

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

ROYAL POINCIANA SOUTH,

Appellant,

Case No.: 502007CA009625XXXXMB

L.T.: 07-2097

Division: 'AY'

v.

TOWN OF PALM BEACH,

Appellee.

Opinion filed: DEC 13 2007

✓ Appeal from the Code Enforcement Board of the Town of Palm Beach, Florida.

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✓ For Appellee: John C. Randolph, Esq., 505 South Flagler Drive, Suite 1100, P.O. Box
3475, West Palm Beach, Florida 33407-3475

REVERSED AND REMANDED

The Appellant, ROYAL POINCIANA SOUTH ("the Building") appeals the Order of the Code Enforcement Board of the TOWN OF PALM BEACH ("the Town") entered on May 17, 2007, which found the Building in violation of Section 134-1607 of the Town of Palm Beach Code of Ordinances. This court has jurisdiction pursuant to § 162.11, Florida Statutes. For the reasons set forth below, we find that the Town departed from the essential requirements of law, and reverse.

Royal Poinciana South is an apartment building located in the Town of Palm Beach, Florida. The Building's air conditioning units have been located on its rooftop for at least forty years. The units pre-date the Town ordinance, Section 134-1607, which requires that rooftop air

conditioning units be sight screened from view insofar as possible. For that reason, the units were never screened.

In April 2005, the Town issued a permit for the Building to replace its roof. The Town also required as part of the re-roofing that the Building replace the stands supporting the air conditioners in order to comply with the Florida Building Code. The new stands raised the units by two feet. In October 2005, a month after the roof's final approval, Hurricane Wilma blew off the new roof and the Building proceeded to obtain new permits and approval. At no time did the Building screen the air conditioning units.

In March and May of 2007, the Town cited the Building with violating Section 134-1607. The Code Enforcement Board held a hearing on the matter May 17, 2007. At the hearing, the Building based its defense on two theories. First, the Building argued that it enjoyed a grandfathered status and thus 134-1607 could not apply retrospectively. Second, it argued that the Town was estopped from requiring compliance with 134-1607 after issuing the permits and final approval of the roof. After discussion of both the grandfathering and estoppel issues, the Code Enforcement Board issued an Order stating Findings of Fact and Conclusions of Law that "[v]iolation of Chapter 134, Section 134-1607, of the Town of Palm Beach Code of Ordinances does exist." This appeal followed.

Where a party is entitled as a matter of right to seek review in the circuit court from administrative action, the circuit court must determine whether procedural due process was accorded, whether the essential requirements of the law have been observed, and whether the administrative findings and judgment are supported by competent substantial evidence. City of Deerfield Beach v. Vaillant, 419 So. 2d 624 (Fla. 1982).

On appeal, the Building argued that the Town departed from the essential requirements of law by applying Section 134-1607 retrospectively, and that there was no competent substantial evidence to support the Town's conclusion that the ordinance applied to the Building. The Building based its argument, both at the hearing and on appeal, on the well-accepted rule of law that statutes that create new rights or obligations may only be applied prospectively. See Cunningham v. State Plant Board of Florida, 112 So.2d 905, 906 (Fla. 2d DCA 1959), cert. denied 115 So.2d 701 (Fla. 1961); City of Lakeland v. Catinella, 129 So.2d 133, 136-37 (Fla. 1961). In its answer brief, however, the Town responded that the Town's zoning Code expressly regulates nonconforming or "grandfathered" structures. The Town argued that the Building was nonconforming according to Sections 134-416(d), 134-417, and 134-418 of the Town of Palm Beach Code of Ordinances, and that by raising the air conditioning units two feet the Building lost its grandfathered status. The application of these ordinances, however, was raised for the first time on appeal. The discussion of the grandfathering issue that took place at the hearing was insufficient without providing notice to the Building of the application of these ordinances. Significantly, the Building offered several arguments in its Reply brief against the application of these ordinances that it was unable to raise at the hearing. In order for the Town to find the Building in violation of 134-1607, it must first make a finding that the Building has enlarged or extended a nonconformity that was previously grandfathered by applying Sections 134-416(d), 134-417, and 134-418 of the Town of Palm Beach Code of Ordinances.

This Court finds that the Town departed from the essential requirements of law by raising Sections 134-416(d), 134-417, and 134-418 for the first time on appeal. We **REVERSE** and **REMAND** with direction to address the grandfathering issue, in order to provide the Building

with the opportunity to respond to the application of Sections 134-416(d), 134-417, and 134-418 of the Town of Palm Beach Code of Ordinances.

The Building also argued on appeal that the Town departed from the essential requirements of law by not finding that the Town was estopped from enforcing Section 134-1607 against the Building, and that there was no competent substantial evidence to support the conclusion that the Town was entitled to enforce the ordinance against the Building. The burden was on the Building to prove that the Town was estopped from applying Section 134-1607; however, the record lacks sufficient evidence to support a finding of estoppel.

HOY, KELLEY, and LEWIS, JJ. concur.