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

ELAINE MORRIS, TRUSTEE,
TRULIET INVESTMENTS, LLC

CASE NO.: 2014-CV-52-A-O

Appellant,

v.

CITY OF ORLANDO, FLORIDA

Appellee.

___________________________________/

Appeal from a decision of the
Code Enforcement Board,
Orlando, Florida.

Elaine Morris, *pro se*,

Victoria Cecil Walker, Esquire, Assistant City Attorney,
for Appellee.

Before MYERS, WHITEHEAD, J. KEST, J.J.

PER CURIAM.

FINAL ORDER AND OPINION AFFIRMING FINAL JUDGMENT

Appellant, Elaine Morris, appeals from the order of the City of Orlando Code Enforcement Board ("Board"), dated July 9, 2014, which found her to be in violation of sections 58.103, City of Orlando's Land Development Code, and 36.02(1), City of Orlando's Business Tax Code. This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1)(C); and section 162.11, Florida Statutes (2014).

Facts and Procedural History

Appellant is the owner of property located at 31 North Tampa Avenue, Orlando, Florida, in the Lorna Doone neighborhood. On March 19, 2014, Inspector Wharton, a Code Enforcement Officer for the City of Orlando, inspected the property and cited it for violating sections 58.103, City of Orlando's Land Development Code, and 36.02(1), City of Orlando's Business Tax Code. Appellant was given until March 31, 2014 and March 26, 2014, respectively, to take corrective action. She did not do so.

On July 9, 2014, a Code enforcement hearing was held regarding the violations on the property. The violation of section 58.103 was for converting a structure without obtaining zoning approval and building permits. Specifically, the property had been converted into a school, but a final inspection was never conducted. The violation of section 36.02(1) was for the lack of a business tax receipt in conducting the school. Appellant represented herself at the hearing. Inspector Wharton testified and presented evidence of the violation at the hearing. Appellant testified on her own behalf, arguing that she did not receive the requested clarifications as to the violations and that a final inspection had been performed. Inspector Wharton, however, argued that there had been a partial inspection that was approved, but that the final inspection had not occurred, resulting in the violation. Based upon the testimony and arguments heard at the hearing, the Board entered an order finding Appellant in violation of the Code for the violations charged against her. This required Appellant to cure the violations of sections 58.103 and 36.02(1) by August 8, 2014 and July 16, 2014, respectively, or pay a penalty of $100 for every day of noncompliance on each violation. This appeal followed.

Standard of Review

When reviewing a decision by a code enforcement board, 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 Deland v. Benline Process Color Co., Inc.*, 493 So. 2d 26, 28 (Fla. 5th DCA 1986) (quoting *City of Deerfield Beach v. Valliant*, 419 So. 2d 624 (Fla. 1982)). Also, according to section 162.11, Florida Statutes (2014), a circuit court reviewing a final administrative order of an enforcement board cannot engage in *de novo* review, and it shall limit its review to "the record created before the enforcement board."

Analysis

On appeal, Appellant argues that 1) she was denied procedural due process due to a lack of clarification, confusion of citations, denial of closing statement at hearing, withholding of facts, denial of opportunity to contest fines and liens, and short time frames for complying with citations; 2) essential requirements of law and competent substantial evidence were lacking at the hearing; 3) Inspector Wharton's testimony conflicted with the compliance schedule submitted; 4) the defenses of equitable estoppel and laches should be considered; 5) she was cited for the same offense twice; and that 6) the fines imposed upon her were grossly disproportionate to the severity of the offenses. Conversely, Appellee argues that the order is supported by competent substantial evidence and the essential requirements of the law have been observed because the Code was not misapplied.

The amount of due process required in a quasi-judicial hearing "is not the same as that to which a party to a full judicial hearing is entitled, and such hearings are not controlled by strict

rules of evidence and procedure." *Seminole Entm't, Inc. v. City of Casselberry,* 811 So. 2d 693, 696 (Fla. 5th DCA 2001) (citing *Lee County v. Sunbelt Equities, II, Ltd. Partnership,* 619 So. 2d 996, 1002 (Fla. 2d DCA 1993)). In general, a quasi-judicial hearing meets "basic due process requirements if parties are provided notice of hearing and opportunity to be heard." *Jennings v. Dade County,* 589 So. 2d 1337, 1340 (Fla. 3d DCA 1991). The parties "must be able to present evidence, cross-examine witnesses, and be informed of all the facts upon which the commission acts." *Id.* (citing *Coral Reef Nurseries, Inc. v. Babcock Co.,* 410 So. 2d 648, 652 (Fla. 3d DCA 1982)). When reviewing a code enforcement board decision in its appellate capacity, the circuit court may not reweigh the evidence or substitute its judgment for that of the Board. *City of Deland v. Benline Process Color Co., Inc.*, 493 So. 2d 26 (Fla. 5th DCA 1986).

Appellant does not contest that she was given notice of hearing; however, she contends that she was not given a meaningful opportunity to be heard. She argues that she was denied procedural due process as Inspector Wharton did not respond to two letters she sent him inquiring about the violations, and that this led to withholding of evidence and her inability to properly cross-examine and prepare for the hearing. The record reflects that she did not make any efforts to receive information other than sending these letters, as Inspector Wharton testifies that he had never spoken to Appellant before this hearing. Additionally, she had the opportunity to present evidence to the Board and did so by arguing that the violations should have been addressed to the tenant, not her as the owner. She also claims that she was denied the opportunities to contest the fines and to make a closing statement. However, the record reflects that she did not attempt to inquire about the fines and never asked any questions about how the amounts were determined. Additionally, while brief opening and closing statements are permitted, this is not a case where Appellee was afforded an opportunity of which Appellant was

deprived or even where Appellant attempted to make a closing statement and was denied that right. Appellant was afforded due process throughout the entirety of these proceedings.

Appellant argues that the Board deviated from the essential requirements of law and that competent substantial evidence was lacking as Inspector Wharton did not provide a report of his inspection or the complaint from which his inspection stemmed. It is not this Court's burden to determine if the hearing officer made the best, right, or wise decision, but instead is whether the hearing officer made a lawful decision. *Dusseau v. Metropolitan Dade County Board of County Commissioners*, 794 So. 2d 1270, 1276 (Fla. 2001). Here, Inspector Wharton submitted undisputed photographs and compliance schedules that were accepted into evidence, as well as provided testimony as to the violation. Additionally, the record reflects a statement of violation, dictating the results of the inspection and informing Appellant of the violations and the associated hearing. After this initial offer of evidence, Appellant was entitled to present evidence disproving the Code violations. Appellant provided letters and copies of return mailing receipts to show that she had inquired about the violations, but did not provide evidence to refute Inspector Wharton's evidence. The essential requirements of law were not violated because the current Code provisions were correctly applied to Appellant and the Court finds that there was competent and substantial evidence to support the Code violation.

Appellant argues that Inspector Wharton's testimony as to her lack of a full final inspection is in conflict with the citation which states the violation as not obtaining zoning approval and building permits. In order to obtain zoning approval and a building permit, there has to be compliance with the Code, resulting in the need for a final inspection. § 65.271, Code of the City of Orlando. Inspector Wharton's testimony reflects that an inspection did not take place and so it was impossible to obtain zoning approval and a building permit, thereby resulting

in a violation. Appellant did not attempt to refute this testimony or provide evidence that a final inspection was performed. Therefore, Inspector Wharton's testimony was not in conflict with the citation.

Appellant argues the defenses of equitable estoppel and laches. However, this is not the appropriate venue as Appellant did not previously raise these issues. Under Florida law, Appellant cannot raise an issue on appeal that she did not raise before the Board. *Jackson v. Whitmire Constr. Co.*, 202 So. 2d 861, 862 (Fla. 2d DCA 1967); *see also Dober v. Worrell*, 401 So. 2d 1322 (Fla. 1981).

Appellant argues that she was charged for the same offense twice, alluding to a civil equivalent of double jeopardy protection. She claims that each violation had the same elements and applied to the same property. However, that is an inaccurate statement of the offenses. The violation of section 36.02(1) was a failure to obtain a business tax receipt which would be necessary for the business activities, whereas the violation of section 58.103 was related to zoning approval for the physical property on which the business was located. These are two separate and different offenses. Additionally, this is not an issue that was raised before the Board and therefore cannot be raised for the first time on appeal. *Id.*

Lastly, Appellant argues that the fines were disproportionate to the severity of her offenses. The fines imposed upon Appellant are within the statutory limits found in section 162.09, Florida Statutes. Additionally, Chapter 162, Florida Statutes, provides a violator with procedures to challenge the imposition, validity, and amount of the fine assessed. *See* § 162.09, Fla. Stat. Appellant had the opportunity to question the amount during her hearing and failed to do so. At no point prior to the filing of this appeal did Appellant object to the amount of the fines. As this is an issue that is being raised for the first on appeal, it cannot be heard. *Id.*

Accordingly, it is hereby **ORDERED AND ADJUDGED** that the City of Orlando's Code Enforcement Board's "Findings of Fact, Conclusions of Law, and Order" is **AFFIRMED.**

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida on this 19th day of February, 2015.

/S/ ______________________________
Donald A. Myers, Jr.
Presiding Judge

WHITEHEAD and J. KEST, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to **Elaine Morris,** ***pro se,*** P.O. Box 680752, Orlando, Florida 32868; and **Victoria Cecil Walker, Esq., Assistant City Attorney**, 400 S. Orange Avenue, Orlando, Florida 32801, as counsel for Appellee, on the 20th day of February, 2015.

/S/ ______________________________
Judicial Assistant