

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

CLAY G. COLSON,

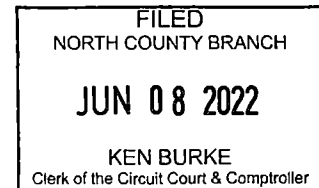
CASE NO.: 21-005793-CI

Plaintiff,

v.

THE CITY OF TARPON SPRINGS, FLORIDA,

Defendant.



**PLAINTIFF'S MOTION FOR RECONSIDERATION OF
ORDER GRANTING DEFENDANT CITY OF TARPON SPRINGS'
MOTION TO DISMISS FOR FAILURE TO JOIN INDISPENSABLE PARTIES**

COMES NOW, the Plaintiff, CLAY G. COLSON, and files his Motion for
Reconsideration of Order Granting Defendant CITY OF TARPON SPRINGS' Motion to
Dismiss for Failure to Join Indispensable Parties showing:

1. On January 25, 2022, counsel for the Defendant, CITY OF TARPON SPRINGS, filed the Defendant's Motion to Dismiss for Failure to Join Indispensable Parties. Such motion did not seek dismissal with prejudice, but instead, it sought dismissal without prejudice and cited *Fulmer v. Northern Central Bank*, 386 So.2d 856 (Fla. 2d DCA 1980) which holds that it is improper to dismiss an action for failure to join indispensable parties with prejudice. Furthermore, such motion did not cite a single case concerning indispensable parties to an action to challenge the consistency of a development order with a comprehensive plan pursuant to Florida Statutes §163.3215.
2. On May 2, 2022, a hearing was held on such motion.
3. After counsel for the Defendant, CITY, presented its motion, I pointed out that the Second District Court of Appeal's decision in *City of St. Petersburg, v. Marelli*, 728

So.2d 1197 (Fla. 2d DCA 1999) held that a property owner and developer for whom a variance was granted is not an indispensable party, and thus, that such precedent requires denial of the CITY's motion to dismiss.

4. In *City of St. Petersburg, v. Marelli*, 728 So.2d 1197 (Fla. 2d DCA 1999), the court cited *Brigham v. Dade County*, 305 So.2d 756 (Fla.1974), in which the Florida Supreme Court found that a party challenging an administrative action concerning a zoning regulation change need not join the affected property owner as the property owner is not an indispensable party.
5. However, Judge Muscarella granted the CITY's motion and directed counsel for the CITY to prepare a proposed order.
6. On May 9, 2022, Judge Muscarella signed the proposed order submitted by counsel for the CITY, and the Order Granting Defendant CITY OF TARPON SPRINGS' Motion to Dismiss for Failure to Join Indispensable Parties was filed on May 10, 2022.
7. Such Order provides that the CITY's Motion to Dismiss for Failure to Join Indispensable Parties is granted without prejudice, but then, it provides that failure to file an amended complaint within 30 days shall result in dismissal with prejudice.
8. Such Order also does not explain who the Court considers indispensable parties and states that the amended complaint is due within 30 days of the date of the hearing when I recall that Judge Muscarella stated that I would have 30 days from the date of the Order to file an amended complaint.
9. As the proposed order prepared by counsel for the CITY is contradictory, did not accurately reflect Judge Muscarella's ruling at the hearing on May 2, 2022, was entered before I received a copy to review and object to, and provides for dismissal with


prejudice contrary to the precedent submitted by counsel for the CITY in its motion, the Court should reconsider such Order and either clarify it or vacate it.

10. Furthermore, as such Order is contrary to the Second District Court of Appeal's holding in *City of St. Petersburg, v. Marelli*, 728 So.2d 1197 (Fla. 2d DCA 1999) and the Florida Supreme Court's holding in *Brigham v. Dade County*, 305 So.2d 756 (Fla.1974) that a property owner and developer for whom a variance was granted is not an indispensable party to an action to challenge a decision by local government to grant a variance to allow a development, the Court should reconsider and vacate such Order.

WHEREFORE, I respectfully request the Court to reconsider and vacate the Order Granting Defendant CITY OF TARPON SPRINGS' Motion to Dismiss for Failure to Join Indispensable Parties.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this motion has been served by U.S. Mail to Jay Daigneault, Esq. of Trask Daigneault, LLP at 1001 S. Fort Harrison Ave., Suite 201 in Clearwater, FL 33756 on this 7 day of June 2022.


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