

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

WILLIAM P. PLANES, SR.  
a/k/a WILLIAM PLANES,  
REGINA M. PLANES, and  
WILLIAM PLANES, II,  
Petitioner,

vs.

Appeal No. 08-000010AP-88B  
UCN 522008AP000010XXXXCV

CITY OF TARPON SPRINGS,  
Respondent.

FILED  
COURT CLERK DEPT  
2008 OCT 29 AM 8:41  
KEN BURKE  
CLERK OF APPELLATE COURT

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This matter is before the Court on the Petition for Writ of Mandamus. Upon consideration of the same and being otherwise fully advised, the Court grants the petition as set forth below.

In April 2004, the Planes family (Family) and the City of Tarpon Springs (City) entered into an Agreement for the purchase of three plots in Cycadia Cemetery. Following execution of this Agreement, the Family received the deed and paid the documentary stamp tax, thereby becoming owners of the plots. The Agreement stated that the Family could construct a private mausoleum over its three plots, provided the mausoleum was consistent with City Cemetery policies and the City Land Development Code. Instead of constructing three separate mausoleums, the Family designed one mausoleum which would extend over all three plots. The Family chose this design because they believed it would provide for more green space in the cemetery, minimize the obstruction of the lake view, and would be compatible with other private and public mausoleums in the cemetery.

KEN BURKE, CLERK OF COURT  
PINELLAS COUNTY FLORIDA  
INST# 2008294260 10/30/2008 at 02:03 PM  
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When the Family submitted the proposed construction for the mausoleum, the City Commission issued a development order rejecting the proposal. The Family contends that the City's development order is unreasonable and unfairly burdens the property. Accordingly, the family filed a Request for Relief pursuant to the Florida Land Use and Environmental Dispute Resolution Act, Fla. Stat. §70.51 (2004). However, the City failed to respond to the Planes' family Request for Relief. The Family now requests this Court issue a Writ of Mandamus directing the City to respond to its Request for Relief by participating in the Florida Land Use and Environmental Dispute Resolution Act Proceeding.

A court may issue a writ of mandamus to enforce a legal right by requiring a public officer or agency to perform a corresponding duty required by law; however, the legal duty must be ministerial, not one which the public entity has discretion in performing. *Soto v. Board of County Commissioners of Hernando County*, 716 So. 2d 863, 864 (Fla. 5<sup>th</sup> DCA 1998). For example, if the law requires the city to take action and the city fails to do so, a court may issue a writ of mandamus. *See Stranahan House, Inc. v. City of Fort Lauderdale*, 927 So.2d 1068 (Fla. 4<sup>th</sup> DCA 2006). To determine if the law requires the city to act, courts have looked to the language of the law in question. Specifically, the court in *Stranahan* held that where the law states that a City "shall" take some course of action, this indicates a clear requirement to act. *Id.* at 1070.

Here, the Family properly filed a Request for Relief pursuant to the Florida Land Use and Environmental Dispute Resolution Act because it believed the City's development border was unreasonable and unfairly burdened its property. Fla. Stat. §70.51. Under this act, "any owner who believes that a development order ... is unreasonable or unfairly burdens the use of the owner's real property" may apply for relief. *Id.* Furthermore, after the owner applies for relief,

the head of the governmental entity “**must** forward the request for relief to the special magistrate... within 10 days after the receipt of the request.” *Id.* (emphasis added).

Looking to the language of the Florida Land Use and Environmental Dispute Resolution Act, there exists a clear requirement that the City respond to the Request for Relief. The law does not leave any room for discretion on the part of the City. At the very least, the law requires the City to forward the Request for Relief to the special magistrate; however, the parties provide no evidence demonstrating that the City has taken action regarding this Request for Relief.

Therefore, it is

**ORDERED AND ADJUDGED** that Petitioner William P. Planes’ Petition to Issue Writ of Mandamus is **GRANTED**.

**DONE AND ORDERED** in Chambers, at St. Petersburg, Pinellas County, Florida, this

28 day of October, 2008.

Original opinion entered by Circuit Judges J. Thomas McGrady, Peter Ramsberger and Amy M. Williams.

Copies furnished to:

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