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

APPELLATE DIVISION

MARY L. BARLEY FAMILY TRUST 1/10/1996,

Appellant, Case No.: 23-AP-18-P

L.T. Case No.:
CEBFGC20230000134

v.

ISLAMORADA VILLAGE OF ISLANDS,

Appellee.
_____/

APPELLATE OPINION

THIS CAUSE comes before the Court upon the Appellant's Notice of Appeal of an Order Imposing Civil Penalties Upon Default issued by the Islamorada, Village of Islands (the "Village") Code Compliance Hearing Officer on December 4, 2023. The Court, having considered the Appellant's Initial Brief, the Appellee's Answer Brief, Appellant's Reply, the record, pertinent legal authority, and being otherwise fully advised in the premises, finds and orders as follows:

I. BACKGROUND

Appellant owns a parcel of real property in Islamorada, Florida, that adjoins a right-of-way owned by the Village. Over time, Appellant has made improvements to the Village's right-of-way including the installation of a propane tank and construction pavers. On April 20, 2023, the Village issued a courtesy letter to the Appellant stating that the propane tank and the pavers placed and constructed in the Village's right-of-way violated provisions of the Islamorada Code of Ordinances ("Code"). The letter

advised the Appellant to take corrective measures by applying for and obtaining an after-the-fact permit and requesting required inspections to finalize the permit within ten (10) days. (App. Tab 1).

Appellants were issued a formal Notice of Violation issued on May 4, 2023, citing violations of Village Code Section 50-24(a), entitled "permit required" and Section 6-61(a), entitled "work requiring building permit". (App. Tab 2). On October 10, 2023, a hearing took place before a Code Compliance Hearing Officer for the Village. The Hearing Officer continued the hearing until November 14, 2023, to get further information about possible permits for the propane tank and/or pavers.

At the hearing on November 14, 2023, Ms. De La Sierra, the Code Compliance Officer, testified that "no permits [had] been issued for the propane tank," and that "one permit was issued for a paver walkway," but she found no evidence that the inspection had been conducted and passed for the pavers. (App. Tab 4 at P. 91). At the conclusion of the hearing, the Hearing Officer ruled that he would enter an order affirming the notice of violation and give Appellant 120 days to come into compliance before imposing civil penalties. (App. Tab 4 at P. 107).

On December 4, 2023, the Hearing Officer entered an "Order Imposing Penalties Upon Default" affirming the decision of the Code Compliance Officer and finding Appellant in violation of Sections 6-61(a) and 50-24(a) of the Village Code. (App. Tab 5). This appeal of the Hearing Officer's 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. *Cent. Fla. Invs. v. Orange Cty.*, 295 So. 3d 292, 294 (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*. "[O]n appeal, all errors below may be corrected; jurisdictional, procedural, and substantive. *Cent. Fla. Invs.* at 295 (*quoting Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 526 n. 3 (Fla. 1995)).

When reviewing local government administrative action, 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." *Haines*, 658 So. 2d at 530.

III. DISCUSSION

In this case, Appellant seeks review of the Final Order based on the following arguments: (1) the Hearing Officer failed to make written findings of fact related to the Appellant's defenses of estoppel, laches, and selective enforcement, rendering the order noncompliant with statutory and regulatory requirements and departing from the essential requirements of law; (2) the Hearing Officer erroneously imposed the burden of proof on the Appellant rather than the Code Enforcement Officer; and (3) the Hearing Officer's findings are not supported by competent substantial evidence.

A. Sufficiency of Findings

Appellant argues that the Hearing Officer departed from the essential requirements of law because the Hearing Officer failed to consider and/or

make any findings related to Appellant's defenses of estoppel, laches, and selective enforcement.

A circuit court reviewing an agency action looks to whether the agency "applied the correct law," which is synonymous with "observing the essential requirements of law." *Haines*, 658 So. 2d at 530. "A ruling constitutes a departure from the essential requirements of law when it amounts to 'a violation of a clearly established principle of law resulting in a miscarriage of justice.'" *Miami-Dade Cty. v. Omnipoint Holdings, Inc*. 863 So. 2d 195, 199 (Fla. 2003) (quoting *Combs v. State*, 436 So. 2d 93, 96 (Fla. 1983)).

The Village Code requires that "[t]he code compliance officer shall make findings of fact and conclusion of law based on evidence of record." § 2-118(k). Likewise, the Local Government Code Enforcement Boards Act requires "findings of fact, based on evidence of record and conclusions of law…affording the proper relief." §162.07(4), Fla. Stat. While neither the Act nor the Code mandates any specific amount of detail, the Hearing Officer is required to make basic findings supported by the evidence. *Hayes v. Monroe County*, 337 So. 3d 442, 445 (Fla. 3d DCA 2022). Detailed written findings may not be necessary, but the Appellant is entitled to notice of the specific findings of fact upon which the ultimate action is taken. *Borges v. Dep't of Health,* 143 So. 3d 1185, 1187 (Fla. 3d DCA 2014).

In this case, the Hearing Officer issued a perfunctory order affirming the decision of the Code Compliance Officer and finding "the Violator to be in violation of Section 6-61(a) of the Village Code entitled 'Work requiring building permit' and Section 50-24(a) of the Village Code entitled 'Permit required' of the Village Code. (App. Tab 5). Appellant argues that these findings are insufficient and depart from the requirements of Chapter 162

and the Village Code. Appellant argues that the Hearing Officer should have considered Appellant's defenses of estoppel, laches, and selective enforcement, and the failure to do so renders the order noncompliant with statutory and regulatory requirements.

At the code enforcement hearing, the Hearing Officer allowed Appellant's counsel to raise the defense of laches, but questioned its relevance stating: "I mean, to me, the question is simply whether or not permits were obtained for this work, and if not, whether there is a violation of the code." (App. Tab 3 P. 22 lines 11-13). The Hearing Officer failed to address Appellant's selective enforcement defense stating that he was from out of town and did not have personal knowledge of the facts forming the defense. (App. Tab 3 P. 21). As to the estoppel defense, the Hearing Officer stated, "I don't find that the estoppel argument is valid here, but it presents an interesting case of fairness, like you mentioned that it has been so long and it's been sitting in the right of way for many, many, many years, in excess of 20." (App Tab 4 P. 106 lines 10-15). The Hearing Officer stated that "it really comes down to compliance" and ultimately affirmed the decision of the code compliance officer. (App. Tab 4 Pp. 108-109). The Final Order does not address any of Appellant's defenses.

The Village argues that the Village Code limits the fact-finding determination to "whether the alleged violation occurred" and thus, the Hearing Officer did not depart from the essential requirements of law by failing to rule on the Appellant's affirmative defenses. The Village cites Section 2-118(l) of the Code which states as follows:

> The fact-finding determination of the code compliance hearing officer shall be limited to whether the alleged violation occurred, and, if so, whether the person named in the notice may be held responsible for that

> violation. Based upon this factfinding determination, the code compliance hearing officer shall either affirm or reverse the decision of the code compliance officer. If the code compliance hearing officer reverses the decision of the code compliance officer and finds the named violator not responsible for the code violation alleged in the notice, the named violator shall not be liable for the payment of any fine or costs, absent reversal of the code compliance hearing officer's findings on appeal pursuant to section 2-121.

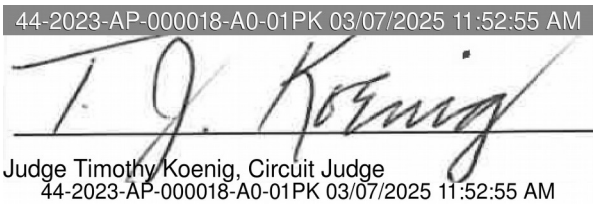
While the Village correctly notes that Section 2-118(l) requires the Hearing Officer to determine if a violation occurred, this interpretation overlooks the latter part of subsection (l) which mandates that if a violation is found, the Hearing Officer must determine "whether the person named in the notice may be held responsible for that violation." Consideration of affirmative defenses would be relevant to this determination because an affirmative defense, if proven, can negate or reduce the violator's responsibility.

This case is analogous to *Hayes v. Monroe County,* where the homeowners argued that enforcement of the Code was barred by estoppel and laches, but "[e]fforts to develop these defenses were redirected by the Magistrate" and factual and legal findings did not accompany the Special Magistrate's decision. 337 So. 3d at 444. That case revolved around "the core concern that the magistrate failed to consider the doctrines of estoppel and laches as defenses to the Code violations." *Id*. at 445. The Third District Court of Appeal determined that the lack of factual findings by the Magistrate rendered the order statutorily and regulatorily noncompliant, which, in turn, obfuscated the issue of whether the Magistrate considered estoppel and laches or considered himself absolved from doing so. *Id*. at 445. The Court noted, "such defenses are conclusive, allowing the decision to stand threatens to compromise the very due process the regulatory and

statutory scheme strives to afford." *Id*. at 446. The Court held that the Circuit Court should have required written findings and quashed the decision affirming the code enforcement order. *Id.*

The failure to make sufficient findings of fact and conclusions of law in this case undermines principles of due process and constitutes a departure from the essential requirements of law. The failure to make written findings of fact and conclusions of law on the affirmative defenses cannot be remedied by the reviewing court. See *Id*. (error to place the "reviewing Circuit Court in the *de facto* position of performing the Special Magistrate's statutory duty of issuing findings of fact and conclusions of law.") Therefore, the matter is **REVERSED** and **REMANDED**.

DONE AND ORDERED in Key West, Monroe County, Florida this Friday, March 7, 2025



Judge Timothy Koenig, Circuit Judge
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