

IN THE CIRCUIT COURT OF THE 16TH JUDICIAL CIRCUIT OF
THE STATE OF FLORIDA, IN AND FOR MONROE COUNTY,

Case No: 44-2021-CA-155-M

HEIDI VALDES,

Petitioner,

vs.

CITY OF MARATHON, FLORIDA, a
political subdivision of the State of Florida,
CITY OF MARATHON PLANNING
COMMISSION, and FLORIDA KEYS ANIMAL
ENCOUNTERS, LLC, a Florida limited liability
Company,

Respondents.

_____ /

**ORDER DENYING CONSOLIDATED PETITION FOR WRIT OF
CERTIORARI**

THIS CAUSE is before the Court on a Consolidated Petition for Writ of Certiorari (the “Petition”), challenging Marathon City Resolution 2021-75 approving a conditional use permit and corresponding development order authorizing the construction of an industrial warehouse on property owned by Respondent, Florida Keys Animal Encounters, LLC (“Encounters”). After fully briefing the matter, the parties, through counsel, appeared before the Court for oral argument on June 6, 2023. The Court, having considered the

Petition, Respondents' Joint Response in Opposition, Petitioner's Reply, the record, pertinent legal authority, and being otherwise fully advised in the premises, finds and orders as follows:

I. Factual and Procedural Background

Respondent Encounters owns property located in Marathon, Florida. A portion of the property is currently developed as an amusement and sea life park known as Aquarium Encounters. Respondent seeks to expand development on this property, and in furtherance of this goal, applied for a conditional use permit and a variance to a wetland setback. On March 5, 2021, Encounters submitted an application proposing to amend the major conditional use permit originally approved in 2005 to allow for construction of an office, laboratory, and warehouse.

On May 17, 2021, the City of Marathon Planning Commission ("Planning Commission") conducted a public hearing on Encounters' request for a conditional use permit and application for a variance. The Planning Commission voted to recommend approval of the conditional use permit and it granted the variance. On June 21, 2021, the Planning Commission memorialized the variance approval in Resolution 2021-001, which Petitioner did not appeal.

On August 4, 2021, Encounters amended its application for the conditional use permit to clarify the dimensions of the proposed warehouse. At a public hearing on September 14, 2021, the Marathon City Council

considered and granted Encounters' amended request for the conditional use permit. The City Council thereafter adopted Resolution 2021-75 approving the conditional use permit and corresponding Development Order #2021-06 (collectively "Resolution 2021-75"), authorizing the construction of an industrial warehouse on the property.

On December 9, 2021, Petitioner filed a consolidated Petition for Writ of Certiorari seeking to quash: 1) the City's Resolution 2021-75; 2) the Planning Commission's Resolution 2021-001; and 3) the City's Resolution 2021-74. On March 29, 2022, the Court entered an "Order Granting in Part and Denying in Part, Respondents' Motion to Dismiss." The Court dismissed Petitioner's challenge to the City's passage of Resolution 2021-74 and the Planning Commission's passage of Resolution 2021-001 both relating to the variance. Thus, the only issue before the Court is the Petitioner's challenge to the City's approval of a conditional use permit codified in Resolution 2021-75.

II. Standard of Review

First-tier certiorari review is limited to reviewing 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). In this case, the issues before the Court are whether the City of Marathon departed from the essential requirements of the law in approving Resolution 2021-75 and whether the

City's decision to approve the conditional use permit is supported by competent substantial evidence.

III. Discussion

As a preliminary matter, Respondent argues that the Petitioner lacks standing to appeal Resolution 2021-75. However, this argument was expressly considered and rejected by the Court in its March 29, 2022 written Order. The Court has determined that the Petitioner has standing to challenge Resolution 2021-75 approving Encounters' request for a conditional use permit.

Pursuant to the City of Marathon Code of Ordinances (the "Code"), a "conditional use" is a use that, because of its character, size, and potential impacts, may or may not be appropriate in a particular zoning district. § 102.71. The criteria for evaluating a conditional use approval are outlined in Chapter 102, Article 13, Conditional Use Permits, in the City of Marathon Land Development Regulations ("LDRs"). Pursuant to Code Sec. 102.71, the conditional use requirement is intended to allow for the integration of certain land uses and structures within the City based on conditions imposed by the Council. Review is based primarily on compatibility of the use with its proposed location and with surrounding land uses and on the basis of all zoning, subdivision and other ordinances applicable to the proposed location and zoning district. *Id.* "Conditional uses shall not be allowed where the conditional use would create a nuisance, traffic congestion, a threat to the public health, safety or welfare of the community

or a violation of any provision of the City Code, state law, rule or regulation.” *Id.*

In Resolution 2021-75 the City Council made a determination that the Applicant’s request for a conditional use permit, subject to the terms of the LDRs and with conditions imposed, was in compliance with the City’s Comprehensive Plan and LDRs and authorized the expansion of the previously approved sea life amusement park and marine educational facility to include a warehouse, office, and lab space. (Petitioner’s Appendix (“Pet. App.”) Exhibit 1-Resolution 2021-75). Petitioner contends that the City did not correctly apply the law in granting the conditional use permit and alleges that the decision is unsupported by evidence demonstrating compliance with the Code’s requirements.

A. Essential requirements of the law

A circuit court reviewing an agency action looks to whether the agency “applied the correct law,” which is synonymous with “observing the essential requirements of law.” *Haines City Community Development v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995).

A property owner seeking conditional use approval or an amendment to an existing conditional use permit from the City is required to submit an application for the proposed development to be reviewed by the City staff, the City Planning Commission, and the City Council prior to approval. See Code Secs. 102.74; 102.75; 102.79. The City Council has final authority to approve the application, approve the application with conditions and

limitations, refer the application back to the Planning Commission or City staff for further review, or deny the application. § 102.76. In review of an application seeking an amendment to an existing conditional use permit, City staff, the Planning Commission, and the City Council must analyze specific criteria and factors for approval which are delineated in Code Sec. 102.77. In order to approve an application for an amendment of a conditional use permit, the City Council must make a finding that the application complies with the general criteria and the review factors listed within the section. *Id.*

In this case, the record demonstrates that the Marathon City Council correctly applied the applicable legal standards and followed all necessary procedural requirements in approving the Amended Application with conditions. The applicant provided all the information required by the Code for a complete application to amend a conditional use permit. (Pet. App. Exhibit 7-Encounters' Application; Exhibit 11-Encounters' Amended and Restated Application). Upon receipt of the Application, City staff analyzed the Application's consistency with the provisions of Code Sec. 102 Chap. 13. (Pet. App. Exhibit 14- City Council Agenda Statement). The Planning Department staff found that the request was in compliance with all of the requirements of these sections and recommended conditional approval of the request. *Id.*

The City scheduled and conducted a final review of the Amended Application before the City Council. (Pet. App. Exhibit 16-transcript of City

Council public hearing). At the hearing, the City, Respondent, Petitioner, and members of the public were allowed to participate and present evidence in support of or in opposition to the Amended Application. *Id.* The City Council made a determination that the Applicant's request for a Conditional Use Permit, subject to the terms of the LDRs and with Conditions imposed, was in Compliance with the City's Comprehensive Plan and LDRs and unanimously approved Development Order 2021-06 granting a Conditional Use Permit to Encounters. (Pet. App. Exhibit 1-Resolution 2021-75).

Petitioner argues that even if the City applied the correct law and followed the correct procedures, the City departed from the essential requirements of the law in granting a conditional use application unsupported by evidence. The Court finds that for the reasons that follow, the record evidence supports the City Council's decision and there was not a departure from the essential requirements of the law.

B. Competent Substantial Evidence

Competent substantial evidence has been defined as "evidence that will establish a substantial basis of fact from which the fact at issue can be reasonably inferred, or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Duval Utility Co. v. Fla. Pub. Serv. Comm'n*, 380 So. 2d 1028, 1031 (Fla. 1980). "Competent substantial evidence is tantamount to legally sufficient evidence." *School Board of Hillsborough County v. Tenney*, 210 So. 3d 130, 134 (Fla. 2d DCA 2016)

(internal citation and quotation omitted). Thus, “[a] circuit court’s review of an agency decision for competent substantial evidence is limited to determining whether the evidence before the agency was legally sufficient to support the agency’s decision.” *Id.* The circuit court, upon this review, “may not reweigh the evidence to determine whether the agency made ‘the ‘best’ decision or the ‘right’ decision or even a ‘wise’ decision.’” *Id.* (quoting *Dusseau v. Metro. Dade Cty. Bd. of Cty. Comm’rs*, 794 So. 2d 1270, 1276 (Fla. 2001)).

In this case, the record contains legally sufficient evidence to support the City Council’s decision to grant Encounters’ Amended Application for the Conditional Use Permit. Encounters provided an Amended Application which included a certified survey, site plans, density and parking calculations, depictions of the drainage plans, photographs of the property and adjacent roadways, a traffic study, an environmental habitat evaluation index, background information memorandums, and PowerPoint presentations in support of the Application. (Respondent’s Appendix at 1-69, 104-145, 174-184, 219-239, 240-394). City staff reviewed the Amended Application and provided the Council with detailed written analysis and testimony as to how the Amended Application was consistent with all applicable criteria to approve an amendment to an existing conditional use permit. (Pet. App. Exhibits 14 and 16). Written recommendations and presentations of professional staff and testimony at a hearing combine to provide sufficient competent evidence. *City of Hialeah Gardens v. Miami-*

Dade Charter Found., Inc., 857 So. 2d 202, 205 (Fla. 3d DCA 2003).

Further, the Respondent provided testimony in support of the Amended Application, and additional testimony from citizens of the City in support of the Amended Application was also heard by The Council (Petitioner's Exhibit 16).

Petitioner argues there is a lack of evidence supporting the City's specific findings that 1) the proposed use is compatible with the surrounding properties; 2) the Code's parking requirements were satisfied; and 3) that satisfactory provisions have been made in regard to ingress and egress. However, there is substantial competent evidence in the record to support each of these findings. Planning Director, Brian Shea, provided evidence to support these findings in the City Council Agenda Statement provided to the City Council prior to the hearing and in his testimony at the hearing.

Planning Director Shea noted the "proposed project is compatible with adjacent uses and consistent with the overall land use pattern, which is heavily focused on retail sales and service and commercial activity along the U.S. 1 corridor. The development of the site will result in significant improvement to the site development quality, including landscaping and stormwater management. These improvements are expected to have a positive benefit on the surrounding uses and the City of Marathon." (Pet. App. Exhibit 14 Sec. B). Brian Shea also provided evidence that satisfactory provisions were made in regard to ingress and egress in Section E (1) of the

Agenda Statement, and evidence that the Code's parking requirements were satisfied in Section E (2) of the Agenda Statement. (Pet. App. Exhibit 14).

While there was also evidence submitted in support of denying the Conditional Use Application, the Court may not re-weigh the evidence, and the existence of contrary evidence is insufficient to overcome the substantial competent evidence in the record that supports the City Council's decision. *See Dusseau*, 794 So. 2d at 1276.

Finally, Petitioner contends that Encounters and a related entity, Dynasty Marine, intend to use the property, among numerous other uses, as a light industrial warehouse/distribution center, and that there is no competent substantial evidence demonstrating that a light industrial warehouse is permissible in the applicable zoning district under the Code.

The City of Marathon has a Table of Uses in its Code for permitted uses in each zoning district. In this case, the area of development on the parcel has a Mixed Use (MU) zoning designation which is described in Sec. 103.09 (A) as follows:

Mixed-use (MU) Zoning District: The MU zoning district is designed to accommodate a wide variety of commercial and retail activities that will result in the most efficient and attractive use of the City's historic business district and the US 1 corridor, in an effort to recognize the role of US1 as the City of Marathon's "Main Street". Specifically, this district provides for land uses that have a strong pedestrian-oriented character, with a mixture and concentration of specialty shopping, transient lodging, retail, personal service, restaurant, cultural, fishing industry, affordable housing and entertainment uses in the Old Town area. The MU district also provides for large-scale retail and commercial business opportunities in other areas, including larger shopping centers, specialty shopping centers, individual multi-tenant commercial buildings, automobile services and sales, fast food

restaurants, affordable housing residential uses, transient lodging and other retail establishments that serve the community at large.

The property at issue has been previously developed as an amusement and sea life park. (Pet. App. Exhibit 14). Under the Table of Uses in sec. 103.15.1, "Uses by Zoning District", the specific use of "Amusement or Sea life parks" requires conditional approval in the Mixed-Use District. In its Amended and Restated Application for a Conditional Use Application, Encounters seeks to develop a "warehouse for marine life and coral propagation" and "proposes to have a Mixed-Use Light industrial use on the Property." (Pet. App. Exhibit 11). At the hearing on the Application, the Planning Director, testified that the proposed redevelopment to include an office, laboratory and warehouse would most likely fall under the amusement and sea life park use. He stated, "So the way our code reads potentially fall under they're most likely amusement of sea life park but the structure, itself, is a warehouse structure, but the use is not that warehouse structure if that makes sense." (Pet. App. Exhibit 16 at P. 110).

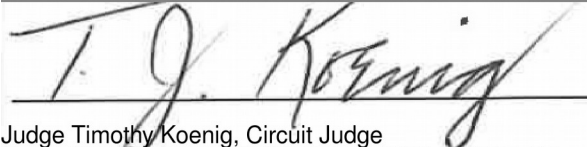
Petitioner focuses on the term "light industrial" from the Application for the Conditional Use Permit and argues that "light industrial" uses such as warehouse and distribution centers are not expressly set forth as permissible uses in the Mixed-Use zoning district table. However, the Marathon Code, unlike other municipal codes, does not prohibit any and all uses not specifically allowed for in the district. Under Code section 103.13, "a use not listed in the use table, but possessing similar characteristics, including, but not limited to; size, intensity, density, operating hours,

demands for public facilities such as water and sewer, traffic and environmental impacts, and business practices, may be allowed upon approval by the Director.” In this case, the actual uses are allowed for or are similar to permitted uses, which Marathon specifically provides for in its approval process, and the Planning Director has discretion in administering this process. In other words, the process that applies is for specific uses, and the zoning regulations do not specifically allow or prohibit categories of uses such as “light industrial.” Based on the City of Marathon’s code, and the process for reviewing applications and approving conditional use applications, there is substantial competent evidence to support Resolution 2021-75.

IV. Conclusion

For the foregoing reasons, Petitioner’s Petition for Writ of Certiorari is hereby **DENIED**.

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Judge Timothy Koenig, Circuit Judge
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