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: 522017AP000040XXXXCI
REF NO.: 17-0040AP-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 it in violation of section 105-27.1.1.1 of the City's Code of Ordinances ("Code"). For the reasons set forth below, the order is affirmed.

Facts and Procedural History

Appellant owns residential property in the City of Dunedin. On May 30, 2017, a code enforcement officer noticed a vehicle parked over the sidewalk, which is a violation of Code section 105-27.1.1.1. A Notice of Violation was mailed to Appellant, which required the violation to be corrected by June 8, 2017. It is undisputed that the original violation was corrected by June 8. The code enforcement officer testified that he received an email complaint on July 10, 2017, and revisited the property on July 17, at which time a vehicle was again parked over the sidewalk. The code enforcement officer referred the matter to the Board, and a hearing was held on August 1, 2017. The Board found that Appellant was currently in compliance as of the date of the hearing, but the property was in violation past the June 8 date set for compliance because of the July 17 recurrence of the violation. Based on the finding of violation, the Board's

order indicated that if the violation occurred again after the date of the hearing, Appellant could be fined at an amount 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

In its inartfully drafted initial brief, Appellant raises a multitude of arguments challenging the Board's order. We affirm in all respects and write only to address the most coherently presented issues; namely, that the Board departed from the essential requirements of law by allowing a "moot" matter to be brought to hearing, that Appellant's due process rights were violated because it only had two days to correct the parking violation, and that competent substantial evidence did not support the Board's finding of a "recurring issue."

First, Appellant maintains that the Board violated the essential requirements of law by allowing the hearing to proceed even though both the original violation and the recurrence of the violation had been corrected. Upon certiorari review, "[f]ailure to observe the essential requirements of law means . . . the commission of an error so fundamental in character as to fatally infect the judgment and render it void." *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 527 (Fla. 1995) (quoting *State v. Smith*, 118 So. 2d 792, 795 (Fla. 1st DCA 1960)). Here, Appellant maintains that because the parking violations were corrected before the hearing, the code enforcement officer should have withdrawn the case under Dunedin's Code Enforcement Board Rule of Procedure 4(3). However, the rule specifically provides that "[s]hould a violation

be corrected prior to the set hearing date, the code officer *may* withdraw the case." (Emphasis added). Because the plain language of the rule allows the code enforcement officer the discretion to not withdraw the case and to proceed, this argument is without merit.

Next, Appellant asserts its due process rights were violated because it was given only two days to correct the violation. "[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). Here, the Notice of Violation was dated June 2, 2017, and gave Appellant until June 8 to fix the parking violation. The Notice was sent via regular mail, and Appellant asserts it received the Notice on June 6. Although the Court is concerned with the short amount of notice given to Appellant, we do not find it rises to the level of a due process violation since it was not the original violation, but rather the recurrence of the violation, that brought the matter before the Board.

While Appellant corrected the original violation by the compliance date of June 8, the violation recurred on July 17. The code enforcement officer testified that he requested a hearing because of the recurrence of the violation, not the timely corrected original violation. *See* § 22-72, Code; § 162.06, Fla. Stat. ("If the violation is corrected and then recurs . . . , the case may be presented to the enforcement board even if the violation has been corrected prior to the board hearing, and the notice shall so state."). The Notice of Violation stated that "[i]f the violation is not remedied *and discontinued*, you will receive a notice to appear for hearing." (Emphasis added). Because Appellant was found to have corrected the original violation by the compliance date but was held to be in violation due to the recurrence of the violation, the short notice was not a violation of due process.

Finally, Appellant contends that the Board's "factual finding of a 'recurring issue' should be reversed" because it is not supported by competent, substantial evidence. Appellant's argument appears to be in response to a portion of the Board's order that states "[t]his matter is deemed to be of a recurring nature and should it recur, by law the Board can levy fines of up to $500.00 a day." Here, the original violation occurred on May 30, 2017, and recurred on July 17. Since the violation recurred, it can presumably be said to be of a recurring nature; however, such a finding is irrelevant.

Neither the Code nor Florida Statues Chapter 162 require a violation to be of a recurring nature to find guilt or impose fines. The parties seem to conflate "recur" and "repeat." As discussed above, if a violation is corrected by the compliance date, but then *recurs*, the code enforcement officer may request a hearing before the Board without issuing a new notice of violation. § 22-72, Code; § 162.06, Fla. Stat. If, after a hearing, the Board finds that a violation has been committed and then the same violation occurs again within five years, it is considered a *repeat* violation and the Board may impose a greater fine of up to $500 per day. §§ 22-42, 22-79(d), Code; §§ 162.04(5), 162.09(2)(a), Fla. Stat. When any violation is repeated—even one that is not deemed to be of a recurring nature—the law allows the code enforcement officer to request a hearing without giving the violator time to correct the violation. *See* § 22-73, Code; § 162.06(3), Fla. Stat. Accordingly, the finding of a recurring nature is unnecessary, but the Board properly held that any repeat parking violation could subject Appellant to a greater fine.

Conclusion

Because the Board's final order did not depart from the essential requirements of law and there was no due process violation, it is

ORDERED AND ADJUDGED that the final order of the City of Dunedin Code Enforcement Board is **AFFIRMED**.

DONE AND ORDERED in Chambers, in St. Petersburg, Pinellas County, Florida, on this _____ day of _____, 2018.

Original Order entered on June 15, 2018, by Circuit Judges Jack Day, Amy M. Williams, and Pamela A.M. Campbell.

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