

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

SAMUEL M. BAKER, BARBARA FERRELL,
LINDA HEIN, LINDA MCARTOR,
and KRISTAL ALBERTSON

Plaintiffs,

v.

Case No.:

MAYOR TRAVIS PALLADENO,
COMMISSIONER TERRY LISTER,
COMMISSIONER NANCY HODGES,
COMMISSIONER HOUSH GHOVAEE,
and COMMISSIONER ELAINE POE
all in their official capacities as the members
of the MADEIRA BEACH CITY COMMISSION
and the CITY OF MADEIRA BEACH, a
municipal government of the State of Florida,

Defendants.

_____ /

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiffs, SAMUEL M. BAKER, BARBARA FERRELL, LINDA HEIN,
LINDA MCARTOR, and KRISTAL ALBERTSON, (“PLAINTIFFS”), by and
through their undersigned counsel, and pursuant to Florida Statutes Chapter 86 file
this Complaint for declaratory judgment against the Defendants, THE CITY OF
MADEIRA BEACH, a municipal government of the State of Florida (hereinafter
“CITY”), TRAVIS PALLADENO (“PALLADENO”), TERRY LISTER

(“LISTER”), NANCY HODGES (“HODGES”), HOUSH GHOVAEE (“GHOAVEE”), and ELAINE POE (“POE”), in their official capacities as elected officials of the CITY, and in support thereof states:

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

2. The purpose of this action is to obtain a Declaratory Judgment to enforce the right of Madeira Beach residents to vote on matters on which the PLAINTIFFS and the citizens legally petitioned their government under the terms guaranteed to them by their City Charter (the “Charter”). In addition, the PLAINTIFFS allege that under the terms of the Charter, the ordinance that is the subject of this action was suspended from taking effect upon the filing of the petitions.

3. 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.

4. PLAINTIFFS are residents, citizens and taxpayers in the CITY.

5. Defendant, CITY, is an incorporated municipality located within Pinellas County, Florida, which operates under a Charter.

6. The CITY is governed by four commissioners and a mayor (the “Commission”).

7. This Court has jurisdiction of the matters set forth herein because the PLAINTIFFS have an adverse, present and readily ascertainable interest in a *bona fide* dispute with the CITY regarding the sufficiency of the petitions that the PLAINTIFFS submitted as set forth below.

8. Defendant, PALLADENO, is the mayor of the CITY and is sued in his capacity as mayor of the CITY.

9. The Commissioners of the City are LISTER, HODGES, GHOVAEE and POE (the “Commissioners”) and are sued in their capacity as commissioners of the CITY.

10. From January to June 2016, the Commission has considered the rezoning of two controversial developments, Holiday Isle and Town Center (the “Developments”).

11. The Developments are contingent on the Commission approving the rezoning (“Rezoning”) of the parcels of land on which the Developments would be constructed under the City’s PD ordinance, an ordinance permitting planned development in certain areas of the CITY.

12. The PD Ordinance was amended in November 2014, by Ordinance 2014-08¹ (the “Ordinance”). (**Exhibit 1**). Two proceedings in this Circuit currently

¹ Ordinance 2014-08 was originally titled Ordinance 2014-06.

allege that the amended PD Ordinance is invalid due to defective notices².

13. The week before the final hearing on the Rezonings was scheduled, over 1000 residents (more than two thirds of the number of residents who voted in the previous election) petitioned the CITY pursuant to provisions of the City Charter to repeal the Ordinance.

14. The CITY refused even to consider the petitions.

VIOLATION OF CITY CHARTER

15. PLAINTIFFS incorporate paragraphs one through 14 as though fully set forth herein.

16. Charter Section 13 (**Exhibit 2**) includes provisions which permit the electors of the City to petition the Commission to reconsider ordinances, and if the Commission fails to repeal the ordinance, then a referendum is held to determine whether the voters elect to repeal the ordinance.

Referendum. The electors of the City shall have power to require reconsideration by the Board of Commissioners of any adopted ordinance and, if the Board of Commissioners fails to repeal an ordinance so reconsidered, to approve or reject it at a City election, provided that such power shall not extend to the budget or capital program or any emergency ordinance or ordinances relating to appropriation of money or levy of taxes.

Charter Section 13-1 General Authority

17. The requirements for the commencement of the petition proceedings are as

² Parker v. City of Madeira Beach 2016-CA-004641; Parker v. City of Madeira Beach 2016-CA-001524.

follows in Charter Section 13-2:

Any five (5) electors may commence initiative or referendum proceedings by filing with the City Clerk an affidavit stating they will constitute the petitioners' committee and be responsible for circulating the petition and filing it in proper form, stating their names and addresses and specifying the address to which all notices to the committee are to be sent, and setting out in full the proposed initiative ordinance or citing the ordinance sought to be reconsidered. Filing shall consist of delivery of said petition to the City Clerk, or in his absence, to any employee of the office of the City Clerk, during normal working hours, and the date and time of filing shall be noted thereon.

Charter Section 13-2 Commencement of proceedings, petitioners' committee, affidavit.

18. The PLAINTIFFS include all of the members of the Petitioners' Committee ("Petitioners")

19. On May 17, 2016, the Plaintiffs complied with Charter Section 13-2 by submitting the affidavit and the petition (the "Petition") that contained: 1) their names and addresses, 2) the address to which notices to the committee was to be sent, 3) setting out in full Ordinance 2014-08 which was to be reconsidered, 4) and delivering the Petition and affidavit to the office of the clerk during normal business hours. (**Exhibit 3**)

20. The Charter requirements for a valid petition are as follows:

A. *Number of signatures.* Initiative and referendum petitions must be signed by electors of the City equal in number to at least twenty-five (25) percent of the total number of electors registered to vote at the last regular City election.

B. *Form and content.* All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing.

Each signature shall be executed in ink or indelible pencil and shall be followed by the address of the person signing. Petitions shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed or sought to be reconsidered.

C. *Affidavit of circulator.* Each paper of a petition shall have attached to it when filed, an affidavit executed by the circulator thereof stating that he personally circulated the paper, the number of signatures thereon, and that all the signatures were affixed in his presence, that he believes them to be the genuine signature of the persons whose names they purport to be, and that each signer is an elector of the City and had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered.

Charter Section 13-3 Petitioner

21. The total number of electors required to sign the Petitions is 794³.
22. On May 17, 2016, the PLAINTIFFS delivered to the CITY:
 - A. The Petition which was uniform in size and style, assembled as one instrument with a copy of the Ordinance attached thereto throughout the circulation of the Petition;
 - B. Petitions, when finally submitted, containing a total of 846 signatures for verification by the CITY⁴.
 - C. Signed Petitions were submitted with the affidavit of circulators (the “Affidavit”) as required by the Charter. Two Affidavits were submitted by the PLAINTIFFS⁵. The Affidavit stating that the circulator personally

³ The total number of voters at the last regular city election on March 8, 2016 was 3173. Twenty Five Percent as required by the Charter would be 794.

⁴ A total of 938 signed petitions were submitted for verification. Of those, the CITY rejected 92 signed petitions.

⁵ The affidavit submitted on May 17, 2016 (**Exhibit 3**) and a supplemental affidavit submitted on

circulated the Petition, that all signatures were affixed in his or her presence, that the circulator believed the signatures to be the genuine signature of the persons who signed, and that each person who signed was an elector of the City and had the opportunity before signing to read the full text of the Ordinance.

23. On May 20, 2016, the CITY sent the PLAINTIFFS a letter which rejected the Petitions (**Exhibit 5**) stating that the PLAINTIFFS were not put under oath and therefore, they had not submitted an affidavit as required by Charter Section 13.2.

24. Contrary to the CITY'S objection, all of the PLAINTIFFS' affidavits stated that they "swear and affirm" the facts alleged to be true.

25. On June 10, 2016, the PLAINTIFFS submitted additional Petitions and a modified affidavit (**Exhibit 4**). The Petitions were supplemented on June 20, 2016 and June 27, 2016.

26. On June 13, 2016 a second rejection letter was sent to the PLAINTIFFS (**Exhibit 6**).

27. On July 7, 2016, the CITY, misconstruing the requirements of the Charter, sent the PLAINTIFFS a Certificate of Insufficiency (**Exhibit 7**) stating that the Petitions and Affidavit failed to comply with the requirements of Section 13 of the Charter.

Jun 10, 2016 (**Exhibit 4**).

28. PLAINTIFFS assert that all of the Petitions and affidavits were submitted in accordance with Section 13 of the Charter.

29. As members of the Commission, the Mayor and the Commissioners have a legal duty to comply with their responsibilities and duties pursuant to Section 13 of the Charter.

30. The rejection of the Petitions and the affidavits is simply evidence of the bad faith of the CITY and the Commissioners who intentionally refused either to repeal the Ordinance or submit the Ordinance to the voters for reconsideration.

WHEREFORE, PLAINTIFFS, respectfully request 1) that the Court determine that the Petitions to reconsider Ordinance 2014-08 are sufficient 2) that the Court determine that the CITY has an obligation to submit Ordinance 2014-08 to the electors for reconsideration; and 3) that the Court order the CITY to reimburse the PLAINTIFFS the costs of this action and 4) that the Court order such other further relief as the Court deems just and proper.

COUNT 2

THE REZONINGS ARE INVALID BECAUSE ORDINANCE 2014-08 WAS SUSPENDED PRIOR TO THE CITY COMMISSION VOTE TO REZONE THE DEVELOPMENTS

31. The PLAINTIFFS reallege paragraphs 1 through 30 as fully as though set forth herein.

32. The signed Petitions and affidavits were submitted to the CITY prior to June

14, 2016.

33. Pursuant to Charter Section 13.5, the Ordinance was suspended from taking effect as of the date of filing of the Petitions and the Affidavit.

When a referendum petition is filed with the City Clerk, the ordinance sought to be reconsidered **shall be suspended from taking effect**.

Such suspension shall terminate when:

A. There is a final determination of the insufficiency of the petition.

B. The Petitioners' Committee withdraws the petition.

C. The Board of Commissioners repeals the ordinance.

Charter Section 13.5 - Referendum petitions, suspension of effect of ordinance (Emphasis supplied)

34. Despite the fact that none of the above requirements had occurred prior to June 14, 2016, the Commission held a hearing to vote on the final approval of the rezonings of both Developments which relied on the Ordinance for their effectiveness.

35. None of the preconditions of Charter Section 13.5 have occurred and therefore, the Rezonings of the Developments, are invalid and void *ab initio*.

36. The Ordinance remains suspended until a “final determination” by this Court determines whether the Petitions are insufficient.

A final determination as to the sufficiency of a petition shall be subject to court review.

Charter Section 13.5 Court review, new petition.

WHEREFORE, PLAINTIFFS, respectfully request 1) that the Court determine

that the Petitions to reconsider Ordinance 2014-08 are sufficient 2) that the Court determine that when the Petitions were filed with the Clerk that Ordinance 2014-08 was suspended from taking effect; 3) that the Court determine that the rezoning of the Holiday Isle and Town Center developments are invalid and void *ab initio*; 4) and that the Court order the CITY to reimburse the Plaintiffs the costs of this action.

Dated: August 9, 2016

Respectfully Submitted,

By: Kenneth L. Weiss, Esq.

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