

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO.: 2020-CV-000036-A-O

FLORIDA FEDERATION
GARDEN CLUBS,

Appellant,

v.

CITY OF WINTER PARK,

Appellee.

Appeal from the Code Compliance Board,
in and for the City of Winter Park, Florida.

Eric P. LaRue II, Esq., Winter Park,
of The LaRue Firm, PLLC,
for Appellant.

Richard S. Geller, Esq., Winter Park, and
J. Giffin Chumley, Esq., Winter Park,
of Fishback Dominick,
for Appellee.

Before WEISS, WILSON, and HIGBEE, J.J.

PER CURIAM.

Florida Federation of Garden Clubs (“FFGC”) timely filed a Notice of Appeal seeking review of a “Findings of Fact, Conclusions of Law, and Order” of the Code Compliance Board (“the Board”) of the City of Winter Park, Florida, (“the City”) related to violations of the Code of Ordinances of the City of Winter Park, Florida (“the Code”). This Court has jurisdiction pursuant to Rule 9.030(c)(1)(C), Fla. R. App. P.; Section 162.11, Florida Statutes; and Section 2-108 of the Code.

The City owns property at 1400 S. Denning Drive, Winter Park, Florida (“the Property”), which has been leased to FFGC to be used as its statewide garden club headquarters. However, to supplement its income, FFGC sometimes rents out the Property as a venue for special events such as weddings, and the neighboring residential property owners have called the Winter Park Police Department to the Property numerous times related to noise disturbances during those events.

The City, as landlord, issued a cease-and-desist letter to FFGC, revoking its consent for the rental of the Property’s facilities by FFGC due to these noise complaints. The City also cited FFGC for violation of the Code related to noise, and after a hearing on the cited Code violations, the Board issued a written order finding that the City had complied with the required notice provisions and that the Respondent, FFGC, had violated Chapter 62, Section 62-95 (Lessee’s responsibility for noise disturbances), 62-96 (a) & (b) (Noise disturbance prohibited generally), 62-97 (2) & (3) (Specific prohibitions) of the City of Winter Park Code of Ordinances. Further, the order noted that

Based on a motion by Todd Boyer, seconded by Maria Bryant, the respondent is ORDERED to refrain from disturbing the peace and quiet in the neighborhood beginning 1 day from the hearing date. Failure to comply with this Order will result in fines of up to \$250.00 per day per violation, or for each day of a continuing violation. The Florida Federation Garden Club can hold events with the City Manager’s approval.

FFGC does not dispute the portion of the order finding them in violation of the City noise ordinance or the part that directs a \$250.00 per day per violation fine for future violations. The very narrow issue FFGC cites for review in this case involves the portion of the violation order that requires FFGC to seek the City Manager’s approval for this use of the Property. FFGC argues that the Board did not have the authority to require approval by the City Manager for

future events, in perpetuity, under either Chapter 162 of the Florida Statutes or the City's Code. We agree.

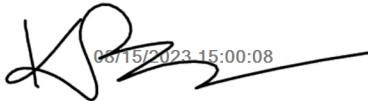
We found nothing in the Florida Statutes or the Code to indicate that the Board was authorized to require the City Manager's approval, in perpetuity, for FFGC to hold events on the Property. While the City points to the general catch-all language of § 2-106 of the Code, noting the Board has the power to "Issue orders having the force and effect of law commanding whatever steps are necessary to bring a violation into compliance," we find that such steps must still be contained within the jurisdiction of the Board. *See Gutierrez v. Village of Pinecrest*, 29 Fla. L. Weekly Supp. 163a (Fla. 11th Cir. Ct. May 21, 2021). Further, even if the Board did have this authority, there was no notice to FFGC that the Board would seek to require the City Manager's approval, in perpetuity, during its proceedings, and the absence of such notice offends procedural due process. *See Butler v. Brown*, 338 So. 3d 392 (Fla. 5th DCA 2022); *Yampol v. Turnberry Isle S. Condo. Ass'n, Inc.*, 143 So. 3d 1144 (Fla. 3d DCA 2014).

Since the City did not express that requiring the consent of the City Manager was potentially a condition it was seeking in this Code enforcement case, and since allowing such a condition does not appear to be authorized by the Code or the Florida Statutes in the first place, we believe that the Board did not have authority to put this requirement in its violation order. The City revoking its consent for further FFGC event rentals in a cease-and-desist letter is based on its interpretation of the lease between the parties, and the record indicates that FFGC disputes that interpretation. This is a landlord-tenant issue, not a Code compliance issue. We find the City's other arguments in support of the requirement to be without merit.

It is therefore ORDERED that the August 17, 2020, order of the City of Winter Park Code Compliance Board is AFFIRMED with regard to the finding of code violations and the

potential imposition of a fine for further violations. It is FURTHER ORDERED that the condition within the violation order related to a requirement that Florida Federation Garden Clubs receive the City Manager's approval to hold events is QUASHED, and the cause is REMANDED to the Board for further proceedings consistent with this opinion.¹

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 15 day of August, 2023.



08/15/2023 15:00:08

eSigned by Kevin Weiss 08/15/2023 15:00:08 xj-7IX7b

KEVIN B. WEISS
Presiding Circuit Judge

WILSON and HIGBEE, J.J., concur.

CERTIFICATE OF SERVICE

I CERTIFY that the foregoing was filed with the Clerk of the Court this 15 day of August, 2023, by using the Florida Courts e-filing Portal ("Portal"). Accordingly, the foregoing is being served via E-service Notification of Electronic Filing emails on this day to all Electronic Service Recipients identified on the Portal, including the following: **Eric P. LaRue II, Esq.**, the LaRue Firm, PLLC, 501 S. New York Avenue, Ste. 230, Winter Park, Florida 32789, at eric@thelaruefirm.com, and **Richard Geller, Esq.**, Fishback Dominick, 1947 Lee Road, Winter Park, Florida 32789, at rgeller@fishbacklaw.com.

Judicial Assistant

¹ The outstanding Joint Motion to Expedite Appeal filed in this case on November 17, 2022, is at this point determined to be moot and is, therefore, denied.