


SARASOTA COUNTY GOVERNMENT

Office of the County Attorney

Interoffice Memorandum

No. 1769

TO: Honorable Chair and Members of
the Board of County Commissioners

FROM: Joshua B. Moye, County Attorney 

RE: Siesta Key Hotels Litigation Status Report
Ramirez v. Sarasota County, Case No. 2021-CA-5551-NC
222 Beach Owners Ass'n v. Sarasota County, Case No. 2021-CA-5582-NC
Ramirez v. Sarasota County, Case No. 1D23-1058

DATE: October 24, 2023

This is an update to Interoffice Memorandum No. 1761. It provides a status report on litigation involving: (1) the proposed hotel located at the combined property at 214, 220, and 226 Calle Miramar and 221 Beach Road (“Calle Miramar Hotel”); (2) the proposed hotel located at 1260 and 1266 Old Stickney Point Road (“Old Stickney Point Hotel”); and (3) the Unified Development Code amendment that removed density limitations for transient accommodations.

There are three lawsuits. Lourdes Ramirez challenged the special exception for the Calle Miramar Hotel in circuit court (“Ramirez lawsuit”). 222 Beach Owners Association, Inc. challenged the special exceptions for the Calle Miramar Hotel, the Old Stickney Point Hotel, and the UDC amendment in circuit court (“222 Beach lawsuit”). Lourdes Ramirez also filed an administrative petition challenging the UDC amendment with the Division of Administrative Hearings. That matter is now on appeal at the First District Court of Appeal (“DOAH Appeal”).

I. Ramirez Lawsuit

On August 21, 2023, the Honorable Hunter Carroll, Circuit Judge, entered a partial summary judgment which finds Resolution No. 2021-208 granting special exceptions for transient accommodation use and height to develop an eight-story, 170-room hotel with a restaurant, rooftop bar, retail shops, and 223 parking spaces on a 0.96-acre property in the Siesta Village portion of Siesta Key is inconsistent with Future Land Use Policy 2.9.1 of the Sarasota County Comprehensive Plan. The circuit court order also granted summary judgment to the County regarding its interpretation of Coastal Policy 1.2.3 and Future Land Use Policy 1.2.6.

Because of the ruling regarding Future Land Use Policy 2.9.1, the court directed the parties to confer as to next steps, including whether the parties desired the court to enter a final judgment

invalidating the special exception and precluding the County from permitting development activities pursuant to that special exception, or if they wish to proceed to adjudicate the other portions of Ramirez’s remaining challenges first through a trial. Based on Board direction on September 12, 2023, our office informed the Court that the County would prefer entry of a final judgment. On October 9, 2023, the circuit court issued its final judgment in this case.

II. 222 Beach Lawsuit

On October 6, 2023, the Honorable Hunter Carroll, Circuit Judge, conducted a case management conference. During that conference, our office informed the Court that the Board had directed our office to agree to a final judgment in this circuit court lawsuit. The parties are awaiting a draft of a final judgment from the plaintiffs’ attorneys to review.

III. DOAH Appeal

On August 29, 2023, the First District Court of Appeal issued an order to show cause to the parties requesting a response as to whether the appeal was premature. Specifically, the Court questioned whether there needed to be a final order from the Administration Commission (Governor and Cabinet) before an appeal could proceed. Our office filed a response on September 8, 2023, requesting that any dismissal be without prejudice to refile after the Administration Commission entered a final decision. As of the date of this memorandum, the Administration Commission still has not entered a final order.

IV. Attorney’s Fees

Section 163.3215, Florida Statutes, provides for an award of attorney’s fees to the prevailing party in a consistency challenge like those in the Ramirez lawsuit and the 222 Beach lawsuit. No attorneys’ fees would be awarded as a result of the DOAH appeal. As articulated in an earlier memorandum, the attorneys’ fee awards may be several hundred thousand dollars. Both the Ramirez lawsuit and the 222 Beach lawsuit have been pending for almost two years and included extensive discovery and multiple court hearings.

III. Evaluation

Circuit Court Judge Hunter Carroll and Administrative Law Judge Suzanne Van Wyk both rejected arguments regarding the interpretation of Future Land Use Policy 2.9.1. As discussed in the prior memorandum, an appeal of Judge Carroll’s decision would be an uphill battle. The Intervenor/Developers in the Ramirez lawsuit and the 222 Beach lawsuit have also agreed to entry of the final judgments. They have indicated plans to seek an amendment to the comprehensive plan and Unified Development Code. In our professional opinion, pursuit of any appeal in either the Ramirez lawsuit or the 222 Beach lawsuit without an agreement from the Intervenor/Developers to assume the risk associated with additional costs and attorneys’ fees would not be warranted. Our office would also recommend dismissing the DOAH appeal. Finally, our office would recommend rescinding the UDC amendment.

V. Conclusion

The County has until November 8, 2023, to decide whether it wishes to appeal the Ramirez lawsuit final judgment. Our office recommends that the County not appeal the final judgment in the Ramirez lawsuit. We would also recommend not appealing the eventual final judgment in the 222 Beach lawsuit. We would also recommend voluntarily dismissing the pending appeal with the First District Court of Appeal. We also recommend rescinding the UDC amendment. We ask that the Board give our office direction in this matter.

There is the possibility of a legislative fix which amends the County's comprehensive plan. As of the date of this memo, one party has submitted such a possible amendment. Such an amendment would require a supermajority vote of the Board.

Attachment: Ramirez final judgment
cc: Jonathan Lewis, County Administrator

10/9/2023 3:14 PM

KAREN E. RUSHING

CLERK OF THE CIRCUIT COURT

SARASOTA COUNTY, FLORIDA

CIVIL COURTS

Receipt # 3094190

IN THE TWELFTH JUDICIAL CIRCUIT COURT
IN AND FOR SARASOTA COUNTY, FLORIDA

LOURDES RAMIREZ,
Plaintiff,

v.

CASE NO. 2021 CA 005551 NC
DIVISION C CIRCUIT

SARASOTA COUNTY,
Defendant.

FINAL JUDGMENT

The Court entered an Order Granting in Part and Denying in Part Multiple Motions for Summary Judgment dated August 21, 2023, which granted summary judgment in favor of Plaintiff Ramirez on the issues of (1) Plaintiff's standing to bring this action, and (2) the inconsistency of the challenged Development Order approving the Calle Miramar hotel with Future Land Use Policy 2.9.1 of the Sarasota County Comprehensive Plan, granted summary judgment in favor of the Defendants on the issue of the Development Order's consistency with Coastal Policy 1.2.3 and Future Land Use Policy 1.2.6 of the Comprehensive Plan, and ruled that there were disputed issues of fact precluding summary judgment on the issue of the Development Order's consistency with the remaining Comprehensive Plan objectives and policies raised by Plaintiff. The parties filed on September 20, 2023 a Joint Response as requested by the Court's Order, requesting that the Court enter a final judgment invalidating the Development Order and precluding the County from permitting development activities pursuant thereto, in light of the Court's granting of summary judgment as to inconsistency with FLU Policy 2.9.1, rather than proceeding to trial on the remaining claims of inconsistency, which are rendered moot by the Court's ruling regarding FLU Policy 2.9.1.

Accordingly, it is hereby ORDERED and ADJUDGED as follows:

1. FINAL JUDGMENT is entered in favor of Plaintiff Lourdes Ramirez.
2. Sarasota County Resolution No. 2021-208 adopted October 27, 2021 (the Development Order) is inconsistent with Sarasota County Comprehensive Plan Future Land Use Policy 2.9.1, and thus in violation of sections 163.3194 (1)(a), and (3), and 163.3215, Florida Statutes.
3. The Court's August 21, 2023 Order Granting in Part and Denying in Part Multiple Motions for Summary Judgment (DIN 209) is hereby adopted and incorporated as part of this FINAL JUDGMENT.
4. The inconsistency of the Development Order with Sarasota County Comprehensive Plan Future Land Use Policy 2.9.1 is dispositive of the issue of the Development Order's consistency with the Sarasota County Comprehensive Plan pursuant to sections 163.3194 (1)(a), and (3), and 163.3215, Florida Statutes.
5. Other allegations of Comprehensive Plan inconsistencies alleged by the Plaintiff are moot and no judicial labor remains for the Court.
6. The Development Order is null and void, and Sarasota County is precluded from permitting development activities pursuant to the Development Order, and the Intervenors are precluded from engaging in any development activities authorized by the Development Order.
7. The Court reserves jurisdiction to determine which party is the prevailing party for purposes of section 163.3215 (8)(c), Florida Statutes, and to award attorneys' fees or costs or both upon a timely filed motion.
8. The Court further reserves jurisdiction to enter any additional order necessary to effectuate this Final Judgment.

DONE AND ORDERED in Venice, Sarasota County, Florida, on October 09, 2023.

HUNTER W CARROLL
Circuit Judge

SERVICE CERTIFICATE

On October 09, 2023, the Court caused the foregoing document to be served via the Clerk of Court's case management system, which served the following individuals via email (where indicated). On the same date, the Court also served a copy of the foregoing document via First Class U.S. Mail on the individuals who do not have an email address on file with the Clerk of Court.

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