From:	Sue Lang
To:	Planning Commission; City Council; Edward Lavallee; James Clinch; Roger Clark
Cc:	Board and Council Messages
Subject:	Don"t Be Bullied Or Afraid To Oppose The Village At Laurel and Jacaranda Shopping Center
Date:	Monday, January 6, 2025 11:37:10 AM
Attachments:	Gwynn_2nd_DCA_Opinion (1).pdf

Please see the attached 2011 ruling in the City of Venice's favor re: Claim of governmental taking of property without just compensation. Especially see Paragraphs 8 and 9 (not numbered): (i added red highlights to a few key sections i copied below)

Paragraph 8 A use restriction on real property may constitute a taking "if it has an unduly harsh impact on the owner's use of the property."
...A party challenging the constitutionality of a regulation has the burden to establish that he or she has suffered significant financial loss from the imposition of the regulation. Id. (citing Bass Enters. Prod. Co. v. United States, 54 Fed. Cl. 400, 403 (Fed. Cl. 2002)).

Paragraph 9 ...("The standard is not whether the landowner has been denied those uses to which he wants to put his land; it is whether the landowner has been denied all or substantially all economically viable use of his land.").

Mr. Neal cannot claim that not being allowed to build the proposed shopping center on this property constitutes an "unduly harsh impact on the owner's use of the property" nor has he "suffered significant financial loss" from not being allowed to build the proposed shopping center because a) it can be put to other uses and b) because he and his plans are on record stating that this property was to remain undeveloped, i.e. he had no expectation of any financial income or profit from this property beyond the adjacent residential development. **Indeed Mr. Neal has already derived income and profit from this property when he sold the neighboring homes because a certain amount of value of these homes can logically be attributed to the proximity of the natural, undeveloped open/green space that was promised to homebuyers.**

The City of Venice Planning Commission is not required to, nor should, approve the plans for this unwanted and unnecessary shopping center.

Thank you

M A N D A T E

from

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA

SECOND DISTRICT

THIS CAUSE HAVING BEEN BROUGHT TO THIS COURT BY APPEAL, AND AFTER DUE CONSIDERATION THE COURT HAVING ISSUED ITS OPINION;

YOU ARE HEREBY COMMANDED THAT SUCH FURTHER PROCEEDINGS BE HAD IN SAID CAUSE , IF REQUIRED, IN ACCORDANCE WITH THE OPINION OF THIS COURT ATTACHED HERETO AND INCORPORATED AS PART OF THIS ORDER, AND WITH THE RULES OF PROCEDURE AND LAWS OF THE STATE OF FLORIDA.

WITNESS THE HONORABLE MORRIS SILBERMAN CHIEF JUDGE OF THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, SECOND DISTRICT, AND THE SEAL OF THE SAID COURT AT LAKELAND, FLORIDA ON THIS DAY.

DATE: January 17, 2012

SECOND DCA CASE NO. 2D10-5696

COUNTY OF ORIGIN: Sarasota

LOWER TRIBUNAL CASE NO. 2009 CA 017007 NC

CASE STYLE: CITY OF VENICE v. MARTHA GWYNN

DISTRICT COURT OF APPEAL SECOND DISTRICT STATE OF FLORIDA

James Birkhold
Clerk

cc: (Without Attached Opinion)
Hala A. Sandridge, Esq. Martha Gwynn

me

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

CITY OF VENICE, Petitioner, v. MARTHA L. GWYNN, Respondent.	)	Case No. 2D10-5696

Opinion filed December 30, 2011.

Petition for Writ of Certiorari to the Circuit Court for the Twelfth Judicial Circuit for Sarasota County; sitting in its appellate capacity.

Hala Sandridge of Fowler White Boggs, P.A., Tampa, for Petitioner.

Martha L. Gwynn, pro se.

FERNANDEZ, KIMBERLY K., Associate Judge.

The City of Venice seeks certiorari review of an order of the circuit court sitting in its appellate capacity which declared a city ordinance unconstitutional as applied to Martha L. Gwynn's property. At issue before the court was review of the

Venice Code Enforcement Board's order finding that Gwynn's "nonconforming use" of the property violated the ordinance. We grant the City's petition because the circuit court departed from the essential requirements of law in determining that the ordinance was unconstitutional as applied.

In 2009, the Venice City Council enacted Ordinance 2009-06 to amend various provisions in the City's Land Development Code that control the use of residential property. See City of Venice, Fla., Code of Ordinances, ch. 86, art. V, Div. 3 (2009). The amendments to the code prohibited owners of single-family dwellings in residential neighborhoods from renting their property for short periods of time.[1] See §§ 86-81(d), 86-151. According to the ordinance, owners of single-family dwellings may rent their property for a period of less than thirty days only three times in a calendar year unless they had complied with the preexisting use requirements of the ordinance prior to July 14, 2009, the effective date of the ordinance. To have "grandfathered in" short-term rental property, the property owner must have obtained "all of the applicable state and local registrations, licenses and/or permits, including, but not limited to all necessary tax registration and occupational licenses necessary for operation of such rentals." § 86-570(b) (defining an "[e]xisting legal nonconforming resort dwelling").

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[1]Section 86-570(b) defines a "resort dwelling" as

> any one, two, three or four-family dwelling unit located in the RE or RSF zoning district which is rented to guests more than three times in a calendar year for periods of less than 30 days or one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of less than 30 days or one calendar month, whichever is less.

Gwynn purchased her property in 2004 for the purpose of renting it to seasonal visitors. Although she had been notified of the right to do so, Gwynn did not pursue the right to have her vacation rental property grandfathered in by attempting to meet the requirements of the ordinance. After the effective date of the ordinance, she continued to advertise her property as being available for lease for less than thirty days. As a result, the City of Venice Code Enforcement Board sent Gwynn a notice to cease advertising and operating her property as a resort dwelling. The Board then sent Gwynn a Notice of Hearing "concerning unabated violations of the City of Venice code *Sec. 86-151, Resort Dwellings*."

At the hearing before the Board, Gwynn's attorney specifically argued: "The narrow question that I see in terms of what's before the council this morning is the issue of whether [Gwynn] is in violation. We are not here to discuss the issue of whether the ordinance is valid or not." Gwynn admitted that she had at least three short-term rentals after the effective date of the ordinance and that she had not obtained the licenses required to be grandfathered in. Her attorney conceded that there had been several short-term rentals after July 14, 2009; however, he argued that because the rental agreements were made before the ordinance went into effect, Gwynn should not be found in violation of the ordinance. Based on the evidence before it, the Board found that Gwynn's property was "not a legal non-conforming resort dwelling" and that she had violated the ordinance. The Board ordered her to "come into compliance by not

renting [the property] for periods of less than thirty (30) days for the remainder of 2009."[2]

Gwynn appealed the Board's decision to the circuit court. In her initial brief, Gwynn argued that the ordinance was unconstitutional on its face and unconstitutional as applied to her property because it constituted a governmental "taking" of her property without just compensation.[3] Gwynn argued that the ordinance's prohibition on short-term rentals substantially interfered with her rightful use of and reasonable expectation for her property without substantial advancement of any legitimate governmental interest. The City responded that although the ordinance interfered with Gwynn's desire to use her property for short-term rentals, the application of the ordinance to her property did not constitute a compensable taking when other economically viable uses of the property remained.

The circuit court, acting in its appellate capacity, rejected Gwynn's argument that the ordinance was unconstitutional on its face but held that the ordinance was unconstitutional as applied and could not be enforced against Gwynn's property.[4] It

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[2]Gwynn was not in violation of the ordinance for rental agreements she had entered into for 2010 because the agreements were for monthly rentals.

[3]A regulation may be challenged as unconstitutional on its face or unconstitutional as applied. A facial challenge contends that the regulation on its face, as enacted, constitutes a taking. Taylor v. Vill. of N. Palm Beach, 659 So. 2d 1167, 1170 (Fla. 4th DCA 1995). An as-applied challenge evaluates the impact of the application of a regulation on a particular parcel of land. Id. at 1170-71.

[4]Section 162.11, Florida Statutes (2009), authorizes an aggrieved party to appeal a final administrative order to the circuit court. Such an appeal is not "a hearing de novo but shall be limited to appellate review of the record created before the enforcement board." For appeals under this section, the circuit court is the proper forum to address constitutional claims. Wilson v. Cnty. of Orange, 881 So. 2d 625, 632 (Fla. 5th DCA 2004); Kirby v. City of Archer, 790 So. 2d 1214, 1215 (Fla. 1st DCA 2001)

is from this order that the City seeks second-tier certiorari review in this court. We have jurisdiction. See Fla. R. App. P. 9.030(b)(2)(B).

When reviewing an administrative action, "the circuit court must determine whether procedural due process is 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, 626 (Fla. 1982). At the second appellate level, this court's inquiry is limited to whether the circuit court provided procedural due process and whether it departed from the essential requirements of the law. Allstate Ins. Co. v. Kaklamanos, 843 So. 2d 885, 889 (Fla. 2003); see also United Auto. Ins. Co. v. Santa Fe Med. Ctr., 21 So. 3d 60, 63 (Fla. 3d DCA 2009) ("A departure from the essential requirements of law is equivalent to a failure to apply the correct law."). The City has not alleged that it was deprived of due process by the circuit court; accordingly, we limit our review to whether the circuit court departed from the essential requirements of the law in finding the ordinance unconstitutional as applied to Gwynn.

A use restriction on real property may constitute a taking "if it has an unduly harsh impact on the owner's use of the property." Penn Cent. Transp. Co. v. City of New York, 438 U.S. 104, 127 (1978). When engaging in an analysis of whether a regulation unconstitutionally interferes with a property owner's rights, a court must consider: (1) the economic impact of the regulation on the property owner; (2) the extent to which the regulation has interfered with distinct investment-backed expectations; and (3) the character of the government invasion. Id. at 124; see also Shands v. City of

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(citing Holiday Isle Resort & Marina Assocs. v. Monroe Cnty., 582 So. 2d 721, 721-22 (Fla. 3d DCA 1991)).

Marathon, 999 So. 2d 718, 723 (Fla. 3d DCA 2008) ("The standard of proof for an as-applied taking is whether there has been a *substantial* deprivation of economic use or reasonable investment-backed expectations."). When considering the issue of economic impact, the court must conduct "a fact-intensive inquiry of the impact of the regulation on the economic viability of the landowner's property by analyzing permissible uses before and after the enactment of the regulation." Taylor v. Vill. of N. Palm Beach, 659 So. 2d 1167, 1171 n.1 (Fla. 4th DCA 1995). This includes a comparison of "the value that has been taken from the property with the value that remains in the property." Leon Cnty. v. Gluesenkamp, 873 So. 2d 460, 467 (Fla. 1st DCA 2004). A party challenging the constitutionality of a regulation has the burden to establish that he or she has suffered significant financial loss from the imposition of the regulation. Id. (citing Bass Enters. Prod. Co. v. United States, 54 Fed. Cl. 400, 403 (Fed. Cl. 2002)).

In its order, the circuit court concluded that the ordinance had a significant economic impact on Gwynn by restricting the duration and frequency of rental periods and that it interfered with Gwynn's "expectation that she could rent the property to seasonal visitors." Although the court noted the factors announced by the Supreme Court in Penn Central, the court's order failed to apply the economic impact factor. Limited by the record established at the hearing before the Municipal Enforcement Board, the circuit court was hindered in its ability to engage in any meaningful analysis of the value of Gwynn's property before and after the enactment of the ordinance.[5] In

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[5]As the party bearing the burden of showing the ordinance was unconstitutional as applied, Gwynn was required to prove that the market value of her

focusing on Gwynn's denied expectations for the use of her property, the court failed to recognize record evidence that Gwynn's property had continued value as a monthly rental, as a short-term rental for three periods, or as investment property which could be sold. See Corn v. City of Lauderdale Lakes, 95 F.3d 1066, 1072-73 (11th Cir. 1996) ("The standard is not whether the landowner has been denied those uses to which he wants to put his land; it is whether the landowner has been denied all or substantially all economically viable use of his land."). The circuit court focused on Gwynn's loss of the potential rentals available before the enactment of the ordinance but did not weigh this loss with the property's value based on the residual uses after the enactment. By failing to weigh the before and after values of the property, the circuit court did not determine the economic impact of the ordinance on the property owner as required by Penn Central and its progeny; this was a departure from the essential requirements of the law.

Accordingly, we grant the petition, quash the order of the circuit court, and reinstate the order of the Venice Code Enforcement Board.

Petition granted.

DAVIS, J., Concurs.
KHOUZAM, J., Concurs specially.

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property had decreased or that she had been economically impacted by the enforcement of the ordinance. See Gluesenkamp, 873 So. 2d at 467.

KHOUZAM, Judge, Specially concurring.

Certiorari is appropriate where "there has been a violation of a clearly established principle of law resulting in a miscarriage of justice." Combs v. State, 436 So. 2d 93, 96 (Fla. 1983). A miscarriage of justice can result when the court disregards clearly relevant facts in coming to a decision. Because this occurred here, I concur with the majority.

From:	Paul Sloan
To:	Planning Commission
Cc:	Board and Council Messages
Subject:	Venice Planning Commission - Approve shopping center - Jan 7th
Date:	Monday, January 6, 2025 2:23:21 PM
Importance:	High

Venice Panning Commission,

I am writing in support of the proposed shopping center on Laurel Road just west of Jacaranda.

It is beyond me that those who bought in all those gated communities with homes on postage stamp sized lots, their well fertilized landscaping which were once large swath of woodlands and fields are now complaining how this center will destroy the nature of the area. These new residents don't see an issue with driving through the older neighborhoods to do their shopping and overcrowding the stores; let them shop in their neighborhood, thereby keeping their driving to a minimum thus reducing congestion on our roadways and in our stores.

Thank you,

Paul Sloan
2533 Northway Drive
Venice, FL. 34292

From: Sue Lang
To: Planning Commission; City Council; Edward Lavallee; James Clinch; Roger Clark
Cc: Board and Council Messages
Subject: Suggested Use for the Land at Laurel and Jacaranda
Date: Tuesday, January 7, 2025 9:36:08 AM

While there are many other uses for this land than a shopping center that is unwanted i suggest that the Developer avail himself of a write off by donating the land to a conservation trust. The Developer could also make some money by charging area excavators for dumping some clean fill so that a rookery island can be created in the middle of the large pond like the one at the South County Admin Building that draws birdwatchers from all over.
Think: Neal Rookery instead of Neal crookery...

From: Olen Thomas
To: Planning Commission
Cc: Board and Council Messages
Subject: Planning Meeting - January 7. 2025
Date: Wednesday, January 8, 2025 12:15:28 PM

Good morning,

I want to let you know how disappointed I am in your decision to limit the audience participation time to three minutes for yesterday's agenda item 22-40SP - The Village at Laurel and Jacaranda Site and Development Plan. Like you, I spent hours preparing for this meeting which included developing a concise and informative **five** minute presentation. To have this time cut almost in half at the last minutes was a disservice to me and other residents who had important information to share with the commission. And it was premature given the number of speakers who were actually available to speak.

Over the past nine years I have always felt that the Planning Commission encouraged and appreciated participation from the residents of the city Your action yesterday suggested just the opposite.

Regards,

Olen Thomas
248 Acerno Drive
North Venice, FL 34275