

Publix Super Markets, Inc. v. Miami-Dade Cty., 317 So. 3d 228 (Fla. 3d DCA 2021).

Third DCA Holds that Circuit Court Applied the Correct Law in Denying Publix's Petition for First-Tier Certiorari Regarding the New Placement of a Liquor Store

In 2016, Publix Super Markets, Inc. ("Publix") sought to place a liquor store in an empty location in a shopping center, which was zoned BU-2, Special Business District. Because another liquor store, T-Rexx, was located within 1,500 feet of Publix's proposed liquor store location, Publix required: (1) a Special Exception, which would allow it to use the empty location for a liquor store, and (2) a Non-Use Variance, which would allow Publix's proposed liquor store to be open every Sunday of the year. In January 2017, the Community Zoning Appeals Board ("CZAB") held a public hearing regarding Publix's application where Publix presented evidence in favor of the application and T-Rexx presented evidence against the application. Following the public hearing, CZAB voted to deny both the Special Exception and the Non-Use Variance.

Publix sought first-tier certiorari review of the CZAB denial. The circuit court granted Publix's petition and found that CZAB's decision was not supported by "competent and substantial evidence," because T-Rexx failed to demonstrate that Publix's requests did not meet the requirements and are adverse to public interest. Miami Dade County then petitioned for second-tier certiorari, which the Third DCA granted. The Third DCA revoked the circuit court's order, concluding that it had failed to review the entire record for any "competent, substantial evidence supporting the CZAB's determination and findings, instead assessing [T-Rexx's] showing and evidence." It instructed the circuit court to apply a three-prong standard of review—requiring review of due process, an observation of essential requirements of law, and a finding supported by competent, substantial evidence.

Using the three-prong standard, the circuit court concluded that CZAB's denial of Publix's application was supported by "competent and substantial evidence" because T-Rexx presented evidence that its own location, along with eight other businesses that sell alcoholic beverages, are located within 1,500 feet of where the Publix liquor store would be located, and multiple other liquor stores are located within a several-mile radius of the proposed store. Because the regulation of the concentration of liquor stores is "well founded in the protection of health and morals of the general public," the circuit court determined CZAB had competent, substantial evidence before it and therefore denied Publix's petition for first-tier certiorari. Publix then filed a second petition for second-tier certiorari, which the Third DCA denied.