**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, 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. 14-000009AP-88B (Fla. 6th Cir. App. Ct. July 24, 2014).

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

Mark R. Reinhardt,
Appellant,

v.

Case No: 14-000009-AP
UCN522014AP000009XXXXCI

City of Dunedin Code
Enforcement Board,
Appellee.
_____/

**ORDER AND OPINION**

This is an appeal of an order issued by the City of Dunedin Code Enforcement Board ("Board") on December 13, 2013, which found that Appellant failed to bring his property into compliance with the code and levied a fine of two-hundred dollars ($200) per day until the property was brought into compliance. Appellant contends that his procedural due process rights were violated, as he was not provided sufficient notice for the hearing at which the Board imposed the fine. Because we find that the Board provided Appellant with fair notice and an opportunity to be heard, we affirm.

Appellant also alleges other violations of due process. However, as explained below, Appellant waived his right to appeal those issues. Therefore, this Court will not make any determinations regarding those matters.

PROCEDURAL HISTORY

Appellant resides in Virginia but owns a single-family home in the City of Dunedin, which is the subject property in this case. On September 11, 2013, the City of Dunedin sent a

notice of violation to Appellant regarding the subject property. Despite the notice, Appellant did not correct the violation. As a result, the Board scheduled a public hearing for November 5, 2013 ("first hearing"), and a notice thereof was sent to Appellant via certified mail, return receipt requested, on October 23, 2013. Additionally, a notice of hearing was posted on the subject property and posted at the municipal government offices. Appellant did not attend the first hearing, contending that he did not have enough notice to make the appropriate arrangements to travel from Virginia to Florida in order to appear. Consequently, Appellant sent a fax to the Board to present his arguments, arguing that his due process rights were violated because: 1) the Board did not provide sufficient notice in advance of his hearing; and 2) the code inspector's entry on the subject property was improper because the inspection was conducted without permission and without a search warrant. The hearing was conducted in the absence of Appellant, and the Board issued an order on November 15, 2013 ("initial order"), finding Appellant's property in violation and giving him until November 29, 2013 to bring his property into compliance.

Because the Board found the subject property in violation, a second hearing was scheduled for December 3, 2013 ("compliance hearing") to determine if Appellant had brought his property into compliance. Accordingly, along with a copy of the first order finding the subject property in violation, Appellant was sent notice regarding the compliance hearing via certified mail, return receipt requested, on November 15, 2013, which was eighteen days prior to the hearing. Additionally, notice of the compliance hearing was posted on the subject property and posted at the municipal government offices on November 20, 2013, which was thirteen days prior to the hearing. Although the Board sent the notice to Appellant's address where he received mail both before and after the compliance hearing without any noted complications and the envelope appears to indicate multiple attempts by the Postal Service to deliver it, the notice was returned to sender. Appellant appeals, claiming his due process rights were violated because he did not receive notice for the compliance hearing and that in any event it was not sent appropriately.

## ANALYSIS

When the circuit court in its appellate capacity reviews local governmental administrative action, the appeal "shall not be a hearing de novo but shall be limited to appellate review of the record created before the enforcement board." Fla. Stat. § 162.11 (2013). On appeal, this Court

must determine: 1) whether procedural due process was afforded; 2) whether the essential requirements of law were observed; and 3) whether the administrative findings and judgment were supported by competent substantial evidence. *Lee Cnty. v. Sunbelt Equities, II, Ltd. P'ship*, 619 So. 2d 996, 1003 (Fla. 2d DCA 1993). Here, Appellant asserts that his procedural due process rights were violated.

First, Appellant asserts that his due process rights were violated because he was not provided sufficient notice for the first hearing held on November 5, 2013, contending, perhaps meritoriously, that the Board did not provide notice of the hearing pursuant to Fla. Stat. § 162.12. However, Appellant waived his right to appeal this issue because an appeal regarding the Board's initial order was not timely filed to this Court. Fla. Stat. § 162.11 states "[a]n aggrieved party, including the local governing body, may appeal a final administrative order of an enforcement board to the circuit court . . . [and] [a]n appeal shall be filed within 30 days of the execution of the order to be appealed."

The first hearing was held on November 5, 2013, and although Appellant was not present, he submitted his arguments regarding the violation via fax. The initial order was issued on November 15, 2013, which found that Appellant's property was in violation of the code. Pursuant to Fla. Stat. § 162.11, Appellant had thirty (30) days to appeal the Board's initial order. He did not appeal the initial order of November 15, 2013 in the time prescribed, and therefore, as a matter of law, waived his right to appeal any issues regarding it.

Appellant contends that he never received the initial order. However, the Board provided proper notice of the initial order to Appellant. Rule 4 § 1(k) of the Dunedin Code Enforcement Board Rules of Procedures states that an "order shall be reduced to writing within ten (10) days, signed by the Chairperson, attested to by the Clerk, and mailed by certified mail, return receipt requested, to the Respondent." As required, on November 15, 2013, the Board sent the initial order by certified mail, return receipt requested, to Appellant's correct address. It is apparent that the notice was sent to Appellant's correct mailing address because he received mail at this address from the Board both before and after the initial order was issued. As noted, Appellant was required to appeal the determinations of the initial order to this Court within thirty (30) days

pursuant to Fla. Stat. § 162.11. He failed to do so, and thereby, as a matter of law, waived his right to appeal it. [1]

Appellant also contends that his due process rights were violated because he did not receive sufficient notice of the compliance hearing held on December 3, 2013. However, we hold that Appellant was provided sufficient notice and given an opportunity to be heard, and therefore, Appellant was provided proper due process.

As his primary argument regarding this issue, Appellant asserts that he never received notice of the compliance hearing. However, proof of actual notice is not required for due process to be satisfied. *Little v. D'Aloia*, 759 So. 2d 17, 20 (Fla. 2d DCA 2000). Individuals whose property may be subject to government action must be provided with notice "reasonably calculated, under all the circumstances, to apprise [them] 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) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314). "Reasonably calculated" notice only requires that "the government attempt to give actual notice;" it does not require that the government prove it was received. *Mesa Valderrama v. United States*, 417 F.3d 1189, 1196. (11th Cir. 2005) (citing *Dusenbery v. United States*, 534 U.S. 161, 170 (2002)); see also *Miami-Dade Cnty. v. Wilson*, 44 So. 3d 1266, 1270 (Fla. 3d DCA. 2010). The record shows that on November 15, 2013 the Board sent a notice of hearing via certified mail, return receipt requested, to the same mailing address where Appellant received mail from the Board both before and after the compliance hearing. Although the notice was returned to sender, the envelope appears to indicate multiple attempts by the Postal Service to deliver it. Additionally, the notice of hearing was posted on the subject property and posted at the municipal government offices on November 20, 2013. It is hard to imagine what more the Board could have "reasonably" provided to Appellant "under all the circumstances." *Dawson*, 608 So. 2d at 808. Therefore, Appellant was provided due process.

As a further argument, Appellant contends that, even if he had received notice of the compliance hearing, the Board did not properly send it because it was not sent pursuant to Fla.

[1] Appellant also asserts that his due process rights were violated because he alleges that the code inspector improperly entered his property without permission and without a search warrant. However, Appellant waived his right to appeal this issue as well. As discussed, Appellant failed to timely appeal the order of November 15, 2013 within thirty (30) days, and thereby, waived his right to appeal the issue to this Court.

Stat. § 162.12. However, Appellant's argument is misplaced because § 162.12 only applies to "required" notices under the Local Government Code Enforcement Boards Act, and according to § 162.09(1) and the case law construing it, notice for the compliance hearing was not "required." See *Massey v. Charlotte Cnty.*, 842 So. 2d 142, 145 (Fla. 2d DCA 2003); see also *City of Tampa v. Brown*, 711 So. 2d 1188, 1188-89 (Fla. 2d DCA 1998). 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." After the initial hearing, the Board issued an order on November 15, 2013, finding that Appellant's property was in violation of the Code and warned that if he did not bring his property into compliance by November 29, 2013 that he would suffer a fine of two-hundred dollars ($200.00) a day. Since an order was already issued finding the subject property in violation of the Code, any subsequent hearing regarding the issuance of a fine was not required. See *Massey*, 842 So. 2d at 145. Therefore, any notice regarding the subsequent hearing was not required to comply with § 162.12. *Id.*

CONCLUSION

Appellant waived his right to appeal any issues regarding the initial order of November 15, 2013.

Appellant was provided reasonable notice for the compliance hearing on December 3, 2013. Eighteen days prior to the hearing, Appellant was sent notice of the hearing via certified mail, return receipt requested, to his correct mailing address. In addition, thirteen days prior to the compliance hearing, the notice was posted on the subject property and the municipal government offices.

Accordingly, it is

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

DONE AND ORDERED in Chambers at Saint Petersburg, Pinellas County, Florida, on this_____day of_____2014.

Original order entered on July 24, 2014, by Circuit Judges Pamela A.M. Campbell, Jack Day, and Amy M. Williams.

Copies furnished to:

MARK R. REINHARDT
12 WILSON ST.
AMISSVILLE, VA 20106

JAY DAIGNEAULT, ESQ.
1001 S. FORT HARRISON AVE.
SUITE 201
CLEARWATER, FL 33756

CITY OF DUNEDIN
CODE ENFORCEMENT DIVISION
750 MILWAUKEE AVE.
PO BOX 1348
DUNEDIN, FL 34697