

COMMISSION AGENDA:

12.11.12 #11a.

TO: The Honorable Chairman and Members of the
Board of County Commissioners

FROM: James L. Bennett, County Attorney *JLB*

SUBJECT: Notice of New Lawsuit and Defense of the Same by the County Attorney
in the Case of Gulfview South, Inc. v. Pinellas County, et al.
Circuit Civil Case No. 12-013685-CI-07

DATE: December 11, 2012

NOTICE: THIS IS TO ADVISE THE BOARD OF COUNTY COMMISSIONERS THAT THE ABOVE-REFERENCED LAWSUIT WAS FILED AGAINST THE COUNTY AND THE COUNTY ATTORNEY'S OFFICE WILL DEFEND THE SAME.

DISCUSSION: Gulfview South, Inc. has sued Pinellas County seeking a declaratory judgment determining that the development order passed on Tuesday, October 16, 2012, Case No. CU/TDR-4-9-12 is inconsistent with the Pinellas County Comprehensive Plan as well as the Downtown Historic Palm Harbor Master Plan. Plaintiff additionally seeks a declaratory judgment finding that the development order issued in CU/TDR-4-9-12 was not supported by competent and substantial evidence.

Plaintiff asserts that it owns property in the Old Palm Harbor-Downtown Zoning District and is aggrieved and adversely affected by the Development Order which granted a conditional use to Southerland Realty Holdings I and II, LLC allowing a transfer of development rights and granting a set-back variance.

A copy of the Complaint is attached hereto.

JLB:CDP:gm

Attachment

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

GULFVIEW SOUTH, INC.,

Plaintiff,

v.

CASE NO. 12-01368 SC 1-7

PINELLAS COUNTY, FLORIDA,
a political subdivision of the State of
Florida,

Defendant.

COMPLAINT

Plaintiff, Gulfview South, Inc., sues Defendant, Pinellas County, Florida, a political subdivision of the State of Florida (the "County"), based upon the following:

1. This is an action pursuant to section 163.3215(3), Florida Statutes for a declaratory judgment to determine that the development order passed by the Board of County Commissioners (the "Board") at a quasi-judicial hearing on Tuesday, October 16, 2012 (the "Quasi-Judicial Hearing"), in Case No. CU/TDR-4-9-12 (the "Development Order"), is inconsistent with the Pinellas County Comprehensive Plan (the "Comprehensive Plan") and the Downtown Historic Palm Harbor Master Plan (the "Master Plan") and was not supported by substantial competent evidence.

2. The County and the community of Palm Harbor have been working together since the early 1990s to protect the historical integrity of Downtown Palm Harbor.

3. In 1994, the Board established the Downtown Palm Harbor Historic District to support the community's efforts to recognize and protect the unique heritage of this unincorporated area of the County.

4. In 1997, the voters of the County approved a referendum extending the Penny for Pinellas Infrastructure Sales Tax for another 10 years, which included a commitment to fund streetscape improvements in Downtown Palm Harbor.

5. In 1998, the residents and business owners in Old Palm Harbor developed a Vision Statement emphasizing that Old Palm Harbor and its Downtown is a special place worthy of protection.

6. The objectives and policies of the Comprehensive Plan include the following:

A. To assist communities in providing opportunities and/or public facilities and other features that promote a community's identity, and

B. To assist communities in maintaining their unique character.

7. In the Fall of 2000, local residents, property and business owners, County staff, and the Downtown Palm Harbor Main Street Program worked to develop a draft of the Master Plan.

8. On December 18, 2001, the Master Plan was adopted by the Board of Commissioners.

9. The objectives and policies of the Master Plan are meant to encourage a proper use mix of retail stores, restaurants, and offices in the Old Palm Harbor-Downtown Zoning District.

10. After adoption of the Master Plan, the Board established the Old Palm Harbor-Downtown Zoning District to implement provisions of the Master Plan.

11. On April 26, 2011, the Board amended the Transfer of Development Rights (“TDRs”) provisions in the Pinellas County Future Land Use Map Category Descriptions and Rules of the Comprehensive Plan.

12. These amended TDR provisions did not apply to properties in the Old Palm Harbor-Downtown Zoning District, which is designated in the Pinellas County Future Land Use Map as a Community Redevelopment-District Activity Center.

13. In order to allow for TDRs in the Old Palm Harbor-Downtown Zoning District, the Comprehensive Plan required that the Master Plan be amended to include TDR provisions specific to the Old Palm Harbor-Downtown Zoning District.

14. The Board recently amended the Master Plan to allow for TDRs within the East Sub-District of the Old Palm Harbor-Downtown Zoning District (the “Palm Harbor TDR Provision”).

15. The Palm Harbor TDR Provision allows for an increase in density/intensity of up to 75% of the maximum allowed by the Old Palm Harbor-Downtown Zoning District, which is greater than any other TDRs allowed in the County.

16. Sutherland Realty Holdings I and II, LLC (“Sutherland”) owns three under-developed properties in the Old Palm Harbor-Downtown Zoning District (the “Sending Parcels”).

17. Sutherland also owns two contiguous vacant properties in the Old Palm Harbor-Downtown Zoning District (the “Receiving Parcel”), on which it wants to

construct a three-story office building that would not be permissible without transferring the maximum allowable development rights from the Sending Parcels to the Receiving Parcel and, in order to do so, it applied for the Development Order.

18. On October 16, 2012, the Board passed the Development Order, which granted a conditional use to Sutherland for the maximum allowable TDRs to be transferred from the Sending Parcels to the Receiving Parcel and which granted a variance to Sutherland for building setbacks for the Receiving Parcel.

19. Plaintiff owns property in the Old Palm Harbor-Downtown Zoning District and is aggrieved and adversely affected by the Development Order.

20. Plaintiff contends that the Development Order is not consistent with the Comprehensive Plan or the Master Plan for the following reasons:

A. The densities/intensities permitted by the Development Order are not compatible with and do not further the objectives and policies in the Comprehensive Plan and the Master Plan because the adverse impact on parking for retail stores and restaurants that will result from the Development Order does not promote the community's identity or help maintain its unique character and will not provide sufficient parking for retail stores or restaurants to succeed.

B. The densities/intensities permitted by the Development Order are not compatible with the objectives and policies in the Comprehensive Plan and the Master Plan because the adverse impact on parking for retail stores and restaurants that will result from the Development Order will restrict the ability of the Old Palm Harbor-

Downtown Zoning District to grow with a proper use mix use of retail stores and restaurants, along with offices.

21. Plaintiff contends that the Board's decision to pass the Development Order was not supported by substantial competent evidence based upon the following:

A. The single most important factor for the Board to have considered at the Quasi-Judicial Hearing to consider whether to pass the Development Order was the potential adverse impact it would have on parking for retail stores and restaurants if the maximum development rights were allowed to be transferred from the Sending Parcels to the Receiving Parcel.

B. The Board was provided with a parking study from Avid Engineering that was commissioned by Plaintiff, which provided the statistical basis for its conclusions, and which demonstrated there would be a significant adverse impact on parking for retail stores and restaurants if the maximum development rights were allowed to be transferred from the Sending Parcels to the Receiving Parcel (the "Avid Report").

C. The Board commissioned its own parking study from King Engineering ("King"), to analyze, among other things, what the impact on parking would be if the maximum development rights were allowed to be transferred from the Sending Parcels to the Receiving Parcel (the "King Report").

D. The King Report was not yet completed at the time the Development Order was acted upon by the Board.

E. The Board was asked by members of the public to wait for the King Report to be completed before acting on the Development Order.

F. Rather than waiting for the King Report to be completed, the County solicited, Sandra Gorman, an employee of King, to give an oral update on the status of the King Report (the "Oral Status Update").

G. Ms. Gorman opined that King had determined that there "may" be enough parking to support the needs of the downtown area, at full build-out.

H. Two members of the Board, who voted to pass the Development Order, stated that they were relying upon the Oral Status Update in making their decision.

I. The Board granted a variance for building setbacks for the Receiving Parcel in the Development Order without substantial competent evidence that Sutherland could establish any of the elements in the County code of ordinances necessary to be entitled to a variance.

J. The Oral Status Update does not constitute substantial competent evidence upon which the Board was entitled to rely in making the quasi-judicial decision to pass the Development Order.

K. The Avid Report was the only substantial competent evidence before the Board upon which it was entitled to rely in making the quasi-judicial decision whether or not to pass the Development Order.

22. Plaintiff is in doubt as to its rights under the Development Order, which requires a judicial determination.

WHEREFORE, Plaintiff, Gulfview South, Inc., demands judgment against Defendant, Pinellas County, Florida, a political subdivision of the State of Florida, establishing that the Development Order is inconsistent with the Comprehensive Plan and

the Master Plan and was not supported by substantial competent evidence, together with such other and further relief as this Court deems just and proper.



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Dated: 11/13/12