

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

**JENNIFER MCCOY PARKER and
LINDA C. HEIN,**

Plaintiffs,

Case No.: 16-004641-CI-13

v.

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

Defendant.

_____ /

MOTION TO INTERVENE

Proposed Intervenor, MADEIRA BEACH TOWN CENTER, LLC, as assignee of Madeira Beach Development Co., LLC (“Proposed Intervenor”), by and through its undersigned counsel, and pursuant to Fla. R. Civ. P. 1.210 and 1.230, hereby moves this Court to intervene in the above-styled proceeding, stating as follows in support:

Relief Sought by Plaintiffs

1. On July 14, 2016, Plaintiffs, Jennifer McCoy Parker and Linda C. Hein, filed a three-count Complaint for Declaratory Judgment against Defendant, the City of Madeira Beach (the “City”), seeking, among other things, entry of a declaratory judgment (i) declaring Ordinance 2015-18, which addresses the rezoning of Holiday Isle Marina, inconsistent with the Comprehensive Plan and therefore void *ab initio*, and (ii) declaring Ordinance 2016-01, which addresses the rezoning of Madeira Beach Town Center, inconsistent with the Comprehensive Plan and therefore void *ab initio*.

2. In addition, in Count II, Plaintiffs challenge the sufficiency of the advertised notices provided by the City for the public hearings conducted on the two proposed rezonings

and associated development agreements, contending the Court must declare both Ordinances invalid and void *ab initio* for purported failure to properly advertise for quasi-judicial hearings.

3. Furthermore, in Count III, Plaintiffs allege the City failed to comply with the procedural aspects of the PD Zoning Code, and seek entry of a declaratory judgment declaring both Ordinances invalid and void *ab initio*.

Madeira Beach Town Center, LLC as Proposed Intervenor

4. In early 2016, Madeira Beach Development Co., LLC was the contract purchaser and/or developer of certain tracts of land located within the City of Madeira Beach, Pinellas County, Florida (the “Property”), and in that capacity, submitted a rezoning application to the City (hereafter referred to as “Ordinance 2016-01” or the “Rezoning Application”).

5. Madeira Beach Development Co., LLC received approval of its Rezoning Application and related development agreement on June 14, 2016. The development agreement is recorded at Official Record Book 19231, Pages 1276-1324 of the Public Records of Pinellas County, Florida (the “Development Agreement”), and a true and correct copy is attached as **Exhibit 1**.

6. As anticipated and acknowledged in the Development Agreement, Madeira Beach Development Co., LLC assigned, among other things, its interest as contract purchaser and its rights, benefits and obligations as a party to the Development Agreement, to its assignee and successor – Madeira Beach Town Center, LLC, the Proposed Intervenor identified herein. *See* Ex. 1 at Development Agreement, Recital M, and ¶¶ 9.7, 16.

7. As set forth in Paragraphs 1 through 3, above, Plaintiffs seek a Declaratory Judgment from this Court that directly affects Ordinance 2016-01, and thus directly affects

Proposed Intervenor since it has relied on the City’s approval of the Rezoning Application and the execution of the Development Agreement.

8. If Ordinance 2016-01 is found to be invalid and/or void *ab initio*, Proposed Intervenor will be unable to develop the Property as intended under the Development Agreement.

Brief Summary of Background Facts

9. The Property, approximately 6.6 acres located within the Madeira Beach Town Center Special Area Plan – Causeway and Commercial Core Districts, had a land use designation of Planned Redevelopment – Mixed Use (“PR-MU”) and a zoning district designation of C-3 Retail Commercial (“C-3”). In its application, Madeira Beach Development Co., LLC requested the City amend the zoning designation for the Property from C-3 to Planned Development (“PD”) to facilitate development of the Concept Plan proposed and presented by Madeira Beach Development Co., LLC. The Concept Plan shows a mixed-use development consisting of hotel, condominium, commercial/retail and marina uses.

10. As required by the Community Planning Act (§§163.3161 – 163.3217, Fl. St.), the City has the power and responsibility to plan for its future development and growth, adopt and amend its comprehensive plan to guide such future development and growth and to establish, support, and maintain administrative instruments and procedures to carry out the provisions and purposes of the Act. The City’s comprehensive plan is required to provide the principles, guidelines, standards and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the city that reflects community commitments to implement the plan and its elements. The elements contained within the adopted Comprehensive Plan include but are not limited to a future land use classification and

map, transportation, public facilities, capital improvements, public schools, recreation and open space, and housing.

11. The City has governmental, corporate and proprietary powers to enable it to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law.

12. The Board of Commissioners of the City has the power to make ordinances and resolutions for the government of the City. The ordinances proceed through the review and approval process, and if passed, become effective.

13. In general terms, the objectives of land development regulations are to protect, promote and improve the public health, safety, comfort, order, appearance, convenience, morals and general welfare of a city, and to promote the orderly development of residential, business, recreation and public areas.

14. Through a quasi-judicial process, the City evaluates applications of a land use standard established by local law to specific real property and its impact upon the owners, residents, other occupants and other affected persons.

15. As the applicant, Madeira Beach Development Co., LLC – in connection with its Rezoning Application – proceeded through the quasi-judicial process of the City, and obtained approval on June 14, 2016. Madeira Beach Development Co., LLC, through competent substantial evidence, established that its proposed Rezoning and proposed Concept Plan complied with applicable land development regulations and standards and were consistent with the City's Comprehensive Plan.

16. As part of the Rezoning Process, Madeira Beach Development Co., LLC presented the proposed Rezoning and Concept Plan to the residents of Madeira Beach during two

neighborhood meetings on March 9, 2016, attended meetings with the City's Planning Commission on March 14, 2016 and April 28, 2016, and then presented evidence to the Board of Commissioners of the City in support of its Rezoning Application at the public hearing held May 10, 2016. The evidence presented and record created during the May 10, 2016 public hearing included, but was not limited to, the following:

- The video and transcripts of the neighborhood meetings held on March 9, 2016;
- The Rezoning Application and supporting documents;
- The expert testimony, presentation, and renderings presented by Tim Clemmons, a registered architect with Mesh Architecture;
- The expert testimony, presentation and planning analysis presented by Cyndi Tarapani, a professional urban planner with Florida Design Consultants, Inc.;
- The expert testimony, presentation and traffic analysis presented by Robert Pergolizzi, a professional transportation planner with Gulf Coast Consulting;
- The Planning Commission's unanimous recommendation of approval; and
- The report prepared by the City's professional planning staff with a recommendation of approval.

17. In addition, in connection with the Rezoning Application, Madeira Beach Development Co., LLC and the City negotiated the terms of the Development Agreement that includes, among other information, the following: (i) the development uses permitted on the land, including population densities, and building intensities and height; (ii) a description of public facilities that will service the development; (iii) a description of all local development permits approved or needed to be approved for the development of the land; (iv) a finding that the development permitted or proposed is consistent with the local government's comprehensive

plan and land development regulations; and (v) a description of any conditions, terms, restrictions, or other requirements determined to be necessary by the local government for the public health, safety, or welfare of its citizens. *See Ex. 1.*

18. The second public hearing on the Rezoning Application was conducted June 14, 2016 before the Board of Commissioners of the City. As referenced above, the City approved Madeira Beach Development Co., LLC's Rezoning Application and Development Agreement. *See Ex. 1.*

19. Members of the public attended and participated in the neighborhood meetings on March 9, 2016, the Planning Commission meetings on March 14, 2016 and April 28, 2016 as well as the May 10, 2016 public hearing and the June 14, 2016 public hearing – both conducted before the Board of Commissioners of the City.

Basis for Intervention

20. Proposed Intervenor currently has an interest in the Property, the approved Rezoning Application, the Development Agreement, and the Ordinance sought to be declared void *ab initio* per the relief sought by Plaintiffs in this action.

21. The proposed development, pursuant to the approved Rezoning Application and associated Development Agreement, is directly impacted by Plaintiffs' action to have Ordinance 2016-01 declared void *ab initio*.

22. Proposed Intervenor, as the now-designated Developer, possesses a "direct and immediate interest" of such a quality that it will gain or lose by the legal operation and effect of the judgment. See, e.g., *Harbor Specialty Ins. Co. v. Schwartz*, 932 So. 2d 383, 386 (Fla. 2d DCA 2006).

23. Rule 1.230 of the Florida Rules of Civil Procedure provides that any person or entity 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.

24. However, Proposed Intervenor is a necessary and indispensable party because it will be directly affected by the adjudication of the causes of action brought by the Plaintiffs. *See, e.g., Lee v. Cole*, 46 So. 3d 612, 613 (Fla. 2d DCA 2010). Thus, as an indispensable party, Proposed Intervenor seeks the same rights as the main parties to the action, including the right to file its own complaint. *Al Packer, Inc. v. First Union Nat. Bank of Florida*, 650 So. 2d 165, 166 (Fla. 3d DCA 1995).

25. Pursuant to Florida law, the primary issue in a motion to intervene is whether the person seeking to intervene has a sufficient interest in the case to justify an order allowing that person to participate in the litigation. This issue is most often resolved by determining whether the prospective intervenor's rights would be affected by the outcome of the case. As restated by the Florida Supreme Court in *Union Cent. Life Ins. Co. v. Carlisle*:

[T]he interest which will entitle a person to intervene ... must be in the matter in litigation, and of such a direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment. In other words, the interest must be that created by a claim to the demand in suit or some part thereof, or a claim to, or lien upon, the property or some part thereof, which is the subject of litigation

593 So. 2d 505, 507 (Fla. 1992) (quoting *Morgareidge v. Howey*, 78 So. 14, 15 (Fla. 1918)).

26. Once the court determines that the requisite interest exists, the court then exercises its sound discretion to determine whether to permit intervention, evaluating a number of factors, including the derivation of the interest, any pertinent contractual language, the size of

the interest, the potential for conflicts or new issues, and any other relevant circumstance. *Union Cent. Life Ins. Co. v. Carlisle*, 593 So. 2d at 507-08.

27. Intervention should be liberally allowed. *National Wildlife Federation Inc. v. Glisson*, 531 So. 2d 996, 998 (Fla. 1st DCA 1988), citing to *Miracle House Corp. v. Haige*, 96 So. 2d 417 (Fla. 1957).

28. This motion is timely brought, and intervention will not delay or disrupt the proceeding.

29. Proposed Intervenor is entitled to intervene pursuant to Fla. R. Civ. P. 1.210 and 1.230, and to receive copies of all pleadings, orders and notices filed herein.

Conclusion

WHEREFORE, MADEIRA BEACH TOWN CENTER, LLC requests this Court to allow it to intervene in the above-styled proceeding for purposes of filing a complaint, an answer, or other appropriate pleadings in opposition to the relief Plaintiffs seek in their three-count Complaint, and to thereby establish its rights to proceed with the Rezoning, Concept Plan and Development Agreement as authorized and approved by the City of Madeira Beach, and to hereafter receive all pleadings, orders and notices filed herein.

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