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.: 2016-CA-004641

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

Defendant.
_____/

MEMORANDUM OF LAW IN OPPOSITION TO MOTION TO INTERVENE

Plaintiffs, JENNIFER MCCOY PARKER and LINDA C. HEIN, file this memorandum to oppose the Motion to Intervene filed by MADERIA BEACH TOWN CENTER, LLC, ("INTERVENOR"), and in support thereof state as follows:

Introduction

Similar to M.H.H. Enterprises, Inc. and C&T Enterprises, Inc., INTERVENOR fails to fully appreciate what it means to be an indispensable party. Indeed, INTERVENOR even mischaracterizes what an indispensable party is by stating that "Proposed Intervenor is a necessary and indispensable party because it will be directly affected by adjudicated of the causes of action brought by Plaintiffs." (Motion to Intervene, ¶ 24). Suffice it to say, it takes more than being "directly affected" to be classified as an indispensable party. Further, case law on point with the facts of the present case show that a party in the position of INTERVENOR cannot be considered indispensable.

Procedural History

Plaintiffs initiated this action by filing a three count Complaint against the CITY which seeks to void two ordinances and two related development agreements. The ordinances at issue are

Ordinance 2015-18 and Ordinance 2016-01. These ordinances rezone property owned by the INTERVENORS. The ordinances were eventually adopted by the CITY, but the enactment of the ordinances were subject to development agreements being entered into between the CITY and the INTERVENORS.

The Complaint alleges three bases for why the ordinances and associated development agreements should be void. Count I of the Complaint is a statutory cause of action under Fla. Stat. § 163.3215 that alleges the ordinances are void because they are inconsistent with the CITY's Comprehensive Plan. Count II is a declaratory judgment action that alleges the ordinances are void for failure to properly advertise the public hearings that were held to consider whether the ordinances should be adopted. Count III of the Complaint is a declaratory judgment action that alleges the ordinances are void for failure of the CITY to comply with its own ordinances that require a certain procedure be followed when enacting ordinances of the type at issue.

Approximately two weeks after the Complaint was filed, INTERVENOR filed their Motion to Intervene. The motion incorrectly cites the law regarding indispensable parties by stating that and indispensable party is one that "will be directly affected by the adjudication of the causes of action." (Motion to Intervene, ¶ 24).

Argument

Intervenor Is Not an Indispensable Party

Fla. R. Civ. P. 1.230 states that "[a]nyone claiming an interest in pending litigation may at any time be permitted to assert a right by intervention, but the intervention shall be in subordination to, and in recognition of, the propriety of the main proceeding, unless otherwise ordered by the court in its discretion." This rule is different where the party seeking to intervene is an indisputable party. *Al Packer, Inc. v. First Union National Bank of Florida*, 650 So. 2d 165, 166 (Fla. 3d DCA 1995).

When an indispensable party seeks to intervene, it occupies the same status as the main parties to the action and has the same privileges of filing motions and raising defenses as the main parties. *Id*.

"An indispensable party is one whose interest in the controversy makes it impossible to completely adjudicate the matter without affecting either that party's interest or the interests of another party in the action." *Florida Dept. of Revenue v. Cummings*, 930 So. 2d 604 (Fla. 2006). Indispensable parties are so essential to a suit that no final decision can be rendered without their joinder. *Hertz Corp. v. Piccolo*, 453 So. 2d 12, 14 n. 3 (Fla. 1984). "An indispensable party [is] one without whom the rights of others cannot be determined." *Bastida v. Batchelor*, 418 So. 2d 297, 299 (Fla. 3d DCA 1982).

When challenges are raised to the correctness of a local government's action involving the development of land, the property owner that stands to gain by the local government's action is not an indispensable party. *See Let Miami Beach Decide v. City of Miami Beach*, 120 So. 3d 1282 (Fla. 2013). In *Let Miami Beach Decide*, a Political Committee introduced an amendment to the City of Miami Beach's charter which would require a higher amount of voter approval (60% instead of 50%) before the City could enter into a certain type of lease. *Id*. at 1285. The amendment was put on the City's ballot for a vote, but the City made an addition to the ballot language introduced by the Political Committee. *Id*. at 1286. The Political Committee objected, and after the amendment ultimately passed, the City sued the Political Committee and sought a declaration that the ballot language was not confusing, and thus valid. *Id*. The Political Committee then filed a counter claim alleging that a second item on the ballot was not valid because of procedural reasons. *Id*. The second item attacked by the Political Committee was to decide whether to approve a lease between the City and a company called SBACE. *Id*. SBACE then intervened in the trial court to raise the defense never previously raised by the City, that the Political Committee lacked standing. *Id*. at 1288. After losing at the trial

level for lack of standing to bring a counter claim, the Political Committee appealed. *Id*. at 1287.

The Third District Court of Appeal reversed the trial court because it found that SBACE was not an indispensable party that is allowed to intervene and raise a defense of lack of standing. *Id*. at 1288. As an intervenor, the Court ruled that SBACE had to take the case as it found it because the intervention was in subordination to, and in recognition of, the propriety of the main proceeding. *Id*. The Third District recognized the indispensable party exception to the rule, however, it ruled that such exception did not apply because the legality of two ballot provisions could be resolved whether SBACE was a party to the action or not. *Id*. SBACE's status as property owner and beneficiary of the challenged ballot item had not consequence on the appellate court's decision.

Other Florida cases have also ruled that property owners are not indispensable parties in writ of certiorari proceedings to challenge the enactment of zoning regulations. In *The City of St. Petersburg v. Marelli*, 728 So. 2d 1197 (Fla. 2d DCA 1999), a company that owned a laundromat requested a variance for its property to allow it to have less than the required numbered of parking spaces. After the City approved the variance, the neighbors of the laundromat petitioned for a writ of certiorari to the Circuit Court. *Id*. at 1198. The Circuit Court found that the City's approval was not supported by competent, substantial evidence. *Id*. The City appealed, arguing in part that the Circuit Court erred because the neighbors failed to join the actual property owners that requested the variance. *Id*. Rejecting the argument, the Second District cited to a decision of the Florida Supreme Court that ruled that a party challenging an administrative action concerning a zoning change does not need to join the affected property owner. *Id*. (*citing to Brigham v. Dade County*, 305 So. 2d 756 (Fla. 1975)); *see also Concerned Citizens of Bayshore Community, Inc. v. Lee*, 923 So. 2d 521 (Fla. 2d DCA 2005) (ruling that, in a suit brought by a citizen group against a local government to void local government's decision to rezone property, the property owner of the rezoned property is not an indispensable party

to review the local government's rezoning actions).

If the property owner of land being rezoned cannot be considered an indispensable party, as demonstrated by the above case law, then INTERVENOR's position as assignee of the development agreement makes it even more tenuous of a classification. The causes of action as pled can easily be decided without need for INTERVENOR's presence in the lawsuit. A review of the precise causes of action brought will help dispel any notion that INTERVENOR is an indispensable party.

Count I of Plaintiffs' Complaint is a statutory cause of action that alleges the rezoning ordinances to be inconsistent with the CITY's Comprehensive Plan. The very statute which Plaintiffs have sued under does not require any person other than the local government to be joined as a party. Subsections (3) and (4) of Fla. Stat. § 163.3215(1) "provide the exclusive methods for an aggrieved or adversely affected party to appeal and challenge the consistency of a development order with a comprehensive plan adopted under this part." The same subsection then goes on to state that "[t]he local government that issues the development order is to be named as a respondent in all proceedings under this section." Nowhere in the statute does the legislature require property owners to be joined. While it is true that INTERVENORS will be prohibited from developing its land if Plaintiffs were to ultimately prevail in the case, the inquiry required by Count I is very simple: whether the ordinances are consistent with a comprehensive plan.

Similarly, Count II only involves a challenge to the advertising procedures the CITY is required to follow in giving notice of local hearings on proposed rezoning ordinances. Such a cause of action can be disposed of simply by reviewing newspaper advertisements used by the CITY and determining whether the advertisements contain the substantive elements required under the CITY's local code.

Finally, Count III also involves an allegation that the CITY did not follow its own procedural

requirements for enacting the rezoning ordinances. On this Count, the Complaint alleged that the CITY did not follow its own local codes by:

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.

(Complaint; ¶ 36).

As with Counts I and II, the determination on Count III can be made by opening up the CITY's code of ordinances, reviewing the actions taken by the CITY, and deciding whether the CITY followed its own rules. Simply put, the INTERVENOR has nothing to add to such basic inquiries and this Court is well equipped to make the necessary findings without the presence of INTERVENOR.

Conclusion

This Court should find that INTERVENORS are not indispensable parties.

CERTIFICATE OF SERVICE

I certify that I have filed this Memorandum on August 16, 2016 using Florida's E-Filing Portal, which will electronically serve a copy on William S. Galvano, Esq. of Grimes, Goebel, Grimes, Hawkins, Gladfelter & Galvano, P.L., 10230 Manatee Ave. W., Bradenton, FL 34205 at wgeservice@grimesgoebel.com and kmorrissey@grimesgoebel.com; on Andrew J. Salzman, Esq. of Unice, Salman, Jensen, P.A., 1815 Little Road, Trinity, FL 34655 at service@unicesalzman.com and mbocook@unicesalzman.com; and also on Tammy N. Giroux, Esq. of Shumaker, Loop & Kendrick, LLP, 101 East Kennedy Boulevard, Suite 2800, Tampa, FL 33602 at tgiroux@slk-law.com and wgould@slk-law.com.

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