

**IN THE CIRCUIT COURT FOR THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA**

PATRICK J. TRESCOTT,

Appellant,

v.

CASE NO.: CVA1 06-63

Lower Ct. Case No.: CEB 06-48225Z

CEB 06-48227Z

CITY OF ORLANDO,

Appellee.

An appeal from a decision of the
Code Enforcement Board,
City of Orlando, Florida.

Herbert S. Zischkau, III, Esquire,
for Appellant.

Victoria Cecil, Esquire
For Appellee.

Before MACKINNON, J. KEST, and EVANS, JJ.

PER CURIAM.

FINAL ORDER AND OPINION AFFIRMING IN PART

AND REVERSING IN PART AUGUST 9, 2006, FINDINGS OF FACT

AND CONCLUSIONS OF LAW OF CODE ENFORCEMENT BOARD

Appellant Patrick J. Trescott (Trescott) timely appeals from two simultaneous final orders of the City of Orlando (City) Code Enforcement Board (Board), dated August 9, 2006, which found him in violation of sections 58.103, 58.1161, 58.1204, 58.200, 58.793, and 61.430, Orlando Code of Ordinances (Code). This Court has jurisdiction pursuant to Florida Rule of

Appellate Procedure 9.030(c)(1)(C) and section 162.11, Florida Statutes. We dispense with oral argument per Florida Rule of Appellate Procedure 9.320.

Trescott is the owner of commercial property located at 2300 and 2310 West Church Street. The property consists of ten substandard lots side-by-side, each 25 feet wide by 100 feet deep. The property located at 2300 consists of the first four lots which are occupied by a large metal building where three of the four bays are used for an auto repair shop. The property located at 2310 West Church Street consists of the two middle lots and last four lots which are occupied by a bathroom facility and parking area.

On March 2, 2006, City Code Inspector, John Leath, inspected Trescott's property in response to a citizen's complaint and issued citations for various Code violations. The Statement of Violation and Compliance Schedule for the property located at 2300 West Church Street listed four Code violations and the required corrective action to be taken by Trescott.¹ The Statement

¹ The Compliance Schedule provides in pertinent part:

- | | |
|-----------------|--|
| Section 58.103 | * Building, structure, or land used or occupied not in conformity with the regulations specified for the zoning district in which it is located.

Provide bathroom facility for auto repair business, per building codes, under City permit and obtain approved final inspection on permit or permanently cease occupancy and business activity. |
| Section 58.1161 | * Repair or alteration consisting of a substantial improvement, to a nonconforming building, structure, or vehicular use area, not in conformity with the provisions regulating nonconformities.

Obtain Zoning Approval and necessary permits for interior alteration (erected walls to provide office space) within metal building or remove all unpermitted alterations. |
| Section 58.1204 | * Allowing derelict, disabled or abandoned vehicle(s) to be placed or remain on any property when not within a completely enclosed building.

Repair derelict, disabled, or abandoned vehicle(s), or relocate derelict, disabled, or abandoned vehicle(s), to a completely enclosed building, or permanently remove derelict, disabled, or abandoned vehicle(s) from property. |
| Section 58.793 | * Stored vehicles required to be maintained in an operable condition. Where not so maintained, the definition of a junk yard shall be applied and subject to all applicable City Code provisions. |

of Violation and Compliance Schedule for the property located at 2310 West Church Street also listed four Code violations and the required corrective action to be taken.²

On August 9, 2006, a noticed hearing was held before the Board at which Trescott was represented by an attorney. The witnesses at the hearing included: Inspector John Leath, Trescott, and Elijah Thomas, Trescott's tenant. Based upon the testimony and evidence presented at the hearing, the Board entered orders finding Trescott guilty of violating the Code and requiring him to cure the violations by September 25, 2006, or pay a fine of \$100.00 per day. This appeal followed.

Pursuant to section 162.11, Florida Statutes, a circuit court's review of a quasi-judicial decision of an enforcement board is not a hearing de novo, but is limited to a review of the record before the Board. City of Deland v. Benline Process Color Co., Inc., 493 So. 2d 26, 27

	All vehicles outside must have current tags and in operable conditions or stored inside a completely enclosed structure or permanently remove vehicles from property.
² The Compliance Schedule provides in pertinent part:	
Section 58.103	* Structure erected without Zoning Approval and Building Permits.
	Obtain Zoning Approval and Building Permits for Wood shed/storage building and Out-House or completely remove structures, including toilet, sink and plumbing pipes from property.
Section 58.1204	* Allowing derelict, disabled or abandoned vehicle(s) to be placed or remain on any property when not within a completely enclosed building.
	Repair derelict, disabled, or abandoned vehicle(s), or relocate derelict, disabled, or abandoned vehicle(s) to a completely enclosed building, or permanently remove derelict, disabled, or abandoned vehicle(s) from property.
Section 58.200	* Building, structure, land or water used or occupied not in conformity with regulations specified in Figure 1, Table of Zoning District Regulations, Figure 2, Table of Allowable Uses in Zoning District, Figure 3, Land Use Intensity Table.
	Obtain Zoning Approval and necessary permits to utilize building, structure, land, or water in conformity with specified regulations, or revert to previous legally existing land use, "Vacant unoccupied Lot."
Section 61.430	* Vehicle(s) parked on an unimproved surface.
	Remove all vehicles from property and permanently cease parking on vacant lot.

(Fla. 5th DCA 1986). An appeal from the Board is governed by a three part standard of review: (1) whether procedural due process was accorded; (2) whether the essential requirements of law have been observed; and (3) whether the administrative agency's findings and judgment are supported by competent, substantial evidence. City of Deerfield Beach v. Vaillant, 419 So. 2d 624, 626 (Fla. 1982). The circuit court is not entitled to make separate findings of fact or to reweigh the evidence. Haines City Cmty. Dev. v. Heffs, 658 So. 2d 523, 529 (Fla. 1995).

Pursuant to the Local Government Code Enforcement Boards Act in Chapter 162, Florida Statutes, it is the duty of the code inspector to initiate enforcement proceedings. §162.06(1), Fla. Stat. (2007). Upon finding a code violation, the code inspector must notify the violator and give him or her a reasonable time to correct the violation. §162.06(2), Fla. Stat. (2007). Should the violation continue beyond the time specified for correction, the code inspector should notify the enforcement board and request a hearing. Id. During the hearing, the enforcement board shall take testimony from the code inspector and alleged violator. §162.07(3), Fla. Stat. (2007). At the conclusion of the hearing, the enforcement board shall issue findings of fact, based on evidence of record and conclusions of law, and shall issue an order affording the proper relief. §162.07(4), Fla. Stat. (2007).

Trescott asserts that the Board erred in finding him in violation of Code sections 58.1204, 58.793, and 61.430, because the Board's oral pronouncements at the hearing found him not in violation. Additionally, Trescott maintains that there was no competent, substantial evidence upon which the Board could have found him in violation of Code sections 58.103 and 58.200. Trescott does not dispute the violation or required corrective action for Code section 58.1161.

The City concedes that the Board's written orders were inconsistent with its oral ruling regarding Code sections 58.1204, 58.793, and 61.430. However, the City argues that there is

competent, substantial evidence to support the Board's findings of violations as to Code sections 58.103 and 58.200.

Sections 58.1204, 58.793, and 61.430, Orlando Code of Ordinances

Trescott argues that the Board erred as a matter of law by rendering written orders materially different from the oral pronouncements at the August 9, 2006 hearing. The Board's written orders find Trescott in violation of Code sections 58.1204, 58.793, and 61.430; however, Trescott insists that the Board's oral pronouncements found otherwise.

The City concedes that the Board's findings of violations as to Code sections 58.1204, 58.793, and 61.430, in the written orders are error.

Generally, an agency's oral pronouncements at a noticed hearing prevail over subsequent inconsistent written orders. Verleni v. Dept. of Health, Bd. of Podiatric Medicine, 853 So. 2d 481, 483 (Fla. 1st DCA 2003). Absent a concession of error by the opposing party, conflict between an oral pronouncement and a written order requires reversal and remand for factual resolution by the lower tribunal. See Lester v. State, 563 So. 2d 178, 179 (Fla. 5th DCA 1990).

Sections 58.103 and 58.200, Orlando Code of Ordinances

Trescott asserts that the Board's decisions regarding the permitting of the bathroom facility at 2310 West Church Street and the requirement of a bathroom facility at 2300 West Church Street were not supported by competent, substantial evidence. Alternatively, the City maintains that the bathroom facility at 2310 West Church Street, in its current state, requires zoning approval and a permit, and because the auto repair shop at 2300 West Church Street is located on a separate parcel, Trescott must install an additional bathroom facility.

In appellate proceedings, competent substantial evidence is defined as "such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred."

DeGrott v. Sheffield, 95 So. 2d 912, 916 (Fla. 1957). It is also said “to be such relevant evidence that a reasonable mind would accept as adequate to support a conclusion.” Id.

At the enforcement hearing, Inspector Leath testified that he inspected Trescott’s property in response to a citizen’s complaint and issued citations for various Code violations. He also submitted the compliance schedules and photographs taken of the property on March 2, 2006 and August 7, 2006. Neither Inspector Leath nor the City provided testimony or other evidence beyond these limited points.

Trescott testified that he purchased all ten parcels in 1992 and has used all ten parcels together since that time. He also stated that he bought the parcels from the same person who was using the property to manufacture burial vaults. Trescott testified that he has rented to three different tenants, including Elijah Thomas, since 1992 and the property has never been vacant for a period of more than six months.

When questioned about the make-up of the property, Trescott testified that when he first purchased the property, there were two buildings: the large metal building, now used as an auto repair shop, and the bathroom facility. Since purchasing the property, Trescott testified that any alterations made to the property were maintenance repairs, with the exception of an eight-by-eight storage shed he built for the air compressor due to theft concerns. Trescott explained that he replaced the flooring in the bathroom because it was getting spongy, repaired hurricane damage to the steel belting, and also replaced some of the piping in the bathroom. Trescott further testified that he did not obtain permits prior to making any of the above repairs because the costs of the repairs or additions were below \$2,500 and it was his understanding that he was only required to get a permit if the cost exceeded \$2,500.

Elijah Thomas, Trescott's current tenant, testified that he grew up within one mile of the property and has been familiar with the property since the 1960s. Thomas explained that the bathroom facility used to be part of a large one-story building but all that remained from the building was the bathroom facility and some foundation. Thomas further testified that he began renting the property in January of 2001 and is unaware of any other owners, with the exception of Trescott and the burial vault manufacturer. With respect to repairs or alterations to the property, Thomas testified that he built an office for his auto repair shop which is inside the large metal building and he estimated the cost of the project was \$1,400-\$1,500.

Trescott asserts that the record on appeal is void of competent, substantial evidence upon which to affirm the Board's findings of violations as to the permitting requirements for the bathroom facility and the requirement of an additional bathroom facility for the auto repair shop. Trescott argues that all of the parcels have been in continuous use together since the 1960s and it is error for the City to require him to pull a permit for maintenance repairs or in the alternative to tear down the structure. Additionally, Trescott maintains that because the parcels have been in continuous use together since the 1960s, it is improper for the City to disregard the property's history by requiring an additional bathroom facility to be built on the adjoining parcel.

With the exception of Trescott's and Thomas' testimony to the contrary, the record is void of any evidence establishing that the parcels have not been in continuous use together since the City of Orlando's annexation so as to require the addition of a bathroom facility to the auto repair business or that the outdoor bathroom facility has been reconstructed or structurally altered so as to fall under Code section 58.103 or 58.200. We agree with Trescott in that the Board's findings of violations as to Code sections 58.103 and 58.200 are not supported by competent, substantial evidence.

Section 58.1161, Orlando Code of Ordinances

Trescott does not appeal the Board’s finding of a violation of Code section 58.1161. He concedes that the office was built without a permit and he should be required to obtain a retroactive permit for any interior alterations to the building.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the Board’s finding regarding Code section 58.1161 is **AFFIRMED**; the Board’s findings regarding Code sections 58.1204, 58.793, and 61.430 are **REVERSED** and **REMANDED** for entry of written orders consistent with this opinion; and the Board’s findings regarding Code sections 58.103 and 58.200 are **REVERSED** and **REMANDED** for further proceedings consistent with this opinion.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this
22 day of _September_, 2008.

_____/S/_____
CYNTHIA Z. MACKINNON
Circuit Court Judge

_____/S/_____
JOHN M. KEST
Circuit Court Judge

_____/S/_____
ROBERT M. EVANS
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. mail or hand delivery to **Herbert S. Zischkau, III, Esquire**, 1202 Sacramento Street, Deltona, Florida 32725; **Victoria Cecil, Esquire**, Assistant City Attorney, Orlando City Hall, 400 S. Orange Avenue, Orlando, Florida 32801 on this _22_ day of _September_, 2008.

_____/S/_____
Judicial Assistant