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NOT FINAL UNTIL DISPOSITION
OF TIMELY-FILED MOTION FOR
REHEARING OR CLARIFICATION

IN THE CIRCUIT COURT
OF THE ELEVENTH
JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE
COUNTY, FLORIDA

APPELLATE DIVISION
CASE NO. 2018-000340 AP

GPT 74 ST OWNER LLC – AIM
RECYCLING, INC.,
Appellant,

LOWER TRIBUNAL
CASE NO.: ECC2017-161

v.

TOWN OF MEDLEY, FLORIDA,
Appellee.
_____/

OPINION

Opinion filed: January 4, 2021

On Appeal from a Special Magistrate Hearing in and for Miami-Dade County, Florida.

Eileen Ball Mehta Esq., Carter N. McDowell Esq., Elise H. Gerson Esq., Bilzin Sumberg Baena Price & Axelrod LLP, for Appellant.

Laura K. Wendell Esq., Jose L. Arango Esq., Weiss Serota Helfman Cole & Bierman, P.L., for Appellee.

Before: WALSH, TRAWICK, and SANTOVENIA, JJ.

WALSH, J.

On November 8th, 2017, the Town of Medley ("Medley") issued a courtesy warning notice to GPT 74 ST OWNER LLC- AIM RECYCLING, INC. ("GPT"), of its violation of Medley Code Section 14-26(B) for operating a scrap metal recycling business without a business tax receipt ("BTR"). A formal notice of violation followed. After a code enforcement hearing on July 10, 2018, a special magistrate found GPT in violation of Section 14-26(B). The order granted GPT 60 days to come into compliance, after which a fine would accrue. GPT filed this petition for certiorari challenging the order.

Background

GPT operated a scrap metal recycling facility on its property. Medley issued a BTR to GPT to operate a junk yard. However, Medley refused to issue a BTR to operate a scrap metal processing facility. Code Section 14-26(B) requires:

> No person shall engage in any business that is carried on within the Town, and no business tax shall be issued, until a business tax for the current year, and all prior outstanding business taxes have been paid for such business and the proper business tax receipt obtained.

See §14-33, Code of Town of Medley.

GPT did not deny that it operated a scrap metal recycling facility without a proper BTR. In 2016, Medley discontinued zoning use for scrap metal recycling or

processing, and therefore, GPT could no longer obtain a BTR for this use. GPT claimed that it enjoyed status as a "legally non-conforming use" for scrap metal recycling, and therefore, Medley wrongfully refused to issue a BTR.

The special magistrate allowed GPT to put forth evidence on its past scrap metal recycling business, but ultimately found that whether its scrap metal recycling business qualified as a legally nonconforming use was not a defense to the code violation. GPT's zoning status was not a matter to be determined by a special master in a code enforcement hearing, but rather, was required to be addressed through Medley's zoning process to the Town Council. Following this process, GPT, if successful, could obtain its BTR from Medley. Recognizing that a zoning process could take time, the magistrate gave GPT a 60-day compliance period before imposing fines.

GPT claims in this petition that Medley departed from the essential requirements of law resulting in a severe miscarriage of justice, for failing to accept GPT's status as a legally nonconforming business on the property. Additionally, GPT claims that in refusing to recognize its defense and failing to make findings on its alleged legally nonconforming use, Medley deprived GPT of procedural due process.

Analysis

On review from a final order of code enforcement, a circuit court determines: (1) whether procedural due process is accorded; (2) whether the essential requirements of law have been observed; and (3) whether the administrative findings and judgment are supported by competent substantial evidence.[1] *Haines City Community Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995).

Departure from the Essential Requirements of Law

GPT argues that the special magistrate departed from the essential requirements of law by refusing to entertain its defense that it operated as a legally nonconforming use.

A determination whether the essential requirements of law were observed hinges upon whether the correct law was applied. GPT was cited for violating Section 14-26(b) of the Town of Medley Code. This section provides:

> (b) Requirements to pay business tax. No person shall engage in any business that is carried on within the town, and no business tax receipt shall be issued, until a business tax for the current year, and all prior outstanding business taxes have been paid for such business and the proper business tax receipt obtained.

It is uncontroverted that GPT failed to obtain the "proper business tax receipt" to operate a scrap metal recycling business. Section 14-26(g) of the Medley code

[1] GPT does not argue that there was a lack of competent, substantial evidence presented below.

requires:

> (g) Separate business.
>
> (1) Each business entity registered with the state shall constitute a single and separate business, requiring a business tax receipt for each registered business entity.
>
> (2) A separate business tax receipt shall be obtained for each separate business at the same location.
>
> (3) Each receipt obtained by a business shall be issued to cover only the business licensed thereby at the location and in the category designated in such receipt.

To be entitled to a business tax receipt, the business owner must obtain a compliant certificate of use. It is undisputed that GPT failed to obtain such a certificate of use, and therefore, Medley could not issue a BTR for scrap metal recycling. Section 14-33(b) provides:

> (b) Certificate of use. No business tax receipt shall be issued until a certificate of use has been issued in accordance with the Town Code, unless its business does not require a certificate of use. The certificate of use shall be issued when the business is in compliance with the Town Code, ...
>
> (1) Before any use of land, building or structure is established, or any established use of land, building, or structure is changed to a different use than that identified in the previously-issued certificate of use and/or business tax receipt which applies to the property, the person seeking to establish the use must obtain a certificate of use from the Town Attorney.

GPT's BTR for operating a junkyard was plainly insufficient under the code to cover

its operation as a scrap metal recycling facility. Furthermore, Medley was not required to issue a BTR until GPT obtained a certificate of use for scrap metal recycling.

Zoning which would have permitted scrap metal recycling was discontinued under the Code in 2016. Therefore, Medley would not issue a BTR because scrap metal recycling was not a permitted business use under the current code. In response, GPT claimed that Medley wrongfully denied a BTR based upon GPT's status (asserted but never determined by the Town Council) as a legally nonconforming use. GPT claims that the trial court departed from the essential requirements of law for failing to recognize this legal defense. Again, applying the Medley Code, GPT is wrong.

Medley codified a separate zoning process to determine whether a property or land may maintain business operation as a legally nonconforming use. Section 62-61 addresses nonconforming uses for both buildings and land. A legally nonconforming use must lawfully exist as of the time of the passage of the code and must continue without interruption of more than 90 days. § 62-61(a), Town of Medley Code. *See, e.g., City of Miami Beach v. Beach Blitz, Co.*, 28 Fla. L. Weekly Supp. 461a (Fla. 11th Cir. App. July 21, 2020) (broadly interpreting Miami Beach ordinances related to continuous nonconforming use and

abandonment in favor of the property owner). In addition, Medley limits any nonconforming use of land to not more than three years after the zoning is discontinued:

> (1) Unless otherwise waived or extended as provided for below in this subsection (b), where land which is now used for a use excluded from the district in which such land is located and such use is not an accessory to the use of a main building located or the same lot or grounds **such nonconforming use shall be discontinued and all material completely removed by its owner not later than three years from the date of the passage of this chapter** or any subsequent amendment thereto which rendered such use nonconforming.

§ 62-61(b)(1), Town of Medley Code (emphasis added). If GPT's use is deemed legally nonconforming, it expired in 2019, three years after Medley discontinued the use.

Should a property owner seek an extension of the three-year period limiting legally nonconforming use on land, a property owner must apply to the Town Council for a waiver or extension:

> (2) Upon application by a property owner whose use is now excluded from the district in which the land is located, the **Town Council may grant a waiver of the obligation to discontinue the use as required by this subsection or grant the owner an extension of the three-year time period for discontinuance**.
>
> a. In granting such a waiver or extension, the Town Council must find that the obligation to discontinue the **use imposes an unreasonable burden on the property owner or that there is otherwise an overriding public purpose** in granting such relief.

> b. In granting a waiver or extension, the Town Council may impose reasonable conditions in order to protect the health, safety and welfare of the public, including the users or occupants of the land and in order to insure the orderly ultimate transition of the property to a use permitted under the applicable zoning district regulations.

§ 62-61(b)(2), Town of Medley Code (emphasis added).

Thus, to establish a legally nonconforming use, GPT must first establish (to the Town Council, not to a special magistrate in a code violation hearing) that its use was continuous and not abandoned. To extend the three-year limitation of such nonconforming use, GPT would need to additionally prove to the Town Council that discontinuation "imposes an unreasonable burden" or that there is an overriding public purpose supporting extension of the nonconforming use. § 62-61(b)(2), Town of Medley Code.

None of this was done. Instead, in a code violation hearing, GPT's attorney proffered that it was granted use by Miami-Dade County (but not Medley) to operate a scrap metal operation. While there was evidence in Medley's records that GPT's predecessors operated as a junkyard, Medley maintained no records that GPT's predecessors operated a scrap metal recycling facility. GPT's law firm's records, however, yielded a 2010-2011 license[2] for a predecessor of GPT,

[2] It is unclear in the record what type of "license" was in GPT's attorney's files nor who issued the license.

Car Recycling, Inc., to operate a scrap metal recycling facility. (Appellant's Appendix at A. 24). Car Recycling, Inc. also maintained records with Miami-Dade County evincing its sporadic operation as a scrap metal recycling company.

GPT was aware that to solve its zoning problem it must seek a zoning resolution with the Town Council. In fact, GPT's own project manager Mr. Keebler testified that when he requested that a Medley official, Ms. Ayala, disclose past business tax receipts for GPT's predecessors who operated scrap metal recycling, "her position was that the property was not zoned for it; therefore to chase this receipt was – **she was set on us coming to a hearing concerning the zoning, not to get down here and fill out a tax receipt**." (emphasis added)

The special magistrate properly determined that whether GPT operated as a legally nonconforming use was not a defense to a code enforcement proceeding for failure to obtain a BTR. The special magistrate could not recognize such a defense without making a finding that GPT operated as a nonconforming use, a decision reserved by the code to the Town Council. A finding by a special magistrate in a code enforcement proceeding that GPT operated as legally nonconforming use would allow GPT to operate its scrap metal recycling facility without ever being required to comply with sections 14-33 and 62-61 of the Medley Code. Such an end-run around municipal zoning and code provisions is an

inappropriate misuse of the code enforcement hearing function. We therefore find no departure from the essential requirements of law.

Procedural Due Process

GPT next asserts that it was deprived of procedural due process for the special magistrate's failure to entertain and make findings regarding its defense. GPT further claims that the Town has not afforded it the opportunity nor means to come into compliance, thus effectively forcing it to cease operations.

Chapter 162, Florida Statutes, sets forth the due process safeguards for a municipal code enforcement hearing. Section 162.06(2), Florida Statutes requires reasonable notice of the violation. If the violation is not corrected, the violator is entitled to a hearing, with testimony presented under oath. Following the hearing, the code enforcement board must issue an order making findings of fact with a compliance date. § 162.07, Fla. Stat.

"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 County,* 842 So. 2d 142 (Fla. 2d DCA 2003) (citation omitted). Here, Medley afforded GPT procedural due process. GPT was issued a courtesy warning notice and a formal notice of its violation and notice of the code enforcement hearing. GPT received a hearing where testimony under oath was presented and GPT had a

full opportunity to be heard. As set forth above, the special master was not required to make findings in its order on GPT's alleged defense, because whether GPT was operating as a nonconforming use is a zoning matter to be brought before the Town Council, not a defense to violation of the code. Medley therefore abided by all due process requirements.

GPT's argument that Medley gave it insufficient time or ability to come into compliance is similarly without merit. Even before the hearing, in consideration of the time needed for GPT to complete a zoning process and obtain a BTR, Medley allowed postponements of the hearing from February 13, 2018 until July 10, 2018. The initial warning notice was issued on November 8, 2017. The final order allowed GPT an additional 60 days to come into compliance, or until September 8, 2018. All told, GPT had 10 months to come into compliance. No violation of due process occurred.

Accordingly, we find that there was no departure from the essential requirements of law and no deprivation of due process. The petition for writ of certiorari is therefore denied.

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