

IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA

STEVE BYLE

Plaintiff

v.

Case No. 51-2007-CA-7037-WS
Circuit Judge: G

PASCO COUNTY, by and
through its BOARD OF COUNTY COMMISSIONERS

Defendants
_____ /

ACTION FOR INJUNCTIVE and DECLARATORY RELIEF

This is an action for Declaratory and Injunctive relief
as described in Paragraph 3.

The Parties

1. Plaintiff, STEVE BYLE is a citizen of Pasco County
who resides in the Leisure Beach waterfront subdivision.

2. Defendant Pasco County ("County") is a political
subdivision of the State of Florida.

Jurisdiction

3. This is an action for declaratory judgment and
injunctive relief pursuant to § 86, Florida Statutes.
Plaintiff seeks a declaratory judgment holding that
Defendant's Development Review Committee is without
authority or jurisdiction to provide a remedy to an ongoing
violation of Defendant's general ordinance regulating the

obstruction of navigable waterways within the County, with a variance from its Land Development Code.

Plaintiff's Standing

4. The Plaintiff, STEVE BYLE, resides in the Leisure Beach Subdivision and is one of the upland land owners Defendant's Ordinance and ongoing litigation governing the obstruction of navigable waterways is meant to protect. He is an aggrieved or adversely affected party, in that he will suffer an adverse effect to an interest protected or furthered by the COUNTY's Ordinance, and has a protectable interest which exceeds in degree the general interest in community good shared by all persons in the County.

Facts

5. Defendant COUNTY operates a Development Review Committee (DRC) which is given certain powers pursuant to Section 304 of Defendant COUNTY's Land Development Code.

6. Pursuant to Section 301.3 E (3) of the LDC, the DRC has the authority to: "hear variance requests from the requirements of this Code".

7. Defendant maintains a Code of Ordinances, including Chapter 114 regulating waterways. On March 27, 2007, Defendant amended Section 114-40 to include a procedure

purportedly to obtain a variance from the Ordinance
reprinted below:

(d) Variances may be granted to these dock construction standards and mooring restrictions pursuant to the procedures and conditions of section 316 of the Land Development Code.

A copy of the Ordinance is attached and incorporated herein as exhibit 1.

8. On May 4, 2007, Defendant COUNTY notified Lynn Marie Flareau, also a resident of Plaintiff's subdivision, by way of a letter that "we have determined that your above referenced property is in violation of the Pasco County Code of Ordinances, Section 114-40 related to the obstruction of navigability of a County waterway". A copy of the Letter is attached and incorporated herein as exhibit 2.¹

9. On or about August 21, 2007, Defendant COUNTY sued Ms. Flareau seeking permanent injunctive relief and alleged at paragraph 24 of said complaint that the "dock constitutes open, public, repeated, continuous, persistent, and intentional violations of the Pasco County Code of Ordinances" and at paragraph 25 that "Permanent injunctive relief is necessary to maintain the public health, safety, and economic welfare of adjoining landowners and users of the canal, and to allow the County to fulfill its obligation

¹The three offending structures had received citations starting in 2004.

to the citizens in enforcing the laws and ordinances of Pasco County". A copy of the Complaint is attached and incorporated herein as exhibit 3.

10. On or about October 24, Ms. Flareau applied for a "variance" from Defendant County and on December 11, 2007, Defendant notified Ms. Flareau that it would be recommending approval of the variance to the Development Review Committee scheduled for December 20, 2007. A copy of the zoning variance review report is attached and incorporated herein as exhibit 4, and an excerpt of the rationale for approval is reproduced below.

10. On May 4, 2007, Pasco County again cited the applicant that the subject parcel was in violation of obstruction of navigable County waterways.

11. Staff has noted that the canal is Pasco County owned, is platted 70 feet in width, and is a portion of the unrecorded plat of Leisure Beach, Unit Five. Since that time, the Brazilian pepper trees, mangroves, and vegetation have grown into the canal, reducing its width to between 59 feet and 63.2 feet. Further, the opposite side of this canal will never be developed as it is marsh land.

12. Staff has observed numerous similar docks and elevated decks to the north and south of the subject parcel along this canal. Two are directly adjacent to the north.

13. Staff finds that a literal interpretation of the provisions of this code would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the Pasco County Land Development Code.

14. Staff feels that the requested variance is the minimum variance necessary to make reasonable use of the land.

15. Staff has concluded that the granting of the variance will be in harmony with the general intent and purpose of the Pasco County Land Development Code and that such variance will not be

injurious to the area involved or otherwise detrimental to the public welfare.

16. Staff has reviewed the proposed request in accordance with Article 300, Subsection 316.1.A.1, of the Land Development Code.

11. On December 17, Defendant COUNTY published its agenda for the December 20, 2007 Development Review Committee. Plaintiff then contacted Commissioner Jack Mariano to set up a meeting with the Zoning Compliance Manager Debra Zampetti re Plaintiff's concern that while one County Attorney is prosecuting an ongoing obstruction of our canals, another County Attorney is providing a remedy to defeat the prosecution.

12. Plaintiff asked Ms. Zampetti about the efficacy of a variance from its Land Development Code given that the offending structures were not offending the LDC and under what authority Defendant was operating under to issue a variance to Ms. Flareau that would have the effect of defeating the County's ongoing prosecution of the offending docks and other such matters such as the effect this would have on the citizens of the County who are relying on this ordinance to protect their property rights, etc.

12. Ms. Zampetti told Petitioner that "you just don't understand office politics, and she didn't wish to discuss the matter further".

13. Defendant County has scheduled a public hearing to approve a "request for variance" on Dec 20, 2007 under the authority of section 316 of its Land Development Code, the intro of which is reproduced below.

Sec. 316. Variance requests.

The development review committee shall have the authority to hear and decide variances from the strict requirements of this Code.

14. The Plaintiff is in doubt as to his rights, status and legal relations with regards to the actions of the COUNTY.

15. There is a bona fide, actual, present practical need for this Court's declaration of rights, without which the Plaintiff will suffer irreparable injury.

16. There is no adequate remedy at law and Plaintiff has no administrative remedy.

17. Time is of the essence.

COUNT 1.

DECLARATORY AND INJUNCTIVE RELIEF

18. This Court has jurisdiction to enter declaratory and injunctive relief pursuant to Chapter 86, Florida Statutes (2002), and Rule 1.610 Fla. R. Civ. P.

19. The COUNTY has a legal obligation under Chapter 163, Part II, Fla. Stat. (2002), to apply its codes and

ordinances equally to all persons and all properties and in a uniform fashion.

WHEREFORE, Plaintiff prays this Honorable Court grant the following relief:

1. Take jurisdiction of this cause;

2. Enter a Declaratory Judgment, Adjudging that:

- (a) Defendant is currently prosecuting an offense to its general Code of Ordinances re the obstruction of navigable waterways of the County.

- (b) By the express terms of its implementing ordinance, found at Land Development Code section 301.1, Defendant's DRC was "created to administer the provisions of this Code under the authority prescribed by this Code and state law.

- (c) The navigability of waterways in Pasco County is not regulated via its Land Development Code.

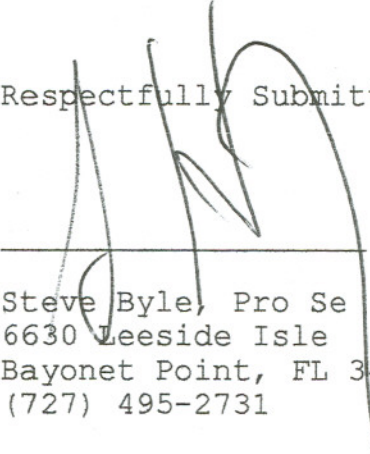
- (d) Notwithstanding section 114-40 (e) of Defendant's general Code of Ordinances, Defendant's DRC is without authority to provide any remedy for an ongoing and continuous violation of Defendant's Code of Ordinance as it

is expressly limited to hear "variance requests from the requirements of the Land Development Code".²

3. Enter an Order declaring Defendant's Code of Ordinance section 114-40(e) unconstitutional and *Ultra Vires* to the extent that it purports to provide a remedy that would defeat the regulation of the navigable waterways of Pasco County with a variance from its Land Development Code ordered by its Development Review Committee.

4. Issue such further orders as it deems just and practicable.

Respectfully Submitted,



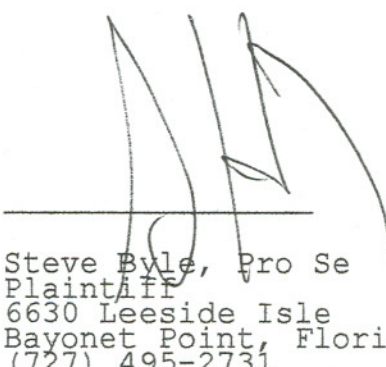
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6630 Leaside Isle
Bayonet Point, FL 34667
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² Variance is defined in the LDC as A grant of relief from the requirements of this Code which permits construction in a manner otherwise prohibited by this Code where specific enforcement would result in unnecessary hardship.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was furnished by fax, mail or hand delivery this January 17, 2008 to:

County Attorney
Pasco County
West Pasco Government Center
Suite 340
New Port Richey, FL 34654



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