

STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY

STEPHEN J. BYERS AND
ERICH NIKOROWICZ,

Petitioners,

v.

ANTIQUERS AERODROME, INC.,

Respondent,

DOAH Case No. 18-1732
DEO Case No. 18-037

2019 SEP 18 PM 2:02
FILED
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF ECONOMIC OPPORTUNITY
FILING AND ACKNOWLEDGEMENT
FILED, on this date, with the designated
Agency Clerk, receipt of which is hereby
acknowledged.

Agency Clerk 9/16/19
Date

FINAL ORDER

This matter was considered by the Florida Department of Economic Opportunity ("Department"), following receipt of a Recommended Order issued by an Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH").

Background

This is a proceeding to determine whether a proposed revived declaration of covenants for Antiquers Aerodrome, Inc. ("Antiquers") was properly approved by parcel owners and complied with all statutory requirements. On February 2, 2018, the Department entered Determination Number 18010 ("Determination"), approving the proposed revitalization pursuant to Chapter 720, Part III, Florida Statutes (2018). Substantially affected parcel owners Stephen J. Byers and Erich Nikorowicz filed a Petition for Administrative Proceedings ("Petition") on March 19, 2018, challenging the Determination. The Department referred the Petition to DOAH on April 3, 2018. A final hearing in the matter was held on March 14, 2019, and the ALJ entered her Recommended Order on June 19, 2019.

Role of the Department

The Department previously reviewed the Antiquers proposed revitalization submission and entered a non-final agency determination approving revitalization of the proposed declaration of covenants pursuant to section 720.406(2), Florida Statutes. The Petitioners timely filed their Petition, which was timely referred to DOAH by the Department. After an administrative hearing, the ALJ entered a Recommended Order recommending that the Department enter a final order approving revitalization.

Standard of Review of a Recommended Order

Pursuant to Florida's Administrative Procedure Act, an agency may not reject or modify the findings of fact in a recommended order unless the agency first determines from a review of the entire record, and states with particularity in its final order, that the findings of fact were not based upon competent, substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. § 120.57(1)(I), Fla. Stat. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. *Id.*

Absent a demonstration that the underlying administrative proceeding departed from essential requirements of the law, "[a]n ALJ's findings cannot be rejected unless there is no competent, substantial evidence from which the findings could reasonably be inferred." *Prysi v. Dep't of Health*, 823 So. 2d 823, 825 (Fla. 1st DCA 2002) (citations omitted). In determining whether challenged findings of fact are supported by the record in accord with this standard, the agency may not reweigh the evidence or judge the credibility of witnesses, both tasks being within the sole province of the ALJ as the finder of fact. *See Heifetz v. Dep't of Bus. Reg.*, 475 So. 2d 1277, 1281-83 (Fla. 1st DCA 1985). If the evidence presented in an administrative hearing

supports two inconsistent findings, it is the ALJ's role to decide the issue one way or the other. *Id.* at 1281.

The Administrative Procedure Act also specifies the manner in which the agency is to address conclusions of law in a recommended order. In its final order, the agency may only reject or modify the conclusions of law over which it has substantive jurisdiction. When rejecting or modifying a conclusion of law, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law and must make a finding that its substituted conclusion of law is as reasonable as or more reasonable than that which was rejected or modified. § 120.57(1)(1), Fla. Stat.; *see also DeWitt v. Sch. Bd. of Sarasota Cnty.*, 799 So. 2d 322, 324-25 (Fla. 2d DCA 2001).

The label assigned to a statement is not dispositive as to whether it is a finding of fact or a conclusion of law. *Stokes v. State, Bd. of Prof'l Engineers*, 952 So. 2d 1224, 1225 (Fla. 1st DCA 2007) (citing *Kinney v. Dep't of State, Div. of Licensing*, 501 So. 2d 129, 132 (Fla. 5th DCA 1987)). A conclusion of law or finding of fact should be considered as such based upon the statement itself and not the label assigned. *See, e.g., Goin v. Comm 'n on Ethics*, 658 So. 2d 1131, 1137-38 (Fla. 1st DCA 1995).

Department's Review of the Recommended Order

The Department has been provided copies of the Recommended Order ("RO"), the hearing transcript, and the evidence introduced at the final hearing. Petitioner Byers and Petitioner Nikorowicz filed separate exceptions to the RO on July 5, 2019. The exceptions are now considered as follows:

A – Nikorowicz Exception 1: Conclusion of Law ¶¶ 65

Respondent Nikorowicz takes exception to the conclusion of law in paragraph 65 of the RO that the drawing utilized in the revitalization process satisfied the requirements for a “graphic depiction” under Chapter 720, Part III, Florida Statutes. Like Byers, Nikorowicz argues that the poor quality of the drawing precludes it from qualifying as the required graphical depictions. As addressed below, in Section F, this conclusion is not as reasonable as or more reasonable than the conclusion set forth in the RO. Therefore, Respondent Nikorowicz’s first exception is DENIED.

B – Nikorowicz Exception 2: Conclusion of Law ¶¶ 63

Respondent Nikorowicz appears to take exception to the conclusion of law in paragraph 63 permitting consideration of the parcel-owner consents submitted before the 14 day period set forth in section 720.405(6), F.S., had elapsed after the August 8, 2018, Notice. As part of his argument, Nikorowicz also contends the four consents given before the August 8, 2018, Notice should not be considered. Neither conclusion is as reasonable as, or more reasonable than, the conclusions set forth in the RO. The August 2 and August 8 Notices both advised parcel owners that Antiquers was not seeking their response for at least 14 days from receipt. Nothing in Chapter 720, Part III, Florida Statutes, precludes the consideration of consents voluntarily given early. Furthermore, the August 8 Notice merely updated the revitalization packets previously sent to parcel owners in order to correct a misspelled name and lot owner. Therefore, Respondent Nikorowicz’s second exception is DENIED.

C – Byers Exception 1

Respondent Byers appears to take general exception to the validity of parcel-owner consents given before the August 8, 2018, Notice was mailed out, contending that the August 2,

2018, Notice did not contain the “complete text” required by section 720.404(5), Florida Statutes. Although section 120.57(1)(k), Florida Statutes, provides for the filing and consideration of exceptions to a recommended order, “an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.” Byers Exception 1 fails to clearly identify the disputed portion of the RO in this matter, and therefore, the exception will not be ruled upon. To the extent Byers adequately raises Exception 1, the Department has addressed this in Paragraph B, above. Byers First Exception is, accordingly, DENIED.

D – Byers Exception 2

Respondent Byers appears to take general exception to the validity of parcel-owner consents he contends were sought and submitted before “the 14-day period.” Byers Exception 2 fails to clearly identify the disputed portion of the RO in this matter, and therefore, the exception will not be ruled upon. *See* § 120.57(1)(k), Fla. Stat. To the extent Byers adequately raises Exception 2, the Department has addressed this in Paragraph B, above. Byers Second Exception is, accordingly, DENIED.

E – Byers Exception 3: Conclusion of Law ¶¶ 70-73

Respondent Byers takes exception to the conclusions of law in paragraphs 70-73 of the RO that Antiquers timely submitted the proposed revitalization to the Department within the 60-day window established in section 720.406(1), Florida Statutes. The RO reads the statute to require submission within 60 days after the date a majority of consents is established, while Byers appears to argue the 60 days should begin running after the date the first consent is given. Respondent Byers’ conclusions are not as reasonable as or more reasonable than the conclusions set forth in

the RO. The plain language of section 720.406(1) clearly establishes that the 60-day window is governed by the date on which the revitalization is approved; i.e., consented to by the requisite majority of parcel owners. *See, e.g., Trinidad v. Fla. Peninsula Ins. Co.*, 121 So. 3d 433, 439 (Fla. 2013) (holding that where statutory language is clear or unambiguous, the interpretative inquiry ends). Therefore, Respondent Byers' third exception is DENIED.

F – Byers Exception 4: Conclusion of Law ¶¶ 38-46, 64-65

Respondent Byers takes exception to the conclusions of law in paragraphs 38-46 and 64-65 of the RO to the extent it holds that the illustration utilized by Antiquers in the revitalization process satisfied the requirements for a “graphic depiction” in Chapter 720, Part III, Florida Statutes. In sum, Byers reads “graphic depiction” to require some level of “vivid realism.” The RO concludes that the graphic depiction must simply be a representation of the community subject to revitalization and that the drawing at issue met that burden. Respondent Byers' conclusion is not as reasonable as or more reasonable than the conclusions set forth in the RO. Therefore, Respondent Byers' fourth exception is DENIED.

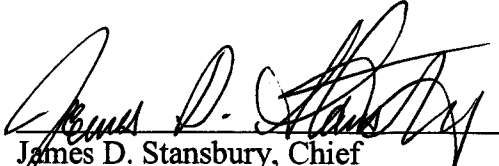
G – The remainder of the RO

The Department identifies no conclusion of law within its substantive jurisdiction for which a substituted conclusion of law would be as reasonable as, or more reasonable than, the ALJ's conclusions in the RO. Furthermore, the ALJ's findings of fact were based on competent, substantial evidence and there is no indication the proceedings on which the findings were based did not comply with the essential requirements of the law.

Order

Based on the foregoing, the Department adopts the ALJ's Findings of Fact and Conclusions of Law as set forth in the Recommended Order in their entirety (a copy of which is attached as

Exhibit A), and incorporates said Findings of Fact and Conclusions of Law into the Department's Final Order. The Department finds that Determination Number 18010 is affirmed, and Antiquers' request to revitalize its proposed declaration of covenants is APPROVED.¹

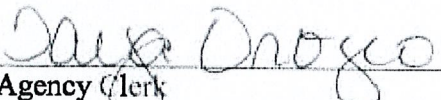


James D. Stansbury, Chief
Bureau of Community Planning and Growth
Department of Economic Opportunity

¹ A copy of Determination Number 18010 is attached as Exhibit B and incorporated herein.

NOTICE OF FILING AND SERVICE

I HEREBY CERTIFY that the above Final Order was filed with the Department's undersigned Agency Clerk and that true and correct copies were furnished to the persons listed below in the manner described on the 17th day of September, 2019.


Agency Clerk
Department of Economic Opportunity
107 East Madison Street, MSC 110
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By Certified U.S. Mail

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