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SID J. WHITE

APR 16 1993

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA
CASE NO. 80,973

FOURTH DCA CASE NO. 88-03192

PARK OF COMMERCE ASSOCIATES, etc.,

Petitioner,

v

CITY OF DELRAY BEACH, a Florida
municipal corporation, DOAK S.
CAMPBELL, III, MAYOR, JAMES
WEATHERSPOON, RICHARD
DOUGHERTY, MALCOLM BIRD, and
MARIE HORENBURGER, City Council
Members, and LAND RESOURCES
INVESTMENT COMPANY,

Respondents.

BRIEF OF AMICUS CURIAE FLORIDA ASSOCIATION OF COUNTY
ATTORNEYS, INC., IN SUPPORT OF THE RESPONDENT
CITY OF DELRAY BEACH'S POSITION

FLORIDA ASSOCIATION OF COUNTY
ATTORNEYS, INC.

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PRELIMINARY STATEMENT

In this brief, all appellants will be referred to as "Appellants". All appellees will be referred to as "Appellees". All references to the Appendix will be cited as "[App-].

STATEMENT OF THE CASE AND FACTS

The Florida Association of County Attorneys, Inc., hereby accepts and adopts the Statement of the Case and Facts as submitted by Respondent City of Delray Beach, Florida, in its Answer Brief.

SUMMARY OF THE ARGUMENT

Local Governments' Home Rule powers gives Florida local governments the authority to establish by ordinance the type of review for site plan approval.

The ordinance in Corn is distinguishable and sets forth a technical administrative process.

It is a violation of the separation of powers doctrine for the court to legislate the type of review required by labeling all site plan review process as quasi-judicial or administrative.

ARGUMENT

- I. Local Governments' Home Rule powers gives Florida local governments the authority to establish, by ordinance, the type of review for site plan approval.

Local governing bodies have broad home rule powers. Municipalities have all powers not reserved or preempted to the state or a county by general law, the Florida Constitution, or County Charter. § 166.021, Fla. Stat. (1991). There is no uniform general law or other prohibition or requirement governing or mandating a specific site and development plan review process. Thus, a municipality (or a county) pursuant to its home rule powers, may, by ordinance, establish the parameters of its site plan review process.

Whether a site plan approval process is quasi-judicial or quasi-legislative depends on the intent and procedures of the local government as reflected in its ordinances setting forth the site plan review process.

A local government acts in either a quasi-legislative, quasi-judicial, or quasi-executive capacity. Nelson v. Lindsey, 10 So.2d 131 (Fla. 1942). Where a governmental body acts in a quasi-legislative capacity or quasi-executive capacity, a challenge to its decision should be by declaratory and/or injunctive relief. Board of County Commissioners v. Casa Development, 332 So.2d 651 (Fla. 2nd DCA 1976). On the other hand, where a governmental body acts in a quasi-judicial capacity, appellate review is

appropriately by certiorari. DeGroot v. Sheffield, 95 So.2d 912 (Fla. 1957).

To determine a local governments legislative intent in its land development review procedures, one must look at the attributes of the process established by statute or the governing ordinance. The Supreme Court of Florida has stated, "When the statute provides the appellate procedure, that course should be followed". De Groot, supra 915. In De Groot, this court held that a Civil Service Board was acting in a quasi-judicial capacity because" . . . it arrived at its decision after a full hearing pursuant to notice based on evidence submitted in accordance with the statute here involved". Id. at 915.

In Bloomfield v. Mayo, 119 So.2d 417 (Fla. 1st DCA 1960), the Court was reviewing a decision by the Commissioner of Agriculture denying the registration of a pesticide product. The Court stated that,

"It thus appears that before an administrative order may be considered quasi-judicial in character and therefore subject to review by certiorari, the statute authorizing the entry of such an order must also require that the administrative agency give due notice of a hearing to be held on the question to be considered, and provide opportunity to be heard in a proceeding in which the party effected is afforded the basic requirements of due process of law." Id. at 421.

The First District Court of Appeal in Bloomfield carefully reviewed the statute to determine if it required that the registrant or others be given such notice or required a hearing in accordance with due process. The Court found that the statute provided that the canceling of an already approved registration,

required notice and a due process hearing, but the initial granting of the registration did not require a hearing pursuant to statute and thus the court held that it did not warrant certiorari review. Id. at 422.

The Second District Court of Appeal in Casa Development, supra, was charged with determining whether the action of the Board of County Commissioners of Hillsborough County denying a water and sewer franchise was a quasi-legislative or quasi-judicial proceeding. The authority to grant or deny the franchises was established pursuant to a Special Act. The Court looked to the Special Act to determine if there were quasi-judicial criteria. The court stated that the Special Act did not contemplate a quasi-judicial hearing nor was one conducted. "About all that happened was that Appellees' representative made some unsworn statements in support of the application and the County Attorney responded with opinions of his own". Casa Development, supra at 654. The court held that review by certiorari was, thus, not the appropriate remedy. Id. at 654.

Similarly in the instant the applicants made only unsworn statements and others gave their opinions. There was no formalized hearing process, no cross-examination, no evidentiary rulings, and no sworn testimony. This procedure was absolutely in accord with the Respondent Delray Beach's ordinances and procedures.

The Fourth District Court of Appeal in Connor v. Town of Palm Beach, 398 So.2d 952 (Fla. 4th DCA 1981) established that the "Board of Trustees for Town of Palm Beach Employees Retirement

System's" denial of disability benefits to a law enforcement officer did not constitute a quasi-judicial decision. The court found that "there was no sworn testimony, no witnesses, no examination or cross-examination, no order containing findings and conclusions". Id at 954. The Court thus determined that the denial was properly reviewable by declaratory relief. Id. at 954.

Therefore, the local government's own ordinance must be reviewed to determine if a quasi-legislative or quasi-judicial proceeding is provided. If the statute or ordinance is silent, then the process actually used to reach a decision must be reviewed and analyzed to determine if a quasi-judicial hearing occurred. The case law requires a hearing upon notice, and a requirement that the hearing meet basic requirements of due process, "including the right to present evidence and to cross-examine adverse witnesses and [requires that] the judgment should be contingent on the showing made at the hearing". DeGroot, supra at 654.

Local governments have home rule power to establish the type of review for site and development plans by ordinance. The ordinance sets forth the intent of the legislative body as to its site plan review processes, and it must be determinative as to the type of review.

II. The ordinance in Corn is distinguishable and sets forth a technical administrative process.

The trial court in Corn found that "the evidence establishes

that the City Council was required to permit the applicant to correct the deficiencies; and when the corrections were made, the ordinances of the City of Lauderdale Lakes would require the City Council to approve the site plans. City of Lauderdale Lakes v. Corn, 427 So.2d 239 (Fla. 4th DCA 1983).

The Fourth District Court of Appeal in Corn likened site plan approvals to plat approvals. However, the court obviously did not conduct an analysis of the statute governing plat approval (Chapter 177, Florida Statutes) with the City of Lauderdale Lakes' ordinances governing its site plan approval process.

Nonetheless, the court in Corn addressed site plans as if they were comparable to plats. In Corn, the court cited Yokeley's Law of Subdivisions, §52 regarding the platting process, for the proposition that:

...the authority of a town to deny a landowner the right to develop his property by refusing to approve the plat of such development is, by statute made to rest upon specified standards of a statute or implementing ordinances. Thereafter, the approval or disapproval of a plat on the basis of controlling standards becomes an administrative act."

Corn at 243. (Emphasis added)

This statute sets forth requirements of platting which are highly technical. The intent expressed in this state statute for platting is for a ministerial/administrative review process. However, this is not similar to local site plans, which are not covered by a uniform state statute.

The Fourth District Court of Appeal in Boynton Beach vs. V.S.H. Realty, Inc., 443 So.2d 452 (Fla. 4th DCA 1984) reviewed the

City of Boynton Beach's site plan ordinance. The panel, unlike Corn, went through the proper analysis by actually analyzing the attributes of the Boynton Beach site plan review ordinance. The Court, in Boynton Beach, found no indicia of a quasi-judicial process. Id. at 454. Further, the Court reviewed the ordinance and found that the factors to be reviewed clearly required "informed legislative discretion...so as to protect the various interests of the public, particularly neighboring residents and property owners." Id. at 455.

Unlike plat approvals, each local government exercising its home-rule powers has the authority to not require site plan review or to require site plan review and set the procedures. A local government by ordinance, provide for a quasi-legislative process, a quasi-judicial process, or an administrative process. The intent of each municipality as expressed in its ordinances and the conduct of the review process dictates the attributes of the review process and ultimately whether the proceeding is determined to be quasi-judicial, quasi-legislative or quasi-administrative or executive.

The Boynton Beach case does not contradict Corn. The Corn case and the Boynton Beach case, (assuming the proper analysis and review of the City of Lauderdale Lakes ordinances were conducted by the court) can be harmonized. The City of Lauderdale Lakes ordinance required only technical compliance and therefore set up a ministerial/administrative process which could be addressed through a writ of mandamus. The Boynton Beach case involves a different type of ordinance and procedure. The Boynton Beach

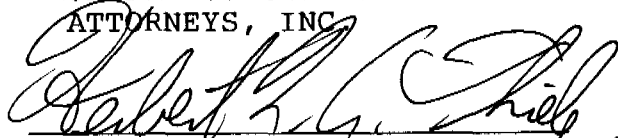
ordinance called for a quasi-legislative decision reviewable by declaratory decree and/or injunctive relief. The Respondent City of Delray Beach's ordinance likewise sets forth such a quasi-legislative review.

CONCLUSION

The Respondent City of Delray Beach's site plan review process is quasi-legislative. The Fourth District Court's en banc opinion of September 2, 1992, and en banc clarification of November 18, 1992, should be overruled. The Trial Court's judgment should be affirmed.

Dated this _____ day of April, 1993.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by first class U.S. mail to: John Beranek, Esq., Aurell Radey Hinkle Thomas & Beranek, 101 North Monroe Street, Suite 1000, Monroe-Park Tower, Tallahassee, FL 32302; L. Martin Reeder, Esq., 1900 Phillips Point West, 19th Floor, 77 South Flagler Drive, West Palm Beach, FL 33401-6198; and Susan A. Ruby, Esq., Assistant City Attorney, 200 N.W. 1st Avenue, Delray Beach, FL 33444, this 16th day of April, 1993.

FLORIDA ASSOCIATION OF COUNTY ATTORNEYS, INC.



HERBERT W.A. THIELE, Member, Board of Directors