

**NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED  
IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
APPELLATE DIVISION**

ALAN DIX and ANITA DIX,  
Appellants,  
v.

Ref. No.: 17-000030-AP-88B  
UCN: 522017AP000030XXXXCI

TOWN OF REDINGTON SHORES  
CODE ENFORCEMENT,  
Appellee.

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**ORDER AND OPINION**

Appellants, Alan and Anita Dix, appeal the Findings of Fact and Order Finding Violation entered by the special magistrate<sup>1</sup> of Appellee, Town of Redington Shores Code Enforcement, which found Appellants' property in violation of the Florida Building Code as adopted by the Town of Redington Shores Code of Ordinances ("Code"). On appeal, Appellants contend that Appellee's employment of the code enforcement special magistrate violates Appellants' due process rights. For the reasons set forth below, the Findings of Fact and Order Finding Violation is affirmed.

**Facts and Procedural History**

Appellants own a house that has a first floor living area with a kitchen, full bathroom, laundry room, great room, electrical outlets, and lighting. It is undisputed that Appellants purchased the property after the first floor living area was installed. Appellants' property had a sewer back up and when the Town's Building Inspector came to see it, the Inspector, at some point, observed the first floor living area. The Town issued a Notice of Violation, which said that the first floor, by virtue of its existence, violated section R322 of the Florida Building Code (Flood Resistance Construction) as adopted by Section 90-1 of the Town's Code. The violation was set for hearing. After hearing, the special magistrate entered the Findings of Fact and Order Finding Violation, which held that the first floor living area had no permits issued for the construction of

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<sup>1</sup> "Special magistrate" and "special master" are used interchangeably in this Order and Opinion to refer to the quasi-judicial code enforcement hearing officer employed by the Town of Redington Shores.

the kitchen, bathroom, or living space and no permits could be issued. The special magistrate also found that the first floor living area violated R322 because there was: 1) an enclosed living space below the design flood elevation, 2) an enclosed kitchen below the design flood elevation, and 3) an enclosed bathroom below the design flood elevation. The special magistrate ordered Appellants to bring the property into compliance within sixty days, and if not, a \$250.00 dollar per day fine would be assessed as long as the property was non-compliant. Thereafter, Appellants filed the instant appeal challenging the Findings of Fact and Order Finding Violation.

### **Standard of Review**

“Where a party is entitled as a matter of right to seek review in the circuit court from administrative action, the circuit court must determine whether procedural due process is accorded, whether the essential requirements of the law have been observed, and whether the administrative findings and judgment are supported by competent substantial evidence.” *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982).

### **Discussion**

Appellants do not challenge the merits of the Findings of Fact and Order Finding Violation, nor do Appellants argue that there was any procedural or substantive issue below. Rather, Appellants argue that their “due process rights, guaranteed under the 5th and 14th Amendments of the United States Constitution, Article I, Sec. 9 of the Florida Constitution and Florida Statute Section 162.05” were violated by the manner in which Appellee employed the code enforcement special magistrate. Appellants essentially contend that because the Town employs the special magistrate, the special magistrate will not be fair and impartial and will therefore deprive litigants of due process.

“An administrative agency conducts a quasi-judicial proceeding in order to investigate and ascertain the existence of facts, hold hearings, and draw conclusions from those hearings as a basis for their [sic] official actions.” *Broward Cnty. v. La Rosa*, 505 So. 2d 422, 423 (Fla. 1987) (noting that “although the legislature has the power to create administrative agencies with quasi-judicial powers, the legislature cannot authorize these agencies to exercise powers that are fundamentally judicial in nature”). “[C]ode enforcement proceedings are quasi-judicial rather than judicial in nature and . . . use of hearing officers in these proceedings is constitutionally authorized.” *Verdi v.*

*Metro. Dade Cnty.*, 684 So. 2d 870, 874 (Fla. 3d DCA 1996) (opining that under Article V, Section I of the Florida Constitution, “a legislative body would have clear authority to utilize hearing officers to enforce its codes as long as such enforcement proceedings are only quasi-judicial in nature”).

Pursuant to Chapter 162, Florida Statutes, “a municipality may, by ordinance, adopt an alternate code enforcement system that gives . . . special magistrates designated by the local governing body . . . the authority to hold hearings and assess fines against violators of the respective . . . municipal codes and ordinances” and to “[i]ssue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.” §§ 162.03(2), 162.08(5), Fla. Stat. Code enforcement powers conveyed by Chapter 162 “do not . . . cross[] the line between ‘quasi-judicial’ and ‘judicial.’ Such boards may impose fines for code violations but they cannot impose criminal penalties. . . . Further, the statute provides for the fundamental due process requirements of notice and a hearing, making of a record, and appeal.” *Michael D. Jones, P.A. v. Seminole Cnty.*, 670 So. 2d 95, 96 (Fla. 5th DCA 1996); *cf. Massey v. Charlotte Cnty.*, 842 So. 2d 142 (Fla. 2d DCA 2003) (reversing a code enforcement board’s decision to impose fines and a lien where the property owner was not provided the proper notice and opportunity to be heard “concerning any factual determination necessary to impose a fine or create a lien”).

Here, the Town has enacted ordinances governing code enforcement. *See* Chapter 70, §§ 1, *et seq.*, Code. “The Town of Redington Shores Special Master is designated by resolution of the town commission for the purpose of handling code enforcement hearings.” *Id.* § 70-2, Code. “The code enforcement special master shall be an attorney at law, licensed to practice in the State of Florida, and shall be appointed by resolution of the Town Commission of the Town of Redington Shores, with such compensation as is deemed appropriate by the town commission. Such special master shall serve at the pleasure of the town commission, and may be removed at any time by the town commission.” *Id.* § 70-3A, Code. The special master shall avoid conflicts of interest and “fundamental due process shall be observed and shall govern the [code enforcement] proceedings.” *Id.* §§ 70-5A(6), 70-12, Code.

Appellants argue that because the special magistrate serves at the pleasure of the town commission and may be removed at any time by the commission, the special magistrate is *de facto* biased and cannot be a fair and impartial decision-maker. However, Appellants provide no legal support for this position and this position is clearly refuted by the above-cited case law. Appellants’

only other argument is that section 162.05, Florida Statutes, requires code enforcement board members to only be appointed or removed through certain methods that are absent from the Town's Code, and by virtue of section 162.03(2), these methods also apply to special magistrates. However, this argument is entirely without merit as special magistrates are specifically exempted from the requirements of section 162.05, Florida Statutes. *See* § 162.03(2), Fla. Stat. ("A special magistrate shall have the same status as an enforcement board under this chapter. References in this chapter to an enforcement board, **except in s. 162.05**, shall include a special magistrate if the context permits.") (Emphasis added).

Since the Town is a legislatively created municipality with the power to adopt ordinances designing a code enforcement system that gives a special magistrate the authority to hold hearings and assess fines regarding code violations, Appellants' due process rights were not violated by the manner in which the Town employed the code enforcement special magistrate.

### **Conclusion**

Because Appellants' due process rights were not violated, it is

**ORDERED AND ADJUDGED** that the Findings of Fact and Order Finding Violation is hereby **AFFIRMED**.

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

Original Order entered on March 21, 2018, by Circuit Judges Jack Day, Pamela A.M. Campbell, and Amy M. Williams.

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