

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

FRIENDS OF THE BELLEVIEW BILTMORE, INC.

Petitioner,

v.

**TOWN OF BELLEAIR, BELLEVIEW
BILTMORE COUNTRY CLUB CORP.**

Respondent.

Ref. No.: 14-000023AP

UCN: 522014AP000023XXXXCV

ORDER DISMISSING PETITION FOR WRIT OF CERTIORARI

THIS CAUSE is before this court on Respondent's motion to dismiss the petition for writ of certiorari, to which Petitioner filed a memorandum in opposition. Having reviewed the parties' submissions and applicable law, the Court finds that it is without jurisdiction to grant the relief requested, and accordingly the petition must be dismissed.

Petitioner seeks to challenge the Town of Belleair Town Commission's adoption of Ordinance No. 495. Ordinance No. 495 amends section 74-84 of the Belleair Land Development Code (Code) to reduce the minimum lot size of the Hotel district. The Commission's decision to amend the Code was legislative in nature. *See Coastal Development of North Florida, Inc. v. City of Jacksonville Beach*, 788 So. 2d 204 (Fla. 2001). In *Coastal Development*, the Court held that small-scale development amendments to a comprehensive plan are legislative decisions subject to the fairly-debatable standard of review, and are properly challenged by an original action in the circuit court, not a petition for certiorari. *Id.* at 210. The Court reasoned this would even be the case for an amendment applicable to only a single tract of land. *Id.* at 208. The Court in *Coastal Development* based its conclusion on several factors.

First, we concluded that because the original adoption of the comprehensive plan by a local government was a legislative act, it naturally followed that a proposed modification of that comprehensive plan was likewise legislative in nature. Second, the integrated review process by several levels of government indicates that an action on a comprehensive plan amendment is a policy decision. Third, section 163.3184(10)(a) mandates that the fairly-debatable standard of review applies in an administrative hearing to determine compliance with the Act. Fourth, the holding would remove uncertainty and promote uniformity in the land-use law context. (internal citations omitted)

Id.

The Court's reasoning is applicable to the Code amendment petitioner seeks to challenge ~~in the instant petition. First, the original adoption of the Code was clearly a legislative act, and it~~ naturally follows that a proposed amendment of that Code is likewise legislative in nature. §163.3213(5)(a), Fla. Stat. ("The adoption of a land development regulation by a local government is legislative in nature."). Second, just like in review of a small-scale amendment, there is an integrated review process by several levels of government for review of amendments to land development regulations set out in section 163.3213. Third, section 163.3213(5)(a) mandates a fairly-debatable standard of review. Finally, holding that an amendment to the land development code is a legislative act would promote uniformity in the land-use law context. Because the challenged action was legislative in nature, not quasi-judicial, this court is without jurisdiction. *Walgreen v. Polk County*, 524 So. 2d 1119, (Fla. 2d DCA 1988).

Accordingly, it is

ORDERED that the instant petition for writ of certiorari is hereby DISMISSED.

DONE AND ORDERED in Chambers, at St. Petersburg, Pinellas County, Florida, on this 25th day of July 2014.

Original order entered on July 25, 2014 by Circuit Judges Jack Day, Amy M. Williams, and Pamela A.M. Campbell.

Copies furnished to:
JOHN A SHAHAN, ESQ
536 EAST TARPON AVENUE
SUITE 3
TARPON SPRINGS, FL 34689

E.D. ARMSTRONG, ESQ
HILL, WARD & HENDERSON, PA
BANK OF AMERICA PLAZA, SUITE 2700
101 EAST KENNEDY BOULEVARD
TAMPA, FL 33601

THOMAS A. CLOUD, ESQ
GRAY ROBINSON, PA
PO BOX 3068
ORLANDO, FL 32802