

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
FOR THE STATE OF FLORIDA  
Civil Appeal

MARLIN BRIGGS

Appellant,

Circuit Appeal No.: 23-CA-014549

Division: H

L.T. Case No.: L174323

vs.

HILLSBOROUGH COUNTY  
(CODE ENFORCEMENT),  
Appellee.

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On review of a Final Order of the Code Enforcement  
Special Magistrate for the City of Tampa.

**APPELLATE OPINION**

This case is before the circuit court to review an order of the Code Enforcement Special Magistrate finding that Appellant, Marlin Briggs, violated Hillsborough County Land Development Code (“LDC”) Section 4.01.03 by virtue of unpermitted tree removal. Appellant was found to have violated Section 4.01.03 of the LDC for the unpermitted removal of 30 oak trees measuring a total of 370 inches diameter at breast height (“DBH”), and 3 pine trees measuring 13, 16, and 19 inches DBH for a total of 418 inches DBH of tree removal. A Hillsborough County Environmental Supervisor reduced the total DBH to 205 inches. Appellant argues that he was denied due process for multiple reasons, specifically: 1) the fine imposed on him was excessive; 2) the County employees made representations to him that were not taken into consideration; and 3) that Section 4.01.06 of the LDC and his altered site plan to preserve 111 inches to receive credit for his violation were not taken into consideration. Also, in support of his appeal, Appellant contends that no competent, substantial evidence supports the order finding the violation. Finally, Appellant contends that there was a departure from the essential requirements of law because he was not given credit for trees he allegedly preserved.

Appellant was afforded due process in that he was provided adequate notice and opportunity to be heard by a neutral fact-finder. Testimony from county staff and Appellant's admission that he cut the trees without securing the necessary permit support the conclusion that Appellant violated the LDC's proscription against unpermitted tree removal. Finally, there was not a departure from the essential requirements of law when a violation was found pursuant to Section 4.01.03 of the LDC. Accordingly, the decision is **AFFIRMED**.

### **I. Procedural Posture**

Appellant is the owner of a property at 3608 Berger Road, Lutz, Florida (the "subject property"). Sometime in 2016, Appellant made plans to construct a home on the subject property. In efforts to construct a home there, Appellant cut down trees on the subject property without first acquiring a Land Alteration and Landscaping Permit.

On January 4, 2017, Hillsborough County first inspected Appellant's property. Then on January 12, 2017, Hillsborough County issued Appellant its first Notice of Violation alleging a violation of Section 4.01.03 of the LDC for the unpermitted tree removal of 30 oak trees measuring a total of 370 inches in diameter at breast height ("DBH"), and 3 pine trees measuring 13, 16, and 19 inches DBH for a total of 418 inches DBH of tree removal. A Hillsborough County Environmental Supervisor later reduced the total DBH to 205 inches though.

The Notice of Violation gave Appellant 15 calendar days from receipt of the notice to take corrective action. After Appellant failed to do so, the County issued a timely Notice of Hearing. A hearing was then held before a Code Enforcement special magistrate on July 14, 2023.

At the July 14, 2023 hearing, Appellant contested the violation. Appellant argued that he believed he had reached an understanding with the County back in 2017, whereby the County would credit Appellant for any trees he cut down that were in the "footprint of construction" and

for trees remaining on the property. Unfortunately, Appellant admitted that he had no evidence to substantiate his claims. Appellant further challenged the amount of the fine and alleged that he should have been credited for the remaining trees on the property that were taken into consideration and preserved that would have been otherwise removed for construction per Section 4.01.06 of the LDC. The Code Enforcement special magistrate found the Appellant to be in violation of Section 4.01.03 of the LDC and this appeal followed.

## **II. Jurisdiction and Standard of Review**

This court has appellate jurisdiction to review code enforcement orders pursuant to Sections 162.11 and 26.012, Florida Statutes. Code enforcement orders are reviewed to determine whether Appellant was 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 Valiant*, 419 So. 2d 624, 626 (Fla. 1982).

## **III. Analysis**

### **A. Due Process**

This Court rejects Appellant's arguments that he was not afforded due process. The fundamentals of due process due in an administrative proceeding are fair notice and an opportunity to be heard in a meaningful manner. *Keys Citizens for Responsible Gov't, Inc., v. Fla. Keys Aqueduct Auth.*, 795 So. 2d 940, 948 (Fla. 2001). Appellant was provided notice of and appeared at the hearing on July 14, 2023 and fully participated in it. Accordingly, the Court rejects Appellant's argument that he was denied due process.

### **B. Competent, Substantial Evidence**

Appellant argues that there is no competent, substantial evidence to support a finding that Appellant violated Section 4.01.03 of the LDC, which states, "[e]xcept as specifically exempted herein, it shall be *unlawful* for any person, firm or corporation, either individually or through an

agent to cause land alteration within the unincorporated areas of Hillsborough County *without having obtained a Natural Resources Permit* from the Administrator, or to allow a condition which is the result of unauthorized land alteration activity to remain unremedied.” Section 4.01.03 A. 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. 1<sup>st</sup> DCA 2019). Here the record shows that Appellant, by his own admission, did not acquire a permit prior to his removal of trees.

### **C. Departure from Essential Requirements of Law**

Appellant also contends that the Order departs from the essential requirements of law because it does not credit him for the trees he preserved during building his home to offset his violation. Appellant argues that he should be credited for trees he preserved pursuant to Section 4.01.06 to offset for his violation of Section 4.01.03. Yet, Section 4.01.06 actually governs the minimum landscaping design requirements and where it refers to giving “credit” in “4.01.06 C. Credit” this is regarding credit towards meeting those minimum landscaping design requirements. Appellant here, however, has been found to be in violation of Section 4.01.03, *not* Section 4.01.06. Regardless of whether Appellant would meet the minimum landscaping design requirements and whether under Section 4.01.06 he would be allotted credits *towards minimum landscaping requirements*, Appellant was still required under Section 4.01.03 to acquire a Land Alteration and Landscaping Permit *prior* to the removal of any trees. The record reflects he did not do so. Nothing in Section 4.01.06 negates the requirement in Section 4.01.03 that “it shall be unlawful for any person, firm or corporation, either individually or through an agent to cause land alteration within the unincorporated areas of Hillsborough County without having obtained a Natural Resources Permit”. Further, the “4.01.06 C. Credit” section under 4.01.06 does not

function to offset violations under Section 4.01.03 and as such is inapplicable to determining whether Appellant violated Section 4.01.03 and his fine amount for such. As such, the Court finds there was no departure from the essential requirements of law. In light of the foregoing, it is unnecessary to address the other issues raised by Appellant.

The Court **REITERATES** that Appellant has two options, which are detailed in the Order Imposing Fine. Those options are to pay the entire fine or offset the fine by planting new trees that meet the specific criteria set by the county. As per the Order Imposing Fine, Appellant may contribute the value of 205 inches DBH (\$13,325.00) to the Restoration Fund; plant 205 inches DBH approved shade restoration trees which must be 1-inch DBH or larger, a minimum of 8 Feet in height, Florida Grade #1, chosen from the Hillsborough County Approved Tree list as appropriate; or a combination of plantings and contributions to the Restoration Fund.

It is therefore **ORDERED** that the decision of the code enforcement special magistrate is **AFFIRMED**.

**ORDERED** in Tampa, Hillsborough County, Florida, on the date imprinted with the Judge's signature.

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Judge Helene Daniel

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**Helene L. Daniel, Circuit Judge**

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