

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.:

The CITY OF MADEIRA BEACH, a
Municipal Government of the State of
Florida,

Defendant.

_____ /

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiffs, JENNIFER MCCOY PARKER (“PARKER”) and LINDA C. HEIN (“HEIN”) (collectively hereinafter “PLAINTIFFS”), by and through their undersigned counsel, sue Defendant, THE CITY OF MADEIRA BEACH, a municipal government of the State of Florida (hereinafter “the CITY”), and in support thereof state:

1. This is an action for declaratory relief over which this court has subject matter jurisdiction pursuant to Florida Statutes §§ 26.012, 86.011 and 163.3215.
2. Venue is proper in Pinellas County as the cause of action accrued in Pinellas County, Florida. § 47.011, Fla. Stat. (2016).
3. The CITY is an incorporated municipality located within Pinellas County, Florida, operating under a City Charter (the “Charter”).
4. The CITY is governed by four commissioners and a mayor (the “Commission”).
5. On May 10, 2016, the CITY adopted Ordinance 2015-18 (**Exhibit 1, Pages 1-3**) which was intended to rezone certain property known as the Holiday Isle Marina from C-4 (Marine Commercial) to PD (Planned Development). The rezoning was subject to and

conditioned upon the approval by the CITY of the specific provisions and conditions of a development agreement (the “Holiday Isle Development Agreement” (**Exhibit 2**) to be considered at the June 14, 2016 Commission meeting.

6. The notices for the adoption by the Commission of Ordinance 2015-18 were published on December 29, 2015 and February 26, 2016. (**Exhibit 1, pages 4-7**) On June 14, 2016, the CITY approved the Holiday Isle Development Agreement which, according to the CITY, was the effective date of the rezoning of the Holiday Isle Marina.

7. The notice for the adoption by the Commission of the Holiday Isle Development Agreement was published on February 26, 2016 and April 22, 2016. (**Exhibit 1, Pages 6-7**)

8. On June 14, 2016, the CITY adopted Ordinance 2016-01 (**Exhibit 3, Pages 1-3**) which was intended to rezone certain property known as the Madeira Beach Town Center from C-3 (Retail Commercial) to PD (Planned Development). The rezoning was subject to and conditioned upon the approval by the CITY of the specific provisions and conditions of a development agreement (the “Madeira Beach Town Center Development Agreement”).

9. The notices for the adoption by the Commission of Ordinance 2016-01 were published on February 26, 2106, April 14, 2016 and May 27, 2016. (**Exhibit 3 Pages 4-6**) On June 14, 2016, the CITY approved the Madeira Beach Town Center Development Agreement which, according to the CITY, was the effective date of the rezoning of the Madeira Beach Town Center. (**Exhibit 4**)

10. The Holiday Isle Marina and Madeira Beach Town Center are jointly referred to as the “Challenged Developments.”

11. The rezonings of the Holiday Isle Marina and the Madeira Beach Town Center are hereafter referred to as the “Rezonings.”

12. 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.

13. 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.

14. Florida Statutes § 163.3215(3) provides that the Plaintiffs have standing to challenge the Rezonings:

Any aggrieved or adversely affected party may maintain a de novo action for declaratory, injunctive, or other relief against any local government to challenge any decision of such local government granting or denying an application for, or to prevent such local government from taking any action on, a development order, as defined in s. 163.3164, which materially alters the use or density or intensity of use on a particular piece of property which is not consistent with the comprehensive plan adopted under this part.

15. PLAINTIFFS, as residents, citizens, qualified voters, and taxpayers in the CITY, have an interest and direct stake in the controversies raised herein as they are both aggrieved or adversely affected parties as defined in Florida Statutes §163.3215(2).

16. PLAINTIFFS have standing to seek declaratory relief as they reside in close proximity to the Challenged Developments and, as such, their health, safety, and access to police and fire protection are adversely affected by the Rezonings in a manner that exceeds in degree the general interest of the community.

17. PLAINTIFFS' residences are located on 150th Avenue, which is the sole access road to their residences. This road is also the sole access road to and from the Challenged Developments which will include hundreds of new hotel rooms, condominiums and tens of thousands of square feet of commercial occupancy. The Challenged Developments will add

thousands of daily vehicle trips thereby creating significantly more traffic than currently exists on 150th Avenue. The increased traffic not only affects the ingress and egress of the PLAINTIFFS from their residences on a day-to-day basis but, more importantly, will directly adversely affect their safety as a result of the material increased danger to PLAINTIFFS in the event of a hurricane evacuation. The Challenged Developments will likewise impact sewer and other infrastructure facilities shared by PLAINTIFFS.

18. All conditions precedent to the relief requested herein have been met, waived or satisfied.

COUNT 1 – Consistency Challenge

19. PLAINTIFFS reallege paragraphs 1 through 18 as fully as if set forth below.

20. PLAINTIFFS seek a declaratory judgment determining that the Rezonings, including the associated development agreements, are inconsistent with the CITY's Comprehensive Plan¹ and are therefore invalid and void *ab initio*.

21. A development order is defined in Florida Statutes §163.3161:

(15) "Development order" means any order granting, denying, or granting with conditions an application for a development permit.

(16) "Development permit" includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.

22. The Rezonings and associated related development agreements are Development Orders as defined by §163.3161(15) and (16).

¹ Certain amendments to the CITY's Comprehensive Plan are currently under challenge in a separate proceeding, *Parker v. City of Madeira*, Case No. 16-001524-CI-8, pending in the Sixth Judicial Circuit. The ordinances challenged are 2014-07, 2014-08, and 2014-09. The Rezonings depend, in part, on the validity of those amendments. If these amendments are declared void, the development orders challenged here will be inconsistent with the CITY's pre-amendment Comprehensive Plan.

23. Florida Statutes §163.3194(1)(a) requires that all development orders be consistent with the CITY's comprehensive plan:

After a comprehensive plan, or element or portion thereof, has been adopted in conformity with this act, all development undertaken by, and all actions taken in regard to development orders by, governmental agencies in regard to land covered by such plan or element shall be consistent with such plan or element as adopted. §163.3194(1)(a) Fla. Stat.

24. Pursuant to Florida Statutes §163.3194(3)(a), the Rezoning and associated development agreements must be consistent with the Comprehensive Plan's land uses, densities and intensities.

(3)(a) A development order or land development regulation shall be consistent with the comprehensive plan if the land uses, densities or intensities, and other aspects of development permitted by such order or regulation are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government. §163.3194(3)(a) Fla. Stat.

25. The Rezoning, including the Holiday Isle Development Agreement and the Madeira Beach Town Center Development Agreement, permit the Holiday Isle and the Madeira Beach Town Center developments to develop at densities and intensities far in excess of those permitted in the Comprehensive Plan.

26. Thus, the Rezoning and the associated development agreements violate §§163.3194(1) and (3)(a) and are, therefore, invalid and void *ab initio*.

WHEREFORE, PLAINTIFFS respectfully request that this Honorable Court enter a declaratory judgment (1) declaring that Ordinance 2015-18, the rezoning of Holiday Isle Marina, is invalid and void *ab initio* because it is inconsistent with the current comprehensive plan of the CITY; (2) declaring that Ordinance 2016-01, the rezoning of Madeira Beach Town Center, is invalid and void *ab initio* because it is inconsistent with the current comprehensive plan of the

CITY; (3) awarding all costs incurred by PLAINTIFFS in this action; and (4) granting all further relief deemed necessary by the Court.

COUNT 2 – Notice Required by Land Development Code

27. PLAINTIFFS reallege paragraphs 1 through 18 as fully as if set forth below.

28. PLAINTIFFS seek a declaratory judgment determining that the CITY violated Chapter 2, Division 2, Section 2-6 of the Madeira Beach Code of Ordinances when it failed to properly advertise the quasi-judicial public hearings on the Rezonings and associated developments agreements, thereby rendering all of the Ordinances void *ab initio*.

29. Section 2-6(b) of the Madeira Beach Code of Ordinances requires:

(b) Mailed and published notice for quasi-judicial proceedings shall also advise that any affected person may become a party to such proceeding entitled to present evidence at the hearing including the sworn testimony of witnesses and relevant exhibits and other documentary evidence and to cross-examine all witnesses by filing a notice of intent to be a party with the city clerk not less than five days prior to the hearing.

30. None of the notices (**Exhibit 1 pages 4-7, Exhibit 3 Pages 4-6**) for such quasi-judicial hearings contained the required language advising that “any affected person may become a party to such proceeding entitled to present evidence at the hearing including the sworn testimony of witnesses and relevant exhibits and other documentary evidence and to cross-examine all witnesses by filing a notice of intent to be a party with the city clerk not less than five days prior to the hearing.”

31. As a result of that failure, residents of the CITY were denied the right to appear as a party to the quasi-judicial proceedings. Even for residents who appeared at the hearing to contest the Rezonings and associated development agreements, the CITY deemed their requests untimely for failure to give notice five days in advance.

32. Notices for public hearings are strictly construed by the courts and any defect

renders the underlying ordinance void *ab initio*. *Anderson v. City of St. Pete Beach*, 161 So. 3d 548, 550 (Fla. 2d DCA 2014).

33. The Rezoning and associated development agreements are, therefore, invalid and void *ab initio* as a result of the CITY's failure to properly advertise the quasi-judicial hearings in accordance with its own Code of Ordinances.

WHEREFORE, PLAINTIFFS respectfully request that this Honorable Court enter a declaratory judgment (1) declaring that Ordinance 2015-18, the rezoning of Holiday Isle Marina, and its associated development agreement, is invalid and void *ab initio* because the CITY failed to properly advertise the quasi-judicial hearings related to their adoption as required by the CITY Code; (2) declaring that Ordinance 2016-01, the rezoning of Madeira Beach Town Center, and its associated development agreement, is invalid and void *ab initio* because the CITY failed to properly advertise the quasi-judicial hearings related to their adoption as required by the CITY Code; (3) awarding all costs incurred by PLAINTIFFS in this action; and (4) granting all further relief deemed necessary by the Court.

COUNT 3 – Failure to Comply With PD Zoning Procedure

34. PLAINTIFFS reallege paragraphs 1 through 18 as fully as if set forth below.

35. The Rezoning fail to comply with Chapter 110, Article V, Division 10 of the Madeira Beach Code of Ordinances ("PD Zoning Code").

36. Specifically, the CITY failed to adhere to the procedural aspects of the PD Zoning Code by, among other things:

- A. Failing to require a complete application;
- B. Failing to approve a site plan prior to considering rezoning;
- C. Failing to review the plans, drawings and schematics for the proposed

development plan in detail;

D. Failing to make the plans, schematics, and conditions of the planned development part of the development order for the project;

E. Failing to state with specificity in the development order the development plan approved by the board of commissioners.

37. The CITY's failure to comply with the procedural aspects of its own PD Zoning Code renders the rezoning void *ab initio*.

WHEREFORE, PLAINTIFFS respectfully request that this Honorable Court enter a declaratory judgment (1) declaring that Ordinance 2015-18, the rezoning of Holiday Isle Marina, and its associated development agreement, is invalid and void *ab initio* because the CITY failed to comply with the procedural aspects of its PD Zoning Code; (2) declaring that Ordinance 2016-01, the rezoning of Madeira Beach Town Center, and its associated development agreement, is invalid and void *ab initio* because the CITY failed to comply with the procedural aspects of its PD Zoning Code; (3) awarding all costs incurred by PLAINTIFFS in this action; and (4) granting all further relief deemed necessary by the Court.

Dated July 14, 2016.

Respectfully Submitted,

/s/Timothy W. Weber
Timothy W. Weber, Esq.
FBN: 086789
timothy.weber@webercrabb.com
lisa.willis@webercrabb.com
Weber, Crabb & Wein, P.A.
Wittner Centre Office Building
5999 Central Avenue, #203
St. Petersburg, FL 33710
Phone No. (727) 828-9919
Fax No. (727) 828-9924

and

/s/ Kenneth L. Weiss

Kenneth L. Weiss, Esq.

FBN: 0159021

kweiss1@tampabay.rr.com

11085 – 9th Street E.

Treasure Island, FL 33706

Telephone: 727-415-3672

Attorneys for Plaintiffs