NOT FINAL UNTIL DISPOSITION
OF TIMELY-FILED MOTION FOR
REHEARING OR CLARIFICATION

IN THE CIRCUIT COURT OF
THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR
MIAMI-DADE COUNTY,
FLORIDA

APPELLATE DIVISION
CASE NO.: 2022-80-AP-01

DOUGLAS LANE COMPANIES II, LLC,

Appellant,

v.

CITY OF MIAMI, FLORIDA

Appellee.
_____/

OPINION

Opinion filed: February 6, 2024

On Appeal from an Order of the Code Enforcement Board of the City of Miami

Philippe Revah, Esquire, Edelboim Lieberman Revah PLLC, for Appellant.

Victoria Mendez, Esquire, City of Miami Attorney and John A. Greco, Esquire, Chief Deputy City Attorney, City of Miami, for Appellee.

Before: SANTOVENIA, TRAWICK and ARECES, R., JJ.

TRAWICK, J.

This matter comes before this Court on an appeal filed by Douglas Lane Companies II, LLC, directed against the City of Miami to quash the Code Enforcement Board's Mitigation Order. The Order was rendered on November 9, 2022, following a mitigation hearing.

Background

On September 8, 2021, Douglas Lane Companies II, LLC ("Appellant") received from the City of Miami, Florida, Code Enforcement Board ("Board") a Notice of Violation/Summons to Appear ("Notice"), advising that there were eight violations[1] found on Appellant's property, located at 3800 NW 2nd Ave. in Bay Vista Park

---

[1] (a) Failure to register vacant lot with the City of Miami
(b) Failure to maintain lot in a clean safe condition; not allowing accumulation of debris, trash or dense growth of grass;
(c) Parking on unimproved surfaces;
(d) Parking lot not conforming with off-street parking Guides and Standards;
(e) Failure to obtain a valid certificate of use for the type of business being conducted;
(f) Failure to obtain a business tax receipt for the type of business conducted;
(g) Failure to maintain premise lighting; and
(h) unlawfully establishing an unusual or new use without prior approval at hearing.

("Property").[2] A Code Enforcement Hearing was set for October 13, 2021 ("Enforcement Hearing"). Appellant had previously been directed to correct the violations by July 19, 2021. Appellant failed to appear at the Enforcement Hearing,[3] but previously requested via email that the Hearing be postponed.[4]

Appellant maintained that almost immediately after receiving the Notice in September 2021, it cleared the lot of trash and litter, cut the grass, registered the vacant lot with the City, and contacted the City of Miami Police Department about the illegal late night parking lot operations. Appellant also contended that City police directed it to order Trespass/Arrest signs so that police could arrest anyone who attempted to park on Appellant's vacant lot. Appellant further stated that it sent documented proof of compliance to Code Inspector Mignott in late September 2021.

---

[2] Appellant describes the Property as a "vacant lot" with a billboard on it. Scott Devecht is the owner/manager of the Property, and lives in California.

[3] The Court notes that similarly to the Enforcement Hearing, neither Appellant or its counsel appeared at the oral argument before this Court on September 28, 2023.

[4] Appellant sent a representative (a realtor) to the Enforcement Hearing, but Board Chair Jose Garcia stated that the representative did not have a power of attorney.

Appellant also claimed that the illegal parking lot operations took place at night and on weekends; that some "unknown criminal actors" were illegally renting Appellant's vacant lot as a parking lot for customers of a nearby nightclub. Appellant asserted that neither he nor his company ever used or authorized the use of the subject vacant lot as a parking lot.

Following the Enforcement Hearing, the Board issued a Final Administrative Enforcement Order ("Final Order"),[5] citing seven violations and ordering that they be corrected by November 12, 2021. Failure to comply by that date would result in a $1,000/day fine.

Code Inspector M. Lytle determined that the Property was brought into compliance on July 29, 2022, and issued an Affidavit of Compliance. Appellant requested a mitigation hearing.

On November 9, 2022, the Board conducted a mitigation hearing ("Mitigation Hearing."). Appellant sought complete

---

[5] The Final Order stated: "[i]t is your responsibility to advise the Inspector immediately after the violation has been corrected to obtain an Affidavit of Compliance." ... "Should you have any questions regarding this Enforcement Order, or if you wish to advise the Code Enforcement board that the violation has been corrected, please call Jason Mignott..."

mitigation of the lien ($259,000). The Board agreed that the Property was now in compliance and reduced the lien to $233,000. A Mitigation Order was subsequently rendered on November 9, 2022.

Standard of Review

A three-part standard governs this Court's review: (1) whether procedural due process is accorded; (2) whether the essential requirements of the law have been observed; and (3) whether the administrative decision is supported by competent substantial evidence. *Vill. of Palmetto Bay v. Palmer Trinity Priv. Sch., Inc.*, 128 So. 3d 19, 24 (Fla. 3d DCA 2012).

Procedural Due Process

We first address the issue of whether the Appellant was denied procedural due process. "Quasi-judicial proceedings are not controlled by strict rules of evidence and procedure." *Jennings v. Dade Cnty.*, 589 So. 2d 1337, 1340 (Fla. 3d DCA 1991). However, certain standards of basic fairness must be followed in order to afford due process. *Id.* "A quasi-judicial hearing generally meets basic due process requirements if the parties are provided notice of the hearing and an opportunity to be heard." *Id.*

Here, Appellant maintains that there are three procedural due process errors that require reversal. Appellant's first argument is that the Board refused to allow its counsel to present evidence that Appellant was in compliance with the Code violations before the deadline for compliance.

The City countered that the Appellant failed to present an adequate record, as the transcript from the Mitigation Hearing is incomplete. Specifically, the City contends that the transcript contains blanks and/or missing characters and is difficult to comprehend in parts. Thus, the City maintains that the transcript does not provide the requisite evidentiary basis to overturn the Mitigation Order of the Board. The City also argued that to the extent that the transcript can be interpreted,[6] the Appellant made a choice not to present any testimonial evidence. Instead, the City contends that Appellant chose to have its attorney make legal arguments to support its case.

---

[6] While the transcript is arguably difficult to read because of the missing letters, the missing letters mainly appear in the names of the speakers.

The City also counters Appellant's argument that it lacked sufficient time to present their position. The City states that Appellant was able to present his case for close to an hour at the close of the agenda, and that the record reflects that Appellant had ample time to present its case.

Appellant's second argument is that his emails and phone calls to Inspector Mignott were ignored. Appellant further argues that Inspector Mignott (who wrote up the violations) failed to mark the violations as complied with - even though written evidence in the form of emails was presented to him.

At the Mitigation Hearing, the Appellant's counsel read off the emails which were included in the record. Appellant contends that at least four emails (*see infra*) were sent not only to Inspector Mignott (whose name appeared on the Notice), but also to Inspector Mignott's supervisor. Appellant also made several phone calls to Inspector Mignott, but Mignott's voicemail was full. Appellant's Appendix contains numerous emails to the Code Enforcement Department.[7]

---

[7] July 22, 2021 – email from Scott Devecht, manager of Appellant's company, to Inspector Mignott stating that all items in the citation were addressed and requesting that a copy of the closed matter be sent to him. Mr. Devecht noted that he met with Officer Jean Gilles

of the Miami Police Department. (App. 10-11). Also included is an email from the City of Miami NET Department stating that the property had been registered and noticing that fees were paid for a no trespassing sign.

September 8, 2021 – email from Mr. Devecht to Inspector Mignott stating that "No Trespassing" signs were erected, and all other items in the citation were addressed. Mr. Devecht asked that confirmation be sent to him that the citation was closed. (App. 7-9).

September 20, 2021 – email from Mr. Devecht to Inspector Mignott requesting that the Inspector contact him, and again stating that every violation was responded to. Mr. Devecht noted that the Inspector's voicemail was full, so no message could be left. (App. 13).

September 23, 2021- email chain:

1st email – from Sa'Vanna Smith (Code Enforcement Department) to Inspector Mignott requesting that Scott Devecht be called upon the Inspector's arrival to the office. (App. 16-17)

2nd email – from Scott Devecht to Inspector Mignott, Todd Brinton and Sa'Vanna Smith requesting that Mr. Devecht be called to discuss what issues remain open on the citation. Mr. Devecht noted all of the issues that he addressed pertaining to the citation. (App. 15-16).

3rd email – from Scott Devecht to Inspector Franqui stating that he sent Inspector Mignott three emails with evidence that the citations were complied with. Mr. Devecht noted that he also left messages with the Department, and the only response he received was for a hearing date. He requested that the hearing date be postponed until he was given an opportunity to cure, in the event something remained open. (App. 14-15).

4th email – from Mr. Devecht to Supervisor Lytle and forwarding the emails above.

Appellant was able to read the emails into evidence at the hearing, and the emails are all contained in Appellant's Appendix. Appellant argued that his emails were never responded to.

Appellant's third argument is that he was not given an adequate opportunity to rebut the Affidavit of Compliance which indicated that the Appellant was allegedly out of compliance for 259 days. Appellant requested a continuance in order to introduce all of its evidence before the Board entered its order imposing a ten percent reduction on a $259,000 lien.

Appellant argues that this case is identical to the *Massey v. Charlotte Cnty.*, 842 So. 2d 142 (Fla. 2d DCA 2003). However, *Massey* is inapposite. In *Massey,* the district court reversed the decision of the Circuit Court and held that the petitioners' (Masseys) procedural due process rights were violated because petitioners were denied notice and an opportunity to be heard, and the issued order did not give any avenue for the petitioners to challenge the order. *Id.* at 147.

Here, the City attorney volunteered to reset the Mitigation Hearing to the next hearing date. Appellant did not agree to reset the

hearing. Thus, Appellant was given an adequate opportunity to present its case.

Additionally, Mr. Nemons (Asst. Director of Code Compliance) also stated during the Mitigation Hearing that "[t]here have been communications with Mr. Willinger (Appellant's previous attorney) and myself and the inspector."

We find that Appellant's arguments unpersuasive, and that Appellant received procedural due process.

Essential Requirements of Law

Having found that the Appellant was accorded procedural due process, we now turn to the issue of the essential requirements of the law. In *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995), the Supreme Court held that "applied the correct law" is synonymous with "observing the essential requirements of law." Further, to warrant relief, there must be "an inherent illegality or irregularity, an abuse of judicial power, an act of judicial tyranny perpetrated with disregard of procedural requirements, resulting in a gross miscarriage of justice." *Id.* at 527. (citation omitted).

Appellant presents two arguments why the Board failed to follow the essential requirements of law. Appellant's first argument

is that the Board's actions violate Chapter 2, Article X, Section 2-816 of the City's Code of Ordinances.

This section provides, in pertinent part:

> At the hearing before the board or special magistrate, the alleged violator and owner of the subject property shall be given the opportunity to be represented by an attorney, to call witnesses, to present documentary evidence, and to otherwise properly present his/her position or defense.

Appellant argued that the Board ignored a motion for continuance, and made a ruling without allowing the full presentation and introduction of evidence. Appellant's attorney asked the Board "[s]o the motion that I made is denied for a deferral or an adjournment to a later date or a continuation of the hearing." The Board never answered the Appellant, but moved to the motion to mitigate the fine.

Appellant's second argument is that the City's ordinance - Chapter 2, Article X, Section 2-817(d) pertaining to mitigation is arbitrary and unconstitutional. Further, Appellant maintains that the City failed to consider evidence that compliance was obtained, and that the Code Enforcement Officer simply failed to visit the

Property and verify compliance. Appellant contends that the result of the City's actions is that the City decides when the violations are complied with, and later uses the date as the indisputable benchmark for lien mitigation.

The City correctly argues that under Florida law, litigants are required to make objections on the record in order to preserve any error for appellate review ("contemporaneous objection"). In this case, the Appellant challenges the validity of Miami Code Section 2-817(d) – detailing the schedule of mitigation allowed for non-homestead property. However, the Appellant did not raise this objection at the hearing. Thus, the Appellant failed to preserve this issue for appellate review. See *Mora v. State,* 964 So. 2d 881, 883 (Fla. 3d DCA 2007).[8]

---

[8] We are in fact troubled by the seeming arbitrariness of the City's actions here. If the violations had been corrected in a more timely manner as asserted by Appellant, the fine may have been much less, if indeed one would have been assessed at all. Indeed, there is nothing in the record to show that the City acted within a reasonable time to verify compliance by Appellant. The City could have arguably "sat on the violation," picking and choosing the time to verify compliance, and thereby increasing the amount of the fine, if indeed a fine would have been assessed at all. If in fact the City is conducting verification of code violation compliance in this manner, such actions have constitutional implications. However, as the issue was not properly preserved by Appellant, this is an issue for another day with another litigant.

We find that the Board followed the essential requirements of the law.

Competent substantial evidence

We now turn to the issue of competent substantial evidence. Since the Board followed the essential requirements of the law, the last prong of the test to be considered is whether the Board's decision is supported by substantial competent evidence. "Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred." *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957). "Competent, substantial evidence must be reasonable and logical." *Wiggins v. Fla. Dep't of Highway Safety and Motor Vehicles*, 209 So. 3d 1165, 1173 (Fla. 2017).

The City contends that to the extent that the Mitigation Hearing transcript can be interpreted, Appellant made a choice not to present any testimonial evidence. Instead, Appellant chose to have its attorney make legal arguments to support its case. The City cited *Woodruff v. Gov't Employees Ins. Co.*, 669 So. 2d 1114, 1115 (Fla. 1st DCA 1996) for the proposition that legal argument does not constitute competent evidence. Moreover, the City argued that staff

reports alone constitute competent substantial evidence. *City of Hialeah Gardens v. Miami-Dade Charter Found. Inc.*, 857 So. 2d 202, 205 (Fla. 3d DCA 2003). Thus, the City maintains that the report of the Code Inspector ("Affidavit of Compliance") finding the date of full compliance was sufficient, standing alone, to support the mitigation order of the Board. We agree.

Appellant next argued that the propriety of the lien ($259,000) depended upon "extra-judicial factual findings" in the form of an Affidavit (Affidavit of Compliance). Critically, Appellant contends that he was never given a meaningful opportunity to rebut the Affidavit. We consider this argument under the rubric of whether there is competent substantial evidence to uphold the Board's findings.

Appellant did not provide a copy of the transcript from the initial Enforcement hearing. We find that lack of a transcript from the Enforcement Hearing precludes adequate review of this issue.

Further, we agree with the City's argument that the Affidavit of Compliance from the Code Inspector finding the date of full compliance was sufficient, standing alone, to support the mitigation

order of the Board. We find that there was competent substantial evidence to sustain the Board's findings.

Accordingly, for the foregoing reasons, the decision below is **AFFIRMED**.

SANTOVENIA and ARECES, R., JJ., concur.

COPIES FURNISHED TO COUNSEL
OF RECORD AND TO ANY PARTY
NOT REPRESENTED BY COUNSEL