

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

APPELLATE DIVISION (CIVIL): AY
CASE NO: 502015CA013815XXXXMB

DR. MOHAMMAD SANDHU,

Petitioner,

v.

TOWN OF MANGONIA PARK,

Respondent.

Opinion filed: **OCT 25 2016**

Petition for Writ of Certiorari from the Town of Mangonia Park Planning and Zoning Board

For Petitioner: Jeffrey Lynne, Esq.,
2255 Glades Road, Suite 335W
Boca Raton, FL 33431
Jlynne@bmulaw.com

For Respondent: Keith W. Davis, Esq.,
1111 Hypoluxo Road, Suite 207
Lantana, FL 33462
Keith@CWDA-legal.com

PER CURIAM.

In the instant Petition for Writ of Certiorari ("Petition"), Petitioner Dr. Mohammad Sandhu asks the Court to quash an order denying his application for Zoning Approval by the Town of Mangonia Park Planning and Zoning Board. Dr. Sandhu contends that the Zoning Board departed from the essential requirements of law by violating the ADA, and that the denial of his application is not supported by competent substantial evidence.

On October 27, 2015, Dr. Mohammad Sandhu ("Dr. Sandhu") submitted a development application ("Application") to the Town of Mangonia Park. Dr. Sandhu requested zoning

approval to open a medical detoxification center (“Detox Center”) at 4450 S. Tiffany Drive (“Property”). The Property is zoned as a Planned Commerce Center (“PCC”).

Section 12A of the Town of Mangonia Park Zoning Code (“Zoning Code”) governs PCC zoned property. Dr. Sandhu’s proposed Detox Center is a permitted use of the Property. Under section 12.A.2.1, all permitted uses in the PCC district are subject to the special exception review process by the Town of Mangonia Park Planning and Zoning Board (“Zoning Board”).

To determine whether the Detox Center qualifies as a special exception, the Zoning Board applies the criteria set forth in Zoning Code Section 19. Section 19.3 states:

. . . Special exception uses . . . shall be permitted only upon authorization by the Town Planning and Zoning Board provided that the standards as set forth below have been met; which standards are as follows: . . .

(e) The proposed use will make a substantial contribution to the neighborhood environment and will not infringe on the rights of properties in the vicinity of the excepted use; and

(f) The proposed use does not endanger, restrict or impair public safety.

Dr. Sandhu’s Application addressed the special exception criteria under Section 19.3. Further, Dr. Sandhu submitted floor plans, site plans, and landscape plans of the proposed medical detoxification center, as well as existing site photographs of the Property.

There was a full and final hearing on the application on November 17, 2015. Dr. Sandhu and Cassandra Sierra (“Sierra”)—the licensed clinician on staff operating as the clinical director and Chief Operating Officer—gave sworn testimony. Regarding the first clause in special exception (e)--contributions to the neighborhood environment--Sierra testified that the neighborhood will benefit because more than ten staff are expected at the site, and that seven are currently hired and trained.

Sierra also addressed the second clause of special exception (e)--that the Detox Center would not infringe on the property rights of others in the vicinity, and special exception (f)--that

the Detox Center would not endanger, restrict or impair public safety. Sierra testified that if someone is a threat to themselves or the facility, then she can Baker Act them and transport them to a hospital. Zoning Board members asked about the threat of a patient walking off of the Property and Sierra indicated that if someone wanted to leave then the Detox Center would provide transportation to an airport, bus station, or call a friend or family member to pick up the patient. Sierra also mentioned that behavioral health techs secure the property, do rounds, and walk around the building to make sure the place is safe. Further, the doors of the facility all have alarms on them, and closed circuit televisions monitor the facility.

During the hearing, various members on the Zoning Board expressed concern and questioned Dr. Sandhu about how the Detox Center would impact the public. After Dr. Sandhu's presentation, community member Michael Mullette stated that he believed the facility would be a danger to public safety. No evidence or fact-based testimony was presented to the Zoning Board, and no findings of fact were made by the Zoning Board, indicating that the Detox Center would not contribute to the neighborhood environment, or that it would not infringe on the rights of properties in the vicinity, or was a threat to public safety.

The Zoning Board voted four to one to deny Dr. Sandhu's application because of the lack of competent substantial evidence that the Detox Center will (1) make a substantial contribution to the neighborhood environment and will not infringe on the rights of the properties in the vicinity of the accepted use, and (2) not endanger, restrict, or impair, public safety. Dr. Sandhu filed the instant timely petition on December 15, 2015.

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) ("Common-law certiorari has been made available to review quasi-judicial

orders of local agencies and boards not made subject to the Administrative Procedure Act when no other method of review is provided.”).

The standard of review this Court must apply when evaluating the Zoning Board’s decision is limited to three considerations: (1) whether the Zoning Board afforded Dr. Sandhu procedural due process; (2) whether the Zoning Board observed the essential requirements of law; and (3) whether the Zoning Board’s findings and judgment are supported by competent, substantial evidence. *Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982). The Court cannot reweigh evidence or substitute its judgment for that of the agency. *Educ. Dev. Ctr., Inc. v. City of W. Palm Beach Zoning Bd. of Appeals*, 541 So. 2d 106, 108 (Fla. 1989).

An applicant for a special exception has the initial burden of showing by competent substantial evidence that his application met the requirements of the statutory criteria for granting such exceptions. *Irvine v. Duval County Planning Com’n*, 495 So. 2d 167, 167 (Fla. 1986). Once the applicant has met its burden, the burden shifts to the zoning board to demonstrate, by substantial evidence presented at the hearing and made a part of the record, that the special exception requested did not meet the statutory standards and was adverse to the public interest. *Id.* The Zoning Board is required to make findings of fact, or have evidence supporting its decision to deny an application, and may not simply state as a conclusion that the special exception criteria are violated. *Pollard v. Palm Beach County*, 560 So. 2d 1358, 1360 (Fla. 4th DCA 1990).

Dr. Sandhu met his initial burden of competent substantial evidence that the Detox Center qualifies as a special exception. The Application responded to each of the special exception criteria and indicated how the Detox Center would meet the criteria. At the hearing, sworn testimony of Dr. Sandhu, Sierra, and floor plans, site plans, and landscape plans of the proposed

medical detoxification center, as well as existing site photographs of the Property were presented. The Zoning Board's questions regarding infringing on other properties in the vicinity, as well as public safety were addressed. Without evaluating or analyzing the quality of the evidence, the Court finds that Dr. Sandhu met its burden that the Detox Center qualifies as a special exception by competent substantial evidence.

Competent substantial evidence does not support the Zoning Board's decision to deny the Application. The only testimony arguing that the Detox Center was a threat to public safety was presented by Michael Mulette. However, Mulette's testimony was not fact-based, but rather a generalized statement of opposition, and thus, is not considered competent substantial evidence. *See City of Hialeah Gardens v. Miami-Dade Charter Found., Inc.*, 857 So. 2d 202, 204-05 (Fla. 3d DCA 2003). Outside of Mulette's testimony, no evidence or testimony on the record supports the Zoning Board's decision. Further, the Zoning Board made no findings of fact to support its denial of the Application. Thus, the Zoning Board's denial was not supported by competent substantial evidence. Accordingly, the Zoning Board's decision to deny the Application is quashed, and the Application is remanded to the Zoning Board

We **GRANT** the Petition for Writ of Certiorari, **QUASH** the order denying Dr. Sandhu's Application, and **DENY** Dr. Sandhu's motion for appellate attorney fees.

G. KEYSER, HAFELE, and SMALL, JJ. concur.

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v.

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Petition for Certiorari: December 15, 2015

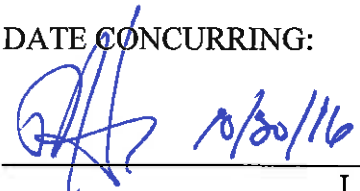

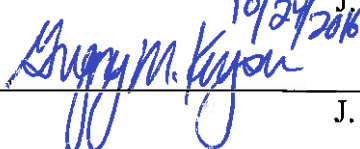
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DATE OF PANEL: July 26, 2016

PANEL JUDGES: G. KEYSER, HAFELE, SMALL

GRANTED/DENIED/OTHER: GRANTED

PER CURIAM OPINION/DECISION BY: PER CURIAM

DATE CONCURRING:)	DISSENTING:)	CONCURRING SPECIALLY:)
)	With Opinion)	With/Without Opinion)
 10/30/16)))
_____ J.)	_____ J.)	_____ J.)
 10/29/16)))
_____ J.)	_____ J.)	_____ J.)
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