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

JON CHRISTIAN PETERSON, JR.,

Appellant,

v.

CITY OF WINTER PARK,

Appellee.
_____/

CASE NO.: 2014-CV-000008-A-O

Appeal from a decision of the City of Winter Park
Code Enforcement Board

Jon Christian Peterson, Jr., Pro Se, Appellant.

Erin J. O'Leary, Esquire and
William E. Reischmann, Esquire, for Appellee.

Before ROCHE, O'KANE, and APTE, J.J.

PER CURIAM.

FINAL ORDER AFFIRMING IN PART AND REVERSING IN PART CITY OF WINTER PARK CODE ENFORCEMENT BOARD

Appellant, Jon Christian Peterson, Jr. ("Peterson"), timely appeals an order of the City of Winter Park Code Enforcement Board ("CEB") dated December 31, 2013, finding him in violation of Winter Park's Land Development Code ("Code"). This Court has jurisdiction pursuant to section 162.11, Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(1)(C). We dispense with oral argument per Florida Rule of Appellate Procedure 9.320.

Summary of Facts and Procedural History

On December 3, 2013, the City of Winter Park Code Compliance Department ("Winter Park") received a complaint that a commercial trailer or semi-trailer was being stored on property in a residential zoning district. In response to that complaint, Winter Park's Code Compliance Officer, Smitha Raphael, responded to the scene and observed the trailer on a vacant lot located at 2148 Via Tuscany in Winter Park. The vacant lot and the adjacent lot, located at 2150 Via Tuscany, are both owned by Peterson. Officer Raphael left a notice at Peterson's residence at 2150 Via Tuscany advising him that the trailer needed to be removed within 24 hours.

Subsequent inspections conducted on December 4 and 6, 2013 revealed that the trailer remained on the property. An inspection done on December 9, 2013 revealed that the trailer was removed. Although Peterson's property came into compliance, Winter Park proceeded with the hearing before the CEB on December 19, 2013 to address and rule on Peterson's prior non-compliance with the Code and to enter an order directing that if the trailer became parked on the property again in the future in violation of the Code, then fines could be assessed for repeat violations.

Per the transcript from the CEB hearing on December 19, 2013, Winter Park's Code Compliance Officer, Susanne Porras, and Section Chief of Code Compliance, Sylvia Hawkins, testified and provided evidence including photographs of the trailer on the property and a report that the title to the trailer revealed that it was owned by a business. Therefore, they argued that the trailer was a commercial trailer. Furthermore, Officer Porras testified that Peterson was a representative of the business that owned the trailer.

Next, Peterson testified and presented evidence including photographs of the property and trailer. Peterson argued that the trailer was recreational because it had a kitchen, bathroom, shower, hot and cold running water, electricity, places to sleep; thus, it could be used as temporary living quarters. He also testified that the trailer was titled in the name of "Hell's Bay Holding, Inc." or "Hell's Bay Marina," a business in which he had a minority ownership interest. Peterson also acknowledged that the trailer was parked on his property. However, notwithstanding his ownership interest in the business, Peterson argued that because the trailer was not titled in his name, the trailer was owned by a guest, and therefore, should be permitted to remain on his property for up to seven days under subsection 58-71(f)(6) of the Code. Peterson did not assert that another person parked the trailer on his property.

Peterson further testified that within 24 hours of the trailer being parked on his property, he notified the building official in accordance with the requirements of subsection 58-71(f)(6); thus, he believed that he was in compliance with the Code. When asked why the trailer was titled in the name of the business, Peterson testified that he "[doesn't] have any vehicles that aren't owned by a business." Lastly, Peterson argued that subsection 58-71(f)(6) would permit him to park the trailer at his house for seven days, then move it off for thirty days, and then park it on his property again for seven days.

After hearing all testimony and arguments, the CEB found that the trailer was recreational and that Peterson was in violation of section 58-71(f) of the Code. Because the CEB did not find that the trailer was commercial, the CEB did not find Peterson in violation of section 58-71(d) of the Code. Thereafter, on December 31, 2013, the CEB issued its "Findings of Fact, Conclusions of Law, and Order" that Peterson now appeals.

Standard of Review

When conducting an appellate review of an administrative action, the circuit court must determine: 1) whether procedural due process was accorded; 2) whether the essential requirements of the law were 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). Also, under section 162.11, Florida Statutes, a circuit court reviewing a final administrative order cannot engage in de novo review and must limit its review to the record created before the enforcement board.

Arguments on Appeal

Peterson argues: 1) Winter Park violated the rule of law in the administration of the hearing by allowing its attorney to both prosecute and act as counsel to the CEB in direct violation of section 162.05(5), Florida Statutes; 2) His right to due process was violated by the CEB in allowing Winter Park's staff and attorney to enter new evidence and testimony during the closed portion of the hearing over his objections as he was unable to review or cross examining the newly introduced evidence during the closed deliberations of the CEB; 3) Section 58-71 of the Code is void for vagueness; 4) Subsections 58-71(f)(3) and (6) of the Code violate the Equal Protection Clause of the United States Constitution; and 5) The CEB's findings are not supported by competent substantial evidence.

Conversely, Winter Park argues: 1) Section 162.05, Florida Statutes, was not violated; 2) Peterson was not denied the right to procedural due process; 3) Section 58-71 of the Code is not void for vagueness; 4) Subsections 58-71(f)(3) and (f)(6) of the Code do not violate the Equal Protection Clause of the United States Constitution; and 5) The CEB's findings that Peterson violated section 58-71(f) are supported by competent substantial evidence.

Analysis

First, as Winter Park concedes in its Answer Brief, this Court addresses an error in the CEB "Findings of Fact, Conclusions of Law, and Order ("Order"). While most of the findings in the Order reflect the findings from the hearing as to Peterson's violation under section 58-71(f) of the Code, the Order also included language indicating that the trailer and property were being used for commercial purposes in violation of section 58-71(d) of the Code as follows: Section I.G. of the Order states: "The violation: Commercial use of a residential property and parking/storage of a trailer." In section III of the Order, in addition to language directing that Peterson "cease the parking and storage of the semi-trailer on a residential zoning district," there also was language directing that Peterson "Cease the use of the residential property as commercial." Because Peterson was only found to be in violation section 58-71(f) of the Code, the language referencing commercial use of the trailer and property must be stricken.

Peterson's First Argument: Next, this Court addresses Peterson's argument that Winter Park violated section 162.05(5), Florida Statutes, as to the administration of the hearing by allowing its attorney, William Reischmann, to both prosecute and act as council to the CEB. Peterson is correct that section 162.05(5), Florida Statutes, prohibits a local governing body attorney to serve in both capacities. However, from review of the hearing transcript, this Court finds that Peterson's argument lacks merit because the record revealed that Mr. Reischmann appeared and presented arguments on behalf of Winter Park and not the CEB. Further, it appears that Mr. Reischmann's comments made at the hearing were to keep the CEB focused on the alleged violations that were before it. Also, it appears that Mr. Reischmann's comments were to ensure that Peterson's rights during the hearing were protected by advising the CEB that Peterson had the right to ask the code compliance officers questions and had the right to cross-

examine evidence introduced by Winter Park. Thus, this Court finds that Winter Park did not violate section 162.05(5), Florida Statutes.

Peterson's Second Argument: Peterson argues that his right to due process was violated by the CEB in allowing Winter Park's attorney to enter new evidence and testimony during the closed portion of the hearing over his objections as he was unable to review or cross examine the newly introduced evidence during the closed deliberations of the CEB.

From what this Court can gather from the hearing transcript, there was a discussion as to concerns about whether Peterson received notice about the trailer being in violation as a commercial trailer because the initial notice dated December 3, 2013 did not cite a violation for the trailer being commercial. Chief Hawkins claimed that after the initial citation was issued, she determined that the trailer was commercial and that she sent Peterson an e-mail informing him of this determination. Officer Porras then attempted to submit the e-mail document into evidence. At that point, Mr. Reischmann interjected himself to make it clear that Peterson had the right to cross-examine that evidence. Mr. Reischmann also kept the CEB focused only on those issues that were properly noticed. Thereafter, the discussion on this issue continued, but the transcript is unclear whether or not the email document was actually placed into evidence. Also, the e-mail document is not in the Appendix filed by Peterson. Lastly, even if the e-mail document was placed into evidence, any possible impact or consideration by the CEB of the e-mail became moot because the CEB ultimately determined that the trailer was recreational rather than commercial.

Peterson's Third Argument: Peterson argues that section 58-71 of the Code is unconstitutionally vague because it does not define "commercial vehicle," "recreational vehicle," "regular or constant parking," or "guest." This Court concurs with Winter Park's detailed analysis of this argument in its Answer Brief and finds as follows:

Parties may challenge the facial constitutionality of a statute or ordinance implemented against them by a code enforcement board in a direct appeal from the code enforcement board's decision. In this case, as discussed above, the CEB did not did not find that Peterson violated section 58-71(d) which pertains to the parking of commercial vehicles in residential districts. Thus, Peterson lacks standing to challenge the constitutionality of that section of the Code, specifically the phrases "commercial vehicle" and "regular or constant parking" contained therein.

Next, this Court addresses Peterson's claim that the terms "recreational vehicle" and "guest" in section 58-71(f) of the Code are vague. This section of the Code addresses the parking and storage of boats, trailers, and recreational vehicles in residential districts and states:

> (1) Boats, trailers of any type, ***recreational vehicles, as defined in state statutes (including campers, travel trailers and motor homes)*** and similar vehicles shall not be parked or stored within any residential district including public rights-of-way, except as hereinafter specifically permitted. Under no circumstances shall any boat, trailer or ***recreational vehicle*** be slept in or otherwise used for lodging or habitation while parked or stored within a residential district. [*Emphasis added*]
>
> (2) Boats and boat trailers may be parked if stored entirely within a carport, garage or enclosed structure. ***Recreational vehicles (including campers, travel trailers, and motor homes)*** and trailers (other than boat trailers) may be parked if stored entirely within a garage or other enclosed structure. As used herein, a garage or other enclosed structure shall mean a structure having at least 75 percent opaqueness. [*Emphasis added*]
>
> (3) Boats, trailers and ***recreational vehicles*** having an overall length of 32 feet or less may be parked in a private driveway within a residential district for an aggregate of not more than 24 hours during any one calendar week. [*Emphasis added*]

> (4) Boats, trailers and ***recreational vehicles*** may be parked or stored within side or rear lot areas of properties in residential districts provided no portion thereof shall be visible from the public right-of-way. [*Emphasis added*]
>
> (5) The parking of boats, trailers and ***recreational vehicles*** in side and rear lot areas is permitted only if fences, walls and landscape screening, including hedges, trees, etc., of heights necessary to substantially screen the view of the boat, trailer or ***recreational vehicle*** shall be constructed and planted so as to buffer adjacent residential properties. [*Emphasis added*]
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> (6) Residents may allow their ***guests*** to park a boat, trailer or ***recreational vehicle*** having a length of 32 feet or less for up to seven days in the driveway or behind the main structure of the lot on which it is parked, provided that the building official shall be notified no later than 24 hours after such vehicle is so parked. After seven days have passed, at least 30 days shall elapse before the same vehicle shall be permitted to park on the same lot for another seven days. [*Emphasis added*]

First, as to the term "recreational vehicles", Peterson contends that section 58-71 is unconstitutionally vague because it does not define the meaning of that term. This argument is negated by Peterson when he claimed at the hearing that the trailer was recreational and not commercial and argued the applicability of the exception in subsection 58-71(f)(6) that permits Winter Park residents to allow their guests to park a recreational vehicle on their property, provided that certain conditions are met. Thus, Peterson is precluded from challenging the facial constitutionality of the phrase "recreational vehicle."

Further, this Court finds that the language at the beginning of subsection 58-71(f)(1) that states: "Boats, trailers of any type, recreational vehicles, as defined in state statutes (including campers, travel trailers and motor homes)…" directs that the definition of the term recreational vehicles is to be consistent with Florida Statutes. Specifically, subsection 320.01(1)(b), Florida Statutes (2013), defines a recreational vehicle as follows: "A recreational vehicle-type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which

either has its own motive power or is mounted on or drawn by another vehicle..." Specifically and what appears applicable is this case, is the statutory definition of a travel trailer as follows:

> The "travel trailer," which is a vehicular portable unit, mounted on wheels, of such a size or weight as not to require special highway movement permits when drawn by a motorized vehicle. It is primarily designed and constructed to provide temporary living quarters for recreational, camping, or travel use. It has a body width of no more than 8 1/2 feet and an overall body length of no more than 40 feet when factory-equipped for the road.

§ 320.01(1)(b)1., Fla. Stat. (2013).

Lastly, Peterson contends that section 58-71 is unconstitutionally vague because it does not define the term "guest." This Court finds that the Code does not provide a specific definition for the term "guest," thus, the term should be construed in its plain and ordinary sense. *See Dadeland Depot, Inc. v. St. Paul Fire & Marine Ins. Co.*, 945 So. 2d 1216, 1225 (Fla. 2006); *Osorio, Sr. v. Board of Professional Surveyors and Mappers*, 898 So. 2d 188, 190 (Fla. 5th DCA 2005) (applying the plain and ordinary meaning of the statute). Further, the plain and ordinary meaning can be ascertained by reference to a dictionary. *See Orlando Regional Healthcare System, Inc. v. Florida Birth-Related Neurological*, 997 So. 2d 426, 431 (Fla. 5th DCA 2008).

Winter Park in its Answer Brief also addressed in detail the definition of the term "guest" as provided by the Merriam-Webster online dictionary as: "(a) a person entertained in one's house; (b) a person to whom hospitality is extended; and (c) a person who pays for the services of an establishment (as a hotel or restaurant)." As Winter Park correctly contends, all three of these dictionary definitions define guest as a "person" who physically appears or has been invited to appear at a place. None of the definitions define "guest" as an inanimate object or entity.

Further, the language in subsection 58-71(f)(6) of the Code provides a definite warning of what conduct is required or prohibited as measured by common understanding and practice

because it provides that guests while staying at the resident's house may park a boat, trailer, or recreational vehicle there for up to seven days in the driveway or behind the main structure of the house. After those seven days have passed, thirty more days must elapse before that same vehicle will be permitted to park on that same resident's lot for another seven days. *See Sieniarecki, v. State*, 756 So. 2d 68, 74 (Fla. 2000) (explaining that the standard for testing vagueness under Florida law is whether the statute gives a person of ordinary intelligence fair notice of what constitutes forbidden conduct; thus, the language of the statute must provide a definite warning of what conduct is required or prohibited, measured by common understanding and practice). Accordingly, this Court finds that section 58-71 of the Code is not unconstitutionally vague.

Peterson's Fourth Argument: Peterson argues that subsections 58-71(f)(3) and (6) of the Code violate his right to equal protection under the law: 1) by giving different rights to persons deemed guests over those persons who are not guests of the property owner and 2) because the CEB improperly applied the law by not considering that a "guest" can be a corporation as corporations have the same rights as persons under the law. This Court concurs with Winter Park's detailed analysis of this argument in its Answer Brief that includes the required criteria to apply when reviewing issues addressing violations under the Equal Protection Clause of the United States Constitution as addressed by the Court in *Leib v. Hillsborough County Pub. Transp. Com'n*, 558 F.3d 1301, 1305-1306 (11th Cir. 2009) as follows:

> The Equal Protection Clause requires the government to treat similarly situated persons in a similar manner. *Gary v. City of Warner Robins, Ga.*, 311 F.3d 1334, 1337 (11th Cir.2002). "When legislation classifies persons in such a way that they receive different treatment under the law, the degree of scrutiny the court applies depends upon the basis for the classification." *Id*. If a law treats individuals differently on the basis of race or another suspect classification, or if the law impinges on a fundamental right, it is subject to strict scrutiny. *Eide v. Sarasota County*, 908 F.2d 716, 722 (11th Cir.1990). Otherwise, the law need only have a rational basis—i.e., it need only be rationally related to a legitimate government purpose. *Id*.

> The rational basis test asks (1) whether the government has the power or authority to regulate the particular area in question, and (2) whether there is a rational relationship between the government's objective and the means it has chosen to achieve it. *Cash Inn of Dade, Inc. v. Metro. Dade County*, 938 F.2d 1239, 1241 (11th Cir.1991). This standard is easily met. As the Supreme Court has held, under rational basis review, a state "has no obligation to produce evidence to sustain the rationality of a statutory classification." *Heller v. Doe by Doe*,509 U.S. 312, 320, 113 S.Ct. 2637, 125 L.Ed.2d 257 (1993). Rather, a statute is presumed constitutional, and the burden is on the one attacking the law to negate every conceivable basis that might support it, even if that basis has no foundation in the record. *Id.* Under rational basis review, a court must accept a legislature's generalizations even when there is an imperfect fit between means and ends. *Id*.

As Winter Park correctly explains, cities have the right to adopt ordinances governing the parking and storage of vehicles within their jurisdiction on the basis that said ordinances protect the aesthetic appeal of a community, and therefore, are a valid exercise of a city's police power. In this case, Winter Park had the authority to exercise its police power to restrict the parking of trailers and recreational vehicles on residential property within its municipal boundaries. Thus, the first prong of the rational basis test is met.

Under the second prong of the rational basis test, this Court must examine whether there is a rational relationship between the government's objective and the means it has chosen to achieve it. From review of the record, Peterson failed to negate any basis supporting Winter Park's restriction on the parking and storage of trailers and recreational vehicles. Instead, he only claims that guests and those who are not guests of the property owner are treated differently. Thus, Peterson's argument fails to fulfill his burden to establish that subsections 58-71(f)(3) and (f)(6) of the Code violate the Equal Protection Clause. *See Miller v. State*, 971 So. 2d 951, 952-53 (Fla. 5th DCA 2007).

Further, in addressing Peterson's argument that the CEB improperly concluded that a corporation could not be deemed a guest under subsections 58-71(f)(3) and (f)(6) of the Code, this Court finds that the CEB properly exercised its authority to interpret the term "guest" in

accordance with its plain and ordinary meaning that would not lead to an unreasonable result. As Winter Park argues, it would be absurd to conclude that a vehicle owned by a business entity of which Peterson is an owner could be a guest on his property, particularly where he testified that all of his vehicles are owned by businesses. Lastly, a municipality's interpretation and application of applicable statutes, code ordinances, and other applicable regulations is entitled to great deference by the reviewing court and the court should not depart from the contemporaneous construction of such statutes and codes unless the construction is clearly erroneous. *See Verizon Florida, Inc. v. Jacobs*, 810 So. 2d 906, 908 (Fla. 2002).

Peterson's Fifth Argument: In this argument, Peterson claims that there was no evidence that he was using his residential property for commercial purposes or storing a trailer in a manner that was not consistent with the exceptions permitted by the Code. First, as stated above, the CEB did not make a finding that Peterson violated section 58-71(d) of the Code. Therefore, Peterson's argument is moot as to his claim that there was no evidence that he was using his property for commercial purposes.

Next, this Court addresses Peterson's claim that there was no evidence that he was storing a trailer in violation of section 58-71(f) the Code. Under section 58-71(f), no boats, trailers of any type, recreational vehicles, as defined in state statutes (including campers, travel trailers and motor homes), or similar vehicles can be parked or stored within any residential district including public rights-of-way in the City, unless one of the exceptions set forth in subsection 58-71(f) is met. Peterson claims that the exceptions set forth in subsections 58-71(f)(3) and (f)(6) both applied, and therefore, the trailer lawfully remained on his property for more than 24 hours.

First, subsection 58-71(f)(3) only allows for boats, trailers and recreational vehicles to be parked in a driveway not more than 24 hours during a calendar week. Based on the testimony and other evidence provided by Chief Hawkins and Officer Porras, Peterson was cited for violating section 58-71(f) because the trailer first appeared on his property on December 3, 2013 and remained there until at least some time on December 6, 2013. Thus, the evidence supports that the trailer remained on the property for more than 24 hours. Next, the exception in subsection 58-71(f)(6) provides that a boat, trailer, or recreational vehicle may be parked for up to seven days in the driveway or behind the main structure of the lot provided that the boat, trailer, or recreational vehicle belongs to a "guest." As discussed above, the CEB rejected Peterson's argument that the trailer was owned by a guest and the CEB's ruling was supported by Peterson's testimony that: 1) He had a minority interest in the ownership of the business entity that the trailer was titled to; 2) All of his vehicles were titled in the name of a business entity; and 3) He didn't have any vehicles that were not owned by a business entity.

The CEB as the finder of fact was responsible for weighing the evidence, including the credibility and demeanor of witnesses. Thus, this Court cannot go further to reweigh evidence and make findings of fact. *City of Deland v. Benline Process Color Company, Inc.*, 493 So. 2d 26, 28 (Fla. 5th DCA 1986) (holding that a circuit court acting in its appellate capacity departs from the essential requirements of law when it reevaluates the credibility of evidence or reweighs conflicting evidence that was before the administrative agency). "It is neither the function nor the prerogative of a circuit judge to reweigh evidence and make findings [of fact] when [undertaking] a review of a decision of an administrative forum." *Dep't of Highway Safety & Motor Vehicles v. Allen*, 539 So. 2d 20, 21 (Fla. 5th DCA 1989). "As long as the record contains competent substantial evidence to support the agency's decision, the decision is presumed lawful

and the court's job is ended." *Dusseau v. Metropolitan Dade County Board of County Commissioners*, 794 So. 2d 1270, 1276 (Fla. 2001). Therefore, based on the record, this Court finds that there was competent substantial evidence to support the CEB's findings and decision that Peterson violated section 58-71(f) of the Code and that none of the exceptions applied.

Conclusion

Based on the foregoing, this Court finds that Peterson was provided due process of law and the CEB's findings and ruling did not depart from the essential requirements of the law and were based on competent substantial evidence.

Therefore, it is hereby **ORDERED AND ADJUDGED** that the City of Winter Park Code Enforcement Board's "Findings of Fact, Conclusions of Law, and Order" ("Order") entered December 31, 2013 is **AFFIRMED** in part and **REVERSED** in part as follows:

1. The language in section I.G. of the Order that states: "The violation: Commercial use of a residential property and parking/storage of a trailer." and the language in section III of the Order that states: "Cease the use of the residential property as commercial." is **STRICKEN**.

2. The remainder of the Order is **AFFIRMED**.

3. This Court finds section 58-71(f) of the City of Winter Park Land Development Code is constitutional.

4. Per this Court's Final Order, the City of Winter Park Code Enforcement Board is directed to enter an amended order that does not include the stricken language.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 17th day of November, 2014.

/S/
RENEE A. ROCHE
Presiding Circuit Judge

O'KANE and APTE, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order was furnished to: **Jon Christian Peterson, Jr.**, 2150 Via Tuscany, Winter Park, Florida 32789; **Erin J. O'Leary, Esquire and William E. Reischmann, Esquire**, Brown, Garganese, Weiss & D'Agresta, P.A., 111 North Orange Avenue, Suite 2000, Orlando, Florida 32801, on this 17th day of November, 2014.

/S/
Judicial Assistant