

**NOT FINAL UNTIL TIME EXPIRES FOR REHEARING, AND IF FILED, DETERMINED**

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

ARL & IL REVOCABLE TRUST,  
Appellant,

UCN: 522017AP000041XXXXCI  
REF NO.: 17-000041AP-88B

vs.

CITY OF DUNEDIN CODE  
ENFORCEMENT BOARD,  
Appellee.

\_\_\_\_\_/

**ORDER AND OPINION**

Appellant challenges the final order of the City of Dunedin Code Enforcement Board (“Board”) finding him in violation of the International Property Maintenance Code section 302.4, “Overgrowth of Weeds/Grass,” which was adopted and incorporated into the City of Dunedin’s Code of Ordinances (“Code”) in section 105-41.9.1. Appellant raises various arguments asserting that the Board’s order departed from the essential requirements of law, was not supported by competent substantial evidence, and violated Appellant’s procedural and substantive due process rights. For the reasons set forth below, we reverse.

**Facts and Procedural History**

Appellant owns residential rental property in the City of Dunedin. According to the transcript, on July 6, 2017, a code enforcement officer noticed the lawn was overgrown. A Notice of Violation, dated July 12, 2017, was sent via regular mail to Appellant. It required the violation to be corrected by Sunday, July 16, 2017. Appellant’s representative testified that he received the Notice on Saturday, July 15, and immediately alerted the tenant of the property, who cut the grass that day. Appellant’s representative asserted he emailed the code enforcement

officer on July 15 and again on Tuesday, July 18, at which time the code enforcement officer replied indicating the property was not in compliance because although the front yard was cut, neither the back nor side yard was. The code enforcement officer referred the matter to the Board, and a hearing was held on August 1, 2017. The Board found that as of the date of the hearing Appellant was currently in compliance, but the property was in violation past the July 16 date set for compliance. The Board did not impose a fine, but based on the finding of violation, any repeat violation could be fined at an amount of up to \$500 a day. Thereafter, Appellant filed the instant appeal.

### **Standard of Review**

When reviewing local government administrative action, the circuit court asks three questions: “[W]hether due process was afforded, whether the administrative body applied the correct law, and whether its findings are supported by competent substantial evidence.” *Lee Cnty. v. Sunbelt Equities, II, Ltd. P’ship*, 619 So. 2d 996, 1003 (Fla. 2d DCA 1993).

### **Discussion**

“[D]ue process is flexible and calls for such procedural protections as the particular situation demands.” *Sch. Bd. of Palm Beach Cnty. v. Survivors Charter Sch., Inc.*, 3 So. 3d 1220, 1236 (Fla. 2009) (citations and internal quotations omitted). In code enforcement cases, the law requires a violator be given “a reasonable time to correct the violation.” *See* § 22-72, Code; § 162.06(2), Fla. Stat. (“[I]f a violation of the codes or ordinances is found, the code enforcement officer shall notify the violator and give him a reasonable time to correct the violation.”). While reasonable time is not defined in either the Code section or pertinent Florida Statute section concerning “Enforcement Boards,” it is discussed in the related sections delineating an alternate code enforcement procedure that allows prosecution in county court. *See* § 22-106(b), Code; §

162.23(2), Fla. Stat. (“Prior to issuing a notice to appear, a code enforcement officer . . . shall establish a reasonable time period within which the person must correct the violation. Such time period **shall be no fewer than five days** and no more than 30 days.”) (Emphasis added). When construing a code section or statute, this Court may consider other related sections to aid it in interpreting the applicable provisions. *See Fla. Dep’t of State, Div. of Elections v. Martin*, 916 So. 2d 763, 768 (Fla. 2005) (“The doctrine of *in pari materia* is a principle of statutory construction that requires that statutes relating to the same subject or object be construed together to harmonize the statutes and to give effect to the Legislature’s intent.”); *DuFresne v. State*, 826 So. 2d 272, 275 (Fla. 2002) (“[I]n cases where the exact meaning of a term was not defined in a statute itself, we have ascertained its meaning by reference to other statutory provisions.”); *State v. Fuchs*, 769 So. 2d 1006, 1009 (Fla. 2000) (“In the absence of a statutory definition, resort may be had to . . . related statutory provisions which define the term.”); *WFTV, Inc. v. Wilken*, 675 So. 2d 674, 679 (Fla. 4th DCA 1996) (“A statutory phrase should also be viewed not only in its internal context within the section, but in harmony with interlocking statutes.”).

Here, the Notice of Violation was dated July 12, 2017, and required the violation to be corrected by July 16. It was sent via regular mail, and Appellant’s representative testified that he received the Notice on July 15, which gave Appellant one days’ notice. The Board did not dispute the representative’s testimony, nor is it challenged on appeal. Although Appellant’s tenant was able to cut the front lawn within one day, this does not necessarily make the notice sufficient due process. This is especially true where the instant finding of violation will result in the Board being able to prosecute a repeat violation without giving Appellant an opportunity to come into compliance. *See* § 22-73(a), Code; § 162.06(3), Fla. Stat. (“If a repeat violation is found, the code inspector shall notify the violator but is not required to give the violator a

reasonable time to correct the violation.”). Accordingly, this Court finds that Appellant was not given a reasonable time to correct the violation at its rental property.

### **Conclusion**

Because Appellant’s due process rights were violated when it was not given a reasonable time to correct the violation, it is

**ORDERED AND ADJUDGED** that the Order of the Board is **REVERSED**.

**DONE AND ORDERED** in Chambers, in St. Petersburg, Pinellas County, Florida, on this \_\_\_\_ day of July, 2018.

Original Order entered on July 23, 2018, by Circuit Judges Jack Day, Amy M. Williams, and Pamela A.M. Campbell.

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