



IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
LEE COUNTY, FLORIDA

CIVIL ACTION

1513350

SPYGLASS AT SAN CARLOS BAY, INC.,
a Florida corporation,

DOCKETED & FILED

Plaintiff,

THE REC 1577 PG 1449

JAN 29 1982

vs.

CASE NO. 81-2918 TSR

SAL GERACI, CLERK

BY *[Signature]* D.C.

LEE COUNTY, FLORIDA, a political
subdivision of the State of Florida,

Defendant.

FINAL DECLARATORY JUDGMENT

This cause came on to be heard on November 9, 1981, November 13, 1981 and November 25, 1981 upon Plaintiff's Complaint for declaratory judgment. The Court having heard the testimony of witnesses and the argument of counsel and being fully advised in the premises, the Court enters the following opinion:

The Plaintiff is the owner of an Option to Purchase certain properties on Siesta Isles. The Plaintiff obtained a foundation permit for a high-rise development which was subsequently revoked by the Board of County Commissioners on the basis that the proposed development was not in accordance with the zoning on the property. The Plaintiff then brought an action before this Court seeking a judgment declaring the right of the Plaintiff to construct the high-rise development, and alleged that the Plaintiffs had a vested right in the development and that the County should be estopped due to the expenditure by the Plaintiff of large sums of money.

The evidence showed that the Plaintiffs obtained the Option to Purchase on January 26, 1982 (Exhibit No. 4). The Plaintiff, as a holder of the option, then moved toward development by obtaining the services of an architectural firm. The head of the architectural firm is a principal in the Plaintiff corporation. The Plaintiff also commenced engineering studies and work and applied for a foundation permit which was issued by Lee County. A fee of \$424.00 was paid to Lee County for this permit.

The issues are two-fold. The first issue focuses on the nature of the zoning on the fourteen acre parcel and the second is the issue of estoppel.

In regards to the first issue, the evidence showed that the fourteen acre parcel was originally zoned GU (agricultural). In 1976 the property was rezoned to a multi-family classification of RU-2 by a resolution designated Z-76-104. The Zoning Board and the Board of County Commissioners reviewed the project and considered the project and multi-family zoning conditioned upon the construction of only single-family, attached, two-stories, over piling dwellings. The land was then zoned RM-2 (multi-family) pursuant to the adoption of new Zoning Regulations on January 5, 1978, by the Board of County Commissioners. The new zoning regulations and map adopt by reference the prior Resolution Z-76-104 and insofar as it is adopted by reference as if set forth therein it is not rescinded and rendered null and void by the subsequent revision provision of the 1978 Regulations.

The zoning on the fourteen acre parcel is beset by several flaws. The first flaw is the necessity to refer to extrinsic and parole evidence. Parole or extrinsic evidence cannot be used to explain an otherwise vague or ambiguous resolution. Hartnett v. Austin, 93 So.2d 86 (Fla. 1956). It is only by reference to extrinsic or parole evidence that it becomes apparent that the current zoning RM-2, a re-designation of the prior zoning of RU-2 multi-family, was subject to conditions. Upon review of the parole and extrinsic evidence it becomes clear that the RU-2 zoning was granted to allow only the construction of single-family, attached, two-stories, over piling dwellings. Such contract zoning based upon conditions is unconstitutional. Therefore, the imposition of conditions and reliance by the County on conditions renders the re-zoning of the subject parcel by Resolution Z-76-104 illegal and void ab initio. The zoning of the subject parcel must then revert to the prior status of GU (agricultural), as more recently designated AG. The Court finds the Plaintiff's reliance upon the 1978 Zoning Regulations re-designating prior zoning classi-

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fications, incorporating certain resolutions by reference and rescinding others as the operative vehicle through which the Plaintiff should be allowed to build a high-rise structure to be totally without merit.

The estoppel issue was raised by the Plaintiff. The Plaintiffs have asserted that estoppel should lie against Lee County under the authority of O.P. Corporation v. Village of North Palm Beach, 278 So.2d 593 (Fla.1973) since the County issued a foundation permit, accepted a fee, and since there is no restriction apparent on the face of the re-designation. The Plaintiff further asserted that it acted in reliance upon the zoning by the investment of substantial sums and otherwise changed its position to its detriment.

The Court finds that the estoppel argument as raised by the Plaintiff is without merit as it is abundantly clear from the evidence that the Plaintiff corporation in several instances, knew of the conditions upon the zoning.

The evidence showed that the engineer who was instrumental in the rezoning in 1976, and a subsequent attempt to rezone an adjacent parcel in 1980 was the same engineer who was working from the outset with the Plaintiff corporation.

There was notice to the Plaintiff that there was no right to rely on the foundation permit. There was great attention drawn to this matter in the news media and the red flag of notice was further raised by the scheduling of the matter for review by the Lee County Commission on July 22, 1981. The Plaintiff cannot reasonably contend, based upon any creditable evidence, that they were without notice and knowledge of the specific conditions and limitations of the rezoning. Therefore, to expend large sums of money and otherwise act in reliance upon this zoning was at their own peril in the face of abundant notice to proceed cautiously.

The contention by the Plaintiffs that the foundation permit vested their rights in the zoning and the permits is without merit. The authorities upon which the Plaintiff rely, in part,

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clearly indicate that the issuance of a foundation permit is no assurance of the issuance of a final building permit. The estoppel argument is further eroded by the fact that the option agreement was not entered into because the foundation permit was issued. The evidence showed that the substantial architectural and engineering fees were incurred only in small part after the issuance of the foundation permit. Furthermore, the activity which the Plaintiff offers as their good faith reliance largely occurred prior to the issuance of the foundation permit, or after they had actual and constructive notice of the pending review of this matter by the County Commission. Much of it would not have been accomplished but for the hiatus caused by the continuance requested by the Plaintiff during which period the Plaintiff endeavored to make the maximum progress toward construction and sale of the units as a predicate for their subsequent reliance upon the current zoning and as a buttress for their argument that they were entitled to have a building permit issued.

The Court finds that there was not a good faith reliance based upon the testimony and evidence in this case, and that any appearance of such reliance to otherwise estop the County from the review of this matter and withdraw the foundation permit is contrived and illusory.

Thus, for all the reasons set forth above, it is
ORDERED AND ADJUDGED that:

1. The Plaintiff is not entitled as a matter of right to the issuance of a building permit, but Lee County is within its legal authority to review the matter and revoke the foundation permit.

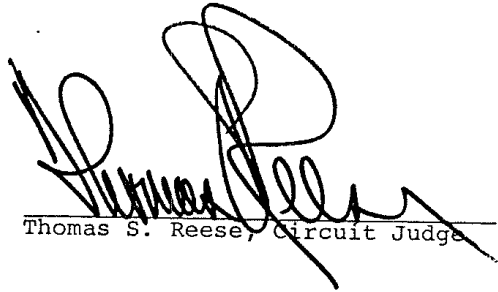
2. The zoning classification of RM-2 on the subject parcel is based upon contract zoning pursuant to conditions which renders Resolution Z-76-104 as incorporated by reference in the 1978 Zoning Resolution void ab initio. The Court specifically finds the incorporation of an invalid prior resolution does not affect the constitutionality of the 1978 ordinance, but affects

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only the zoning of the specific parcel covered by the invalid resolution. The RU-2 rezoning is invalid and the subsequent RM-2 zoning is equally invalid.

3. That the Plaintiff conducted its affairs with notice, and there was no good faith reliance on the part of the Plaintiff. Thus, Lee County is not equitably estopped.

DONE AND ORDERED in Fort Myers, Lee County, Florida, this 28th day of January, 1982.


Thomas S. Reese, Circuit Judge

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RECORDS
LEE COUNTY, FLORIDA
RECORDS MANAGER
CLERK OF CIRCUIT COURT