

Administrative: CODE ENFORCEMENT—Competent substantial evidence—Board’s finding that Appellant was operating a towing business out of his home without obtaining a business tax receipt in violation of the St. Petersburg City Code was supported by competent substantial evidence. The record showed that the appellant was using a phone tower located at his residence to receive calls for his towing business. Order affirmed. *Spaulding v. City of St. Petersburg, Community Development Code Enforcement Bd.*, No. 12-000049AP-88B (Fla. 6th Cir. App. Ct. June 19, 2013).

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
APPELLATE DIVISION**

HOWARD SPAULDING
Appellant,

v.

**Ref. No.: 12-000049-AP-88B
UCN: 522012AP000049XXXXCV**

**CITY OF ST. PETERSBURG, Community
Development Code Enforcement Board**
Appellee.

_____ /

ORDER AND OPINION

Appellant Howard Spaulding appeals the City of St. Petersburg Community Development Code Enforcement Board’s order finding him in violation of §16.50.180 of the St. Petersburg City Code. Because we find that the Board’s decision was supported by competent substantial evidence, we affirm.

At a September 26, 2012 Code Enforcement Board hearing, the Board found Appellant to be in violation of §16.50.180 of the St. Petersburg City Code. This section allows for home-based businesses so long as certain criteria are met. A home occupation is defined as “a business which is an accessory use to a single or multi-family dwelling unit where a residence is the principal use of the property and which has obtained a business tax receipt.” The Board found that Appellant was operating a towing business out of his home without obtaining a business tax receipt in violation of §16.50.180.3, and ordered Appellant to correct the violation within fifteen days or face a fine. Appellant appealed this order, arguing that the Board’s findings were not supported by competent substantial evidence.

Under § 162.11, Fla. Stat., an appeal of a code enforcement board's order to the circuit court “shall not be a hearing de novo but shall be limited to appellate review of the record

created before the enforcement board.” *Sarasota County v. Bow Point on Gulf Condo. Developers, LLC*, 974 So. 2d 431, 433 n.3 (Fla. 2d DCA 2007). When the circuit court in its appellate capacity reviews local governmental administrative action, there is a three-part standard of review: (1) whether procedural due process was accorded; (2) whether the essential requirements of law have been observed; and (3) whether the administrative agency's findings and judgment are supported by competent substantial evidence. *Lee County v. Sunbelt Equities, II, Ltd. P'ship*, 619 So. 2d 996, 1003 (Fla. 2d DCA 1993). Appellant argues that the Code Enforcement Board’s decision fails to meet the third prong of this standard.

In reviewing local administrative action to determine whether the agency's determination is supported by competent substantial evidence, a circuit court may not re-weigh the evidence to substitute its judgment for that of the agency. *City of Hialeah Gardens v. Miami-Dade Charter Found., Inc.*, 857 So. 2d 202, 205 (Fla. 3d DCA 2003).

At the Code Enforcement Board Hearing, the Board heard evidence that Appellant was using a phone tower located at his residence to receive calls for Appellant’s towing business. The Board also heard evidence from Appellant and his attorney that the phone tower located at Appellant’s residence is for phone and CB activity, and that the tower aids in taking orders for his towing business. Specifically, the tower on the property transmitted calls which Appellant received for his towing business through either his home phone or a walkie talkie located in his truck parked on the property. Such evidence is competent substantial evidence supporting the Board’s decision. *See DeGroot v. L.S. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957) (competent substantial evidence is evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred).

Because the Board’s decision was supported by competent substantial evidence, the order of the Code Enforcement Board is AFFIRMED.

DONE AND ORDERED in Chambers, at St. Petersburg, Pinellas County, Florida, on this ____ day of _____ 2013.

Original order entered on June 19, 2013 by Circuit Judges Amy M. Williams, Peter Ramsberger, and Pamela A.M. Campbell.

Copies furnished to:

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