IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION: AY
CASE NO.: 50-2023-CA-013685-XXXX-MB

114 EAST OCEAN LLC,
Appellant,

vs.

TOWN OF LANTANA,
Appellee.
_____/

Opinion filed: February 20, 2025

On Appeal from the Town of Lantana Code Enforcement Special Magistrate

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PER CURIAM.

Pursuant to section 162.11, Florida Statutes, 114 East Ocean LLC, ("Appellant") seeks review of the Order Finding Violation rendered by the Code Enforcement Special Magistrate for the Town of Lantana ("Town") which found Appellant in violation of Section 10.5-23(a) of the Town of Lantana Code of Ordinances ("Town Code"). Appellant is the property owner of 114 East Ocean, Lantana FL ("The Property").

This Court's jurisdiction arises from section 162.11, Florida Statutes, which allows the final administrative orders of a code enforcement board or special magistrate to be appealed to the circuit court. There is, however, some controversy as to the appropriate standard of review for an appeal under section 162.11. The Fifth District Court of Appeal held in *Central Florida Investments, Inc. v. Orange County*, 295 So. 3d 292 (Fla. 5th DCA 2019) that the standard for an appeal under section 162.11 is different from the tree-pronged test under the courts' certiorari jurisdiction.[1]

In *Central Florida Investments*, the district court noted that section 162.11's language provides for a plenary appeal and not an appeal via petition for writ of certiorari. *Id*. at 294. Because a "review by certiorari is not the same as review by appeal," the court held that section 162.11 provides for a greater level of judicial scrutiny on appeal then the standard three-pronged first-tier certiorari test. *Id*. at 294–95. The standard set forth in *Central Florida Investments* is a de novo review of all legal issues before the lower tribunal since a plenary appeal allows the reviewing court to correct all jurisdictional, procedural, and substantive errors. *Id*. at 295. However, while the Court should apply a de novo review of legal issues, section 162.11 does not allow the Court to reweigh the facts or otherwise make new factual findings that differ from the administrative body. § 162.11, Fla. Stat.; *see also M.T. v. Agency for Persons with Disabilities*, 212 So. 3d 413, 415 (Fla. 3d DCA 2016) (applying deferential standard of review to factual findings in a plenary review of an administrative decision). However, the Court need not reach the decision of the appropriate standard of review in the instant case, as the error in the instant case requires reversal

[1] It may be argued that there is a district court split and that the Court need not apply the *Central Florida Investments* case. *See Sarasota Cnty. v. Bow Point on Gulf Condo. Devs., LLC*, 974 So. 2d 431 (Fla. 2d DCA 2007). However, the district court's statement that the circuit court should have applied a certiorari standard of review is dictum and does not have precedential value. *See Soto v. State*, 711 So. 2d 1275, 1276 n.2 (Fla. 4th DCA 1998). Second, the *Bow Point* decision noted that the circuit court's actual mistake was reweighing the evidence which, as discussed above, is inappropriate even under the standard presented in *Central Florida Investments*. *See Bow Point*, 974 So. 2d at 432 n.2.

of the Town's decision under the three prong standard or the broader standard set forth in *Central Florida Investments*, 95 So. 3d at 294.

Section 10.5-23(a) was revised by the Town on May 23, 2022. The prior code stated in part "all required setback areas shall be landscaped, planted and maintained with a combination of sod, flowerbeds, shrubs, hedges, and ground cover" and included mentions of "Xeriscape" ("Prior Code"). The revised code section states in part "All swales shall be maintained in accordance with Chapter 17 of the Town Code of Ordinances" ("Revised Code"). In the instant case, the Town, at both hearings, relied on the Prior Code. The Town Assistant Attorney, Jeffrey Jones, quoted a portion of the Prior Code at the July 20, 2023 hearing. The Prior Code was also introduced at the July 20, 2023 hearing as Exhibit Four by Appellant. At the August 17, 2023 hearing, the Code Enforcement Supervisor, Sam Archer also quoted a portion of the Prior Code. Both the Town Assistant Attorney and Appellant cited to the Prior Code Section language as the Code Section relevant to the violation. The Special Magistrate, the Town Assistant Attorney and the Town Code Enforcement Officers did not mention the Revised Code at any point in the hearings. At the end of the second hearing, the special magistrate found a violation, specifically mentioning that the code "may encourage" Xeriscape but the Property did not "meet the criteria" of the code which "as stated in the testimony" required "the combination of solid flowerbeds, shrubs, hedges and ground cover." The Court notes that the record lacks any indication that the Town considered or applied the Revised Code in the instant case.

This is a clear violation of the essential requirement of law as the Town applied the wrong law at the code enforcement hearings by applying the Prior Code to the violation. It is widely acknowledged that the application of the incorrect law is a violation of the essential requirements of law while a misapplication or misinterpretation of the correct law is not. *See Manatee County v. City of Bradenton*, 828 So. 2d 1083 (Fla. 2d DCA 2002) ("Because Manatee County did not

demonstrate that the circuit court applied the wrong law, but rather argued that it misapplied the correct law, the petition for writ of certiorari is denied."). As the Final Order relies on the testimony introduced at the hearings and utilizes the language of the Prior Code, the Final Order is clearly erroneous under the three prong standard of review or under the broader standard of review. The Court compares the instant facts to those of *Hernandez-Canton v. Miami City Com'n*, 971 So. 2d 829, 831 (Fla. 3d DCA 2007). In *Hernandez-Canton,* the parties disputed which version of the code should apply. The court held that the city commission had applied the incorrect law by applying the old version of the code and remanded the case for further proceedings. The city commission again applied the incorrect law and the case was again remanded to apply the correct version of the code. *Id*.

Additionally, part of a meaningful opportunity to be heard is the opportunity to present evidence relevant to the violation alleged. *See Department of Highway Safety and Motor Vehicles v. Futch*, 142 So.3d 910 (Fla 5th DCA 2014) (The procedural due process rights afforded a driver when seeking review of a license suspension include the right to present evidence relevant to the issues); *Kupke v. Orange County*, 838 So.2d 598, 599 (Fla. 5th DCA 2003) (holding that in quasi-judicial proceedings by administrative bodies, the parties must be able to present evidence, cross examine witnesses and be informed of all the facts upon which the commission acts). When the lower court applies the incorrect law to the case, courts have reversed the decision and ruled that the Appellant be afforded an opportunity to present new evidence. *Hernandez-Canton,* 971 So.2d at 832. Appellant was unable to present evidence or make argument as to whether the Property met the requirements of the Revised Code. This matter must therefore be remanded for further proceedings to determine whether Appellant violated Section 10.5-23(a) of the Town of Lantana Code of Ordinances as revised.

Accordingly, the Order Finding Violation is **REVERSED** and the matter is **REMANDED** for proceedings in accordance with this opinion.

WEISS, BONAVITA, and COLLINS, JJ., concur.