

**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**

GREG MAISON,

Appellant,

Case No.: 22-000016-AP-88B

vs.

Lower Tribunal No.: 22-604

CITY OF DUNEDIN CODE  
ENFORCEMENT BOARD,

Appellee.

\_\_\_\_\_/

Opinion filed: 11/09/2023

**PER CURIAM.**

**ORDER AND OPINION**

**THIS MATTER** is before the Court on the Amended Notice of Appeal filed by Appellant, GREG MAISON ("Maison") on October 31, 2022 and the various briefs filed by the parties. Maison seeks review of two orders issued by Appellee, CITY OF DUNEDIN CODE ENFORCEMENT BOARD ("the Board"). Having considered the briefs, the case file, the applicable law, and being otherwise fully advised in the premises, the Court hereby **FINDS** as follows:

## I. Jurisdiction

This Court has jurisdiction over the instant appeal pursuant to article V, section 5(b), Florida Constitution; section 162.11, Florida Statutes (2022); and Florida Rule of Appellate Procedure 9.030(c)(1)(C).

## II. Relevant Facts and Procedural History<sup>1</sup>

Maison owns a decommissioned school bus. Appellee's App. at 040. The instant dispute began when a resident in Maison's neighborhood informed the City of Dunedin ("City") about Maison parking his bus on a residential street adjacent to his home. *Id.* at 048; *see also* Answer Br. at 2. On or about July 19, 2022, the City issued a Notice of Code Violation to Maison. *Id.* at 008-009. Although Maison was cited for a variety of code violations, the only code provision at issue in this appeal is Dunedin Municipal Code Section 105-27.1.1.1(e)1, which states:

One commercial motor vehicle having a gross vehicle weight rating of not more than 8,500 pounds, not exceeding 22' in length, and not exceeding 8' in height, may be parked in an approved **off-street location on a lot** in a

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<sup>1</sup> Maison filed his appendix materials in multiple installments. The Board's Appendix dated May 19, 2023 contains the most relevant documents previously filed by Maison along with additional documents relevant to the discussion herein. For the sake of ease, this Order and Opinion exclusively cites to the Board's Appendix, although almost all of the record materials cited herein can also be found in the appendix materials filed by Maison.

residential district. Commercial vehicles shall be measured by measuring the outside dimensions of the vehicle, including any attachments or additions.

(Emphasis added); *see also* Answer Br. at 5 ("[T]he City did not pursue violations of all but one of the Code sections at the Hearings, and the Board only found [Maison] in violation of 105-27.1.1.1(e).1"). There is no dispute that: 1) the bus is a commercial vehicle; 2) the bus exceeds the size and weight limits provided in section 105-27.1.1.1(e)1; and 3) Maison resides in a residential district of Dunedin. The crux of this appeal is whether section 105-27.1.1.1(e)1 applies to "on-street parking."

On or about September 6, 2022, Maison attended and contested the citations at a public hearing held before the Board. Appellee's App. at 041. The City opted to only prosecute Maison for a section 105-27.1.1.1(e)1 violation at the hearing. *Id.* at 072-076. The testimony presented at the hearing included evidence that Maison had parked his school bus in his driveway as well as on the street adjacent to his property. *Id.* at 020-026; 037-038. The Board unanimously voted to find Maison in violation of section 105-27.1.1.1(e)1. *Id.* at 072-077. On September 7, 2022, the Board issued

an Order to Correct and Notice of Penalty Hearing ("Violation Order"). *Id.* at 004-005. The Violation Order required Maison to come into compliance with section 105-27.1.1.1(e)1 by September 20, 2022 in order to avoid a fine. *Id.* The Violation Order also provided notice that the Board would conduct a hearing on October 4, 2022 to determine whether Maison had complied with the Violation Order. *Id.* at 005.

As provided in the Violation Order, the Board conducted a hearing on or about October 4, 2022 to assess Maison's compliance. *Id.* at 089-090. Maison did not attend this hearing. *Id.* at 090. Notably, the City introduced evidence showing that Maison had parked his bus in the street adjacent to his property on multiple occasions after the compliance date had passed. *Id.* at 030-031; 091-092. However, the City did not introduce any similar evidence of Maison parking the bus in his driveway after the compliance date. At the hearing, the Board once again unanimously voted to find Maison in violation of section 105-27.1.1.1(e)1. Appellee's App. at 102-104. On October 7, 2022, the City entered its Order Imposing Lien ("Enforcement Order") finding that Maison failed to correct the section 105-27.1.1.1(e)1 violation and assessing fines against Maison

of \$150.00 per day for each day such violation continued beyond September 20, 2022. *Id.* at 006-007.

Maison filed timely notices of appeal on October 6, 2022 and October 31, 2022 for the Violation Order and the Enforcement Order respectively. Maison served his Initial Brief on March 6, 2023. The Board filed its Answer Brief on May 19, 2023. Maison filed his Reply Brief on July 10, 2023. This appeal is now ripe for resolution.

### **III. Analysis**

#### **A. Standard of Review**

"An aggrieved party ... may appeal a final administrative order of an enforcement board to the circuit court." Section 162.11, Fla. Stat. (2022). "Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the enforcement board." *Id.* A circuit court's review of an administrative proceeding is limited to a three-prong analysis: 1) whether procedural due process was afforded; 2) whether the essential requirements of the law have been observed; and 3) 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); *see also City of Venice v. Gwynn*, 76 So. 3d 401, 404 (Fla. 2d DCA 2011).

As a preliminary matter, the Court rejects Maison's contention that this appeal is subject to a *de novo* standard of review. *See* Initial Br. at 6. Maison relies on *Cruz v. State*, 198 So. 3d 648, 650 (Fla. 2d DCA 2015) for the proposition that "[i]ssues of law are reviewed *de novo*." However, *Cruz* involved a criminal appeal rather than administrative action subject to section 162.11. *Id.* ("We review the legality of a [criminal] sentence as a pure issue of law that is subject to *de novo* review" (citations omitted)). This Court's review of the instant matter is clearly confined to the above-provided three-prong standard of review. Moreover, *de novo* review is not available in this proceeding.

Additionally, the Court notes that an appellate court is required to consider more with regard to the essential requirements of the law prong when the appeal is taken pursuant to section 162.11 rather than by certiorari. "Certiorari review considers whether the correct law was applied; review by appeal goes further to also consider whether the law was correctly applied." *Cent. Florida Investments, Inc. v. Orange Cnty.*, 295 So. 3d 292, 295 (Fla. 5th DCA 2019). "It makes

sense that where two levels of appellate review are provided, at least one reviewing court would consider whether the enforcement board correctly applied the law.” *Id.* As such, this Court's inquiry into the essential requirements of the law prong is broader in this case than a certiorari case.

The following is undisputed: 1) Maison's appeal challenges whether the essential requirements of the law have been observed by the Board; and 2) Maison does not raise a procedural due process argument on appeal. However, the parties dispute whether Maison has properly raised an argument as to the competent substantial evidence ("CSE") prong. *See, e.g.* Reply Br. at 2 ("Contrary to [the Board]'s assertions in its Answer Brief, Maison disputes that he abandoned his arguments as to the sufficiency of the Orders and whether the Orders are supported by competent, substantial evidence").

"The burden is on the appellant to demonstrate reversible error and present an adequate record for review." *Emerald Coast Utilities Auth. v. Thomas Home Corp.*, 359 So. 3d 1239, 1250 (Fla. 1st DCA 2023). "Claims of error not raised by an appellant in its initial brief are deemed abandoned." *D.H. v. Adept Cmty. Services, Inc.*, 271 So.

3d 870, 880 (Fla. 2018) (citing *Anheuser-Busch Cos. v. Staples*, 125 So. 3d 309, 312 (Fla. 1st DCA 2013)). "When points, positions, facts **and supporting authorities** are omitted from the brief, a court is entitled to believe that such are waived, abandoned, or deemed by counsel to be unworthy." *Polyglycoat Corp. v. Hirsch Distributors, Inc.*, 442 So. 2d 958, 960 (Fla. 4th DCA 1983) (emphasis added). In *Lynn v. City of Fort Lauderdale*, 81 So. 2d 511, 513 (Fla. 1955), the Florida Supreme Court stated:

It is elementary that when a decree of the [lower tribunal] is brought here on appeal the duty rests upon the appealing party to make error clearly appear ... An appellant does not discharge this duty by merely posing a question with an accompanying assertion that it was improperly answered in the [tribunal] below and then dumping the matter into the lap of the appellate court for decision. Under such circumstances it must be held, as we now hold here, that we are under no duty to answer the question.

At best, Maison's Initial Brief only makes cursory and vague references to the CSE prong. Notably, Maison fails to cite a single legal authority in his Initial Brief in support of any CSE argument. Furthermore, the Initial Brief and Reply contradict Maison's insistence that he properly presented a CSE argument in his Initial

Brief. Both of these documents indicate that "the narrow issue" on appeal is whether section 105-27.1.1.1(e)1 applies to the case at bar. See Initial Br. at 5-6; Reply Br. at 3.

In no way has Maison made "error clearly appear" as is his duty under the law. Consequently, the Court holds that Maison has abandoned or waived any argument for reversal grounded on the CSE prong as he has failed to adequately raise such an issue in his Initial Brief.<sup>2</sup> As such, the only question this Court must decide is whether the Board observed the essential requirements of the law as to the two challenged orders.

### **B. The Violation Order**

Maison argues that the Board failed to observe the essential requirements of the law as to the Violation Order by applying the wrong law. In other words, Maison argues the Board found him in violation of a code regulating off-street parking when he was in fact parking on the street. The Court disagrees with Maison.

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<sup>2</sup> See *Greenwood v. State*, 754 So. 2d 158, 160 (Fla. 1st DCA 2000) ("In his brief, appellant addresses [an] issue in one sentence, followed by a smörgasbord of case citations. We decline to address the constitutionality of the conditions challenged on that ground because the arguments have been neither properly preserved nor properly presented on appeal"). Here, Maison's Initial Brief is even more inadequate than the one analyzed by the *Greenwood* court as to the CSE prong.

Although the majority of the testimony and other evidence presented by the City to the Board at the September 6, 2022 hearing undoubtedly concerned the parking of the bus on the street in front of Maison's property, it is undisputed that the City provided some evidence of the bus being parked in Maison's driveway. Julie Phillips, City of Dunedin code enforcement supervisor, provided the following testimony to the Board: "On September 2nd, I went back to [Maison's] property, this time at 7:48 in the morning before work. The vehicle was there. It was still there at 12:51. And then ironically, when I left for work, the vehicle was parked in his driveway." Appellee's App. at 037. Ms. Phillips also presented the Board with a photograph of the bus being parked in Maison's driveway on September 2, 2022 – just four days before the hearing and over thirty days after Maison's compliance deadline had passed. See Appellee's App. at 025.

The parking of the bus in Maison's driveway is undoubtedly a violation of the plain language of section 105-27.1.1.1(e)1 as the bus was registered as a commercial vehicle at the time and was too big and heavy to be legally parked in a driveway, i.e. "an approved off-street location on a lot in a residential district." Although the parking of the bus in the driveway may have been an isolated occurrence,

Maison does not dispute that: 1) section 105-27.1.1.1(e)1 was the correct law to apply to the bus being parked in the driveway; 2) or that the Board erred in its application of section 105-27.1.1.1(e)1 to the parking of the bus in the driveway. As such, the Court finds that the Board had a valid basis to apply section 105-27.1.1.1(e)1 to facts indicating that Maison had parked his bus in his driveway after the applicable compliance date. In other words, the Board observed the essential requirements of the law. Accordingly, the Violation Order is **AFFIRMED**.

### **C. The Enforcement Order**

Once again, Maison argues that the Board failed to observe the essential requirements of the law as to the Enforcement Order through its application of section 105-27.1.1.1(e)1 to regulate on-street parking. On this occasion, the Court agrees with Maison.

The primary purpose of the October 4, 2022 hearing was to assess whether Maison had come into compliance with section 105-27.1.1.1(e)1. Thus, there was no issue with the Board's application of section 105-27.1.1.1(e)1 to Maison's proceeding on the date in question. However, this Court must also consider whether the law was correctly applied. The Board ultimately determined at the

October 4, 2022 hearing that Maison had failed to obtain compliance with section 105-27.1.1.1(e)1 by the deadline. In order for this to be a correct application of the law, the Board's decision necessarily had to rest on additional evidence of the bus being parked in an **off-street** location, e.g. Maison's driveway. However, no such evidence was presented at the October 4, 2022 hearing.

Instead, the Board premised its finding of ongoing violations of 105-27.1.1.1(e)1 entirely on evidence of **on-street** parking. This constitutes reversible error. The record before us shows that Julie Phillips, City of Dunedin code enforcement supervisor, testified at length during the October 4, 2022 hearing about specific observations of Maison's bus being parked **in the street** after the compliance deadline had passed. There was no similar testimony concerning driveway parking.

It is true that Ms. Phillips made the following statement at the October 4, 2022 hearing:

[T]he bus really doesn't move. **When it does move, as you can see, it's moved to the driveway.** Now we've got blocking of [the] pedestrian sidewalk. So when you have kids that are walking home from school or you have elderly in a wheelchair, moms walking in

strollers, you have to go around the bus with oncoming traffic.

Appellee's App. at 091 (emphasis added). However, the only visual aid provided to the Board at the October 4, 2022 hearing of driveway parking was the same exact photograph of the bus parked in the driveway dated September 2, 2022 which the City previously presented at the September 6, 2022 hearing. Since this photo pre-dates the compliance deadline, it obviously cannot be considered evidence upon which the Enforcement Order may be grounded. The record from the October 4, 2022 hearing also lacks any specific references to dates in which anyone observed the bus parked in the driveway after the compliance deadline. The lack of any evidence indicating that Maison parked in his driveway after September 20, 2022 means there was no violation of section 105-27.1.1.1(e)1 upon which the Enforcement Order could be based. In other words, the Board incorrectly applied section 105-27.1.1.1(e)1 to regulate purely on-street parking.

The Board further argues that the Enforcement Order is sound because: 1) section 105-27.1.1.1(e)1 covers or should be construed to cover Maison's on-street parking; and 2) Maison also parked in the

driveway, which is a clear violation of section 105-27.1.1.1(e)1. Both arguments are meritless.

First, the text of section 105-27.1.1.1(e)1 is clearly limited to parking in an "off-street location," e.g. a driveway or garage. The Board urges the Court to apply a variety of statutory interpretation principles in order to reach the conclusion that section 105-27.1.1.1(e)1 covers on-street parking, but the Board fails to mention the highly relevant principle of *expressio unius est exclusio alterius*, meaning "the inclusion of one is the exclusion of others." *Siegle v. Lee Cnty.*, 198 So. 3d 773, 775 (Fla. 2d DCA 2016) ("Our interpretation of the plain language of [a county code provision] is reinforced by the canon of statutory construction *expressio unius est exclusio alterius*, under which the mention of one thing implies the exclusion of another" (internal citations and quotations omitted)). Applied to this case, this principle asserts that the inclusion of the language "in an approved off-street location" in section 105-27.1.1.1(e)1 excludes any application to on-street parking. Furthermore, there is a separate code provision in the Dunedin Municipal Code which explicitly regulates on-street parking in residential districts. See Dunedin Municipal Code § 105-27.1.1.1(b)4.

Secondly, as discussed above, the Board's second contention is entirely meritless because the October 4, 2022 hearing did not include any evidence that Maison had parked his bus in his driveway after the compliance deadline passed.

Because the Board's Enforcement Order incorrectly applied section 105-27.1.1.1(e)1, the Enforcement Order is **REVERSED** for the Board's failure to observe the essential requirements of the law.

#### **D. Conclusion**

The record demonstrates that the Board received evidence at the September 6, 2022 hearing that Maison parked his bus in his driveway after his compliance date, an action that is prohibited by section 105-27.1.1.1(e)1. As such, the Violation Order observed the essential requirements of the law and is hereby **AFFIRMED**.

However, the Board failed to observe the essential requirements of the law as to the Enforcement Order by incorrectly applying section 105-27.1.1.1(e)1 to regulate on-street parking. The record demonstrates that the Board did not receive any evidence at the October 4, 2022 hearing of off-street parking upon which to base the Enforcement Order. As such, the Enforcement Order is **REVERSED**.

In reversing the Enforcement Order, this Court writes briefly to observe that it would be further error for the Board to conduct additional proceedings aimed at enforcing section 105-27.1.1.1(e)1 without new evidence of Maison parking the bus in his driveway or some other "off-street location." The plain language of the code does not allow the Board to regulate on-street parking of commercial vehicles under section 105-27.1.1.1(e)1. However, the Board can regulate on-street parking of vehicles in certain circumstances under Dunedin Municipal Code Section 105-27.1.1.1(b)4. ("Vehicles may be stored (not moved) **on the street** for a maximum of 72 hours in any 30-day period" (emphasis added)). However, the City must institute new proceedings before the Board if a new code provision becomes the basis for the City's enforcement action.

Accordingly, it is

**ORDERED and ADJUDGED:**

1. The Board's Violation Order dated September 7, 2022 is hereby **AFFIRMED**.

2. The Board's Enforcement Order dated October 7, 2022 is hereby **REVERSED**.

3. This matter is **REMANDED** for further proceedings consistent with this Opinion.

**DONE and ORDERED** in Chambers, in St. Petersburg, Pinellas County, Florida this 8th day of November, 2023.

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Original Order entered on November 8, 2023 by Circuit Judges Amy M. Williams, Pamela A.M. Campbell, and Steve D. Berlin.

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