

IN THE CIRCUIT COURT OF THE 16<sup>th</sup> JUDICIAL CIRCUIT OF  
THE STATE OF FLORIDA, IN AND FOR MONROE COUNTY,

APPELLATE DIVISION

Case No.: 24-AP-12-P

MARY BARLEY FAMILY TRUST and  
PRINSTON LLC,

Petitioners,

v.

ISLAMORADA, VILLAGE OF ISLANDS and  
MM82.790 LLC,

Respondents.

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**ORDER ON PETITION FOR WRIT OF CERTIORARI**

**THIS CAUSE** is before the Court on a Petition for Writ of Certiorari (the “Petition”), challenging Resolution 24-04-31, a final land use order of the Village of Islamorada, Village of Islands (the “Village”) which granted an application to abandon a portion of a right-of-way. The Court, having considered the Petition, the Village’s Response, the Response Brief of MM82.790 LLC, pertinent legal authority, and being otherwise fully advised in the premises, finds and orders as follows:

**I. Factual and Procedural Background**

Respondent MM82.790 owns real property located at 82790 Overseas Highway, in Islamorada, Florida, on which it operates a retail store called the Sandal Factory. (App. 175). A representative for the owner of the Sandal Factory applied for right-of-way abandonment of a portion of a road

located between the Sandal Factory Property and the Overseas Highway. (App. 175). The road fragment is a paved 200-foot-long, 20-foot-wide strip of land called Orange Street which is owned by the Village but has been used as parking and access to the Sandal Factory. (App. 09; 220). Both sides of Orange Street were previously abandoned. (App. 130).

The Sandal Factory Owner's abandonment application was scheduled for a hearing on July 20, 2023. (App. 213). Pursuant to the public notice process, a letter was sent to property owners located within three hundred (300) feet of the proposed right-of-way abandonment. (App. 213). In response, the Village received five letters of no objection and two emails objecting to the abandonment. (App. 213). Petitioners, the two entities represented by Mary Barley, and two other nearby property owners, objected to the road abandonment. (App.191-198). The Staff Report prepared by the Village Planning Director recommended approval of the application. (App. 213).

At the hearing on July 20, 2023, the Village Planning Director testified and recommended approval of the right-of-way application. James Lupino addressed the Village Council as the representative of the Sandal Factory Owner/applicant. Council members remarked and members of the public testified that the Orange Street fragment had been used as a parking lot for the Sandal Factory Property for many years. Petitioners' attorney and Mary Barley spoke in opposition to the abandonment. Petitioners also presented the testimony of an architect, Matt Polack, who presented a conceptual

layout of a proposed new parking/pedestrian plan the Village might implement. (App. 46-55). Ultimately the Village Council moved to continue consideration of the abandonment request to a future hearing date.

In advance of the second hearing, Petitioners again submitted a letter of objection stating that they are “affected owners” insofar as they “walk, bike and drive on the Village-owned property at issue.” (App. 203). The Village Planning Director prepared a second staff report recommending approval of the abandonment application. (App. 220). The second hearing was held on April 11, 2024. The Sandal Factory Owner’s representative spoke, as did counsel for the Petitioners. After discussion and consideration by the Village Council, a motion to approve the requested right-of-way abandonment passed. The right-of-way abandonment was memorialized in Resolution 24-04-31.

On May 10, 2024, Petitioners filed this Petition seeking to quash Village Council Resolution 24-04-31.

## **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, Petitioners are challenging the Village’s decision to abandon the right-of-way as a

departure from the essential requirements of law and argue that it is not supported by competent substantial evidence.

### **III. Discussion**

#### **A. Standing**

As a preliminary matter, Respondents argue that the Petition should be dismissed because Petitioners do not have standing to challenge the Resolution approving the right-of-way abandonment. Standing is a threshold issue which must be resolved before reaching the merits of a case. *Solares v. City of Miami*, 166 So. 3d 887, 888 (Fla. 3d DCA 2015). When acting in its appellate capacity, a circuit court is prohibited from exercising jurisdiction over a petition for writ of certiorari if the petitioner lacks standing. *F&R Builders, Inc., v. Durant*, 390 So. 2d 784, 785-786 (Fla. 3d DCA 1980).

In land use cases, abutting homeowners ordinarily have standing by virtue of their proximity to the proposed area of rezoning. *Save Calusa, Inc. v. Miami Dade County*, 335 So. 3d 534, 540 (Fla. 3d DCA 2023). “Such proximity generally establishes that the homeowners have an interest greater than ‘the general interest in community good share[d] in common with all citizens.’” *Id.* quoting *Renard v. Dade County*, 261 So. 2d 832, 837 (Fla. 1972). In this case, Mary Barley testified that the Petitioner entities, of which she is principal, own three lots on De Leon Street within fifty feet of the subject property. (App. 42).

Petitioners also received formal notice from the Village of the proposed right-of-way abandonment based on the public notice process which requires a letter to be sent via certified mail to adjacent property owners located within three hundred (300) feet. (App. 220). In response, Petitioners objected to the right-of-way abandonment in writing and participated in the public hearings.

Petitioners' proximity to the proposed right-of-way abandonment, along with their participation in the proceedings below, give Petitioners standing to seek appellate review of the Village Council's Resolution.

### **B. The Village Code**

The Village Code has two pertinent provisions governing the abandonment of public rights-of-way. Section 50-56 governs the process and provides as follows:

#### **Sec 50-56 Vacation And Abandonment Of Rights-Of-Way And Easements**

- a. The village council may, of its own motion, or upon application of any person, adopt a resolution vacating, abandoning, discontinuing, and closing any existing public street, alleyway, road, highway, or easement, and renouncing and disclaiming any right of the village and the public in connection therewith, **upon a finding that there is no public interest in continued access by such right-of-way or easement.**
- b. Prior to the adoption of such resolution, the village shall hold a public hearing, to be noticed in accordance with the standards set forth in 30-218. **The abandonment shall not be granted unless all affected property owners agree to the abandonment.**
- c. The resolution, as adopted, shall be recorded in the public records of the county.

(Emphasis added).

Section 50-55 of the Village Code (Definitions) provides the definition of “affected property owner” as follows:

*Affected property owner* means a property owner adjacent to the applicant's property or who, by virtue of a proposed abandonment will:

- a. Have access which is currently used by that property owner eliminated;
- b. Have the only platted access eliminated;
- c. Have the paved area adjacent to that property increased for turn-around purposes; or
- d. Be increased in size.

Thus, prior to granting an application for the abandonment of a right-of-way, the Village Code requires that the Village Council find that: (1) all affected property owners agree to the abandonment, and (2) there is no public interest in continued access by such right-of-way.

### **C. Essential Requirements of Law**

Petitioners argue they qualify as “affected property owners” under the Village Code, and since they objected to the right-of-way abandonment, the Village departed from the essential requirements of the law by granting the abandonment application. 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 Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995). “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 Cty. v. Omnipoint Holdings, Inc.* 863 So. 2d 195, 199 (Fla. 2003) (quoting *Combs v. State*, 436 So. 2d 93, 96 (Fla. 1983)).

**i. Adjacent Property Owner**

There are two ways to establish oneself as an “affected property owner” under the Village Code. First, the property owner could be “adjacent” to the applicant’s property. §50-55, Code of Ordinances, Islamorada, Village of Islands, Florida. Alternatively, the property owner can be “affected” if they suffer one of the four consequences listed in Section 50-55 of the Village Code by virtue of a proposed abandonment.

The term “adjacent” is not defined in Section 50-55, nor is it defined in the general “Definitions and Rules of Construction” Section 1-2 of the Village Code. Section 30-31, which applies to Land Use Regulations and is titled “Rules of Construction and Definitions Generally” contains the following definition of “adjacent land”:

Adjacent land means a parcel of land sharing a boundary with another parcel of land. For purposes of the plan, an intervening road, right-of-way, easement or canal shall not destroy the adjacency of the two parcels. For the purposes of article V, division 4 of this chapter, intervening canals and U.S. 1 shall destroy the adjacency of the two parcels.

In this case, the notice of the public hearing regarding the proposed right-of-way abandonment was sent to the Petitioners in accordance with Section 30-218 of the Village Code, as required by Section 50-56(b), because the Petitioners' property is located within 300 feet of the property subject to the application. In Response, Petitioners objected to the abandonment in writing and at the public hearings.

Prior to both right-of-way abandonment hearings, the Village Planning Director, Jennifer DeBoisbriand, drafted a Staff Report to the Mayor and Village Council that states as follows:

During the public notice process, a letter is required to be sent via certified mail to **adjacent property owners** located within three hundred (300) feet of the proposed right-of-way abandonment, posting of the property, and notice in a local publication. The Village has received 5 letters of no objection and 2 emails objecting to the abandonment. As of the writing of this report, no other comments have been received.

(App. 213; 220) (Emphasis added).

Despite using the term “adjacent property owners” to describe Petitioners and other nearby property owners, the Planning Director goes on to state that the “applicant owns the only property that would be affected by the abandonment.” (App. 214; 221). The Planning Director also opened the first public hearing by stating: “[p]ursuant to code Section 50-56B all affected property owners are required to agree to the abandonment. I would note that the applicant owns the only property that would be affected by this abandonment.” (App. 18 lines 15-19).

At the hearings, the Village Attorney acknowledged that there are two elements that the Village Council must find before abandoning the right-of-way, one of which being that no affected property owners object to the abandonment. (App. 69-70;128). However, at the hearing, there was no discussion whatsoever as to whether Petitioners are “adjacent” to the applicant’s property.



During the hearing, Councilmember Gregg noted that the word “adjacent” is defined in Chapter 30 of the Code and questioned if it applies in this case. He remarked that “It might, but I was not able to understand...” He then appealed to the Village attorney for guidance. (App. 121-122). The Village Attorney instructed the Council that there are four things that could make an affected property owner under Section 50-55. (App. 122). He stated that the Petitioners are not affected parties because “they have not been deemed to be because they were not sought out to see if they had an objection, or if they consent to it, I should say, which is one of the requirements.” (App. 123 lines 1-4). This analysis precluded further discussion on whether Petitioners were adjacent property owners.

The Village argues that since Petitioners did not previously claim that they qualify as an “affected property owner” by virtue of being adjacent, they have waived this argument. However, the Village uses the term “adjacent” in the “affected property owner” definition in Section 50-55 of the Village Code. The Village again used the term “adjacent” in the Village Planning Director’s Staff Report to describe the property owners, including Petitioners, who were contacted about the proposed abandonment. The question of whether Petitioners were adjacent was also raised at the hearing although it was never discussed or answered. Therefore, the issue is before the Court.

In its Response, the Village argues that Petitioners are not “adjacent” property owners because “the cited portions of the record plainly reflect the referred-to parcel does not share a boundary with the Sandal Factory Property, but is across a public intersection of two roads, and that at the rear of the Sandal Factory Property.” (Response at P. 21 n. 7). However, Mary Barley testified that Petitioners own three lots on De Leon street “within fifty feet of the subject property” (App. 42), and record evidence demonstrates that Petitioners’ properties are across De Leon and “catty-corner” across Avacado Avenue from the Sandal Factory. (App. 316; 394). Therefore, the issue of whether Petitioners are adjacent property owners is a disputed question of fact that the Village Council should have addressed and resolved prior to finding that “all affected property owners have no objection to the proposed abandonment and vacation of the Right-of-Way.” (App. 008).

Pursuant to Village Code Section 50-56, the Village Council was required to find that all affected property owners agreed to the abandonment. Prior to making this finding, the Village Council was required to apply the definition found in Section 50-55 of the Code, to determine if any of the objectors, including Petitioners, were “affected property owners.” Part of this analysis required the Village Council to determine if Petitioners were “adjacent to the applicant’s property.” The record does not show that the Village Council engaged in this analysis, which violates the essential requirements of law.

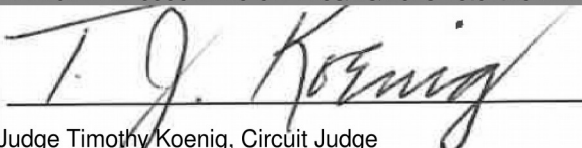
Since the Court finds a departure from the essential requirements of law, it need not address Petitioners' argument that the Resolution is not supported by competent substantial evidence.

#### **IV. Conclusion**

The Village Council did not apply the plain and unambiguous language of the Village Code to determine whether Petitioners were adjacent to the applicant's property and thus, affected property owners, which constitutes a departure from the essential requirements of law.

The Petition for Writ of Certiorari is **GRANTED**, and Resolution No. 24-04-31 granting the right-of-way abandonment is **QUASHED**.

**DONE AND ORDERED** at Key West, Monroe County, Florida this Tuesday, March 25, 2025

44-2024-AP-000012-A0-01PK 03/25/2025 10:01:26 AM  
  
Judge Timothy Koenig, Circuit Judge  
44-2024-AP-000012-A0-01PK 03/25/2025 10:01:26 AM

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