

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL
CIRCUIT IN AND FOR LEE COUNTY, FLORIDA
APPELLATE DIVISION**

**Case No: 22-CA-004411
Code Case No.: COD2009-12416**

CHANDLER M. LUCAS and
SHIRLEY K. LUCAS,

Appellants,

vs.
CITY OF FORT MYERS

Appellee.

_____ /

On Appeal from an Administrative Order of the Code Enforcement
Board for the City of Fort Myers, Florida

**INITIAL BRIEF OF APPELLANTS CHANDLER M. LUCAS and
SHIRLEY K. LUCAS**

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PRELIMINARY STATEMENT

For the sake of clarity and brevity, Parties and Witnesses are referenced by their last name, no disrespect intended.

Appellants' citations to the Record on Appeal will be in the following format: [R, P____]

There are five transcripts of hearings and they are annotated as:

[T_(number of transcript) P__: (page)____(line)].

Example, [T5, 6:13-15].

III. STATEMENT OF THE CASE AND COURSE OF PROCEEDINGS

A. Historical Record

On December 12, 2009, City of Ft. Myers Residential Building Inspector, Richard T. Scott (“Scott”), investigated a possible unsafe structure located at 3771 Edgewood Avenue. [R, P 6-10].¹ The Report listed violations of the Unsafe Structures Ordinance. [R, P 8-10, Sec. 54-157, P 101-102]. That same day, Notice was posted by the City of Ft. Myers that the building was unsafe. [R, P 11].

On December 14, 2009, a letter was sent to the owner of 3771 Edgewood Avenue, Muzie Bahary (“Bahary”), at his Tel Aviv, Israel, address. The letter was sent by Michael J. Titmuss (“Titmuss”), Code Enforcement Manager, and informed Bahary that the structure had been declared unsafe and must be vacated. It indicated the Building Inspector’s Report was attached and the owner was given ninety days to demolish or repair the structure. [R, P 12].

On December 21, 2009, the City Clerk for the City of Ft. Myers

¹ The record in Code Case COD2009-12416 mostly contains unsigned documents.

issued a “Notice of Unsafe Certificate” that said an Unsafe Structure case would be heard by the Code Enforcement Board. (“CEB”) [R, P 13]. On February 19, 2010, a Notice of Hearing was issued for March 11, 2010. [R, P14-15].

At the March 11, 2010 Hearing, Scott presented Case No. COD2009-12416 to the CEB. [T1, 4:10-24]. A representative appeared for Bahary. [T1, 5:6-8]. Earlier in the day, Scott testified that in all cases he was presenting to the CEB that day, he was submitting the entire contents of the file for review and identified it as evidence. There is no record of what was presented as “evidence” to the CEB in this case. Scott identified the issues with 3771 Edgewood Avenue as: wet and dry rot, floor joists in the main house that were soft, wood boring insects and exposed electrical wiring. He asked the CEB for an Order with a date certain for an engineer’s report, permitting, and compliance or per diem fines and the city’s right to abate. [T1,4:10-24; 5:1-4].

Bahary’s representative asked to extend the deadlines so Bahary could return and take care of “certain things,” but presented

no evidence. [T1, 5:12-15]. A motion was made and seconded, “based on the evidence and testimony supplied by the City... to find the defendant guilty.” [T1, 6:5-6].

An “Unsafe Order Imposing Fine and Abatement Failure to Comply” was sent to Bahary on March 17, 2010, stating that based on the evidence and testimony, it was a conclusion of the CEB that as a matter of law, the alleged violator was guilty of Code of Ordinances Sec. 54-156 through 54-157 and ordered to pay a \$250.00 administrative penalty. [R, P 16]. The Order gave the violator until July 8, 2010, to apply for and obtain building permits and until October 14, 2010, to comply with the original Notice of Unsafe. In the event Bahary failed to comply with the Order, a daily fine would be imposed and the City would abate by any means, to include demolition of the structures involved.² [R, P 16].

More than three years later, on July 16, 2013, the City of Ft. Myers sent Bahary a letter stating it had been informed the property

² The issues regarding accrued liens and fines on the property are not on appeal here.

had recently come into compliance, but a \$306,000 lien was still recorded and encumbering the property. Bahary was asked to complete an attached "Request A Hearing For Mitigation" form and return it as soon as possible. [R, P 17-18]. There is nothing in the record to show a mitigation hearing was held.

The following March, 2014, Bahary received another Notice that the structure at 3771 Edgewood Avenue had been declared an unsafe structure in its present condition and he received a Notice of Hearing for Unsafe Structure. [R, P 19, 20-21]. The Hearing was set for April 10, 2014, to determine whether Bahary was guilty of having an unsafe structure at 3771 Edgewood Avenue. [R, P 2-21]. The Notices were filed under the original case number, COD2009-12416.

At the April 10, 2014 Hearing, Scott again testified for Code Enforcement and reminded the CEB that the structure suffered from wood boring insects, wet and dry rot and a sinking and rotting wood floor. [T2, 4:11-22]. He showed the CEB pictures taken in 2009 and admitted he had not been in the structures for probably "three years." [T2, 4:22-25]. He reminded the CEB that he already

had an Abatement Order and if the City had the funds the structure probably would have been gone. [T2, 5:4-7].

Shirley Lucas ("Lucas"), Appellant here, appeared for potential purchasers of the property from Suntrust Bank, who had filed for foreclosure against Bahary. She provided each CEB member with an Engineer's Report on the property. [T2, 5:14-21, 6:8-13; R, P 22-25]. Amanda Kurtell, an attorney for Suntrust, also appeared. To effectuate the sale, the CEB issued an Order to cap the lien at \$2500, to be paid to the City by November 13, 2014, or at closing, and set a deadline for compliance of the unsafe violations of September 11, 2015, or the lien would revert to the original amount. [T2,9:12-24,15:6-21; P 26].

On August 18, 2015, Lucas received a Notice of Violation for Unsafe Structure and a Notice of Hearing for Unsafe Structure for 3771 Edgewood Avenue that were generated at her request and set for September 10, 2015. [T3, 4:13-16; R, P 27-8, 29]. Lucas appeared and explained to the CEB that circumstances with the previous purchaser resulted in her taking title to the property. [T3,

5:8-16]. Lucas asked for an extension of the compliance date in the previous order to July 14, 2016, to cure the Unsafe Structure violation. [T3, 5:17-19, 6:7-11, 7:9-12]. The CEB approved an extension for compliance until July 14, 2016 and an Order was issued. [T3, 7:22-24; R, P 30].

On March 14, 2019, Lucas appeared again at her own request before the CEB to obtain an extension to comply with the previous Amended Order. The CEB granted an extension of six months to obtain all permits and three additional months to come into compliance. [R, P 33]. Lucas submitted an updated Engineering Report to the Building and the Permitting Department on September 3, 2019. [R, P 34-45].

On January 20, 2021, Lucas was sent another Notice of Hearing scheduled for February 11, 2021. [R, P 46-47]. At the Hearing, Titmuss, the Code Enforcement Manager, informed the CEB that Lucas, himself, the Building Official and the Director held a Zoom meeting the previous day and reached an agreement on a time-line for compliance and were looking for a revised abatement

order from the CEB. [T4, 6:17-22,10:16-17]. Titmuss testified that Lucas agreed to submit revisions to her renovation permit by April 11, 2021, and to have the outer shell of the home completed by December 11, 2021. The definition of outer shell would be attached to the Order. [T4, 7:3-12]. Lucas testified that she agreed to the terms of the order as stated by Titmuss. [T4, 8:6-9]. Titmuss told the CEB that Lucas had accomplished more in the last six weeks than had been accomplished in the last six years. [T4,10:5-8]. A Revised Abatement Order was issued sometime after the Hearing³. [R, P 48-49].

B. The September 8, 2022, Hearing and Order

On August 11, 2022, Lucas was sent a Notice of Hearing for Noncompliance to determine if she was in compliance with the Unsafe Order Imposing A Fine and Abatement recorded on April 14, 2010, and what action the CEB would take. [R, P 50-51].

³ The Order was incorrectly dated September 13, 2018, but the body of the Order indicates it is the CEB determination made February 11, 2021. The Notice of Hearing was correctly dated January 20, 2021.

On September 2, 2022, more than a week before the Hearing, Lucas hand-delivered and emailed an “ExParte Motion for Continuance” to Grant Alley, the City Attorney and Mark Campbell, Code Enforcement Manager and emailed the Motion to Steve Belden, Director of Community Development and other city government officials, requesting a thirty-day continuance of the September 8 Hearing to obtain legal representation. [R, P 52-53]. The Motion stated Lucas had been advised by local attorney, Bruce Strayhorn, to obtain appropriate legal counsel to present what he considered were several meritorious defenses to noncompliance. [R, P 52].

Neither the City Attorney nor Code Enforcement responded to Lucas and the Motion for Continuance was not placed on the September Agenda for the CEB to consider before going forward with the Hearing. Lucas was told by Code Enforcement employee, Kim LeFebvre (“LeFebvre”), that the motion would not be granted. Lucas represented herself at the Hearing. [T5, P 1].

Before the Hearing, Lucas consulted with her contractor, TLC

Construction, who prepared a written Schedule for completion of any remaining Unsafe Structure Work under the 2010 Order and a Schedule for completion of the remaining work on the outer shell under the 2021 Order of the CEB. [R, P 54-55]. Lucas scheduled Tyrone Perkins, Foreman for TLC, to present TLC's Schedules for completion and compliance.

The morning of the Hearing, Tyrone Perkins called Code Enforcement to find out when he needed to appear. He was told by LeFebvre that he would not be allowed to speak. Perkins called Lucas immediately who called LeFebvre. LeFebvre told Lucas that Perkins would not be allowed to speak during the Hearing and she could not call him as a witness. LeFebvre also told Lucas she didn't need a witness because she was "definitely" going to get time to finish. The only question was how much time.

The Lucas case was called and Tom Smith ("Smith"), Code Enforcement Field Supervisor, presented the case for Code Enforcement. [T5, 5:13]. He testified:

This was an unsafe structure, that the case had

been before the CEB before, “they were given the list of what they needed to comply. You guys agreed to what it was to keep it from unsafe. They had to submit their revisions, all that stuff. This property has not come into compliance. It is an unsafe structure and the City is looking for that [sic] you find it is not in compliance and that we - the city can go forward and abate.” Smith clarified that the City wanted to demolish it. [T5, 5:14-25].

Lucas testified that while the case had been pending since “09,” she was the fourth owner and had substantially completed most of the work. She explained that just before Titmuss retired, he and other Code Enforcement staff met and walked all over the property. Titmuss went through the cabana/guest house and said it was “perfect” and people could live in it. [T5, 9:18-24]. He told Lucas what needed to be done with the pool and she redid everything having to do with the pool. He told Lucas to fix the fence along the side and she fixed all the fencing. Lucas testified that everything Mike gave her got fixed and he came out and inspected it all. [T5, 9:24-25, 10:1-4].

Lucas testified that she and her husband were before the CEB on February 21, 2021, regarding what needed to be done and that

her husband was doing the all work on the property and “he is now dead.” [T5,6:8-17, 7:12-14]. Lucas went through the “phased plan for completion” that she and now-retired Code Enforcement Manager, Titmuss, had worked out after the (2021) site inspection and a Zoom meeting:

First Phase: remove bricks from front yard to back for exterior storage, remove bathtub and all junk and debris from front. “That was all done.”

Second Phase: Cut back all shrubs, pressure clean and patch the walls, paint, clean up driveway. “We did everything timely.”

Third Phase: Front and west side of house plus accessory building. There is a historic 1920 two-story house up front, the swimming pool and an accessory cabana. Electrical permits on the house and passed everything. Electrical permits for the yard and dock and passed everything. Plumbing permits for the cabana and passed. Roofing permits for the house and passed. [T5,7:21-25, 8:1-20].

Lucas showed the CEB that her existing permit did not expire until February, 2023, and that the permit was 78% complete according to the City’s website showing permit completion data. [T5, 9:5-17, 10:13-15; R, P 56-59, 60-61]. She presented the TLC

Construction Schedules and explained in detail what remained to be done to achieve compliance on both the outer shell and the interior work, including permit revisions and inspections. The Schedules showed all the work would be done within five months. [T5, 11:11-25; R, P 54-55].

Lucas referred the CEB to the February 2021 Abatement Order deadlines and testified that her husband became seriously ill in March 2021, just before her permit revisions were due in April 2021, and he was in the hospital when revisions were to be approved by June 2021. He died just before the outer shell was supposed to be completed in December 2021. [T5,12:13-22, R, P 48-49]. She concluded by asking for six months to come into compliance. [T5,13:7-8].

A CEB member asked Lucas what needed to be done and what had been done and asked what Lucas was telling them. Smith interrupted Lucas to respond to the question and said the revisions that were supposed to be permitted on April 11, 2021 were not done. [T5,13:12-15]. LeFebvre then referred the CEB to the original

2009 Order.⁴ [T5, 13:19-25]. Smith reminded the CEB that the house has been sitting there unfinished. Lucas responded that she had been the only owner that put money into it. Smith replied that they were getting complaints about it. [T5,14:11-15].

Brent Brewster, Building Official, came to the podium to offer “clarification.” He said he was there when Titmuss set up the “phases” to try and get the property looking better for the neighbors because they were getting a lot of complaints from the neighbors and everything so these were phases he wanted in line to get the property to “look better.” They were to be done by December, 2021. [T5,14:21-25, 15:1-12]. He did not explain what “looking better” had to do with an unsafe structure.

Mark Campbell (“Campbell”), Code Enforcement Manager, came to the podium and stated to the CEB :

“So I just wanted to be clear, so this is a noncompliance hearing for an unsafe structure. So that would mean you are here to determine whether or not it’s in violation, right, so we are not here to

⁴ LeFebvre was referring to the 2010 Unsafe Order. There is no 2009 Order.

rehear the case. We are here for whether or not it's in compliance per the order that was given before. So I just wanted to make sure that's on the record." [T5,15: 24-25, 16:1-6].

There was discussion about giving Lucas more time, and then Campbell came to the podium again and addressed the CEB:

"I just want again, I want to be clear. So we are here for – this is an unsafe structure. This is a noncompliance hearing, right, so we are determining whether or not it is in compliance for an unsafe structure which means that means it is a danger to the life, safety and welfare of the community. We have received numerous complaints. This is unfortunately one of the properties that we get the most complaints about. So I want to be clear that this is a noncompliance hearing." [T5, 17:12-20].

A motion was discussed with a six month extension before abatement, and Smith, for Code Enforcement, interrupted the member and said, "...we want a short time... we get calls almost monthly." [T5,18:15-19]. A CEB member interjected that he understood it was an unsafe structure but looking at it from her point of view and the money that had been invested. "I'm definitely in agreement with giving..." [T5, 18:22-25, 19:1]. He was cut off by Campbell, who came to the podium again and spoke very directly to

the Board:

“Again, respectfully. I want to be clear. This case was started in ‘09. So this year is 2022, right? So this is an unsafe structure which means it is endangering the life, safety and welfare of the surrounding community. So I just want to make sure that that [sic] is clear.” [T5, 19:2-8].

Smith came to the podium for Code Enforcement and told the Board:

“We have given them time already until now and the neighbors just want to see it either finished or torn down.” [T5, 19:14-15].

Lucas attempted to respond to the issue of the neighbors, but was repeatedly cut off by Board Chairman Shaw. [T5, 20:1-14].

Lucas reminded the CEB that while it was a 2009 case, it wasn't her 2009 case. The record showed that she was the only one that had pulled permits or done anything to help the house. The back cabana/guest house was finished, the swimming pool was fixed, a patio was installed. She had invested a lot of money. [T5, 21:1-12].

Once again, Campbell came to the podium and again reminded the CEB that:

He didn't want to be a broken record, "but this is a noncompliance hearing. We are just here to determine whether or not it is in noncompliance and this is an unsafe structure that has been standing for well over a decade." [T5, 21:22-24, 22:1-3].

A motion was made that, "Based on the evidence and testimony provided I move that the property is found to be in noncompliance and the City shall abate by any means necessary." [T5, 22:4-18]. There was discussion about whether the motion needed a date. CEB Member Dorsey said, "give her six months for a date, 2023, for the abatement." [T5, 23:6-8]. Overholser would not accept six months, but would accept two months. [T5 23:9-15].

Lucas argued that, "I can't even get permits.." She was told she could not speak by LeFebvre, but Board counsel Alley reminded the CEB she could speak. [T5, 23:16-19]. Lucas continued, "...to try and have a structural engineer go out...do the drawings. She pointed out the CEB just heard testimony in another case that it takes at least two weeks for the city to even look at stuff and approve it. Given that, she argued there was no way to get all of that work done in two months. [T5, 23:20-25].

The CEB discussed amending the motion to give Lucas three months to either bring the property into compliance or the city could demolish the building. [T5,24:5-18]. A Board Member asked LeFebvre if it could come back before the Board if Lucas made substantial progress. [T5, 24:22-25, 25:1]. City Attorney Alley told the CEB they could craft the motion that way. [T5, 24:22-25, 25:1]. LeFebvre suggested they could also just bring it back in six months. [T5, 25:2-13].

Smith came to the podium again for Code Enforcement and said:

“It’s either like Mark said, this is a noncompliance hearing. She has not complied. You give her three months to either do it or take it down. If she comes back again in three months you are going to give her another three months. There is her six months.” [T5, 26:2-5].

Lucas interrupted that she would have to show additional inspections, revisions...Smith cut her off again and told the CEB, “...the house needs to be all finalized and signed off from an unsafe structure within three months.” [T5, 26:7-14].

Chairman Shaw summarized for the CEB that the motion found her in noncompliance and the second half is giving her x period of time to either come into compliance or the city is going to abate. Demolish. [T5, 26:18-21].

Campbell asked to make one more statement and said to the Board:

“If you give her six months, it has to be totally completed. There is no coming back for a progress report.”

Lucas replied that she would sign off on that. She did not want to come back again.” [T5, 27:2-7].

A CEB Member said, “I would recommend six months. It has to be completed. All or nothing at this point.” [T5, 27:9-10]. Someone requested clarification and Attorney Alley said this is a noncompliance hearing. If the board wants to give more time the board can give more time and that’s the prerogative of the board. She is requesting six months. If at the end of that period what the code enforcement staff should do is bring it back in front of the board like today you gave her more time, she is not in compliance

and we are asking to move forward with abatement. [T5, 27:22-25, 28:1-16].

A CEB member concluded the finding of noncompliance had been approved. He just didn't understand the second part where they gave her three months, six months, whatever.

[T5, 28:18-25, 29:1-4]. CEB member Conners said that first, he agreed with the noncompliance. He wanted to know if Lucas could pull permits with a noncompliance. [T5, 29:5-9].

Lucas responded that the permit she needed was already in place and did not expire until February 2023. Brewster answered that Lucas already had a renovation permit. The only thing that hadn't been done was the required revisions hadn't been turned in, but she could still do that under her active permit. [T5, 29:10-22].

Campbell approached the podium for the sixth time and again directly addressed the Board members and said,

"I just want to be clear again, Mark Campbell for the City, that obviously the city is not in support of giving any more time on it because, again, our focus is on the life, safety and welfare of the community..." Which this - I understand that she did not have the

property back in '09 but this property has been in this state or similar state since '09 and we are in year 2022." [T5, 30:1-9].

Lucas asked how it was a safety problem when she has been given permission to have people reside in the back unit. "It's not a safety problem." [t, 30:9-13].

Chairman Shaw reminded the Board there was a motion on the table to find noncompliance. Conners seconded the motion. [T5, 30:22-25]. The motion passed. [T5,31:7-14]. No additional time was given. [T5,31:1-2].

Mark Campbell approached the podium one more time for clarification:

"I believe the order that was given from before was that the city would have the right to abate as they saw fit, correct, so that would be as the city saw fit to abate." [t, 32:15-18].

The CEB cut off Lucas's last comment with adjournment. [T5, 32:21-23].

On September 13, 2022, the CEB issued an Order of Noncompliance signed by Nathan Shaw, Board Chairman. On

September 14, 2022, the CEB issued a Corrected Order of Noncompliance signed by Nathan Shaw, Board Chairman. There is no discernable difference between the two orders. Both Orders stated the property was in noncompliance and eligible for demolition. [R, P 62, 63]. This appeal was timely filed thereafter. [R, P 64-67].

IV. SUMMARY OF THE ARGUMENT

Appellant, Shirley Lucas, appeals the Corrected Order of the City of Ft. Myers Code Enforcement Board because both the Hearing on September 8, 2022, and the Corrected Order of Noncompliance deprived Lucas of certain fundamental constitutional rights. Lucas appeals under the Due Process guarantee of the Florida Constitution, which provides that “[n]o person shall be deprived of life, liberty or property without due process of law.” Art. I, Sec. 9, Fla. Const. She also appeals under the Fourteenth Amendment to the United States Constitution which prohibits the States from depriving any person of property without due process of law. *Dusenbery v. United States*, 122 S. Ct. 694, 699 (2002). Lucas is

asking the Circuit Court to set aside the September 14, 2002, Corrected Order of Noncompliance which found she was guilty of noncompliance and her property was eligible for demolition. [R, P 63].

Central to all the due process arguments is the out-sized role Code Enforcement Officials and employees, including Kim LeFebvre, played in all of the due process violations alleged by Lucas. For example, the CEB never saw or considered the Ex-Parte Motion filed by Lucas requesting thirty days to obtain legal representation; the motion having been denied without any lawful authority by the Code Enforcement Department. Lucas clearly had the right under Ch. 162 to call witness in her defense at the Hearing and yet she was told by the Code Enforcement Department, again without lawful authority, that her witness would not be allowed to speak.

Central to the argument here is the fact that Code Enforcement presented no evidence or testimony to the CEB of what unsafe violations remained at 3771 Edgewood Avenue to support a finding on noncompliance with the 2010 Unsafe Order. In fact, Code

Enforcement only addressed a 2021 Abatement Order that was not noticed for the Hearing. Even so, the Code Enforcement witnesses presented no evidence or testimony that any remaining issues with the 2021 about the outer shell contributed to the structure being unsafe versus unsightly and no evidence that anything about the structure was a danger to the community despite repeated testimony to those “facts.”

V. ARGUMENT

A. Standard of Review

The Corrected Order of Noncompliance states, incorrectly, that “An aggrieved party may appeal a ruling or order of the Code Enforcement Board by Certiorari in Circuit Court.” [R, P 63].

The statute governing appeals from a final administrative order of an enforcement board to the circuit court provides for a plenary appeal as a matter of right. *Central Florida Investments, Inc. v. Orange County, Florida*, 295 So. 3d 292, 293 (Fla. 5th DCA, 2019). Florida Statutes and City of Ft. Myers, FL Code of Ordinances state that, “Any aggrieved party may appeal a final administrative order of

a code enforcement board to the circuit court. Such appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the Code Enforcement Board. An Appeal shall be filed within 30 days of execution of the order to be appealed.” [R, P 87, Sec. 162.11, *Fla. Stat.* (2022); R, P 106, Art. IV, Sec. 54-165(d) and P 99, Sec. 2-418, Ft. Myers Code of Ordinances].

The procedural history for review of administrative orders to the contrary, the current and controlling grant of appellate review is by appeal and not certiorari from an enforcement board to the circuit court. *Central Florida Investments, Inc.*, 295 So. 3d at 294. On appeal, under Sec. 162.11, a circuit court may correct all errors below including jurisdictional, procedural and substantive errors. *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 526 n. 3 (Fla. 1995); *Kirby v. Archer*, 790 So. 2d 1214, 1215 (Fla. 1st DCA 2019). The due process issues raised by Lucas are properly cognizable on appeal to the circuit court from the final order of the CEB taken pursuant to Sec. 162.11, *Fla. Stat.* (2022); *Holiday Isle Resort and Marina Associates v. Monroe County*, 582 So. 2d. 721, 722 (Fla. 3d

DCA 1991).

The Florida Legislature authorized municipalities to create, by ordinance, local government code enforcement boards. The City of Ft. Myers Code of Ordinances, cited above, largely mirrors the language of Ch. 162. Once the City of Ft. Myers opted for a code enforcement board under Ch. 162, it was prohibited under Article 1, Section 18 of the state constitution to enforce its ordinance by any other manner except as described in chapter 162. *City of Tampa v. Braxton*, 606 So. 2d 554, 555 (Fla. 2d DCA 1993). Therefore, Ch. 162.11 is controlling as to the Standard of Review.

B. The Corrected Order of the Code Enforcement Board Violates Due Process and Should be Set Aside

The August 11, 2022, Notice of Hearing for Noncompliance was to determine whether Lucas was in “compliance with the Unsafe Order Imposing a Fine and Abatement recorded on 4/15/2010 and what action the Code Enforcement Board will take.” [R, P 50]. The 2010 Order found Bahary, the owner of 3771 Edgewood Avenue, guilty of violations of Ft. Myers Code Of Ordinances, Section 54-156 and 54-157. [R, P 100-102].

Prior to the 2010 Hearing, Bahary received a letter declaring the structure unsafe in its present condition and the items causing the structure to be determined unsafe were found in the Building Inspector's Report attached to the letter. [R, P 6-12]. The Report listed issues Bahary needed to address under Sec. 54-157 to bring the unsafe structure into compliance. [R, P 7-10]. The inspection and the Report were done by Richard Scott. [R. P 6, 10].

Scott told the CEB in 2010 the structure suffered from wet and dry rot, soft floor joists in the main portion of the house, wood boring insects and exposed electrical wiring. It is reasonable to infer Scott was actually inside 3771 Edgewood Avenue in 2010 to do the Inspection and it is reasonable to infer the CEB based its findings on Scott's testimony.⁵

In 2014, when the CEB was again asked to determine whether 3771 Edgewood Avenue was an unsafe structure, Scott testified that he had not been in the structure in at least three years but the last

⁵ Lucas never saw the Inspection Report until, in preparation for this appeal, it was found in the Record as a document uploaded on January 17, 2017.

time he was inside, it was suffering from wood boring insects, wet and dry rot and a wood floor that was sinking and rotting. The CEB gave the owner ten months to bring the property into compliance.

At the request of Code Enforcement, the case was brought before the CEB again on February 11, 2021, to consider a revised abatement order. There were no members of either the 2010 or the 2015 Board, who had previously heard the case and Scott's testimony about the structure on the 2021 Board.⁶ [T1, P1; T3, P1, T4, P1]. Titmuss testified that Code Enforcement and Lucas had reached an agreement that the outer shell of the home must be completed by December 11, 2021. To avoid confusion, the definition of "outer shell" was be attached to the order.⁷ [T, 6:17-25, 7:2-12]. The definition of outer shell was not shared with the CEB during the Hearing and no explanation was given for how paint and exterior

⁶ The 2021 and 2022 Board members who heard the case appear to be the same. [T2 4:10-21].

⁷ The Order defined the outer shell as, "The complete exterior of the dwelling completed which included, exterior finish(Stucco or siding), Roof completed, windows and doors installed, soffit and fascia complete, exterior paint. [R, P 49].

finish constituted an unsafe structure.

The CEB did not hear any testimony about any unsafe violations from the 2010 order that remained unresolved. The February 11, 2021 Revised Abatement Order contained no findings of fact or conclusions of law; just a recitation of Code Enforcement's requested deadlines for completion of the outer shell. [R, P 48].

The case was noticed for hearing again on September 8, 2022, to determine whether the owner was in compliance with the Unsafe Order recorded on April 15, 2010, and what action Code Enforcement would take. Smith testified it was an unsafe structure; they were given the list of what they needed to comply and the property had not come into compliance. The City wanted to demolish it. [T5, 5:13-25]. Smith's testimony was about the 2021 Revised Abatement Order and he never mentioned the 2010 Order that was the subject of the noncompliance hearing.

Brewster testified that the phases in the 2021 Order that Lucas addressed were to try and get the property "looking better for the neighbors." He said, the shell was not complete as ordered in

2021. Brewster did not explain how getting the property looking better for the neighbors had anything to do with the Unsafe Structure Order issued in 2010.

After the Hearing, the CEB issued an Order and then a “Corrected” Order for the structure located at 3771 Edgewood Ave. that stated, “based upon the evidence and testimony presented in the case and, as a matter of law, the respondent was GUILTY of violating the City of Fort Myers Code of Ordinances.” The Corrected Order did not include what ordinances were violated because the CEB heard no testimony at the Hearing that any ordinance had been violated.

The Corrected Order found that LUCAS CHANDLER M & LUCAS SHIRLEY K were to have taken certain corrective actions on or before October 14, 2010, even though no evidence or testimony was presented about required corrective actions that were to be taken in 2010; only actions that were to have been taken in 2021.

Most egregiously, the Corrected Order found that a reinspection of the property was performed on which revealed

that the corrective action ordered by the CEB had not been taken thus rendering the property in noncompliance as of 9/8/2022 and eligible for demolition. The transcript of the proceedings is devoid of any testimony or evidence that a reinspection occurred, thus the Order has a blank space where the date of the reinspection was to be inserted. [R, P 63]. In fact, there is no evidence in the Record that anyone from Code Enforcement has been inside the structure since Scott's Inspection Report was made in 2009.

The only testimony offered by Code Enforcement to show noncompliance was a statement from Smith that no permit revisions under the 2021 Abatement Order had been submitted. There was no testimony from Code Enforcement about wet and dry rot, wood boring insects or exposed electrical wiring. Lucas did try and address the work being done on the floor joists in the main portion of the house that was 78% complete, but it is not clear that any member understood why that was important. [T5, 9:5-17].

What the CEB did hear before voting was Code Enforcement Manager, Mark Campbell, come to the podium seven times and tell

the CEB four times that it was a noncompliance hearing. He also told the CEB four times that it was an unsafe structure and three times that the structure was a danger to the life, safety and welfare of the community. Neither Campbell, nor any other Code Enforcement witness, offered any testimony or evidence about how it was an unsafe structure or how it was a danger, except that “we get a lot of complaints from the neighbors.” Nowhere in the thirteen year Record of this case, beginning with the Inspection in 2009, is there a Notice and Request to the CEB for an immediate hearing because a code inspector had reason to believe any condition causing the violation at 3771 Edgewood Avenue presented a serious threat to the public health, safety and welfare as required by local ordinance. [R, P 94, Sec. 2-411(d), Code of Ordinances].

The Record also shows that twice during the Hearing, the CEB heard from the other witnesses for Code Enforcement that it was an unsafe structure that was not in compliance and was the source of complaints, also without offering any evidence of the complaints or how complaints rendered a structure unsafe or dangerous to the

community.

The Hearing transcript reflects the single-minded effort by Code Enforcement to get the Order it wanted from the CEB. One member said, "I know it's an unsafe structure." [T5,18:24-25]. How? It can be inferred that he only knew it was unsafe because that was what he was told. Another said, "we don't have much choice. It's not in compliance." Again, how was it not in compliance? Another said, "Right," and then, "We can't change that." That is what he was told more than once. He moved, "based on the evidence and testimony provided I move that the property is found to be in noncompliance and the City shall abate by any means necessary." [T5, 22:4-7, 15-18].

His motion shows just how little the CEB understood about the case. The Motion, which passed, found the "property" subject to demolition. The Order includes the legal description of the land on which the structure sits but makes no distinction between the main house, the cabana/guest house, the newly-tiled patio and the newly renovated pool. Lucas testified about the main structure, the

cabana/guest house, and the pool and patio, even explaining that after passing all inspections, the guest house was safe to be occupied. The Code Enforcement witnesses never defined what they wanted to demolish, therefore, under the order, every structure is subject to demolition.

The CEB, lacking testimony and evidence from the City, tried to shift the burden to Lucas to tell them “about the house,” what needed to be done and what had been done. Those questions should have been directed to Code Enforcement; it was not her burden to prove noncompliance.

Regardless of whether Lucas was railroaded because the CEB was pressured into a vote of noncompliance, the law applicable to an order of a code enforcement board is well-established. At the conclusion of the Hearing the CEB was required to issue findings of fact based on evidence of record and conclusions of law, and issue an order affording proper relief consistent with the powers it was granted. *Ficken v. City of Dunedin*, 2021 WL 1610408 (M.D. Fla. 2021); [R, P 85, Sec. 162.07(4); R, P 97, Sec. 2-415,(d), City of Ft.

Myers Code of Ordinances].

The Corrected Order violates due process in that it includes no findings of fact based on the evidence and testimony presented during the Hearing regarding the 2010 Unsafe Order. According to the Notice of Hearing the purpose was to determine if Lucas was in compliance with the Unsafe Order dated April 15, 2010. [R, P 50]. The 2010 Order found, as a matter of law, that the owner had violated Sec. 54-156 through 55-157, Code of Ordinances. [R, P 16]. The CEB heard no testimony about how any structure on the property at 3771 Edgewood Avenue violated a city ordinance.

Courts have considered what amount of detail is required for the CEB to make basic findings supported by the evidence under Sec. 162.07(4), as the Act does not mandate any specific amount of detail.” *Hayes v. Monroe County*, 337 So.3d 442, 445 (Fla. 3d DCA 2022). The detail necessary to meet the statutory and regulatory requirement of factual findings is ultimately based on principles of due process, and it has repeatedly been held by the courts of this state that in order to assure due process and equal protection of the

law, every final order entered by an administrative agency in the exercise of its quasi-judicial functions must contain specific findings of fact upon which its ultimate action is taken.” *Borges v. Dept of Health*, 143 So. 3d 1185, 1187 (Fla. 3d DCA 2014); *Gentry v. Dep’t of Prof’l & Occupational Regul., State Bd. of Med. Exam’rs*, 283 So. 2d 386, 387 (Fla. 1st DCA 1973). The Second DCA recently held that although there are no strict rules, most often when, as here, findings are required by legislative mandate, the lack of such findings could result in a remand to make such findings. *Naples Estates Limited Partnership v. Glasby*, 331 So. 3d 863 (Fla. 2d DCA2021). The Fourth has held an order devoid of the rule-based requirement to render factual findings, is facially deficient. *McKeegen v. Ernst*, 84 So. 3d 1229, 1230 (Fla. 4th DCA 2012).

Constitutional due process claims are properly cognizable on an appeal to the Circuit Court from a final order of an enforcement board taken pursuant to Sec. 162.11, Fla. Stat. *Holiday Isle Resort & Marina Assoc. v. Monroe County*, 582 So.2d 721, 722 (Fla. 3d DCA 1991); [R, P 64-67]. The Order rendered by the CEB is patently

deficient and violates due process and the Circuit Court should insist the CEB perform its statutory duty by taking testimony and issuing proper findings of fact and conclusions of law. That would be particularly true, where, as here, the relief sought by the City is the complete demolition of private property, without even defining what private property can be demolished.

Applying controlling legal precedent and the plain language of Sec. 162.07(4), the Court should find that the Order violates the principles of due process the regulatory and statutory scheme strives to afford to a property owner, set aside the order and return the matter to the CEB for a new hearing. *Castro v. Miami-Dade County Code Enforcement*, 967 So. 2d 230, 234 (Fla. 3d DCA 2007).

C. Lucas Was Denied Due Process of Law When Her “Ex-Parte Motion” Was Not Considered By the Code Enforcement Board

On September 1, 2022, more than a week before the scheduled Hearing, Lucas hand-delivered and served by email, an “Ex-Parte Motion for Continuance” on City Attorney Grant Alley, Code Enforcement Manager, Mark Campbell and Tom Smith, chief prosecutor of the Code Enforcement case at the Hearing on

September 8, 2022. ⁸ [R, P 52-3]. The Motion requested a thirty-day continuance of the September 8 Hearing because:

- 1) Local attorney, Bruce Strayhorn, advised Lucas to request an extension to obtain appropriate legal counsel to present what he believed were several meritorious defenses to the claim of noncompliance;
- 2) It would be a miscarriage of justice if the City denied Respondents the right to be properly represented;
- 3) The City and Code Enforcement were aware of the death of Respondent Chandler M. Lucas; and
- 4) The City and Code Enforcement were aware of the existing critical medical issues of Respondent Shirley K. Lucas. [R, P 52-53].

Lucas received no response to the Motion for Continuance from either the City Attorney or Campbell, who had set the Hearing, but was informed by LeFebvre that there would be no continuance.

⁸ COD-017562, referenced in the Motion, concerns a dock issue and is not before the Court on appeal. By the date of Hearing, Lucas was able to retain counsel for that case, but he could not represent Lucas in the Unsafe Structure case due to a conflict.

At the beginning of the Code Enforcement proceedings on September 8, 2022, Chairman Shaw went over the rules and procedures, including the rule that “all parties and their representatives today will be allowed full opportunity to be heard on matters relevant to their cases.” [T5, 2:12-15]. Shaw continued, “As each new case is called the code enforcement officer will present their case evidence first to the Board and then answer any questions. When the code enforcement officer is finished the alleged violator and/or their representative will have the opportunity to respond to the alleged violations and answer any of the Board’s questions.” [T5, 3:1-7]. Clearly, the rules contemplated parties that were represented by counsel. Even so, it appears the CEB was not informed of the Motion by Code Enforcement, the Motion did not appear on the Agenda for consideration by the CEB before the Hearing and the Motion was not mentioned by any member of the CEB during the Hearing.

Code Enforcement cases involve determinations made by lay persons based on the presentation of factual findings made by

others, and often concern activities that are remote in time. These cases, especially where the demolition of private property is at issue, require skilled and experienced attorneys to counter the overwhelming advantage the government has when it brings a case before a Code Enforcement Board.

Here, the City's case was prosecuted by three experienced Code Enforcement officials, while Lucas was left to present her defenses alone at a podium that even lacked any interface to display her exhibits⁹. [T5, 1]. She had to rely on the time-wasting process of having a clerk take and display each exhibit when asked, causing delay and distraction in the presentation of her defenses.¹⁰ The legal jeopardy Lucas faced was particularly acute because she inherited final orders of violations and noncompliance that had not been appealed and were not subject to later attack when she

⁹ A common disadvantageous set-up for the alleged violator at Code Enforcement proceedings.

¹⁰ Throughout Lucas' presentation, there are exchanges such as, "First put this one, that and then I will give you the other...I wanted them to see that.." [T, 9:5-6, 11].

became the property owner. *City of Plantation v. Vermut*, 583 So. 2d 393, 394 (Fla 4th DCA 1991).

Procedural due process imposes constraints on governmental decisions that deprive individuals of property interests. *Massey v. Charlotte County*, 842 So. 2d 142, 146 (Fla. DCA 2nd 2003). Ch. 162 does not specifically address the right to counsel where real property interests are at issue, but the Second DCA has held that sometimes it is necessary to fill in the procedural gaps in Ch. 162, by the common sense application of basic principles of due process. *Massey*, 842 So. 2d at 145.

This is one of those procedural gaps that need filling. Where any procedure at a code enforcement hearing implicates due process, such as a Motion for Continuance to obtain counsel, Ch. 162 should be interpreted to require that the motion be heard and decided by the CEB before the hearing. Certainly, this Court should make clear that *Massey* prohibits finding that a “procedural gap” in Ch. 162 can be filled by a person or government department not authorized to make decisions in a code enforcement proceeding

under Ch. 162.

A dispute about continuing a code enforcement hearing is precisely the type of local matter that an appeal to the circuit court can resolve. *Conley v. City of Dunedin*, 2010 WL 146861 (M.D. Fla. 2010). Sec. 162.09 should be interpreted by the circuit court in line with the CEB's own procedures outlined by the Chairman before the hearing.¹¹ No court should allow such a Motion to be considered and decided by the paid staff in the department prosecuting the case, without notice to the CEB and an opportunity for the violator to heard on the motion.

The extent of procedural due process protection varies with the character of the interest and nature of proceeding involved. *Carillon Community Residential v. Seminole County*, 45 So. 3d 7, 9 (Fla. 5th DCA, 2010). The *Massey* court cited three relevant factors to decide what process is due:

1) the private interest that will be affected by the official action;

¹¹ Each code enforcement board shall have the power to adopt rules for the conduct of its hearings. Ch. 162.08, Fla. Stat.

2) the risk of erroneous deprivation of such interest through the procedure used; and

3) the government's interests and burdens that additional or substitute procedural requirements would entail. *Massey*, 842 So. 2d at 146, citing *Keys Citizens for Responsible Government v. Florida Keys Aqueduct Authority*, 795 So. 2d 940, 49 (Fla. 2001).

Considering the private interest that will be affected, Lucas had a compelling interest in retaining her property and preventing its complete destruction. She testified to the investment she had already made ("I have put tons of money in it") and the fact that over the twelve years the case had been pending she was the only owner that had worked to cure the violation. [T5, 14:13-14].

The risk of an erroneous deprivation is enormous to the property owner. Code Enforcement proceedings on the question of compliance are particularly fact-intensive. The Order that was issued here is the best example of the risk when experienced counsel is prevented from presenting evidence and witness testimony, raising objections and cross-examining witnesses to

insure that a complete factual record is before the CEB.

There are no additional government interests and burdens by allowing the CEB time consider a request to retain counsel. This case had been pending for twelve years with years' long gaps between the City's efforts to bring the Unsafe Structure into compliance. Certainly Code Enforcement has an interest in protecting the public, but here, it offered no testimony of how public safety was in jeopardy. The right to have counsel present and representing a property owner will mean more issues will be resolved during a hearing instead of on appeal of an order.

Quasi-judicial proceedings are not controlled by strict rules of evidence and procedure. *Jennings v. Dade County*, 589 So. 2d 1337, 1340 (Fla. 3d DCA 1991). Nonetheless, certain standards of basic fairness must be adhered to in order to afford due process. *Carillon Community Residential*, 45 So. 3d at 9. The Ex-Parte Motion also asked for a continuance because Chandler Lucas had become desperately ill shortly after appearing before the CEB in 2021 and had died just before the 2021 compliance deadline, as both the

Code Enforcement Officials and the City Attorney knew. Lucas herself, was ill. The burden here could have and should have been carried by her counsel. Fundamental fairness demanded, at a minimum, that the CEB, not City employees with their own agendas and no grant of statutory power, have the opportunity to consider the Ex-Parte Motion submitted by Lucas.

The formality and procedural requisites can vary, depending on the importance of the interests involved and the nature of the subsequent proceedings. *Boddie v. Connecticut*, 91 S. Ct. 780,786 (1971). The purposeful failure of both Code Enforcement and the City Attorney to provide the Motion to the CEB for its consideration before hearing the case, and Code Enforcement's summary denial of the Motion on its own initiative and without any authority to make such a decision, violated Lucas' right to due process and demands that the Order on appeal be set aside by the Circuit Court.

D. Lucas Was Denied Due Process When She Was Prevented From Offering Relevant Testimony

Twice Lucas was denied her right to a meaningful opportunity to be heard at the September 8, 2022 Hearing. First, when Code

Enforcement told her that her witness would not be allowed to testify and second, when the CEB heard testimony about neighbor complaints from Code Enforcement, but refused to hear testimony from Lucas about the neighbor complaints.

1. Witness Tyrone Perkins

Lucas reasonably expected that her construction foreman, Perkins, would appear in front of the CEB to present and explain the completion and compliance schedules TLC Construction had prepared for any remaining unsafe structure work at 3771 Edgewood Avenue under the 2010 Unsafe Order and any remaining work on the outer shell under the 2021 Revised Abatement Order.

The morning of September 8, 2022, Perkins and Lucas were told by LeFebvre that he would not be allowed to speak before the CEB. Lucas was left to present the completion and compliance schedules to the CEB herself and try to explain them. The testimony was critically important to show the CEB how much Lucas had already done and how little remained to be done and the CEB should have had the opportunity to hear Perkins' testimony.

Under both statute and ordinance, it is the role of the fact-finder, not Code Enforcement, to resolve conflicts in the testimony and weigh the credibility of witnesses. *Naples Estates Limited*, 331 So. 2d at 867.

2. Lucas Testimony About Neighbor Complaints

During the Hearing, Brewster testified that the “phases” Lucas addressed were about trying to get the property looking better for the neighbors under the 2021 Revised Abatement Order. Campbell testified that 3771 Edgewood Avenue was one of the properties Code Enforcement got “the most complaints about.” Smith testified, “...we get calls almost monthly.” LeFebvre apparently thought she could testify and added, “Multiple times.” Smith told the CEB the neighbors want to see it either finished or torn down. None of this witness testimony was supported by any evidence. The single actual neighbor complaint in the Record is about the seawall.

After Smith’s last comment, Chairman Shaw asked Lucas if she had any further comments and she said,

Lucas: Concerning the neighbors, I hate to tell you what type of

neighbors I have over there because I have got a neighbor next door that literally got arrested for trying to run me over and kill me...

Shaw: We don't need to talk about that. Let's just talk about the house.

Smith: The house.

Lucas: But they are saying-

Shaw: It doesn't matter about the neighbors. About the house.

Lucas: He is saying neighbors are putting - he has sent me texts telling me that I either sell it to him or he is going to do other avenues to make me force-

Shaw: We don't need to get into all of that.

[T5, 19:17; 20:1-14].

Lucas tried to testify that the "neighbors" was really one neighbor, not even a homeowner, and Code Enforcement was asking to demolish a house just to keep a neighbor happy. As Lucas tried to explain, there is evidence in the Record for 3771 Edgewood Avenue, going back to 2015 where Michael Goudie, the next door

neighbor, asked Titmuss if he would be interested in a deal where he would demolish the home and in return, the city would deed him clear title to the property.

There is evidence in the Record that Goudie emailed Titmuss and Scott and claimed to be the next door homeowner and complained the house was a dump and the last three owners were all working together to scam banks with the property. There is no evidence that Goudie owns the property next door and no evidence in the record that the actual owner has ever filed a complaint about the Lucas property. [R, P 68-72].

The Record includes a June 15, 2017, email from Lucas to LeFebvre and forwarded to Titmuss and Brewster about the progress of the work on site and includes the message that Mike Goudie came onto the property and beat up one of the seawall workers. Lucas reported that she went to court after his threats against her and a Repeat Violence Injunction was issued prohibiting Goudie from coming on her property. The Judge issued the order after reviewing police reports and text messages to Lucas stating her

would make her life a living hell unless she sold him the property.

The Record shows Lucas also reported to Code Enforcement that Goudie had threatened to shoot the sod delivery person, and told the surveyor he did not belong on her property. [R, P 73-75].

The Record includes a February 10, 2021, email from Lucas to Titmuss and four others recounting a February 2 incident where Goudie hurled a brick through the rear window of a construction worker's truck as it was leaving 3771 Edgewood Avenue, causing the window to explode. The Ft. Myers Police were called and Goudie was charged with "projectile used to cause harm." The officer was familiar with Goudie. [R, P 76-7].

Lucas was entitled to present her testimony, police reports, Final Order of Injunction and property ownership records so the CEB could consider whether Code Enforcement decided that demolition of her property was preferable to harassment by Michael Goudie. At a minimum, it could have prompted the CEB to ask Code Enforcement about any evidence of the complaints they cited or allowed Lucas to cross-examine Smith about the nature and source

of the complaints.

Procedural due process requires both fair notice and real opportunity to be heard at a meaningful time and in a meaningful manner. *Massey v. Charlotte County*, 842 So. 2d at 146. Quasi-judicial proceedings are not controlled by strict rules of evidence. *Jennings v. Dade County*, 589 So. 2d 1337, 1340 (Fla. 3d DCA 1991). Nevertheless, certain standards of basic fairness must be adhered to in order to afford due process. *Hadley v. Department of Administration*, 411 So. 2d 184 (Fla. 1982). A party to a quasi-judicial hearing, by virtue of its direct interest that will be affected by official action must be able to present evidence, cross-examine witnesses, and be informed of all facts upon which the CEB acts. *Lee County v. Sunbelt Equities, II, Ltd. Partnership*, 619 So. 2d 996, 1002 (Fla. 2d DCA 1993).

The outlines of procedural due process are well-established. Under the Fourteenth Amendment, the fundamental requisite of due process is the opportunity to be heard. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). In the case of a

Hearing on an unsafe structure, Lee County requires that: 1) all testimony to be under oath, 2) formal rules of evidence shall not apply but fundamental due process shall be observed and govern the proceedings, 3) hearsay evidence may be used to explain direct evidence, and 4) relevant evidence shall be admitted if it is the type that reasonable people rely on in the conduct serious affairs. [R, P 105, Sec 54-165(a) Code of Ordinances]. The violation of a litigant's due process right to be heard requires reversal. *S.B.L. v. State*, 737 So. 2d 1131 (Fla. 1st DCA 1999), citing to *County of Pasco v Riehl*, 620 So. 2d 229, 231 (Fla. 2d DCA 1993).

This brief demonstrates the level of unlawful interference into these proceedings by Code Enforcement, its failure to present any meaningful evidence and the consequent damage caused by that interference and failure. Code Enforcement was without authority under any Florida statute or ordinance to decide whether Tyrone Perkins' testimony would be heard by the CEB. It is the CEB that has the power to subpoena witnesses and evidence and take testimony, and the CEB, not Code Enforcement, has the power to

decide if witness testimony is relevant. [R, P 93, Sec 2-394(a)(2),(3); R, P 85, Ch.162.07(2) Fla. Stat.].

The CEB's refusal to hear testimony offered by Lucas about the "neighbor complaints," was not only a violation of her right to due process, it was a violation of the CEB's own rules and procedures. At the beginning of the Hearing Chairman Shaw promised, "All parties and their representatives will be allowed full opportunity to be heard on matter relevant to their cases." [T5, 2:13-15]. Given the number of times Code Enforcement referred to the neighbors, any testimony about the neighbors was relevant and should have been allowed for the CEB to consider. Because Lucas was denied a real opportunity to be heard in meaningful manner, the Corrected Order should be set aside.

VII. CONCLUSION

Lack of due process before a deprivation of property may be cured by adequate post-deprivation process such as this appeal to the circuit court. *McKinney v. Pate*, 20 F.3d 1550, 1557 (11th Cir. 1994). Lucas does not challenge the power of the CEB to issue

orders that include the destruction of private property. The September 8 Hearing was to determine whether Lucas was in compliance with a 2010 Unsafe Order that found the property owner of 3771 Edgewood Avenue guilty of violations of Ft. Myers Code Of Ordinances, Section 54-156 and 54-157. [R, P 100-102]. It was not within the powers of the CEB to issue an order granting Code Enforcement the authority to destroy private property belonging to Lucas without hearing sufficient testimony and evidence from Code Enforcement about how the property was not in compliance with the 2010 Unsafe Order and issuing such an Order violated her right to due process.

There is also no provision in either Ch. 162 or the City of Ft. Myers Code of Ordinances for the CEB to delegate authority to Code Enforcement to decide who will be allowed a continuance based on a well-founded Motion to obtain counsel, and who will be allowed to offer relevant testimony during a CEB Hearing and the usurping of the authority of the CEB to make those decision by Code Enforcement, violated Lucas's right to due process. A basic

component of minimum due process in the decision-making process is an impartial decision-maker. *Ridgewood Properties, Inc. v.*

Department of Community Affairs, 52 So. 2d 322, 323 (Fla. 1990).

An Order that is the result of such pervasive interference cannot be held to be the result of independent decision-making.

Finally, in denying Lucas the right to testify about what appeared to the central reason Code Enforcement wanted demolish property owned by Lucas, the CEB violated her right to due process. Based on the facts and the law as presented, Shirley Lucas asks the Circuit Court to set aside the Corrected Order of Noncompliance and grant her such other relief as the Court deems just.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed with the Clerk of Court via the Florida Courts E-Filing Portal which will automatically send notification of the filing to the email addresses for Grant Alley, Esq., City Attorney for the City of Fort Myers, Florida on this 9th day of January, 2023.

/s/ Colleen J. MacAlister, Esq.

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CERTIFICATE OF TYPEFACE COMPLIANCE

I HEREBY CERTIFY that Appellants Initial Brief on Appeal was formatted in Bookman Old Style, 14 pt. and contains 10,010 words.

/s/ Colleen J. MacAlister, Esq.

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Florida Bar No.: 080471