

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
FOR THE STATE OF FLORIDA  
Civil Appellate Division

ROBERT V. CANTON and,  
DEBORAH CANTON  
Appellants,

Circuit Civil Appeal No.: 20-CA-3272  
Division X  
L.T. No.: 19016452

vs.

HILLSBOROUGH COUNTY,  
Appellee.

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On review of a final order of the  
Code Enforcement Special Magistrate  
for Hillsborough County, Florida.

**APPELLATE OPINION**

We review a denial of a contest by the Hillsborough County Code Enforcement Board (the “**CE Board**”), which found that Appellants Robert and Deborah Canton (“**Appellants**”) had not complied with a November 25, 2019 Order Finding Violation. Because no substantial, competent evidence supports the decision, we quash the Order Denying Contest.

**I. JURISDICTION**

We have jurisdiction. Section 162.11, *Fla. Stat.*

**II. STANDARD OF REVIEW**

Decisions of code enforcement boards and magistrates are reviewed on appeal to determine whether Appellants were afforded due process, whether the decision comports with the essential requirements of law, and whether competent, substantial evidence supports the decision. *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982). Because Appellants did not appeal the original Order Imposing Fine, that Order is final and is not under review here. We confine our review to the Order Denying Contest.

**III. PROCEDURAL POSTURE**

Appellants are the owners of a 59-acre goat, cattle, and horse farm in Thonotosassa, Florida. Three contiguous parcels make up Appellants’ property but only one parcel is the subject of this case: 059720.0100 (the “**Subject Parcel**”). The Subject Parcel is 15.65 acres, zoned AR, and is homesteaded. Both a single family residence and farmworker housing are located on the Subject Parcel.

This case began with a complaint from a neighbor about large “goat yoga” events being held on one of Appellants’ other two parcels: 059723.0000 (the “**Goat Yoga Parcel**”). The neighbor complained that many of the goat yoga attendees used her private road to access the Goat Yoga Parcel. The neighbor also inquired whether Appellants had obtained a permit for concrete work being done on the property. The record contains no indication that the neighbor raised any concerns about an Air BnB.

On September 20, 2019, a Code Enforcement Officer (“**CE Officer**”) visited Appellants’ property. Prior to arrival at the property, the CE officer checked Air BnB’s website and found a listing for Appellants’ home. The listing appeared to advertise the home as being available for stays of less than seven days.

Appellants were cited for “Improper Use of Zone” in a Notice of Violation and Notice of Hearing (the “**Combo Notice**”) served on them on September 20, 2019. The Combo Notice indicated that the premises in violation was 12520 Franklin Road, parcel number 059720.0100, which is zoned AR (Agricultural Rural).<sup>1</sup> The “Improper Use of Zone” violation was described as follows: “Dwelling #1 on the property is being rented through AirBnB. Home cannot be rented for less than seven consecutive days. AirBnB account allows home to be rented for less than seven consecutive days. Please adjust account so it conforms to code.”

The Combo Notice notified Appellants that if compliance was not achieved for the alleged violations, they were ordered to appear before the CE Board on November 22, 2019. Appellants were in communication with the CE Officer and believed that they had shown that the violation was corrected so they did not appear for the November 22, 2019 hearing. Following the hearing, the CE Board gave Appellants an additional three days to comply and then entered an Order Imposing Fine on November 25, 2019. The property was inspected on November 26, 2019 and found in non-compliance. Although there is no evidence in the record that the property was actually rented for a period of less than seven days on the date of the original Notice of Violation or any day since that time, Appellants nonetheless accrued \$27,000 in fines until the County was satisfied that they had complied.

Appellants contested the finding of non-compliance and the matter as heard on February 28, 2020 (the “**Non-Compliance Hearing**”). At the Non-Compliance Hearing, Appellants argued that they showed the CE Officer that they were in compliance shortly after they were served with the Combo Notice and on that basis assumed that the hearing was canceled. Appellants further attacked the reliability and veracity of the code enforcement officer’s evidence that the property was not in compliance.

The Board rejected Appellants’ contest and this appeal followed.

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<sup>1</sup> The Combo Notice also cited Appellants for “Inoperable Vehicles.” The Inoperable Vehicles aspect of the citation is not at issue in this appeal.

#### IV. ANALYSIS

We limit our review to the Order Denying Contest, and do not review the correctness of the Order Finding Violation because it was not timely appealed. *Gabor Czinke and Eva Czinke v. Hillsborough County, Florida*, 27 Fla. L. Weekly Supp. 796a (Fla. 13th Jud. Cir. [Appellate] Oct. 22, 2019).

##### A. Due process

We reject Appellants' argument that they were not afforded due process. The fundamentals of the process due in administrative proceedings are notice and a meaningful opportunity to be heard. *Keys Citizens for Responsible Gov't, Inc. v. Fla. Keys Aqueduct Auth.*, 795 So.2d 940, 948 (Fla.2001)(Procedural due process requires both fair notice and a real opportunity to be heard "at a meaningful time and in a meaningful manner.) Here, Appellants received notice of the Non-Compliance Hearing, appeared, and participated in the hearing.

##### B. Competent, substantial evidence

We agree with Appellants that the record lacks substantial, competent evidence to support a finding that Appellants were not in compliance on the date the fines began to run. Substantial evidence is "such relevant evidence as a reasonable mind would accept as adequate to support a conclusion." *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957), cited by *Atkins North America, Inc. v. Tallahassee MH Parks, LLC*, 277 So. 3d 1156, 1160 (Fla. 1st DCA 2019). Here, the record contains no evidence that at the time of the Notice of Violation the Appellants were engaged in the act that Code Enforcement cited as the violation, namely renting a residence for a period of less than seven days. Because Appellants failed to preserve for appeal the issue of whether they were in violation in the first instance, the only issue we address here is whether they were in violation when the time to bring the property into compliance expired.

The evidence presented by the County regarding the AirBnB is not substantial, competent evidence of a violation. Significantly, there is not substantial, competent evidence in the record that Appellants were hosting AirBnB guests at the time the fines began to accrue. The evidence offered for the violation was that the CE Officer confirmed a reservation online; however, the CE Officer did not complete the reservation online and receive a confirmation number. Nor did the owner otherwise confirm the reservation. Put simply, the code does not permit a Code Enforcement Officer to issue a Notice of Violation for an inchoate or attempted violation that has not actually occurred. "Since zoning regulations are in derogation of private rights of ownership, words used in a zoning ordinance should be given their broadest meaning when there is no definition or clear intent to the contrary and the ordinance should be interpreted in favor of the property owner." *Rinker Materials Corp. v. City of North Miami*, 286 So. 2d 552, 553 (Fla. 1973). For these reasons, the Order Denying Contest must be quashed.<sup>2</sup>

In light of the foregoing and because we find no merit in them, it is unnecessary to address the other issues raised by Appellants.

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<sup>2</sup> In *Khoyi v. Hillsborough County*, a divided panel of this court ruled that "the Hillsborough County Code as a whole intends to restrict short-term vacation rentals to properties meeting specific locational and licensing criteria."

It is therefore ORDERED that the petition is GRANTED and the Order Denying Contest is QUASHED on the date imprinted with the undersigned's signature.

Electronically Conformed 1/5/2022  
By: Anne-Leigh Gaylord Moe  
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Anne-Leigh G. Moe, Circuit Judge

MOE, GABBARD, DANIEL, JJ.

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