

**IN THE CIRCUIT COURT FOR THE
NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA**

**CASE NO.: 08-CA-5227-O
WRIT NO.: 08-20**

**DAVID W. FOLEY, JR. and
JENNIFER T. FOLEY,**

Petitioners,

v.

ORANGE COUNTY, FLORIDA,

Respondent.
_____ /

Petition for Writ of Certiorari from the
Decision of the Orange County Board of Commissioners.

David W. Foley, Jr., Pro Se,
and Jennifer T. Foley, Pro Se,
for Petitioners.

Joel D. Prinsell, Deputy County Attorney,
For Respondent.

Before POWELL, EVANS, and T. SMITH, JJ.

PER CURIAM.

FINAL ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioners, David W. Foley and Jennifer T. Foley, seek certiorari review of Respondent's, Orange County Board of County Commissioners, final zoning decision, dated February 29, 2008. This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(3). We dispense with oral argument pursuant to Florida Rule of Appellate Procedure 9.320.

Docketed by:
W. DREXLER

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CLERK OF THE COURT
ORANGE COUNTY, FLORIDA

The facts, as illustrated by the parties' written submissions, are that the Petitioners have been breeding and raising exotic birds (Toucans) on their single family residential property, which is zoned R-1A. The Petitioners have also been selling the exotic birds commercially via the internet. After obtaining a determination from the County Zoning Manager, and following a public hearing by the County Board of Zoning Adjustment (BZA), which unanimously approved the Zoning Staff's determination, the Board of County Commissioners (BCC) conducted a public hearing and unanimously approved the Zoning Manager's determination and the BZA decision. The BCC determined that: (1) the Petitioners were engaged in aviculture; (2) aviculture with associated aviaries is not permitted as a principal use or accessory use within an R-1A zoning district; and (3) aviculture with associated aviaries is not permitted as a home occupation in an R-1A zoning district.

Petitioners timely filed a Petition for Writ of Certiorari seeking review of the BCC's decision. This Court has considered the Petition, Response, Reply, all appendices and the transcript of the proceedings.

Where a party is entitled to seek review in the circuit court from a quasi-legal administrative action, the circuit court is limited in its review to determining: (1) whether due process of law was accorded; (2) whether the essential requirements of law were observed; and (3) whether the agency's decision is supported by substantial competent evidence. Fla. Power & Light Co. v. City of Dania, 761 So. 2d 1089 (Fla. 2000); Haines City Cmty. Dev. v. Heggs, 658 So. 2d 523 (Fla. 1995); City of Deerfield Beach v. Valliant, 419 So. 2d 624 (Fla. 1982).

Petitioners do not dispute requirements (1) and (3); therefore, the sole issue before this Court is whether the BCC observed the essential requirements of law.

In order to constitute a departure from the essential requirements of law, there must be a violation of a clearly established principle of law resulting in a miscarriage of justice. See Combs v. State, 436 So. 2d 93 (Fla. 1983); Tedder v. Fla. Parole Comm'n, 842 So. 2d 1022 (Fla. 1st DCA 2003). A clearly established principle of law can derive from a variety of legal sources, including an interpretation or application of a statute, ordinance, administrative or procedural rule. See Fassy v. Crowley, 884 So. 2d 359 (Fla. 2d DCA 2004). The BCC's interpretation and application of its own zoning code is entitled to great deference by the reviewing court, especially in the absence of other court decisions or legal authorities, as is the case here. See Verizon Fla., Inc. v. Jacobs, 810 So. 2d 906 (Fla. 2002); Las Olas Tower Co. v. City of Ft. Lauderdale, 733 So. 2d 1034 (Fla. 4th DCA 1999).

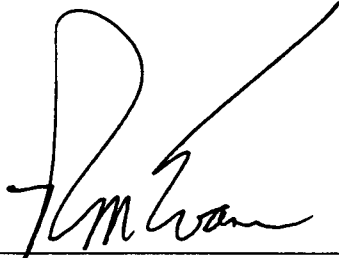
Petitioners' other arguments have been considered and found to be without merit. Only two of which bear brief mention. The fact that one neighbor testified before the BCC and that Petitioners presented 23 favorable affidavits does not carry the day for them. See City of Apopka v. Orange County, 299 So. 2d 657 (Fla. 4th DCA 1974)(the function of the board of county commissioners is to hold public hearings, hear neighborhood residents, and obtain facts, not to hold a plebiscite; a majority's desires or opinions can never control the zoning decision). Finally, Petitioners' assertion that sections of the Orange County Zoning Code are unconstitutional is one which can only be made in a separate legal action, not on certiorari review. See Miami-Dade County v. Omnipoint Holdings, Inc., 863 So. 2d 195 (Fla. 2003).

We conclude that the governing Code sections were properly interpreted by the County Zoning Manager, the BZA, and the BCC. Moreover, we find that the BCC observed the essential requirements of law.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the Petition for Writ of Certiorari is **DENIED**.

DONE and ORDERED at Orlando, Florida this 21st day October,

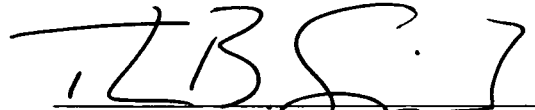
2009.



ROBERT M. EVANS
Circuit Judge



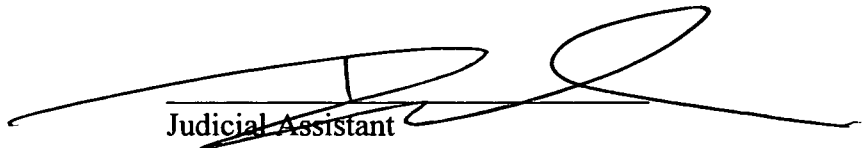
ROM W. POWELL
Senior Judge



THOMAS B. SMITH
Circuit Judge

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing order was furnished via U.S. mail on this 21 day of October, 2009, to the following: **David W. Foley and Jennifer T. Foley**, 1015 North Solandra Drive, Orlando, Florida 32807-1931 and **Joel D. Prinsell, Deputy County Attorney**, Orange County Attorney's Office, PO Box 1393, Orlando, FL 32802-1393.



Judicial Assistant