

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
IN AND FOR MONROE COUNTY, FLORIDA
APPELLATE DIVISION

DENISE JOY SNYDER
LIVING TRUST,

Appellant,

Case No.: 24-AP-003-K

L.T. Case No.: CE23070007

vs.

MONROE COUNTY, FLORIDA

Appellee.

_____ /

OPINION

THIS CAUSE comes before the Court upon a Notice of Appeal filed by Appellant, Denise Joy Snyder Living Trust, appealing a Final Order entered by the Monroe County Code Compliance Special Magistrate on December 11, 2023. The Court, having considered the Appellant's Initial Brief, Monroe County, Florida ("Appellee's") Answer Brief, the record, the argument of counsel, pertinent legal authority, and being otherwise fully advised in the premises, finds and orders as follows:

I. BACKGROUND

Appellant owns the subject property located at 19617 Date Palm Drive, Sugarloaf Key, Florida. (Appellant's App. 024). The subject property is a vacant lot which is zoned for residential use. (*Id.*; Tr. at 6). On June 9, 2022, Appellant obtained documentation from an arborist certified by the International Society of Arboriculture (ISA) detailing that the subject property contained tree species which posed a danger to persons or property. (Appellant's App. 001). After obtaining documentation from the

(ISA)-certified arborist under section 163.045, Florida Statutes, Appellant removed the trees from the subject property without obtaining a permit. (Appellant's App. 016). On July 1, 2022, the Legislature amended section 163.045, Florida Statutes, to define "residential property" as "a single-family, detached building located on a lot that is actively used for single-family residential purposes..." Fla. Stat. § 163.045 (2022).

After inspecting the subject property on July 12, 2023, the Code Compliance Department issued Appellant a "Notice of Violation/Notice of Hearing" for the following violations of the Monroe County Code ("MCC"):

MCC § 118-11 - ENVIRONMENTAL RESTORATION
UNAUTHORIZED VEGETATION REMOVAL HAS
OCCURRED IMPACTING THE NATURAL CONDITION
OF THE LOT.

MCC § 17-6(b)(3) - VEHICLES ON VACANT LOTS
THE RECREATIONAL VEHICLE MAY ONLY BE PARKED
ON THE SAME LOT OR CONTIGUOUS LOT WITH A
PRINCIPAL STRUCTURE.

MCC § 6-100.(a) - PERMITS REQUIRED
PERMIT(S), APPROVAL(S), AND ALL INSPECTIONS
ARE REQUIRED FOR THE CLEARING.

MCC § 6-110.(a)(4) - LAND CLEARING COMMENCED
PRIOR TO THE ISSUANCE OF A PERMIT OR
APPROVAL BY THE BUILDING OFFICIAL IS
SUBJECT TO AFTER-THE-FACT FEES.

On September 28, 2023, a hearing took place before the Code Compliance Special Magistrate. During the hearing, the Monroe County Assistant Director for Environmental Resources ("Assistant Director") testified that Appellant did not obtain the required permits before clearing vegetation on the subject property and that Appellant must restore the

native vegetation. (Tr. at 6). Additionally, the Assistant Director testified that Appellant did not qualify for the exception to the permit requirement under section 163.045 because the exception only applies to residential properties. (Tr. at 7). Jeffrey Snyder appeared on behalf of Appellant and contested the violations by testifying that he acquired documentation from an (ISA)-certified arborist before the Legislature amended section 163.045 in July 2022 to exclude vacant lots from the definition of “residential property.” (Tr. at 8). In response, Monroe County’s counsel argued that Appellant cannot claim the exception to the permit requirement under the previous version of the statute because a vacant lot is not a residential property. (Tr. at 12). Appellant did not contest the Code Inspector’s finding that Appellant parked an RV on the subject property in violation of MCC § 17-6(b)(3) and corrected the violation prior to the compliance date of November 7, 2023. (Tr. at 10; Appellee’s Brief at 8). At the conclusion of the hearing, the Special Magistrate took the matter under advisement.

On December 11, 2023, the Special Magistrate entered a Final Order affirming the Code Compliance Department’s Notice of Violation/Notice of Hearing and finding Appellant cleared trees on the subject property without a permit in violation of MCC sections 118-11, 6.100.(a), and 6-110.(a)(4). (Appellant’s App. at 002-004). The Special Magistrate found that although Appellant presented a report from an arborist, the exception to the permit requirement under section 163.045 did not apply because the subject property is a vacant lot and is not a residential property. *Id.* In doing so, the

Special Magistrate ordered the Appellant to bring the subject property into compliance by making the corrections required in the Notice of Violation/Notice of Hearing. *Id.* The Special Magistrate imposed a fine of \$200 per day if Appellant did not correct the violations before 05/29/24. *Id.* This appeal of the Special Magistrate's Final Order followed.

II. STANDARD OF REVIEW

Pursuant to Fla. Stat. § 162.11, the Circuit Court sitting in its appellate capacity has jurisdiction to review code enforcement final orders. *Central Florida Investors v. Orange County*, 295 So. 3d 292 (Fla. 5th DCA 2019). "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." Fla. Stat. § 162.11. When an appeal is taken from the final administrative order of a local enforcement board, the circuit court has plenary appellate review of the record before the enforcement board. *Id.* at 294; § 162.11 Fla. Stat. This includes the jurisdiction to consider and resolve constitutional issues as part of a code enforcement appeal. *Key Haven Associated Enterprises, Inc. v. Board of Trustees of Internal Improvement Trust Fund*, 427 So. 2d 153, 157 (Fla. 1982). "[O]n appeal, all errors below may be corrected; jurisdictional, procedural, and substantive. *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 526 n. 3 (Fla. 1995). The Court engages in a three-part standard of review to determine: (1) whether due process was accorded; (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.” *Id.* at 530. Neither party raised the issue of procedural due process and it is not at issue in this appeal.

III. DISCUSSION

Adherence to the Essential Requirements of Law

Appellant seeks review of the Special Magistrate’s Final Order on grounds that the Special Magistrate incorrectly applied the law by holding that Appellant could not invoke the exception to the permit requirement under the pre-amended version of section 163.045.

Review by appeal requires the court to consider whether the correct law was applied and whether the law was correctly applied. See *Central Florida Investors*, 295 So. 3d at 295.

In this case, the Special Magistrate’s Final Order departed from the essential requirements of law by holding that vacant lots do not qualify as residential property under the pre-amended version of section 163.045. Prior to the amendment which took effect on July 1, 2022, section 163.045(1) provided as follows:

A local government may not require a notice, application, approval, permit, fee, or mitigation for the pruning, trimming, or removal of a tree on residential property if the property owner obtains documentation from an arborist certified by the International Society of Arboriculture or a Florida licensed landscape architect that the tree presents a danger to persons or property.

Under the pre-amended version of section 163.045, “residential property” included vacant property zoned for residential use. See *Vickery v. City of Pensacola*, 342 So. 3d 249, 255 (Fla. 1st DCA 2022) (“Residential property” is property zoned for residential use or, in areas that have no zoning, property used for the same purposes as property zoned for residential use. To hold otherwise would ignore the term’s common use and improperly limit section 163.045(1).”). Although the subject property is a vacant lot, it qualified as residential property under the pre-amended version of section 163.045 because it remains zoned for residential use.

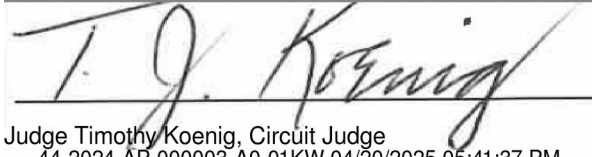
Therefore, the Special Magistrate’s Final Order departed from the essential requirements of law because Appellant complied with the statute by obtaining documentation from the (ISA)-certified arborist before July 1, 2022, and thus qualified for the exception to the permit requirement under the pre-amended version of section 163.045.

IV. CONCLUSION

In this case, the Final Order of the Special Magistrate is **AFFIRMED in part** and **REVERSED in part** as follows:

1. The finding of violation as to MCC § 17-6(b)(3) is **AFFIRMED**.
2. The finding of violation as to MCC sections 118-11, 6.100.(a), and 6-110.(a)(4) is **REVERSED**.

DONE AND ORDERED in Key West, Monroe County, Florida.
Sunday, April 20, 2025

A handwritten signature in black ink, reading "T. J. Koenig", is written over a horizontal line.

Judge Timothy Koenig, Circuit Judge

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