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

PARKSHORE PLAZA CONDOMINIUM ASSOCIATION, INC.,
Petitioner,
v.

CITY OF ST. PETERSBURG, FLORIDA, and PATRICIA B. MOSS REVOCABLE TRUST,
Respondent.
_____/

Ref. No. 15-000001AP-88B
UCN: 522015AP000001XXXXCI

ORDER AND OPINION

Petitioner challenges an action of the City Council of St. Petersburg, which upheld the Development Review Commission's approval of a site plan for a new condominium. Petitioner asserts that the City failed to follow the essential requirements of law in approving the site plan. For the reasons set forth below, the petition for writ of certiorari is denied.

Facts and Procedural History

On October 1, 2014, the Development Review Commission ("DRC") held a public hearing, and Petitioner was a registered opponent that presented testimony and evidence against approval. Petitioner is Parkshore Plaza, a neighboring condominium. The site plan included a car elevator entrance off of Fareham Place, a narrow street that the Parkshore residents use to access their condominiums. Petitioner insists that the site plan would allow traffic to back up in the road while cars waited for the elevator because it did not provide a proper means for car "stacking"—as required by the City's parking garage ordinance. After the hearing, the applicant added three parallel parking spaces in an effort to address Petitioner's concerns. This revised site plan was unanimously approved by the DRC. Petitioner appealed to the City Council, which unanimously upheld the revised site plan. Petitioner raises three issues:

1. The revised site plan did not comply with the requirements of the City's parking garage ordinance when it was approved by DRC.

2. DRC approved the site plan in a manner that failed to comply with the due process requirements of law because Petitioner was not provided an opportunity to present testimony or evidence about the revisions.
3. The revised site plan provides for a total square footage of building structure that exceeds the total maximum square footage allowance under the City's Comprehensive Land Use Plan, and the applicant did not include several areas when calculating the purported square footage.

After the instant petition was filed, the applicant submitted a modification to the revised site plan for approval. A new public hearing was held by the DRC, and they voted unanimously to approve the modified site plan. The new plan relocated the car elevator entrance away from Fareham Place to an alley. Additionally, the applicant provided testimony that the new square footage calculation contained the areas not included previously (such as a janitor's closet and electrical room). Petitioner did not register as an opponent at this DRC hearing. An appeal by another party was made to City Council, which unanimously upheld the DRC approval.

Discussion

Respondent asserts the petition for writ of certiorari is moot because the modified site plan replaces the revised site plan at issue. "[A] case on appeal becomes moot when a change in circumstances occurs before an appellate court renders its decision and makes it impossible for the court to provide effectual relief." *Nannie Lee's Strawberry Mansion v. City of Melbourne*, 877 So. 2d 793 (Fla. 5th DCA 2004). In *Nannie Lee's Strawberry Mansion*, the city approved a site plan, and while the petition was pending in circuit court, the developer sought and obtained a new site plan addressing the petitioner's objections. *Id.* at 793-794. The circuit court held that "it would serve no useful purpose to review the proceedings approving the superceded [sic] 2002 ordinance and that the new 2003 plan was not the subject of the attack." *Id.* at 794. The Fifth District Court of Appeal agreed that the issues were moot. *Id.*

In the instant case, Petitioner states it has no issue with the modified site plan but argues that the issues are not moot because the applicant could still choose to use the revised site plan. Petitioner asserts that unless this Court rules that the revised plan "is fully rescinded and a nullity [that] cannot be reinstated," the applicant could choose between the two plans at any time.

Respondent contends that the modified site plan supersedes the revised plan and points to a special condition of approval for the modified site plan that reads as follows:

> The applicant may elect to withdraw this application for modification of a previously approved site plan, at his sole discretion, within 30 days of approval of this modification . . . . If said application is withdrawn, the previously approved application and site plan . . . shall remain in full effect, in accordance with all previous conditions of approval.

The Applicant did not withdraw the application.

The Court finds that the revised site plan is no longer in effect, and issues one and two are moot. Issue one specifically asserts that the *revised* site plan does not comply with the parking garage ordinance. The revised site plan is no longer in effect, and Petitioner has no objections to the modified plan. Petitioner's next argument that it was not afforded due process about the revisions made after the hearing on the original site plan is also moot because that site plan is no longer in effect. Furthermore, a new hearing was held for the modified site plan, and petitioner failed to register as an opponent and voice any concerns. Issue three is moot concerning the areas that were not included in the square footage of the revised site plan because they are included in the modified plan.

Respondent asserts that the issue of exceeding allowable maximum square footage is not ripe because "[t]he City performs its final administrative action with respect to the allowable [square footage] of a development only when a complete set of building and construction plans is submitted for permitting."[1] The ripeness doctrine prevents "courts from engaging in speculation or wasting their resources through the review of potential or abstract disputes." *Harrell v. The Florida Bar*, 608 F.3d 1241, 1257-58 (11th Cir. 2010) (quoting *Digital Props., Inc. v. City of Plantation*, 121 F.3d 586, 589 (11th Cir.1997)). A two-prong test for ripeness includes "both the fitness of the issues for judicial decision and the hardship to the parties of withholding judicial review." *Id.* at 1258 (emphasis omitted). The fitness prong concerns "questions of 'finality, definiteness, and the extent to which resolution of the challenge depends upon facts that may not yet be sufficiently developed.'" *Id.* (quoting *Ernst & Young v. Depositors Econ.*

[1] "To require that level of design before zoning and land use approvals are obtained is an unreasonable demand on an applicant's financial resources. Site plans are a simpler set of drawings that require far less outlay of time, money, and effort than detailed construction plans."

Prot. Corp., 45 F.3d 530, 535 (1st Cir.1995)). "The hardship prong asks about the costs to the complaining party of delaying review until conditions for deciding the controversy are ideal." *Id.*

In the instant petition, the maximum square footage issue fails to satisfy both prongs for ripeness. The City has not seen detailed construction plans from which to calculate the square footage, so the facts may change. Therefore, the issue is far from finalized, which is necessary to meet the fitness prong. Petitioner will suffer no "costs" for delay by waiting until the City issues building permits. Also, Respondent points out that a resident of Parkshore has already challenged the square footage allowance in another case. This further lessens the costs to Petitioner of delaying review. Accordingly, the issue of maximum square footage is not ripe for consideration at this time. If and when a building permit is issued, Petitioner may challenge that development order under Florida Statute section 163.3215.

Conclusion

Because the modified site plan supersedes the revised site plan that is the subject of the petition for writ of certiorari, the issues relating to that plan are moot. Furthermore, the maximum square footage calculation is not ripe for consideration by the Court. Accordingly, it is,

ORDERED AND ADJUDGED that above-styled petition for writ of certiorari is DENIED.

DONE AND ORDERED in Chambers, at St. Petersburg, Pinellas County, Florida, on this 22 day of July 2015.

Original Order entered on July 22, 2015, by Circuit Judges Peter Ramsberger, Amy M. Williams, and Thomas M. Ramsberger.

Copies furnished to:

DAVID A. BACON, ESQUIRE
CHRISTOPHER FURLONG, ESQUIRE
BACON, BACON, & FURLONG, P.A.
2959 FIRST AVENUE NORTH
ST. PETERSBURG FL 33713

ROBERT DONALD MASTRY, ESQUIRE
TRENAM KEMKER
PO BOX 3542
ST. PETERSBURG FL 33731-3542

JOHN C. WOLFE, CITY ATTORNEY
CITY OF ST. PETERSBURG
PO BOX 2842
ST. PETERSBURG FL 33731-2842

MARION HALE, ESQUIRE
JOHNSON POPE BOKOR RUPPEL & BURNS
911 CHESTNUT STREET
CLEARWATER FL 33756-5643