

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

CLAY G. COLSON,

CASE NO.: 21-5793-CJ

Plaintiff,

v.

THE CITY OF TARPON SPRINGS, FLORIDA,

Defendant.

_____ /

COMPLAINT

CLAY G. COLSON (“Plaintiff”) sues THE CITY OF TARPON SPRINGS, FLORIDA (“the City”), and allege:

NATURE OF CLAIM, JURISDICTION, AND VENUE

1. This is an action for equitable relief.
2. This Court has subject-matter jurisdiction based on Fla. Stat. §26.012.
3. This Court has personal jurisdiction over the City because the City is a Florida municipal corporation.
4. Venue is proper because the events complained of occurred in Pinellas County.

GENERAL ALLEGATIONS

5. Plaintiff is an individual who owns real property in the City.
6. The proposed development (“the Proposed Development”) at issue in this complaint does adversely affect Plaintiff’s use and enjoyment of the real property he owns in the City, as well as Plaintiff’s property value.

7. The Proposed Development is a 404-unit multifamily project on nearly 74 acres of greenspace along the Anclote River (“the Property”) and a clubhouse, on-site recreational amenities, parking, and stormwater facilities.

8. The Property sits in the City’s Commercial General zoning district (“the CG District”) where only secondary residential uses are permitted under the City’s land development codes.

9. The City’s commission approved the Proposed Development in Ordinance 2021-15 (“the Ordinance”) and Resolution No. 2021-60 (“the Resolution”), a true and correct copy of which is attached as composite Exhibit “A” to this complaint.

10. The Ordinance and the Resolution were both rendered on November 9, 2021

11. The Ordinance and the Resolution constitute development orders within meaning of § 163.3164(15), Fla. Stat. because they granted, with conditions, the Proposed Development’s application for a development permit.

12. As a threshold matter, the Ordinance and the Resolution materially alters the use, the intensity, and the density of the Property in a manner that is not consistent with the City’s comprehensive plan (“the Plan”) because the Proposed Development creates a primary residential use in the CG District where only a secondary residential use is permitted. Specifically, this violates:

- a. Policy 2.4.3 of the City’s Future Land Use Element of the Plan, which provides that the primary use of the CG District is to designate existing commercial areas; and
- b. Policy 2.4.3 of the City’s Future Land Use Element of the Plan, which provides that residential use is permitted in the CG District, but only as a secondary use. The Plan specifically defines “secondary use” as serving a support function to the primary land uses and are of secondary importance in terms of the area having zoning approval.

13. The Ordinance and the Resolution also materially alters the use, the intensity, and the density of the Property a manner that is not consistent with the following other provisions of the Plan:

- a. Objection 1.2 of the City's Capital Improvements Element of the Plan, which requires the City to limit the use of public expenditures which subsidize development in high hazard coastal areas;
- b. Policy 1.2.1 of the City's Capital Improvements Element of the Plan, which requires the City to limit development within High Hazard Coastal Areas with dedicated City funds to only certain conditions;
- c. Objective 1.4 of the City's Capital Improvements Element of the Plan, which requires the City to maintain strict awareness to the extent which future development will have a proportionate cost of facility improvements;
- d. Goal 1.0 of the City's Coastal Planning Area and Conservation Element of the Plan, which requires the City to preserve, protect, and enhance the natural and functional characteristics of the Coastal Planning Area;
- e. Objective 1.1 of the City's Coastal Planning Area and Conservation Element of the Plan, which requires the City to protect and improve the natural resources of all wetlands and areas of significant upland habitat;
- f. Policy 1.1.1 of the City's Coastal Planning Area and Conservation Element of the Plan, which requires the City to evaluate all wetland areas for potential preservation designation with a goal of "no net loss of wetlands;"

- g. Policy 1.1.4 of the City's Coastal Planning Area and Conservation Element of the Plan, which requires the City to require all redevelopment adjacent to wetlands or areas of significant upland habitat to assess the impact upon wildlife;
- h. Objective 1.2 of the City's Coastal Planning Area and Conservation Element of the Plan, which requires the City to restrict dredging and filling activities to those where no feasible alternative exists; and
- i. Policy 1.2.2 of the City's Coastal Planning Area and Conservation Element of the Plan, which requires the City to examine alternatives to dredging and filling.

CAUSES OF ACTION

Count I

Declaratory Judgment

- 14. Plaintiff re-incorporates and re-alleges Paragraphs 1-13 as if fully stated herein.
- 15. This is an action for a declaratory judgment against the City declaring that the Ordinance and the Resolution are inconsistent with the Plan.
- 16. The declaration sought pertains to a present, ascertainable state of facts or controversy involving those facts regarding whether the Ordinance and the Resolution are inconsistent with the Plan.
- 17. Plaintiff needs a declaration of his rights.
- 18. Plaintiff has an actual, present, adverse, and antagonistic legal interest in the resolution of the present controversy.
- 19. All persons who have an actual, present, adverse, and antagonistic interest in the subject matter have been joined in this action, and all adverse interest are before the Court.

20. The relief sought is not merely the giving of legal advice by the Court or the answer to questions propounded from mere curiosity; rather, the relief sought is an approved use of the Declaratory Judgment Act under Florida law.

21. Accordingly, Plaintiff request that the Court enter a judgment determining that the Ordinance and the Resolution are inconsistent with the Plan.

WHEREFORE, based upon the foregoing, Plaintiff request that the Court:

- A. Enter judgment in its favor declaring that the Ordinance and the Resolution inconsistent with the Plan; and
- B. Any other relief the Court deems just and proper.

Count II

Permanent Injunction

22. Plaintiff re-incorporates and re-alleges Paragraphs 1-13 as if fully stated herein.

23. This is an action for a permanent injunction enjoining the City from further enforcing the Ordinance and the Resolution.

24. Plaintiff has a clear legal right to an injunction.

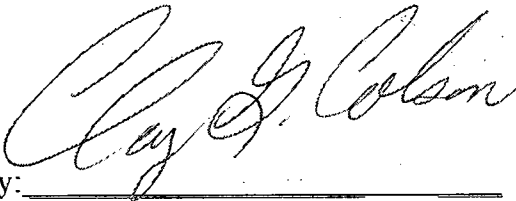
25. Plaintiff has an inadequate remedy at law.

26. Plaintiff will suffer irreparable harm if the City is not enjoined from enforcing the Ordinance and the Resolution.

WHEREFORE, based upon the foregoing, Plaintiff request that the Court:

- A. Enter judgment in its favor enjoining the City from further enforcing the Ordinance and the Resolution;
- B. Any other relief the Court deems just and proper.

Dated: December 9, 2021


By: _____

Clay G. Colston
4318 Joy Drive
Land O'Lakes, FL 34637