

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY**

JENNIFER MCCOY PARKER,
and LINDA C. HEIN,

Plaintiffs,

v.

Case No. 16-001524-CI-8

The CITY OF MADEIRA BEACH, a
Municipal Government of the State of
Florida, and TRAVIS PALLADENO,
in his official capacity as Mayor for the
CITY of Madeira Beach,

Defendants.

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiffs, JENNIFER MCCOY PARKER (“PARKER”) and LINDA C. HEIN (“HEIN”) (collectively hereinafter “PLAINTIFFS”), by and through their undersigned counsel, and pursuant to Florida Statutes Chapter 86, file this Amended Complaint for Declaratory Judgment against Defendants, THE CITY OF MADEIRA BEACH, a municipal government of the State of Florida (hereinafter “CITY”), and TRAVIS PALLADENO, in his official capacity as Mayor for the CITY of Madeira Beach, (“PALLADENO”) (hereinafter collectively “Defendants”), and in support thereof state:

Jurisdiction and Venue

1. This is an action for Declaratory Relief over which this court has subject matter jurisdiction pursuant to Chapter 86, Florida Statutes.

2. Venue is proper in Pinellas County pursuant to Florida Statutes § 47.011, because all of the parties are located in Pinellas County, and because the cause of action accrued in Pinellas County, Florida. § 47.011, *Fla. Stat.* (2015).

Parties and Standing

3. Plaintiff, JENNIFER PARKER, is a resident, citizen, taxpayer, and legally qualified elector of the CITY. PARKER'S residence is located at 423 150th Ave. #1501, Madeira Beach, FL 33708.

4. Plaintiff, LINDA C. HEIN, is a resident, citizen, taxpayer, and legally qualified elector of the CITY. HEIN'S residence is located at 401 150th Ave. #221, Madeira Beach, FL 33708.

5. Defendant, TRAVIS PALLADENO, is the lawfully elected Mayor of the CITY of Madeira Beach and is sued herein in his official capacity.

6. Defendant, CITY OF MADEIRA BEACH, is an incorporated municipality located within Pinellas County, Florida, which operates under a CITY Charter (the "Charter").

7. Moreover, the CITY Commission, the governing authority for the CITY, has five members, including PALLADENO, as mayor (the "Commission").

8. PLAINTIFFS, as residents, citizens, qualified voters, and taxpayers in the CITY have an interest and direct stake in the controversies raised in this Complaint for Declaratory Relief, and have standing to seek declaratory relief pursuant to Chapter 86, Florida Statutes.

9. The PLAINTIFFS are in doubt as to whether certain ordinances adopted by the CITY are valid and enforceable and, as such, they have an actual, present, adverse and antagonistic interest in the subject matter, have a bona fide, actual, present practical need for the declaration that deals with a present, ascertainable state of facts, the rights of the PLAINTIFFS are dependent upon the facts or the law applicable to the facts and the relief sought is not merely the giving of legal advice by the court or the answer to questions propounded from curiosity.

GENERAL ALLEGATIONS

10. PLAINTIFFS seek a Declaratory Judgment finding that the CITY violated Florida Statutes §166.041(3)(c)2.b. when it failed to advertise hearings for ordinances amending the CITY’S comprehensive plan, land development regulations, and special area plan, as well as the rezoning of property owned by C&T Enterprises Inc. and MHH Enterprises Inc. (the “Holiday Isles Marina”), with said statutes, thereby rendering all of the Ordinances void *ab initio*.

11. Florida Statutes § 166.041(3)(c)2.b., provides in relevant part:

b. The required advertisements shall be no less than 2 columns wide by 10 inches long in a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point...The advertisement shall be in substantially the following form:

NOTICE OF (TYPE OF) CHANGE

The (name of local governmental unit) proposes to adopt the following ordinance: (title of the ordinance). A public hearing on the ordinance will be held on (date and time) at (meeting place).

§ 166.041(3)(c)2.b., Fla. Stat. Ann. (emphasis added).

12. In the ordinances and notices described below, the CITY failed to advise the residents of the “TYPE OF” change for which the advertised notice was published. Instead, the CITY simply advised that a Local Planning Agency or Board of Commissioner meeting was noticed.

13. On June 8, 2014, the CITY published an advertised notice of the first hearing for Ordinances 2014-05, 2014-06 and 2014-07 as set forth in Exhibit 1.

14. In the CITY’S notice, the “type of change” was published as follows:

CITY OF MADEIRA BEACH, FLORIDA
LOCAL PLANNING AGENCY
AND
BOARD OF COMMISSIONERS
NOTICE OF PUBLIC HEARINGS

15. Ordinance 2014-05 purports to be a comprehensive plan amendment (the “Plan Amendment”) for the CITY. The Plan Amendment proposes to revise certain land use categories and uses of the CITY.

16. Ordinance 2014-06 purports to be a an amendment to the CITY’s land development regulations (“LDRs”) which adds, among other things, a PD (“Planned Development”) zoning district which permits increased height and density in areas of the CITY (the “LDR Amendment”).

17. Ordinance 2014-07 purports to be an amendment to the CITY’s Special Area Plan (“SAP Amendment”) which appears to be required by the Countywide Plan and Rules.

18. The second reading of the Plan Amendment, the LDR Amendment, and the SAP Amendment was advertised on October 24, 2014 as set forth in Exhibit 2¹.

19. Again, the CITY’S “type of change” was published as follows:

CITY OF MADEIRA BEACH, FLORIDA
BOARD OF COMMISSIONERS
NOTICE OF PUBLIC HEARINGS

20. On February 26, 2016, the CITY published notice of a first hearing on Ordinance 2015-18 as set forth on Exhibit 3.

21. Ordinance 2015-18 purports to be an ordinance rezoning the Holiday Isles Marina property from C-4 to PD.

22. Once again, the CITY’S “type of change” was published as follows:

CITY OF MADEIRA BEACH, FLORIDA
LOCAL PLANNING AGENCY
AND

¹ The ordinances, 2014-07, 2014-08, and 2014-09 in the October 24, 2014 ad apparently renumbered the Plan Amendment from Ordinances 2014-05 to Ordinance 2014-06, the LDR Amendment Ordinance 2014-06 to 2014-09. The SAP Amendment remained Ordinance 2014-07.

BOARD OF COMMISSIONERS
NOTICE OF PUBLIC HEARINGS

23. The June 8, 2014, October 24, 2014, and February 26, 2016 published notices failed to comply with the requirement to advise citizens, in 18 point type, of the “type of change” being considered at the advertised hearings.

24. The Legislature obviously intended that public be specifically and emphatically notified of the “Type of Change” being proposed when certain land use modifications are being considered.²

25. The prerequisite for the enhanced notice required by §166.041(3)(c)(1) and (2). are as follows :

Ordinances initiated by other than the municipality that change the actual zoning map designation of a parcel or parcels of land shall be enacted pursuant to paragraph (a). Ordinances that change the actual list of permitted, conditional, or prohibited uses within a zoning category, or ordinances initiated by the municipality that change the actual zoning map designation of a parcel or parcels of land shall be enacted pursuant to the following procedure:

1. In cases in which the proposed ordinance changes the actual zoning map designation for a parcel or parcels of land involving less than 10 contiguous acres, the governing body shall direct the clerk of the governing body to notify by mail each real property owner whose land the municipality will redesignate by enactment of the ordinance and whose address is known by reference to the latest ad valorem tax records. The notice shall state the substance of the proposed ordinance as it affects that property owner and shall set a time and place for one or more public hearings on such ordinance. Such notice shall be given at least 30 days prior to the date set for the public hearing, and a copy of the notice shall be kept available for public inspection during the regular business hours of the office of the clerk of the governing body. The governing body shall hold a public hearing on the proposed ordinance and may, upon the conclusion of the hearing, immediately adopt the ordinance.

² For example, COMPREHENSIVE PLAN AMENDMENT ADOPTION, “AMENDMENT TO THE CITY’S LAND DEVELOPMENT REGULATIONS”, “AMENDMENT TO THE CITY’S SPECIAL AREA PLAN” or NOTICE OF REZONING FROM C-4 to PD”.

2. In cases in which the proposed ordinance changes the actual list of permitted, conditional, or prohibited uses within a zoning category, or changes the actual zoning map designation of a parcel or parcels of land involving 10 contiguous acres or more, the governing body shall provide for public notice and hearings as follows:

§ 166.041(3)(c)2.b., Fla. Stat. Ann. (emphasis added).

26. The content and subject of all of the above ordinances come within the definition of those that are required to comply with the enhanced notice required by Florida Statutes §166.041(3)(c) and as set forth in the preceding paragraph.

27. The CITY adopted the Plan Amendment, the LDR Amendment and the SAP Amendment at meetings held on July 8, 2014 and November 12, 2014, respectively.

28. The CITY adopted the Holiday Isles Marina rezoning on first reading on March 18, 2016.

29. As a result of the CITY'S failure to comply with the requirements of Florida Statutes §166.041(3)(c)2.b., all of the ordinances set forth above are invalid, unenforceable, and void *ab initio*.

30. All conditions precedent to the accrual of this action have been met, waived, or satisfied.

WHEREFORE, Plaintiffs, respectfully request that this Honorable Court enter a Declaratory Judgment (1) finding that the CITY failed to advertise the Comprehensive Plan Amendment in compliance with Florida Statute §166.041(3)(c)2.b. and declaring that the Comprehensive Plan Amendment is null and void *ab initio*, and stricken, and shall be and is of no force or effect; (2) finding that the CITY failed to advertise the LDR Amendment in compliance with Florida Statutes §166.041(3)(c) 2.b. and declaring that the LDR Amendment is null and void *ab initio*, and stricken, and shall be and is of no force or effect; (3) finding that the CITY failed to advertise the Amendment to Special Area Plan in compliance with Florida

Statutes §166.041(3)(c)2.b. and declaring that the Special Area Plan Amendment is null and void *ab initio*, and stricken, and shall be and is of no force or effect; (4) finding that the CITY failed to advertise the Holiday Isles Marina rezoning in compliance with Florida Statute §166.041(3)(c) 2.b. and declaring that the first reading of the Holiday Isles Marina rezoning ordinance is null and void *ab initio*, and stricken, and shall be and is of no force or effect; and (5) awarding all costs incurred by Plaintiffs in this action; and (6) granting all further relief deemed necessary by the Court.

Dated: April 6, 2016

Respectfully Submitted,

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