IN THE CIRCUIT COURT FOR THE
NINETEENTH JUDICIAL CIRCUIT IN AND
FOR OKEECHOBEE COUNTY, FLORIDA.
APPELLATE DIVISION

Circuit Case No. 17-AP-296

WARREN B RANCH, LLC, HOBART AND CLARA MCCOLLUM, AND OKEECHOBEE LIVESTOCK MARKET, INC.,

Petitioners[1],

v.

OKEECHOBEE COUNTY BOARD OF ADJUSTMENTS AND APPEALS AND CATTLEMEN'S MARKET OF OKEECHOBEE, LLC,

Respondents.
_____/

Not final until time expires for filing motion for rehearing, and if filed, disposed of.

Decision filed February 26, 2019.

Petition for writ of certiorari to the Okeechobee County Board of Adjustments and Appeals.

Chené Thompson, Pavese Law Firm, Fort Myers, for petitioners.

Virginia Sherlock, Littman, Sherlock & Heims, P.A., Stuart, and John Cassels, Jr., Law Office of Cassels & McCall, Okeechobee, for respondents.

PER CURIAM.

The Petitioners invoke our jurisdiction via a petition for writ of certiorari to review the order of the Okeechobee County Board of Adjustments and Appeals ("Board") granting an

[1] When the petition for writ of certiorari was filed, there were four Petitioners: Warren B. Ranch, LLC, Hobart McCollum, Clara McCollum, and Okeechobee Livestock Market ("OLM"). Petitioners Warren B. Ranch, LLC and Clara McCollum filed notices of voluntary dismissal, and on February 6, 2018, the appellate administrative judge rendered an order dismissing their interests in this case. Hobart McCollum and OLM are the remaining Petitioners at this time.

application for a special exception with certain conditions. After careful consideration, we grant the petition and quash the Board's order.

In spring 2017, Cattlemen's Market of Okeechobee, LLC ("the Applicant") filed an application for a special exception to operate a livestock auction with a restaurant on its 100 acre property, which is zoned for agriculture use. County staff reviewed the application, and it recommended that the Board grant the special exception with certain conditions. On May 23, 2017, the Board held a public quasi-judicial hearing on the Applicant's application. During deliberations, the Board extensively discussed the impact that a livestock market would have on the road and the traffic, such as whether additional turn lanes would be required. It voted to table the application until the June meeting to allow experts to conduct a traffic impact analysis.

The Board met again on June 27, 2017. That same day, county staff revised their report to state that the Applicant's traffic analysis concluded that turn lanes were not warranted. The report also noted that the County's traffic engineer had not finished his analysis, so staff could not indicate whether it agreed with the Applicant's conclusion. After much discussion at the hearing, the Board voted 4-2 to grant the Applicant a special exception for a livestock auction without a restaurant, subject to six conditions recommended in the May staff report.

The Petitioners filed a petition for writ of certiorari. The standard of review applied to an administrative decision by a circuit court is whether procedural due process was afforded, whether the essential requirements of the law were observed, and whether the findings and judgment were supported by competent substantial evidence. *Broward County v. G.B.V. Intern., Ltd.*, 787 So. 2d 838, 843 (Fla. 2001) (quoting *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624 (Fla. 1982)).

Issue 1—Standing

Both parties argue the issue of whether the Petitioners have standing and cite case law prior to 1985. In 1985, the Legislature enacted the Growth Management Act ("the Act"), which liberalized standing in local government development cases. *Save Homosassa River Alliance, Inc. v. Citrus County, Fla.,* 2 So. 3d 329, 336 (Fla. 5th DCA 2008); *City of Coconut Creek v. City of Deerfield Beach*, 840 So. 2d 389, 392 (Fla. 4th DCA 2003). In *Save Homosassa River Alliance, Inc.,* the Fifth District discussed the interplay between the Legislature's intent to liberalize the standing requirements for third parties to intervene on development orders and the prior common

law standard. *Id*. Prior to the adoption of the Act, the common law standard required that "a party had to possess a legally recognized right that would be adversely affected by the decision or suffer special damages different in kind from that suffered by the community as a whole." *Id*. (citing *Putnam County Envtl. Council, Inc. v. Bd. of County Comm'rs,* 757 So.2d 590, 592–93 (Fla. 5th DCA 2000); *Citizens Growth Mgmt. Coal., Inc. v. City of W. Palm Beach,* 450 So.2d 204, 206 (Fla. 1984). *Homossasa* further cites §163.3215, Fla. Stat. (2007)[2], which stated in relevant part:

> (2) **As used in this section, the term "aggrieved or adversely affected party" means any person**[3] or local government **that will suffer an adverse effect to an interest protected or furthered by the local government comprehensive plan, including interests related to health and safety,** police and fire protection service systems, densities or intensities of development, **transportation facilities,** health care facilities, equipment or services, and environmental or natural resources. **The alleged adverse interest may be shared in common with other members of the community at large but must exceed in degree the general interest in community good shared by all persons.** The term includes the owner, developer, or applicant for a development order.

The Fifth District stated that the statute clearly changed the common law standard requiring a person to show standing by alleging an interest that is greater than "a general interest in community good shared by all persons." *Id*. at 340. The Fifth District explained:

> An interpretation of the statute that requires *harm* different in degree from other citizens would eviscerate the statute and ignore its remedial purpose. It drags the statute back to the common law test. The statute is designed to remedy the governmental entity's failure to comply with the established comprehensive plan, and, to that end, it creates a category of persons able to prosecute the claim. The statute is not designed to redress damage to particular plaintiffs. To engraft such a "unique harm" limitation onto the statute would make it impossible in most cases to establish standing and would leave counties free to ignore the plan because each violation of the plan in isolation usually does not uniquely harm the individual plaintiff. Rather, the statute simply requires a citizen/plaintiff to have a particularized *interest* of the kind contemplated by the statute, not a legally protectable right.

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[2] *Homosassa* cites the 2007 version of the statute, but the 2017 version is applicable to these facts. The statute has been unchanged since 2002, so both versions are identical.

[3] A "person" is defined as "an individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity" in §163.3164(35), Fla. Stat. (2017).

Id. Neither party in the instant case addresses in their pleadings how §163.3215, Fla. Stat. (2017)'s liberalization of standing affects the Petitioners, but both parties must be aware of it, as §163.3215(3), Fla. Stat. (2017), just one subsection below, is the basis for this court's jurisdiction.

In addition, standing on an appeal from a Board of Adjustment and Appeals decision is addressed directly by Okeechobee County Land Development Regulation ("LDR") section 13.07.02.B., which states:

> A developer, an adversely affected party, or any person who appeared orally or in writing before the board and asserted a position on the merits in a capacity other than as a disinterested witness, may appeal the decision on an application reached at the conclusion of a hearing.

The transcript of the May 2017 hearing submitted by the Petitioners begins in the middle of the hearing on page 56, which is not explained by either party. However, the index indicates in two places that Hobart McCollum spoke to the Board on page 49. Also, mention of Petitioner McCollum is made in the minutes of the May meeting, specifically that he addressed the Board and made his traffic concerns known to it. He stated his concerns about heavy vehicles, traffic speed, safety to other drivers, more weighted traffic, more traffic in general, and a lack of turn lanes and road shoulders. The Respondents' response makes reference to Petitioner McCollum's testimony that he lives 6,000 feet from the property in question, despite the fact that the testimony apparently occurred on missing transcript pages.

The pleadings also make mention of the testimony of the Clemons' family members, who are the owners of OLM, but those pages are among the missing pages of the transcript. The index shows that they spoke on pages 33-41 and 67 at the first hearing. The minutes indicate that the testimony focused on the economic impact of a second livestock market on a small community, as well as traffic concerns, which echoed Petitioner McCollum's misgivings.

The duty to ensure that the record was prepared and transmitted properly is on the Petitioners. Fla. R. App. P. 9.200(e). Though it is strange that the transcript is missing pages, the meetings' minutes provide record evidence that the Petitioners appeared orally before the Board and asserted a position on the merits. Therefore, the Petitioners have standing under LDR section 13.07.02.B. Further, they also have standing under §163.3215, Fla. Stat. (2017), as they meet the statute's definition of an aggrieved or adversely affected party.

Issue 2—Essential Requirements of Law

The Petitioners argue that the Board failed to observe the essential requirements of law when it did not include findings in its order. Applying the correct law is synonymous with observing the essential requirements of law. *Haines City Community Development v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995). A reviewing court should defer to the governing agency's interpretation of an ordinance, unless that agency's interpretation is unreasonable or clearly erroneous. *Las Olas Tower Co. v. City of Ft. Lauderdale*, 742 So. 2d 308, 312 (Fla. 4th DCA 1999). Here, the Board was clearly required by LDR section 13.04.00.D to make findings:

> Findings. The board of adjustments and appeals shall make findings that the requirements of part 11.03.00 have or have not been demonstrated by the applicant for variance. **The board of adjustments and appeals shall make findings that the requirements of part 11.04.00 have or have not been demonstrated by the applicant for a special exception.**

(Emphasis added). LDR section 11.04.03 also includes language requiring the Board to make findings:

> **In reaching its conclusion and in making the findings required in this part**, the board of adjustments and appeals shall consider and weigh, among others, the following factors and standards, where applicable and shall show in its record such factors were considered. **Further, the board shall find in the case of any of these factors and standards**, where they may be relevant and applicable, that the purposes and requirements for granting the special exception have been met by the applicant:…[4]

(Emphasis added). The Respondents admit that the Board's order does not contain findings and argues it was not required to make them pursuant to *Broward County v. G.B.V. Intern., Ltd.*, 787 So. 2d 838, 846 (Fla. 2001) (county commission did not make findings of fact, state a reason for the decision, or issue a written order). However, the instant case is distinguishable from *G.B.V. Intern., Ltd.* because in that case, the Broward County Land Use Plan did not have a provision requiring the county commission to make findings; whereas, the LDR in the instant case has two separate sections requiring the Board to make findings to support its decision to grant a special exception application. Therefore, the Board departed from the essential requirements of law when

[4] The LDR section then goes on to list nine factors for the Board's consideration.

it failed to make findings, either orally at the hearing or in its order, when it was required to do so by two LDR sections. *Las Olas Tower Co.*, 742 So. 2d at 312.

The Petitioners also argue that the Board's order is not supported by competent substantial evidence. However, this argument need not be addressed by this court. A writ of certiorari has a limited purpose; the role of the reviewing court is to halt the miscarriage of justice, nothing more. *See Broward County v. G.B.V. Intern., Ltd.*, 787 So. 2d at 844. When deciding that the administrative authority's judgment is flawed, the appellate court may quash the order reviewed, which leaves the controversy pending before the administrative authority as if no order has been entered. *Id*. Then parties stand upon the pleadings and proof as it existed when the order was made with the rights of all parties to proceed under the law in the same manner and to the same extent which they might have proceeded had the order reviewed not been entered. *Id*. "The appellate court has no power in exercising its jurisdiction in certiorari to enter a judgment on the merits of the controversy under consideration nor to direct the respondent to enter any particular order or judgment." *Id*. (quoting *Tamiami Trail Tours v. Railroad Commission,* 128 Fla. 25, 174 So. 451, 454 (1937) (on rehearing)).

Based on the foregoing, we grant the petition for writ of certiorari and quash the Board's order.

Petition for writ of certiorari granted; order quashed.

METZGER, C.J., MCNICHOLAS, J., and WATERS, Acting Circuit Judge, concur.

Copies of above decision
were furnished to the attorneys/parties
of record on the same date
the decision was filed.