

IN THE CIRCUIT COURT OF THE 16<sup>th</sup> JUDICIAL CIRCUIT OF  
THE STATE OF FLORIDA, IN AND FOR MONROE COUNTY,

APPELLATE DIVISION

Case No.: 22-AP-03-K

L.T. Case No. CE19070109

TRAVIS J. MANTER,

Appellant,

v.

MONROE COUNTY, FLORIDA

Appellee.

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### **OPINION**

**THIS CAUSE** comes before the Court upon the Appellant, Travis Manter's, "Notice of Administrative Appeal" filed on April 22, 2022. The Court, having considered the Appellant's Notice of Appeal, the Answer Brief of Monroe County, pertinent legal authority, and being otherwise fully advised in the premises, finds and orders as follows:

#### **I. BACKGROUND**

Appellant is the owner of property located at 31581 Avenue A, Big Pine Key, Florida (hereinafter the "subject property"). The subject property has a dock that was damaged during Hurricane Irma and that was subsequently deemed unsafe by the Building Official. A Notice of Violation of Monroe County Code ("MCC") section 6-27(b)(2)b: Unsafe /Structural

Deterioration of Pier's Structure or Structural Parts, was issued, and a hearing was held before a Special Magistrate on February 27, 2020. In the Final Order entered on February 27, 2020, the Special Magistrate found the subject property to be in violation of MCC 6-27(b)(2)b and directed Appellant to correct the violation no later than May 27, 2020, or be penalized \$100.00 per day with the fine continuing to accrue until the date of compliance.

The subject property was not brought into compliance by May 27, 2020. However, the County suspended the fine until December 31, 2020, due to Appellant's efforts to bring the subject property into compliance. The dock permit process took many months. The daily fine began accruing on January 1, 2021. The dock permit was issued on May 27, 2021, and the subject property was deemed compliant as of July 19, 2021. By this time, the daily fine had accrued for 199 days, amounting to a total fine of \$19,900.00. Additionally, the County sought to recover costs incurred for prosecuting the case in the amount of \$1,246.78. Thus, the total amount owed was \$21,146.78.

On January 27, 2022, this case came before the Special Magistrate upon the Appellant's written request for a reduction in fines arising from the Final Order entered on February 27, 2020. At the mitigation hearing, the Special Magistrate heard testimony from both the County and the Appellant and took the matter under advisement. On March 24, 2022, the Special Magistrate entered an Order Imposing Fine in the amount of

\$1,990.00 for the violations previously found to exist on the subject property and ordering Appellant to pay \$1,246.78 in costs for a total of \$3,236.78.

On April 22, 2022, Appellant filed this “Notice of Administrative Appeal” seeking to “remove the fines, fees, costs, and/or lien on my property over this code violation on the dock.”

## **II. STANDARD OF REVIEW**

Pursuant to section 162.11, Florida Statutes, 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.” § 162.11, Fla. Stat. 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.

## **III. DISCUSSION**

The Appellant appears to be seeking review of both the Final Order finding the violation of MCC 6-27(b)(2)b entered on February 27, 2020, as well as the Order Imposing Fine entered on March 24, 2022. The challenge to the Final Order is untimely, and the Court finds no error that would warrant granting an appeal of the Order Imposing Fine.

### **I. The Final Order**

Appellant asserts that he should not have been fined because the code violation “was by no fault of my own.” However, any attack on the underlying violation established in the Final Order is untimely. If Appellant disagreed with the finding of violation, the proper recourse was to appeal the Final Order pursuant to section 162.11, Florida Statutes. The Appellant did not timely appeal the Special Magistrate’s Final Order, and therefore, Appellant cannot now challenge the findings therein in this action.

## **II. The Order Imposing Fine**

Appellant requests the Court to remove the fines imposed in the Order Imposing Fines but does not specifically identify any alleged error. The Court will review the Order to 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. *See Dusseau v. Metropolitan Dade County Board of County Commissioners*, 794 So. 2d 1270 (Fla. 2001).

### **A. Due Process**

Procedural due process requires fair notice and a real opportunity to be heard. *Keys Citizens for Responsible Gov’t, Inc. v. Fla. Keys Aqueduct Auth.*, 795 So. 2d 940, 948 (Fla. 2001). In this case, due process was afforded to the Appellant. The Appellant requested a mitigation hearing and was afforded a hearing before the Special Magistrate. Appellant was also given the opportunity to submit additional documentation that was considered by the Special Magistrate in determining the appropriate fine.

### **B. Essential Requirements of Law**

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 City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995). In this case, the Special Magistrate applied the correct laws and correctly applied those laws.

Section 162.09(2)(b), Florida Statutes, and MCC section 8-31(b) require a code enforcement board determining the amount of a fine to consider: 1) the gravity of the violation, 2) any actions taken by the violator to correct the violation, and 3) any previous violations committed by the violator. MCC 8-31(d) provides six enumerated factors for consideration in mitigating fines. In the Order Imposing Fine, the Special Magistrate explicitly states that he has carefully considered all of these factors in determining the amount of the fine to be imposed in this case.

### **C. Competent Substantial Evidence**

In code enforcement cases, a magistrate’s findings will not be disturbed if they are based on competent substantial evidence. *Monroe County v. Carter*, 41 So. 3d 954, 957 (Fla. 3d DCA 2010). Competent substantial evidence is evidence that “will establish a substantial basis of fact from which the fact at issue can be reasonably inferred [and] such relevant evidence as a reasonable mind would accept as adequate to support a conclusion.” *DeGroot v. L.S. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957). In this case, there is sufficient evidence supporting the Special Magistrate’s decision to grant relief and substantially reduce the fine. In the Order Imposing Fine, the Special Magistrate lays out the timeline of events, noting the efforts taken by the Appellant to correct the violation and the hardships faced during this process. The Special Magistrate notes additional factors weighing in favor of mitigation including financial hardship and the Appellant’s status as a caretaker for a disabled minor.

Appellant and the County also provided testimony as to the enumerated factors to be considered.

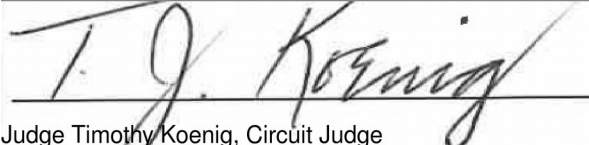
The evidence presented to the Special Magistrate addressed all of the enumerated statutory factors, including additional factors and hardships that may be considered. The Special Magistrate considered this evidence in light of the enumerated factors. The evidence supports the Special Magistrate's decision.

#### **IV. CONCLUSION**

For the foregoing reasons, the matter is **AFFIRMED**.

**DONE AND ORDERED** at Key West, Monroe County, Florida this Friday, March 1, 2024

44-2022-AP-000003-A0-01KW 03/01/2024 10:15:37 AM



Judge Timothy Koenig, Circuit Judge  
44-2022-AP-000003-A0-01KW 03/01/2024 10:15:37 AM

Kelly Dugan

dugan-kelly@monroecounty-  
fl.gov

proffitt-maureen@monroecounty-  
fl.gov

travis manter

travman10@hotmail.com

travman10@hotmail.com

travman10@hotmail.com

Travis Manter

travman10@hotmail.com