

Administrative: CODE ENFORCEMENT – Due Process—Appellants were afforded notice and an opportunity to be heard prior to the Board’s fine reduction hearing. Appellants were aware of the fine reduction hearing, were given an opportunity to be heard, and exercised this option via their petition for a fine reduction. Appellants had no statutory or procedural right to present oral argument at the fine reduction hearing. Order affirmed. Ramsey v. City of Dunedin Code Enforcement Board, No. 13-000051AP-88B (Fla. 6th Cir. App. Ct. July 25, 2014).

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

**DAVID F. RAMSEY
and SUE ANNE RAMSEY,
Appellants,**

v.

**Ref. No. 13-000051AP-88B
UCN: 522013AP000051XXXXCI**

**CITY OF DUNEDIN,
Code Enforcement Board,
Appellee.**

ORDER AND OPINION

Appellants appeal a June 11, 2013 order of the City of Dunedin Code Enforcement Board, wherein the Board declined to further postpone a fine reduction hearing and conditionally reduced a previously imposed fine. Because the notice of the fine reduction hearing afforded Appellants procedural due process, the order of the Board must be affirmed.

PROCEDURAL HISTORY

On March 16, 2012, a notice of violation finding Appellants’ property in violation of City of Dunedin code, and requiring Appellants to remove any trash, storage, and stored recreational equipment from the vacant lot by April 15, 2012 was issued to Appellants. Appellants did not comply with the notice of violation, and on August 7, 2012, the Board ordered Appellants to bring the property into compliance by September 15, 2012 or face a fine of \$100.00 per day. On October 12, 2012, after hearing, the Board found Appellants still in violation of City Code and ordered Appellants to pay a fine of \$100.00 a day for each day that the violation had continued past the September 15, 2012 date set for compliance.

On October 18, 2012, Appellants petitioned the Board for a rehearing of the Board's October 12, 2012 order. After rehearing, the Board affirmed its October 12th order and reinstated the fine of \$100.00 for each day that the violation had continued past the date set for compliance. After bringing the property into compliance, Appellants petitioned the Board on March 1, 2013 for a reduction of its \$14,298.83 fine. On June 11, 2013, after having granted numerous requests by Appellants to postpone the hearing of their fine reduction request, the Board denied Appellants' request to further postpone the hearing, and reduced Appellants' fine from \$14,293.00 to \$5,000.00. It is this order from which Appellants appeal.

STANDARD OF REVIEW

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). Appellants contend that the Board failed to provide procedural due process throughout the code enforcement process.

DISCUSSION

This court has jurisdiction to review only the June 11, 2013 order refusing to grant Appellants' request for a postponement of the fine reduction hearing, and reducing Appellants' fine from \$14,298.83 to \$5,000.00. This is the only order from which Appellants timely appealed. This court does not have jurisdiction to review any issues concerning the Board's October 12, 2012 order finding Appellants in violation of City code and assessing a fine. While an authorized and timely motion for reconsideration will toll the time for filing an appeal, the order on Appellants' request for reconsideration of the October 12, 2012 order was entered on February 15, 2013, giving Appellants until March 15, 2013 to timely appeal the October 12th order. Appellants' July 11, 2013 appeal is thus ineffective to invoke this court's jurisdiction to review issues relating to the October 12th order. Appellants' March 1, 2013 request for a fine reduction does not toll the time required to appeal the October 12, 2012 order. The request for a fine reduction was directed to the February 15, 2013 order, and thus is not effective to suspend rendition of the October 12, 2012 order.

Finding that this court has jurisdiction to review only the Board's June 11, 2013 order refusing to grant Appellants' request for a postponement of the fine reduction hearing, and reducing Appellants' fine from \$14,298.83 to \$5,000.00, we address Appellants' assertion that the notice provided concerning the reduction hearing did not comport with due process. Chapter 162, Florida

Statutes, authorizes a code enforcement board to reduce a fine but does not set forth a procedure a board must follow when considering a request for reduction. §162.09(c), Fla. Stat. Because no specific procedure is mandated by statute, it is necessary to fill the procedural gaps by the common-sense application of basic principles of due process. *Massey v. Charlotte County*, 842 So. 2d 142 (Fla. 2d DCA 2003). Due process requires both fair notice and a real opportunity to be heard at a meaningful time and in a meaningful manner. *Id.* “In any proceeding which is to be accorded finality, due process requires notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Dawson v. Saada*, 608 So. 2d 806, 808 (Fla. 1992).

The clerk of the Board certified that notice of the June 4th fine reduction hearing was mailed to Appellants by certified mail, return receipt requested on April 5, 2013. Additionally, on May 14, 2013, the code enforcement inspector posted notice at the subject property and the City’s municipal government office. Prior to the hearing, Appellants communicated that they were aware of the hearing but were unable to personally attend. Appellants were clearly apprised of the pendency of the action and took advantage of the opportunity to present their objections when they submitted their petition for reduction of the fine. The Code Enforcement Board Rules of Procedure provide that the Board must “make its determination based solely upon the written petition and the City’s written response, unless the board determines that it is necessary to hear oral argument from the violator and/or the City.”

The notice of the fine reduction hearing provided Appellants both fair notice and an opportunity to be heard. Appellants were made aware of the June 4th fine reduction hearing, were given an opportunity to be heard, and exercised this option via their petition for a fine reduction. The Board’s decision not to further postpone the fine reduction hearing was not a violation of Appellants’ due process rights. Appellants had no statutory or procedural right to present oral argument at the fine reduction hearing, and took advantage of their opportunity to be heard when they filed their petition for reduction of the fine in accordance with Rule 5 Section 4 of the Dunedin Code Enforcement Board Rules of Procedure.

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 July 25, 2014, by Circuit Judges Amy M. Williams, Jack Day, and Pamela A.M. Campbell.

Copies furnished to:

LUKE CHARLES LIROT, PA
LUKE LIROT, ESQ
2240 BELLEAIR ROAD, SUITE 190
CLEARWATER, FL 33764

TRASK, METZ & DAIGNEAULT, LLP
1001 SOUTH FORT HARRISON AVE
SUITE 201
CLEARWATER, FL 33756

MICHAEL L. BOWMAN, CHAIRMAN
DUNEDIN CODE ENFORCEMENT BOARD
CITY OF DUNEDIN, FLORIDA
750 MILWAUKEE AVENUE
PO BOX 1348
DUNEDIN, FL 34697