the proceedings below and shall not be presented *de novo*.

Therefore, this Court finds that the Town Council departed from the essential requirements of law by applying an improper standard of review. *See State Dept. of Highway Safety v. Edgell-Gallowhur*, 114 So. 3d 1081, 1085 (Fla. 3d DCA 2013) (“If we find, for example, that the circuit court applie[d] an improper standard of review, this is tantamount to departing from the essential requirements of law.”) (internal quotations omitted). Accordingly, we GRANT the Petition for Writ of Certiorari and QUASH the Town Council’s ruling reversing ARCOM decision B-098-2014.

SASSER, BRUNSON, and BLANC, JJ., concur.

³ The Fourth District Court of Appeal described the Boca Raton City Code as follows:

The City Code allows either the applicant or an intervening party to “appeal” a decision by the hearing officer. City Code § 18-49(1)(k)2. Metro Taxi and Yellow Cab appealed. The Code provides that the City Council sits in “open session” as the appeal board, and that it shall either affirm the hearing officer’s actions, affirm with modification, reverse it or remand for further consideration.

Taxi USA of Palm Beach v. City of Boca Raton, 162 So. 3d 119, 121-22 (Fla. 4th DCA 2014).