

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

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DOUGLAS BACKMAN,  
Appellant,

v.

TOWN OF REDINGTON BEACH,  
Appellee.

Ref. No. 14-000033AP-88B

UCN: 522014AP000033XXXXCV

**ORDER AND OPINION**

Appellant appeals from the Town of Redington Beach Code Enforcement Board Special Magistrate's order finding him in violation of Section 6-284 of the Town of Redington Beach Code of Ordinances prohibiting hedges located within the setback area of a rear yard from exceeding three feet in height. For the reasons set forth below, the decision of the Special Magistrate is reversed.

**PROCEDURAL HISTORY**

Appellant was issued a notice of violation on September 19, 2013, citing violations of several sections of the Code. Another notice of violation was issued on December 17, 2013, citing a single section, 6-284.<sup>1</sup> A hearing on only the December 17th notice of violation was held on March 6, 2014. Before the Code Enforcement Special Magistrate, Appellant argued that the vegetation in his yard did not constitute a "hedge" under the Code. After the hearing, the Special Magistrate found that the code enforcement officer's determination that the landscaping and vegetation constituted a hedge was a permissible interpretation of the Code. Concluding that the plain language of the Code prohibits plantings that form a fence-like boundary or visual barrier, the Special Magistrate found Appellant's landscaping to be in violation of the Code and ordered Appellant to bring the property into compliance by April 22, 2014. It is this order from which Appellant appeals.

<sup>1</sup> The December notice of violation cited section 6-284(2)(1), which was repealed in 2009, but it is substantially the same provision that was moved to the current Code section 6-284(b).

## 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).

## DISCUSSION

“Municipal ordinances are subject to the same rules of construction as are state statutes.” *Rinker Materials Corp. v. City of North Miami*, 286 So. 2d 552, 553 (Fla. 1973).

When “the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.” *Barco v. Sch. Bd. of Pinellas Cnty.*, 975 So. 2d 1116, 1121-1122 (Fla. 2008) (quoting *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984)). “[W]hen the language is ambiguous and ‘[i]n the absence of a statutory definition, resort may be had to . . . related statutory provisions which define the term.’” *Tarpon Springs Hosp. Found., Inc. v. Anderson*, 34 So.3d 742, 748 (Fla. 2d DCA 2010) (quoting *Jones v. Williams Pawn & Gun, Inc.*, 800 So.2d 267, 270 (Fla. 4th DCA 2001)) (emphasis added).

The Redington Beach Code of Ordinance section 6-284(b) reads as follows:

### **Sec. 6-284. - Maximum height; placement.**

(b) *Rear yard.* On waterfront or gulf-front property, fences, walls or hedges located within the setback area of the rear yard shall not exceed three feet in height. An additional one foot of fencing may be added on top of a three foot wall or fence provided that the additional fencing has at least 70 percent visibility.

The proceeding section, 6-283, defines a hedge as “a row of closely planted shrubs forming a visual or physical barrier.” The plants on Appellant’s property consist of various types of palm trees. Chapter Six, article X, section 6-281, states that “[a]ll fences, walls, and hedges shall be regulated by this article, with the exclusion of earth- or water-retaining walls and screening walls, which shall be governed by other provisions of this Code.” This section not

only explicitly states that all hedges are regulated by article X, but it also specifically sets out the only exclusions that are covered under other articles. Regardless, the Town urged the Special Magistrate to consider Chapter 12, article III, section 12-57, which also defines a hedge. It states a hedge is “[a] row of closely planted shrubs or *low growing trees* forming a fence or boundary” (emphasis added). In his findings, the Special Magistrate did not discuss which definition he used, but stated that the property contained a hedge because the “planting[s] form a fence-like boundary or visual barrier.” Courts and magistrates are “without power to construe an unambiguous statute in a way which would extend, modify, or limit, its express terms . . . .” See *Holly*, 450 So. 2d at 219 (quoting *Am. Bankers Life Assurance Co. of Fla. v. Williams*, 212 So.2d 777, 778 (Fla. 1st DCA 1968)) (emphasis omitted). By concluding that a hedge includes any plantings that create a boundary or barrier, the Special Magistrate strayed from the essential requirements of law by taking an unambiguous Code section and interpreting it more broadly.

Furthermore, if an ordinance is clear and unambiguous, this Court need not defer to the Special Magistrate’s interpretation and may give the ordinance its plain and ordinary meaning. See *Manuel v. Dep’t of Children & Family Servs.*, 880 So. 2d 714, 716 (Fla. 2d DCA 2004) (citations omitted); *Fla. Hosp. v. Agency for Health Care Admin.*, 823 So.2d 844, 848 (Fla. 1st DCA 2002) (“[A] court need not defer to an agency’s construction or application of a statute if special agency expertise is not required, or if the agency’s interpretation conflicts with the plain and ordinary meaning of the statute.”). A plain reading of the definition of hedge in section 6-283 includes only shrubs, not palm trees. Article X does not define shrubs, but assuming arguendo that the term shrubs is ambiguous, article III, section 12-57, defines shrubs as “[p]lants with several branches of woody stems and no main trunk, smaller than most trees.”<sup>2</sup> The Oxford English Dictionary similarly defines a shrub as “[a] woody plant that is smaller than a tree and has several main stems arising at or near the ground.”<sup>3</sup> In addition, the code enforcement officer admitted at the hearing that the various palm trees did not fit within section 12-57’s definition of

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<sup>2</sup> A magistrate or a court should only turn to related statutory or code sections to define a term if it is not already defined. See *Tarpon Springs Hosp. Found., Inc.*, 34 So. 3d at 748. Therefore, one may look to 12-57 for the definition of shrub, but not for the definition of hedge because hedge is clearly defined in article X, section 6-283, which regulates hedges under the precise wording of section 6-281.

<sup>3</sup> “When necessary, the plain and ordinary meaning of words in a statute can be ascertained by reference to a dictionary.” *Fla. Hosp.*, 823 So. 2d at 848 (citing *Seagrave v. State*, 802 So. 2d 281, 286 (Fla. 2001)).

a shrub. Both the definition in 12-57 and the definition in the dictionary, combined with the code enforcement officer's testimony, leave no doubt that the trees in question do not constitute shrubs and therefore cannot form a hedge as defined in the Code.

The Special Magistrate's interpretation rewrites the Code, enlarging the plain meaning of the ordinance. Because the Special Magistrate went beyond the Code's language, he failed to follow the essential requirements of law. "As the wording of its laws binds a legislature, the Town is bound by the wording of its Code." *Town of Longboat Key v. Islandside Prop. Owners Coal., LLC*, 95 So. 3d 1037, 1042 (Fla. 2d DCA 2012). Accordingly, it is,

**ORDERED AND ADJUDGED** that the order of the Special Magistrate is reversed.

**DONE AND ORDERED** in Chambers, at St. Petersburg, Pinellas County, Florida, on this 15 day of June 2015.



Original Order Entered on June 15, 2015 by Circuit Judges Peter Ramsberger, Amy M. Williams, and Pamela A.M. Campbell

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