

IN THE CIRCUIT COURT FOR THE 5<sup>TH</sup> JUDICIAL CIRCUIT  
IN AND FOR HERNANDO COUNTY, FLORIDA  
NON-JURY CIVIL DIVISION – DCB

Jodie L. Pillarella and  
John Paul Reeve  
Petitioners

v.

Case No. 2019 CA 1037

Hernando County, Florida  
A Political Subdivision of the State of Florida

and

Hernando Beach Seafood, Inc.  
Defendants

**ORDER DENYING PETITION FOR WRIT OF CERTIORARI**

The captioned matter was brought before the Court on February 24, 2021 to hear oral arguments on a Petition for Writ of Certiorari. Counsel for the three parties were all present and provided argument. After reviewing the record, the court file, and hearing from counsel, the Court **FINDS AND**

**ORDERS AS FOLLOWS:**

**FACTS AND PROCEDURAL HISTORY**

1. The relevant facts giving rise to this controversy are largely undisputed. The Court will only briefly outline the case to establish context for its decision.
2. Hernando Beach Seafood (HBS) operates a commercial marina located on Shoal Line Boulevard in Hernando Beach.
3. The marina is zoned as a Planned Development Project Commercial Marine – PDP(CM). This zoning allows for (in relevant part) docking and mooring of commercial vessels (including those over 26 feet) and accessory uses related to the operation of the marina.
4. In October of 2019, Hernando County Code Enforcement cited HBS for loading and unloading commercial vessels which it deemed was “land

support” for a commercial fishery. It is clear from the record and the zoning regulations that “land support” is not a permitted accessory use under the current zoning of the property.

5. In January of 2020, HBS responded by requesting an opinion from the County’s zoning officials as to the extent of permitted uses on the property.
6. In March of 2020, the zoning official issued a detailed determination letter setting forth the historical basis for the opinion and finding that the activities for which HBS was cited were not permitted within the current zoning.
7. HBS appealed the determination letter to the Board of County Commissioners (BOCC). A public hearing was noticed and held on August 25, 2020.
8. After taking testimony and hearing argument, the BOCC modified the zoning official’s determination and found that the loading and unloading of crab traps, bait and other equipment is permitted under the current zoning for the property. *See Resolution 2020-141*. Although not specifically stated this way, the BOCC essentially found that the loading and unloading of the traps, bait and other equipment fell within the permitted accessory uses and was not land support for a commercial fishery.
9. The current Petition for Writ of Certiorari asks this Court to quash the decision of the BOCC. Petitioners allege that the BOCC’s action amounted to a re-zoning of the property thereby triggering additional due process requirements and departing from the essential requirements of the law. Petitioner’s further allege that the BOCC failed to support their decision with competent substantial evidence.

#### **JURISDICTION AND SCOPE OF REVIEW**

10. This Court has the authority to review the quasi-judicial action taken by the BOCC pursuant to Fla.R.App.P. 9.030(c) and 9.100(f).

11. The scope of review is similar to a plenary appeal and must be based solely on the record that was presented to the BOCC. *Broward County v. GBV Int'l Ltd.*, 787 So2d 838 (Fla. 2001).
12. This Court is limited to three questions: (1) Did the BOCC provide the Petitioners with procedural due process? (2) Did the BOCC observe the essential requirements of the law? and (3) Is the decision of the BOCC supported by competent substantial evidence? *Dusseau v. Metropolitan Dade County Board of County Commissioners*, 794 So.2d 1270, 1273 (Fla. 2001).

### **DUE PROCESS**

13. Petitioner's due process argument relies upon this Court finding that the actions of the BOCC amounted to a re-zoning of the property thereby triggering the additional notice/due process requirements. F.S. 125.66(2)(a).
14. As will be evident later in this opinion, the Court finds that this was an appeal of a zoning determination letter and the actions of the Board did not amount to a re-zoning of the property.
15. Based on this later finding, the Petitioners, as members of the public interested in the outcome, were provided notice and an opportunity to be heard which was in line with the character of their interest. *Carillon Community Residential v. Seminole County*, 45 So.3d 7 (Fla. 5<sup>th</sup> DCA 2010).

### **ESSENTIAL REQUIREMENTS OF LAW**

16. In order for this Court to find that the BOCC departed from the essential requirements of law, it would have to find a "violation of a clearly established principle of law resulting in a miscarriage of justice." *Allstate Ins. Co. v. Kaklamanos*, 843 So.2d 885, 889 (Fla. 2003). In this case, the BOCC did not depart from the essential requirements of law.
17. Petitioners argue that the BOCC departed from the essential requirements of law by failing to apply Hernando County Zoning Codes to

their decision and failing to apply the zoning codes uniformly. *Alvey v. City of N. Miami Beach*, 206 So. 3d 67 (Fla. 3<sup>rd</sup> DCA 2016) and *Broward County v. GBV Int'l Ltd.* 787 So.2d at 842. Petitioner's reliance on *Alvey* would be well placed if the BOCC conducted a change to their zoning codes. In this case, the resolution adopted by the BOCC found that the language of the **current zoning code** allowed for the loading and unloading of crab traps, bait and other equipment. (emphasis added) Petitioner argues that by using "common sense" and "logic" the BOCC failed to apply their own zoning code. This Court completely disagrees. Common sense and logic are exactly the tools necessary to interpret a phrase such as "including, but not necessarily limited to..." (See definition of CM-1 Zoning).

18. Petitioners also rely upon *Wolk v. Board of County Commissioner of Seminole County*, 117 So.3d 1219 (Fla. 5<sup>th</sup> DCA 2013) in support of their position. This reliance is also misplaced, or at least distinguishable, as the *Wolk* Court faced a challenge to a zoning variance. In *Wolk*, the Circuit Court was determined to have applied the incorrect law by failing to look to the six criteria for a variance found in the zoning code. Again, the BOCC in this case found that the challenged uses were permitted under the current zoning code. There are no additional steps or elements the BOCC failed to do. They simply interpreted "accessory" uses to include the HBS activities.

19. The BOCC interpreted the plain language of the zoning code to allow for the challenged activities to occur on the HBS property. It is not permissible for this Court to substitute its opinion as to whether or not the BOCC got it right. Even if the BOCC found the language to be ambiguous, it would be required to liberally interpret the "accessory use" clause and other provisions in favor of HBS. *Rinker Materials Corp. v. City of North Miami*, 286 So.2d 552, 553 (Fla. 1973)("Since zoning regulations are in derogation of private rights of ownership, words used

in a zoning ordinance should be given their broadest meaning when there is no definition or clear intent to the contrary and the ordinance should be interpreted in favor of the property owner.”) Here, the BOCC had to decide whether the loading and unloading of traps, bait and equipment onto a commercial fishing boat constituted “accessory uses” permitted under the current zoning or constituted “land support” of a commercial fishery which would not be permitted. The BOCC found the HBS activities fell into the former category. It would be improper for this Court to substitute its own opinion in place of that of the BOCC which is essentially what the Petitioners are asking it to do. “If the zoning authority’s “If a Comprehensive Plan or zoning ordinance is capable of being interpreted in two or more different ways, it is error for a court not to give the zoning authorities’ interpretation deference over its own view... If the zoning authority’s interpretation is reasonable and is not palpably erroneous or arbitrary is should be accepted by reviewing courts.” *St. Johns County v. Owings*, 554 So.2d 535, 543 (Fla. 5<sup>th</sup> DCA 1989).

### **COMPETENT SUBSTANTIAL EVIDENCE**

20. In acting in their quasi-judicial capacity, the BOCC’s resolution modifying the determination letter must be supported by competent, substantial evidence. *Florida Power & Light Co. v. City of Dania*, 761 So.2d 1089, 1092 (Fla. 2000).
21. Petitioners focus their attention on a lack of testimonial, documentary, or other evidence that HBS did not introduce. Instead, Petitioners argue, the BOCC relied upon legal argument from counsel which is not evidence. The problem with this argument is that the facts of this case are not disputed. HBS was admittedly loading and unloading traps, bait and equipment onto commercial vessels.
22. The question before the BOCC was whether the HBS activity was an accessory use to the other permitted marina uses or, instead, if such loading and unloading constituted land support of a commercial fishery

and therefore not permitted. This is a straight interpretation of two different parts of the zoning code. The best piece of evidence is the zoning code itself.

23. The question under this prong of the Court's analysis then becomes whether including the HBS activities in "accessory uses" was supported by the evidence. The answer is yes.

24. HBS owner, Katherine Birren, testified at several points throughout her presentation concerning the practices surrounding the loading and unloading of a variety of equipment on all kinds of boats. Birrin further testified about what County called an "absurd result" in that the zoning actually permits these exact same activities on recreational boats regardless of size.

25. In addition, the Board looked to other language in the code itself in reaching their decision. As stressed by Commissioner Champion, and then contained in the resolution, HBS could open a bait and tackle shop on this same property. HBS could then sell the same bait to commercial fisherman who would then, presumably, be permitted to load the bait purchased right there on site onto their vessels. If this is permissible, how is that different than carrying the bait the fishermen purchased elsewhere and loading it onto the boat? The majority of the BOCC found it was not any different.

26. The testimony contained in the record and the use of the zoning code itself provides the competent substantial evidence necessary to support the BOCC's decision.

## **STANDING**

27. As this Court has found that the BOCC has provided the requisite due process, did not deviate from the essential requirements of law, and supported their interpretation with competent, substantial evidence, this Court need not reach the standing arguments raised by the Respondents.

**ORDERED** this 1<sup>st</sup> day of March, 2021.



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Don Barbee Jr.  
Circuit Judge

Copies via eservice to:

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