

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

JERMC LTD.,  
Appellant,

v.

TOWN OF REDINGTON SHORES  
CODE ENFORCEMENT SPECIAL MASTER,  
Appellee.

---

Ref. No. 14-000047AP-88B  
UCN: 522014AP000047XXXXCV

FILED  
CLERK OF CIRCUIT COURT  
2015 MAY 11 AM 9:55  
KEN BURKE  
CLERK OF CIRCUIT COURT

ORDER AND OPINION

Appellant appeals the Town of Redington Shores Code Enforcement Board's order finding it in violation of several sections of the International Property Maintenance Code (IPMC), incorporated into the Town of Redington Shores Code section 90-1. Appellant did not attend the code enforcement hearing. On appeal, Appellant argues it was deprived of procedural due process because the notice of violation was vague and ambiguous as to the location of the violations, and because the notice did not specify a section of the Town Code it was alleged to be in violation of.<sup>1</sup>

**Background**

On March 28, 2014, the Town issued a notice of violation to Appellant regarding Code violations that were observed during a March 21, 2014 inspection of the Appellant-owned Redington Long Pier. The notice outlined specific sections of the IPMC, and included a copy of the IPMC sections of which Appellant was alleged to be in violation. The violations concerned rotten wood/roof, roof tie-downs structural members, railings and posts, electric fixtures, and decks. The

---

<sup>1</sup>Appellant also asserts that the Town failed to observe the essential requirements of the law by finding Appellant in violation of the IPMC which is not part of the Code, by enforcing building codes outside of the Coastal Construction Control Line, and by requiring permits for the ordinary repairs; and further, that there was a lack of competent substantial evidence to support a finding of the violation. Because Appellant did not attend the May 27, 2014 code enforcement hearing, these arguments were waived, and the panel will not address them for the first time on appeal. *Sunset Harbour Condo. Ass'n v. Robbins*, 914 So. 2d 925, 928 (Fla. 2005) ("In order to be preserved for further review by a higher court, an issue must be presented to the lower court and the specific legal argument or ground to be argued on appeal or review must be part of that presentation if it is to be considered preserved.") See also *Alonso v. City of Seminole Code Enforcement Board*, 22 Fla. L. Weekly Supp. 495a (Fla. 6th Cir. App. Ct. Dec. 9, 2014) (Argument was not presented below and was thus waived).

notice of violation gave Appellant 30 days to complete the necessary repairs, and stated that Appellant must hire licensed contractors and have the proper permits to complete the work.

The violations were not fixed within the 30-day deadline, and the Town sent Appellant notice of a hearing on the violations to be held before the Town's code enforcement Special Master on May 27, 2014. Like the notice of violation, the notice of hearing did not cite a violation of any section of the Town Code; rather, it specifically referenced each violation and the corresponding section of the IPMC (which had been incorporated by reference into the Town Code via Code section 90-1(c)). On May 12, 2014, Appellant sent a letter to the Town stating that "in order for us to be able to duly respond, the following deficiencies in the Notice, pursuant to Redington Shores, FL Code of Ord. § 70-7, must be amended: (1) Please specify the specific Sections of The Town of Redington Shores Code of Ordinances allegedly violated." Appellant's letter also requested an adjournment "until such proper Notice is given, and we have our due opportunity to collect and present evidence and testimony at the hearing for all repairs that have been made since the Building Inspectors surveyed the premises in March." On May 13, 2014, the Town clerk responded to Appellant's letter, telling Appellant to "please find attached the original letter sent to [Appellant] on March 28, 2014, citing very specific Sections of Florida codes that are in violation, as well as the necessary permit requirements." Appellant replied to the clerk's response with an email reiterating its request for the Town to cite specific sections of the Town Code that were in violation, and for an adjournment until the Town clarified which sections of the Code were at issue.

The Town proceeded with the Special Master Hearing on May 27, 2014, at which no one appeared on behalf of Appellant. The Special Master treated Appellant's letter to the clerk requesting an adjournment as a motion for a continuance, which he denied. Based on testimony from the building inspector, the notice of violation, and photographs showing the condition of the property, the Special Master determined that the violations presented a life safety issue, and entered an order giving Appellant 30 days to come into compliance or face a fine of \$250.00 a day. It is this order from which Appellant appeals.

#### **Discussion**

Appellant contends that it was not afforded procedural due process because the notice of violation did not state any section of the Town Code that Appellant was violating. The notice of violation only stated violations of the IPMC (which had been incorporated by reference into the Town Code via Code section 90-1(c)). Appellant also asserts that the notice was too vague as to the location of the violations which deprived Appellant of a meaningful opportunity to contest them.

Appellant does not contest that the notice was properly sent pursuant to §162.12, Fla. Stat., nor that Appellant received the notice of violation.

“Procedural due process requires both fair notice and a real opportunity to be heard at a meaningful time and in a meaningful manner.” *Massey v. Charlotte County*, 842 So. 2d 142, 146 (Fla. 2d DCA 2003). “The specific parameters of the notice and opportunity to be heard required by procedural due process are not evaluated by fixed rules of law, but rather by the requirements of the particular proceeding.” *Id.* The notice of violation sent to Appellant stated the specific subsections of the IPMC that were alleged to be in violation, as well as a very brief comment explaining how those sections were in violation. While the notice does not specifically state a section of the Town Code, it states specific sections of the IPMC, which has been incorporated into the Town Code via the Florida Building Code, as explained in section 90-1 of the Town Code.

Appellant’s response to the notice was to demand that the Town amend “the following deficiencies in the Notice, pursuant to Redington Shores, FL Code of Ord. §70-7” by specifying “the specific Sections of The Town of Redington Shoes Code of Ordinances allegedly violated.” While this may have been a reasonable request, nowhere in §70-7 of the Town Code, nor in §162.06, Fla. Stat., is it required that the specific sections of the Town Code allegedly violated be included in the notice. Section 162.06 states that “it shall be the duty of the code inspector to initiate enforcement proceedings of the various codes,” and that “if a violation of the codes is found, the code inspector shall notify the violator and give him or her a reasonable time to correct the violations.” Section 70-7 of the Town Code tracks the language in §162.06.

Because the IPMC is adopted by reference into the Town Code in section 90-1, Appellant had notice of the specific alleged violations of the Code. Even if it was unclear to Appellant that the IPMC was adopted by reference, it is axiomatic that ignorance of the law is not an excuse. Appellant had notice that there was to be a hearing of the specifically alleged violations, and if Appellant was unsure about any aspect of the alleged violations, the code enforcement hearing before the special master was the proper forum to address these concerns. Appellant’s argument that the notice of violation was too vague to contest is undermined by the fact that Appellant did attempt to correct many of the violations, albeit without a permit. Again, the code enforcement hearing would have been an excellent time for Appellant to address these concerns.

Appellant’s initial brief also alludes to the fact that it was denied due process because its request for an “adjournment” was not granted. A motion for continuance is granted in the “sound judicial discretion of the trial court and the ruling of the court will not be disturbed unless abuse of discretion is clearly shown.” *Buckley Towers Condo., Inc.*, 340 So. 2d 1206, 1208 (Fla. 3d DCA

1976). The motion for continuance “must be left to the tribunal which has the parties before it, and who must determine from a variety of circumstances occurring in its presence” whether the motion was made in good faith. *Hall v. S.D.L. Co.*, 103 So. 828, 830 (Fla. 1925). “If reasonable men could differ as to the propriety of the action taken by the [lower tribunal], then the action is not unreasonable and there can be no finding of an abuse of discretion.” *J.W. v. Dep’t of Children & Families*, 835 So. 2d 316, 318 (Fla. 5th DCA 2002). It cannot be said in this case that an abuse of discretion is clearly shown. The Special Master considered the request, and based on the serious nature of the violations and the dangerous condition of the property, acted within his discretion in denying the continuance.

#### Conclusion

Because Appellant received proper notice and had an opportunity to be heard, and because the Special Master’s decision was supported by competent substantial evidence and comported with the essential requirements of the law, it is

**ORDERED and ADJUDGED** that:

1. The decision of the Code Enforcement Board is **AFFIRMED**.
2. Appellant’s motion for attorney fees is **DENIED**.

**DONE AND ORDERED** in Chambers, at St. Petersburg, Pinellas County, Florida, on this 8<sup>th</sup> day of May 2015.

Original Order entered on May 8, 2015, by Circuit Judges Jack Day, Amy M. Williams, and Pamela A.M. Campbell.

Copies Furnished to:

JACQUELINE S. ANTONIOUS, ESQ  
THE ANTONIOUS LAW FIRM  
62-26 MYRTLE AVENUE  
SUITE 105  
GLENDALE, NY 11385

JAMES W. DENHARDT, ESQ  
2700 1ST AVE NORTH  
ST. PETERSBURG, FL 33713

MARY F. PALMER, TOWN CLERK  
TOWN OF REDINGTON SHORES  
17425 GULF BOULEVARD  
REDINGTON SHORES, FL 33708