Administrative: CODE ENFORCEMENT – Due Process—Appellant was afforded notice and an opportunity to be heard prior to the Board's issuance of its order imposing a fine when the Board sent Appellant notice via certified mail, return receipt requested, first class mail, and posted a notice on Appellant's property and in the City's municipal offices. Order affirmed. *Reinhardt v. City of Dunedin Code Enforcement Board*, No. 13-000073AP-88B (Fla. 6th Cir. App. Ct. May 5, 2014).

IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLROIDA
APPELLATE DIVISION

MARK R. REINHARDT,
Appellant
v.

Ref. No 13-000073-AP
UCN: 522013AP000073XXXXCI

CITY OF DUNEDIN CODE ENFORCEMENT BOARD,
Appellee,
_____/

ORDER AND OPINION

This is an appeal of an October 10, 2013 order of the City of Dunedin Code Enforcement Board finding Appellant in violation of the Board's order to bring his property into compliance with the city code, and levying a fine of $150.00 per day until compliance was achieved. Appellant seeks review of this order, contending that his Fourth Amendment rights were violated because of an illegal search of his property, and that he was not provided sufficient notice of the hearing at which the Board imposed the fine. Appellant did not raise the issue of the legality of the search below, and we will not address it for the first time on appeal. *See Manning v. Tunnell*, 943 So. 2d 1018 (Fla. 1st DCA 2006). Because we find that the Board provided Appellant with fair notice and an opportunity to be heard, we affirm.

PROCEDURAL HISTORY

On July 10, 2013, Appellant was found in violation of the City of Dunedin's Code of Ordinances. An evidentiary hearing was scheduled for September 10, 2013, notice for which was sent to Appellant on August 20, 2013 by certified mail, return receipt requested, first class mail, as well as posted on Appellant's property and in the City's municipal offices. Subsequent to the September 10th hearing, the Board entered an order on September 13th, finding Appellant

still in violation of the City Code, and giving Appellant until September 22, 2013 to bring the property into compliance before a fine of $150.00 per day would begin to accrue.

A second hearing was scheduled for October 1, 2013 to determine if the property had been brought into compliance. Notice of this hearing was sent on to Appellant on September 19, 2013 via certified mail, return receipt requested, first class mail, and posted on Appellant's property and in the City's municipal offices. Appellant claims not to have received notice until October 3, 2013. Pursuant to the October 1st hearing, the Board found Appellant still in violation of the city code, and entered an order on October 10, 2013 fining Appellant $150.00 per day until the property was brought into compliance. It is this order from which Appellant appeals.

ANALYSIS

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 contends that he was not afforded procedural due process.

Appellant asserts that pursuant to §162.06, Fla. Stat., written notice of the Board's October 1, 2013 hearing was required to be hand delivered or mailed to him as provided in §162.12, Fla. Stat., which states that *all notices required by this part* must be provided by:

> Certified mail, return receipt requested, to the address listed in the tax collector's office for tax notices or to the address listed in the county property appraiser's database. The local government may also provide an additional notice to any other address it may find for the property owner... If any notice sent by certified mail is not signed as received within 30 days after the postmarked date of mailing, notice may be provided by posting as described in subparagraphs (2)(b)1 and 2.

(Emphasis supplied.)

Appellant maintains that because there were fewer than 30 days between the September 19, 2013 date of mailing and the October 1, 2013 hearing, he was not given the requisite 30 days to sign the notice as received. Appellant's argument is misplaced. Notice pursuant to §162.12, Fla. Stat., is mandated only when notice is required by the Local Government Code Enforcement Board Act. Section 162.09(1) states that "[i]f a finding of violation... has been made as provided

in this part, a hearing shall not be necessary for issuance of the order imposing a fine." The September 13, 2013 order found Appellant in violation of the Code and warned of a fine. Any subsequent institution of a fine would not require a hearing. §162.09(1), Fla. Stat. Because a hearing was not required under the Act, no notice was required by the Act, and whatever notice the Board provided did not need to comply with the requirements in §162.12. *See Massey v. Charlotte County*, 842 So.2d 142 (Fla. 2d DCA 2003).

Although the Act does not require notice or a hearing prior to issuing an order imposing a fine, the Board must still afford alleged violators procedural due process. *Id*. Procedural due process requires both fair notice and a real opportunity to be heard at a meaningful time and in a meaningful manner. *Keys Citizens for Responsible Gov't, Inc. v. Fla. Keys Aqueduct Auth.*, 795 So. 2d 940, 948 (Fla. 2001). In *Massey*, like the instant case, a code enforcement board found the appellant's property to be in violation of the city's code. *Massey v. Charlotte County*, 842 So. 2d 142. The board held an evidentiary hearing, for which the Masseys received notice and attended. *Id.* After hearing, the board found the Masseys in violation of the city's code, ordered the violations be corrected, and warned of a fine if the order was not complied with within the prescribed timeframe. *Id* at 143-144. After the deadline for compliance had passed, the city submitted an affidavit of noncompliance and requested that the board institute a fine. *Id* at 144. The board did not provide the Masseys with any notice whatsoever, the Masseys did not have an opportunity to be heard, and there was no hearing prior to instituting a fine and placing a lien on their property. *Id*. Ultimately, the appellate court found that, while no hearing was statutorily required to impose the fine, the board "must provide the property owner with notice and an opportunity be heard concerning any factual determination necessary to impose a fine or create a lien." *Id* at 147.

In determining whether due process has been afforded, a court must consider:

> (1) the private interest that will be affected by the official action; (2) the risk of erroneous deprivation of such interest through the procedures used and the probable value, if any, of additional or substitute safeguards; and (3) the government's interest including the function involved and the fiscal and administrative burden that the additional or substitute procedural requirement would entail.

Id at 146.

In the instant case, Appellant, like the appellant in *Massey*, has a compelling interest in keeping his property unencumbered, and thus the Board must achieve its objectives through

narrowly tailored means. *Massey* at 147. The risk of erroneous deprivation was minimal because the Board had previously held an evidentiary hearing finding Appellant to be in violation of the Code, and notice of the hearing to determine the amount of fines imposed was both mailed to Appellant, and posted on Appellant's property and in the City's municipal offices. Finally, the burden that providing additional procedural safeguards would place on the Board is substantial. The Board sent Appellant notice through first class mail, certified mail, a posting on his property, and a posting at Dunedin's municipal facility. This was done even though no hearing was required by the Act. It is difficult to imagine what further steps the Board could have been expected to take in its effort to provide Appellant with notice.

CONCLUSION

Appellant was afforded notice and an opportunity to be heard. There was a span of twelve days between when notice was sent via certified mail and posted on Appellant's property, and when the hearing was held.

Accordingly, it is

ORDERED AND ADJUDGED that the order of the Board is affirmed.

DONE AND ORDERED in Chambers at St. Petersburg, Pinellas County, Florida, on this _____ day of _____ 2014.

Original order entered on May 5, 2014, by Circuit Judges Amy M. Williams, Jack Day, and Peter Ramsberger.

Copies furnished to:

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