

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT  
OF THE STATE OF FLORIDA, IN AND FOR MONROE COUNTY  
APPELLATE DIVISION

PETER G. GIAMPAOLI and ELIZABETH  
C. GIAMPAOLI, husband and wife, and as  
trustees of the Giampaoli Family Trust,

Case No.: 21-CA-207-K

Petitioners,

L.T. Nos.: 17-3578 & 20-

2039

v.

DALK LAND L.P., a Pennsylvania  
limited partnership, and MONROE COUNTY  
PLANNING COMMISSION,

Respondents.

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**ORDER GRANTING PETITION FOR WRIT OF CERTIORARI**

**THIS CAUSE** comes before the Court upon the Petitioners' Petition for Writ of Certiorari (the "Petition"), challenging the Final Order entered by the Florida Division of Administrative Hearings ("DOAH") Administrative Law Judge ("ALJ") on February 26, 2021. The Court, having considered the Petition, Dalk Land, L.P.'s ("Dalk's") Response to Petition<sup>1</sup>, Petitioners' Reply, the record, pertinent legal authority, and being otherwise fully advised in the premises, finds and orders as follows:

**I. Factual and Procedural Background**

On April 9, 2010, Monroe County issued Petitioners a building permit for the construction of a single-family residence located on Sugarloaf Key,

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<sup>1</sup> Respondent Monroe County Planning Commission submitted a filing on June 11, 2021 notifying the Court that it takes no position with respect to the Petition.

Florida. The permit was governed by the 2007 version of the Florida Building Code (“FBC”) and the 2010 Land Development Code (“LDC”), including the LDC’s flood management provisions (“FMPs”). The original permit has remained open at all times material hereto. Since the original permit was issued, the LDC, including a new version of the FMP became effective on April 13, 2016.

In 2017, Petitioners submitted Revision C and Revision D (collectively the “Revisions”) to the original permit. Initially, the County’s Building Official, Rick Griffin, informed Petitioners that Revision C could not be approved because it was a change in design and construction that did not meet the current regulations for structures in a velocity zone. However, after a second in-person meeting, the Building Official informed Petitioner that his Revision C building plans would be accepted. The email to Petitioner states: “I have spoken to both [assistant county attorney] Steve Williams and Mary Wingate, we will accept the revisions for your proposed residence with the modifications and the pool will be accepted as it was approved previously. This means the new revisions will just show the location of the pool and pool construction is from the previous design. If this is agreeable to you please submit the revised house plans as discussed.” (Final Order at ¶ 50). Revisions C and D were formally approved by Monroe County on May 19, 2017 and January 17, 2018 respectively. Petitioner filed revised elevation certificates which were deemed compliant by the Building Officer.

Dalk, the owner of property located directly adjacent to Petitioners' property, subsequently filed an administrative appeal to the Monroe County Division of Administrative Hearings challenging the administrative actions of the Floodplain Administrator in approving the Revisions and the elevation certificates. The appeal was forwarded from the Monroe County Building Department to DOAH with a request that an ALJ be assigned to the appeal. In March 2018, Dalk amended its appeal, combining all issues arising from both Revision C and Revision D and the elevation certificates. The amended appeal alleges that the revised permits violate not only the floodplain management regulations in chapter 122, but also provisions of the FBC, and other provisions of the LDC.

A central point of contention before DOAH was whether the Revisions to the original building permit issued by the County in 2010 were governed by the law in effect at the time the original permit was issued (the "2010 Rules"<sup>2</sup>), or whether they were governed by the law in effect at the time the Revisions were approved (the "2017 Rules"<sup>3</sup>). The Building Official approved the Revisions based on his interpretation that the date of application for a permit governs the permitted work for the life of the permit despite subsequent changes in the codes. In July 2018, the original ALJ entered an "Order on Scope" agreeing with the Building Official, the Petitioners, and the County, that Revisions C and D were governed by the law in effect at the time the original permit was issued. A successor ALJ

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<sup>2</sup> Collectively encompassing the 2007 version of the FBC and 2010 FMP.

<sup>3</sup> Collectively encompassing the 2014 version of the FBC and the April 13, 2016 LDC, including the FMP in Ch. 122.

subsequently reconsidered this order, and on October 26, 2020, entered an order vacating the Order on Scope.

The ALJ conducted a five-day final hearing from November 2, 2020, through November 6, 2020. On February 26, 2021, the ALJ entered a Final Order vacating the permits, concluding that the 2017 Rules applied to the Revisions.

This Petition seeks an order quashing the Final Order entered by the DOAH ALJ.

## **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).

Here, Petitioners argue that the ALJ committed legal error when he failed to apply the correct law and misinterpreted the law he did apply. Petitioners contend that the ALJ is not authorized to “second guess” decisions by the Building Official concerning interpretations of the code and law delegated to the Building Official. Petitioners further allege the ALJ denied the Petitioner and the County due process when he vacated the Order on Scope four days before commencement of the final hearing and denied Petitioners’ motion for a continuance.

## **III. Discussion**

### Essential Requirements of Law

“A ruling constitutes a departure from the essential requirements of law when it amounts to a violation of a clearly established principle of law resulting in a miscarriage of justice.” *Miami-Dade County v. Omnipoint Holdings, Inc.*, 863 So. 2d 195, 199 (Fla. 2003) (internal quotation and citation omitted). Thus, 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). In this case, the Court finds the ALJ departed from the essential requirements of law by creating a review procedure to review a matter beyond the scope of its limited appellate authority.

Chapter 122 of the Monroe County LDC contains rules for interpreting flood hazard issues. Section 122-9(a) gives DOAH “the authority to hear and decide appeals from administrative actions regarding the floodplain management provisions of this Land Development Code.” Beyond that, the section provides very little guidance for the appeal process. Section 122-9(b) provides that an appeal may be initiated by an affected person within 30 days after the administrative action is taken. The appeal is filed with the County, and “the County shall refer the appeal to DOAH with a request that an administrative law judge be assigned to conduct a hearing.” Sec. 122-9(c). Sec. 122-9(e) states that DOAH shall consider the appeal pursuant to Rule 28-106.201(3) F.A.C. which provides that “[u]pon receipt of a petition

involving disputed issues of material fact, the agency shall grant or deny the petition, and if granted shall, unless otherwise provided by law, refer the matter to the Division of Administrative Hearings with a request that an administrative law judge be assigned to conduct the hearing...” Rule 28-106.201(3) F.A.C.

With this limited guidance, the ALJ constructed a system for reviewing the appeal of the Building Official’s decision to approve the Revisions and the elevation certificates. In the Final Order, the ALJ states, “[t]he term ‘appeal’ as used in section 122-9, was not intended to restrict the scope of decision to a mere review of prior administrative actions.” (Final Order at ¶ 66). The ALJ concluded “in the absence of clear instructions to the contrary, the plain directive to follow rule 28-106.201(3) persuades the undersigned that appeals under section 122-9 are meant to afford parties an opportunity to present evidence and create a record, in the same way that appeals to the Planning Commission under section 102-185 provides such an opportunity.” (Final Order at ¶ 68). The lack of prescribed standards of review in section 122-9 led the ALJ to conclude that the appeal provided an opportunity to try disputed issues of fact de novo. (Final Order at ¶ 69). The ALJ stated, “[t]he undersigned has final order authority in this matter. Although section 122-9 does not specifically address the point, such authority may be reasonably inferred from the absence of any language directing that a recommendation be issued to another decision-maker having final order authority.” (Final order at ¶ 72). After creating this

review framework, the ALJ proceeded to draft a very detailed 58-page order outlining his findings of fact and conclusions of law. Unfortunately, this matter never should have been before the DOAH ALJ because the scope of appeals under chapter 122-9 is narrow, and by its plain language is restricted to reviewing “administrative actions regarding the floodplain management provisions of the Land Development Code.” 122-9(a). In other words, Chapter 122 does not authorize the DOAH ALJ to review decisions of the Building Official on how to process permit applications.

The Building Official heads the County Building Department and is tasked with the responsibility of administering, interpreting, and enforcing provisions of the Florida Building Code, floodplain management regulations, and chapter 6 of the Monroe County Code of Ordinances. See 6-55(c). The Building Official is the “official source to render interpretations of this chapter and the Florida Building Code.” 6-55(c)(7). Section 6-55(c)(13) authorizes the Building Official to review building permit applications for new construction or substantial improvement within areas of special flood hazard to ensure that the proposed construction satisfies the floodplain management requirements. The Florida Legislature has given Building Officials the authority and responsibility for the administration, supervision, direction, enforcement, or performance of permitting of construction, alteration, repair, remodeling, or demolition of structures and installation of buildings systems within their jurisdictions. §468.604(1), Fla. Stat. “The

building code administrator or building official shall faithfully perform these responsibilities without interference from any person.” *Id.*

Based on the express delegation of broad authority, the Building Official has the authority to evaluate the facts and circumstances surrounding the submittal of permit applications and has discretion whether to treat a permit application as a revision to an existing permit or a new application for a permit. In this case, the Building Official determined the application was a revision to the original permit, not a new application, and thus, the version of the FBC and FMP in existence when the original permit issued applied. The Building Official’s decision how to process the permit application is beyond the scope of the ALJ’s limited appellate authority to review administrative actions regarding the floodplain management provisions of the LDC.

While the appeals process outlined in Sec.122-9 may be invoked upon a claim of improper application of a FMP provision, that is not the issue that was brought before the ALJ in this case. Here, the appeal encompassed issues pertaining to the Building Official’s permitting authority and implicated provisions of the Monroe County Code and the LDC. Therefore, an appeal could have been commenced under Sec. 102-185 which gives the Planning Commission “authority to hear and decide appeals from any decision, determination or interpretation by any administrative official with respect to the provisions of this Land Development Code and the standards and procedures hereinafter set forth.” Sec. 102-185(a). Although the ALJ



was led into error by the filing of an appeal that went beyond the scope of his appellate authority, the ALJ subsequently failed to comply with the essential requirements of law by creating a review system much broader than the review authorized by Sec. 122-9 and applying the incorrect law to reach an issue that he did not have authority to review.

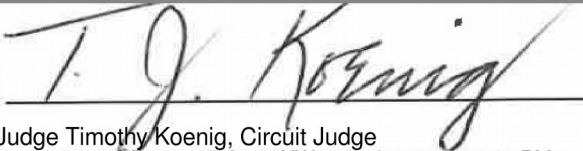
Having concluded that the essential requirements of law have not been observed, it is unnecessary to discuss the claim that the Petitioners were denied due process when their request for a continuance was denied, or any other claim Petitioners allege as a basis for relief.

### **CONCLUSION**

For the foregoing reasons, the Court will **GRANT** the Petition for Writ of Certiorari and will **QUASH** the Final Order entered by the DOAH ALJ on February 26, 2021.

**DONE AND ORDERED** at Key West, Monroe County, Florida this Wednesday, June 8, 2022.

44-2021-CA-000207-A0-01KW 06/08/2022 03:33:16 PM



Judge Timothy Koenig, Circuit Judge  
44-2021-CA-000207-A0-01KW 06/08/2022 03:33:16 PM

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