

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED

IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PASCO COUNTY, FLORIDA
APPELLATE DIVISION

PATRICK T. MULLEN,
Petitioner,

v.

Case Number: 2022-CA-002963-ES

PASCO COUNTY BOARD OF
COUNTY COMMISSIONERS,
Respondent.

Patrick T. Mullen, Petitioner, *pro se*

Richard D. Yovanovich, Esquire
Attorney for Respondent

**ORDER DISMISSING PETITION FOR WRIT OF CERTIORARI
FOR LACK OF STANDING**

Petitioner, Patrick T. Mullen, *pro se* (“Mullen”), seeks certiorari review of Resolution No. 23-09RZ (“Resolution”), entered October 11, 2022, by the Pasco County Board of County Commissioners (“BCC”). In a 3-2 decision, the BCC entered the Resolution granting the application of SD Wesley Chapel, LLC¹ (“Developer”), to amend the zoning classification of the Seven Oaks Master Planned Unit Development (“Seven Oaks MPUD”) from 60,000 square feet of commercial retail/office to residential, mixed-use. The Resolution approved the Developer’s application to build 320 apartments, in two 4-story buildings, vertically-integrated with 25,000 square feet of commercial retail/office space (“development”). The mixed-use development also includes a parking garage, a dog park, pool, playground, and other amenities.

¹ SD Wesley Chapel, LLC, is a limited liability company based in Naples, FL, that specializes in building luxury apartment complexes. This is their first project in Pasco County.

As background, Parcel S-19 consists of a 10.6 acre parcel located within the Seven Oaks Development of Regional Impact (“DRI”) and Seven Oaks MPUD. Looking north from State Road 56, Parcel S-19 has Ancient Oaks Blvd. to the west, commercial retail/offices to the north, and Sam’s Club to the east.² The Seven Oaks MPUD consists of approximately 2,500 acres in eastern Pasco County, and is abutted by I-75, Bruce B. Downs Blvd., and State Road 56. The Seven Oaks MPUD encompasses a maximum of 1,726 residential homes, office and commercial uses, and recreational facilities. At the time of the BCC hearing on October 11, 2022, only 588 residential homes had been constructed, and Parcel S-19 had been vacant for several years. There is no dispute that the approved 320 apartments would count towards the total number of residential homes (1,726) allowed under the Seven Oaks MPUD.

The Resolution, entered October 11, 2022, repealed the BCC’s prior 3-2 decision denying the Developer’s application, entered January 11, 2022, Resolution No. 22-25RZ,³ and included, as a condition of approval, that the Developer defend and indemnify Pasco County from any third-party claims arising from the BCC’s approval of the Developer’s application. The matter came before the BCC after an extensive review process conducted by Pasco County’s Planning Development Department which, after two public hearings, approved the development application 5 to 1, in December 2021. In reaching its decision, the BCC considered the October 11, 2022 hearing as a continuation of the BCC hearing held on January 11, 2022 (referencing the interim, unsuccessful mediation undertaken pursuant to Fla. Stat. § 70.51), without objection. Despite the

² Much of the residents’ testimony focused on the already-congested traffic conditions in this area, which will be exacerbated by the addition of 320 units directly off of Ancient Oaks Blvd., one of the main entrances to Seven Oaks. However, there are several other entrances to Seven Oaks off of Bruce B. Downs Blvd.

³ At both hearings, the elected BCC was comprised of: Ron Oakley (District 1); Mike Moore (District 2); Kathryn Starkey (District 3); Christina Fitzpatrick (District 4); and, Jack Mariano (District 5).

many individuals who testified in opposition to the development,⁴ only Mullen appealed the BCC's final decision.

Citing to the appropriate standard of review, Mullen argues that he was deprived of due process, that the Resolution is not supported by competent substantial evidence, and that the BCC's actions in approving the development departed from the essential requirements of law. *Haines City v. Heggs*, 658 So.2d 523, 530 (Fla. 1995); *City of Deerfield Beach v. Vaillant*, 419 So.2d 624, 626 (Fla. 1985). In its Joint Response,⁵ in addition to countering Mullen's arguments, the Respondent asserts that Mullen lacks standing and is barred from challenging the Resolution pursuant Section 163.3215, Florida Statutes.

Initially, the Court finds that Mullen's Petition for Writ of Certiorari is the appropriate mechanism to challenge the final decision of the BCC, as the underlying proceedings and the entry of the Resolution were quasi-judicial in nature. *Miami-Dade County v. City of Miami*, 315 So.3d 115, 119 (Fla. 3d DCA 2020)(explaining that quasi-judicial decisions of municipal agencies, boards, and commissions are reviewable by petitions for writ of certiorari to the appellate division of the circuit court)(citing *Teston v. City of Tampa*, 143 So.2d 473, 476 (Fla. 1962)). As explained by the Second District Court of Appeal, "[a] decision is judicial or quasi-judicial, as distinguished from executive, when notice and hearing are required and the judgment of the administrative agency is contingent on the showing made at the hearing." *City of St. Pete Beach v. Sowa*, 4 So.3d 1245, 1247 (Fla. 2d DCA 2009)(citing *DeGroot v. Sheffield.*, 95 So.2d 912, 915 (Fla. 1957).

⁴ Representatives from the Seven Oaks Community Development District and Seven Oaks Property Owners Association (which encompasses the Seven Oaks Resident Council), presented testimony and evidence in opposition to the project.

⁵ While the Developer did not file a motion to add party respondent, the Court finds that Fla. R. App. P. Rules 9.100(b)(1) requires, in part, that "all parties to the proceeding in the lower tribunal who are not named as petitioners shall be named as respondents." As such, the Court accepts the Joint Response filed by the BCC and the Developer, collectively "Respondent." This has no bearing on the issue of Mullen's standing.

Additionally, Section 163.3215(4), Florida Statutes, specifically provides for a petition for writ of certiorari, to wit:

4) If a local government elects to adopt or has adopted an ordinance establishing, at a minimum, the requirements listed in this subsection, *the sole method by which an aggrieved and adversely affected party may challenge any decision of local government granting or denying an application for a development order, as defined in s. 163.3164, which materially alters the use or density or intensity of use on a particular piece of property, is by an appeal filed by a petition for writ of certiorari filed in circuit court no later than 30 days following rendition of a development order* or other written decision of the local government, or when all local administrative appeals, if any, are exhausted, whichever occurs later. An action for injunctive or other relief may be joined with the petition for certiorari. (*emphasis added*).⁶

Pasco County has adopted the requirements § 163.3215, Florida Statutes, as set forth in the Pasco County Code Section 407.1.H., which expressly provides for first-tier certiorari review, to wit:

Appeals of Final Determinations of the BCC. Any aggrieved party may appeal a final determination of the BCC to the Sixth Judicial Circuit Court of the County in accordance with the applicable Florida Rules of Procedure. An appeal shall be filed within 30 days of the decision to be appealed and shall not be a hearing de novo, but shall be limited to appellate review of the record created before the BCC in accordance with applicable law for a first tier certiorari review.

Hence, the Court finds it has jurisdiction to review Mullen's Petition for Writ of Certiorari.

Next, the Court must address Mullen's standing, as "[s]tanding is a threshold issue which must be resolved before reaching the merits of a case." *Solares v. City of Miami*, 166 So.3d 887, 888 (Fla. 3d DCA 2015). As explained by the Florida Supreme Court in *Renard v. Dade Cty.*, 261 So.2d 832, 837 (Fla. 1972):⁷

An aggrieved or adversely affected person having standing to sue is a person who has a legally recognizable interest which is or will be affected by the action of the zoning authority in question. The interest may be one shared in common with a number of other

⁶ The Court notes that this section also sets forth a process for a party to seek declaratory or injunctive relief, which is not mutually exclusive from seeking certiorari review.

⁷ Despite Mullen's assertion to the contrary, *Renard* is still good law.

members of the community as where an entire neighborhood is affected, but not every resident and property owner of a municipality can, as a general rule, claim such an interest. *An individual having standing must have a definite interest exceeding the general interest in community good share [sic] in common with all citizens.* So-called 'spite suits' will not be tolerated in this area of the law any more than in any other.

In determining the sufficiency of the parties' interest to give standing, factors such as the proximity of his property to the property to be zoned or rezoned, the character of the neighborhood, including the existence of common restrictive covenants and set-back requirements, and the type of change proposed are considerations. The fact that a person is among those entitled to receive notice under the zoning ordinance is a factor to be considered on the question of standing to challenge the proposed zoning action. However, since the notice requirements of the many zoning laws throughout the State vary greatly, *notice requirements are not controlling on the question of who has standing.* Persons having sufficient interest to challenge a zoning ordinance may, or may not, be entitled to receive notice of the proposed action under the zoning ordinances of the community. *(emphasis added).*

It is not enough for a resident to allege an increase in traffic, parking difficulties, and/or other inconveniences, because everyone in the community will be similarly affected. *Id.*; *Skaggs-Albertson's Properties, Inc. v. Michels Belleair Bluffs Pharmacy, Inc.*, 332 So.2d 116, 116-17 (Fla. 2d DCA 1976)(*citations omitted*). Rather, the aggrieved party in a certiorari proceeding must show he has suffered special damages different in kind from the community as a whole. *Id.*; *City of Ft. Myers v. Splitt*, 988 So.2d 28, 33 (Fla. 2d DCA 2008)(explaining that "[s]tanding under the *Renard* special damages test is typically based on some impact on the litigants' interest as an owner of property")(*citation omitted*). Further, standing must be proven through the record made during the quasi-judicial proceedings. *Splitt*, 988 So.2d at 32 (stating the well-established rule that "the reviewing court's consideration shall be confined strictly and solely to the record of proceedings by the agency or board on which the questioned order is based")(*citations omitted*).

Mullen is unable to show that he has suffered special damages to maintain standing in this certiorari proceeding. The record shows that Mullen testified at both BCC hearings held on January 11, 2022, and October 11, 2022. Upon being called up at each hearing, Mullen stated his

name and address, and then continued along with a PowerPoint presentation, which had commenced several minutes earlier by Jon Tomsu, Director of the Seven Oaks Property Owners Association.⁸ While the record is silent as to the proximity of Mullen's residence to Parcel S-19, the record does clearly show that there are no single-family homes or apartments abutting the property. Rather, the record shows that the nearest Seven Oaks development, Seven Oaks Professional Park (located off of Ancient Oaks Blvd. just north of Parcel S-19), had been earlier rezoned from residential to commercial retail/office such that the development will not border any single-family homes.

The proceedings captured on Pasco County Government's official YouTube channel,⁹ clearly show that Mullen was afforded an opportunity to speak and voice his opposition to the development. Mullen used his allotted time to continue with the PowerPoint, which focused on zoning considerations (including spot-zoning), a cost-benefit analysis, and neighboring deed restrictions involving Sam's Club. Mullen provided no other personal details, such as how far he lives from Parcel S-19, nor any special damages he might suffer. Hence, the Court concludes that Mullen lacks standing and that the Petition for Writ of Certiorari must be dismissed.

⁸ Given the time limitations for each Seven Oaks' resident to speak, usually two minutes, several residents of Seven Oaks took turns presenting from the same PowerPoint. Mr. Tomsu was given more time to speak. Many residents appeared at both hearings to speak in opposition to the development.

⁹ There was no objection to the Court's Notice and Order of Intent to take Judicial Notice of Hearings Posted on Pasco County Government's Official YouTube Channel, pursuant to Fla. Stat. § 90.204. The YouTube videos reinforce the transcripts, and also provide context as to the contentious Board deliberations. Mullen's presentation is located at 4:16:47, of the January 11, 2022 hearing; and, at 2:52:15, of the October 11, 2022 hearing.

WHEREFORE, it is hereby, **ORDERED AND ADJUDGED** that the Petition for Writ of Certiorari is hereby **DISMISSED**.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida on this ____ day of _____, 2023.

Original Order entered on October 16, 2023, by Circuit Judges Susan Barthle, Daniel Diskey, and Lauralee Westine.

Copies furnished to:

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